

**Draft Dudley Local Plan
Representations to the
Regulation 19 Consultation**

**Land at Foxcote Farm,
Stourbridge, Dudley**

St Philips Land Limited

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Contents

1.0	Introduction	1
	Plan-Making to Date	1
2.0	Areas of Response	3
	Spatial Strategy Policies	3
	Non-Strategic Policies	17
	Draft Dudley Local Plan Viability Assessment	18

1.0 Introduction

1.1 These representations to the Draft Dudley Local Plan (“the DLP”) Regulation 19 Consultation have been prepared by Lichfields on behalf of St Philips Ltd (“St Philips”). We focus on the strategic matters that are contained within the consultation and relate specifically to St Philips’ site entitled Land at Foxcote Farm, Stourbridge (“the Site”).

1.2 St Philips seeks to work constructively with Dudley Council (“the Council”) as it progresses towards the submission and adoption of the Local Plan Review and trusts that the comments contained within this document will assist Officers in this regard.

Plan-Making to Date

1.3 The existing development plan for Dudley comprises the following documents:

- The Black Country Core Strategy (adopted February 2011);
- Dudley Borough Development Strategy (adopted February 2017);
- Brierley Hill Area Action Plan (adopted August 2011);
- Dudley Area Action Plan (adopted February 2017);
- Halesowen Area Action Plan (adopted October 2013);
- Stourbridge Area Action Plan (adopted October 2013)

1.4 Previously, the four Black Country Planning Authorities (Walsall, Dudley, Sandwell and Wolverhampton) were in the process of undertaking a review of the Black Country Core Strategy. As per NPPF paragraph 33, “*Reviews should be completed no later than five years from the adoption date of a plan and should take into account changing circumstances affecting the area, or any relevant changes in national policy*”.

1.5 The Black Country Authorities (BCAs) carried out an Issues and Options consultation (“IOC”) between 3rd July and 8th September 2017. Following on from this, the BCAs consulted upon the Draft Black Country Plan Consultation between 16th August to 11th October 2021. The draft plan considered a range of issues, including the amount of housing and employment land needed within the Black Country up to 2039. Other topics included, inter alia, infrastructure provision, health and wellbeing and the natural and historic environment.

1.6 However, it was announced in October 2022 that the Councils had failed to reach a consensus on the approach and therefore each Council is now preparing their own Local Plan. Subsequently, Dudley is in the process of preparing a new local plan, known as the Dudley Local Plan 2041. The Local Plan Review is required to review, inter alia, the housing and employment needs of Dudley.

1.7 The Council undertook an issues and options consultation which concluded in December 2023 where the draft plan considered proposed development allocations, the distribution throughout Dudley and a range of draft policies on topics such as infrastructure, housing provision, the environment, climate change, and transport. The Council is now undertaking

a consultation on the publication version of the Draft Dudley Local Plan (Regulation 19) which will run up until 29th November 2024.

2.0 Areas of Response

Spatial Strategy Policies

Draft Policy DLP1 (Development Strategy)

- 2.1 St Philips **objects** to draft Policy DLP1 on the same basis as raised within St Philip’s regulation 18 representations. Although the housing requirement has been amended from 10,876 dwellings to 10,470 dwellings in the plan period against a Local Housing Need (“LHN”) of 11,169, it still leaves a shortfall of 699 dwellings which is to be exported through Duty to Co-operate.
- 2.2 Although the level of shortfall has reduced from 1,078 dwellings to 699 dwellings, fundamentally, the DLP has still failed to provide sufficient land to meet the minimum housing need, as per National Planning Policy Framework (“NPPF”) paragraph 11(b). Paragraph 69 requires that the Council needs to ensure that additional housing land should identify a sufficient supply and mix of sites, taking into account their availability, suitability and likely economic viability to deliver specific deliverable sites for the first five years of the plan period and deliverable sites of broad locations to meet needs for years 6-10 and 11-15 of the plan periods.
- 2.3 The Council has not done this and consequently Policy DLP1 in relation to housing land supply is **not sound**.
- 2.4 Not only is this approach fundamentally flawed and entirely contrary to the requirement of the adopted NPPF paragraph 35(c), but it is completely misaligned with “*the Government’s objective of significantly boosting the supply of homes*” (NPPF paragraph 60).
- 2.5 In addition, the proposed housing need is based upon the standard method (SM) within the adopted NPPF, however, the DLP has not acknowledged the proposed NPPF changes, in particular the revised SM in which the local housing need for Dudley would substantially increase by 143%. It is likely the draft NPPF will be published prior to the DLP reaching examination; therefore, it is critical the Council identify further land at this stage of the local plan production to meet the increased housing need from the new SM.
- 2.6 Despite the Council not complying with the revised SM, they are still demonstrating a shortfall in their LHN which they expect to export onto neighbouring authorities, placing significant and additional pressures on the GBBCHMA to meet further unmet housing needs instead of utilising suitable land within the Green Belt to meet their own needs.
- 2.7 In this regard, St Philips considers that the DLP’s approach through draft Policy DLP1 is flawed on several grounds, and these are summarised below:
- 1 **Local Housing Need:** The Council has not assessed whether a housing requirement greater than the LHN is justified.
 - 2 **Changes to the Standard Method and NPPF:** The Council does not acknowledge the draft NPPF and the changes in national policy on plan-making.
 - 3 **GBBCHMA Unmet Needs:** The DLP fails to acknowledge the unmet housing need arising from the Greater Birmingham and Black Country Housing Market Area [GBBCHMA] when seeking to export Dudley’s housing shortfall.

- 4 **Duty to Cooperate:** The Duty to Cooperate has not been fulfilled and the unmet housing need identified has been deferred rather than dealt with, contrary to NPPF paragraph 35(c).
- 5 **Sustainability Appraisal:** The Draft Sustainability Appraisal fails to consider all of the options available to meet the LHN as well as the GBBCHMA's unmet need, and therefore would not be justified as per NPPF paragraph 35(b).
- 6 **The Deliverability of Brownfield Land:** The proposed supply of brownfield land and windfall sites is an unrealistic and unviable strategy. In reality, the shortfall of housing land is greater than what has been stated within the DLP.
- 7 **Transitional Arrangements of the Draft NPPF:** Based on the current arrangements, it is considered unlikely that the DLP will proceed through examination.
- 8 **Exceptional Circumstances and Green Belt Release:** The DLP does not seek to identify, allocate and release a sufficient supply of land within the Green Belt for housing. The DLP does not recognise that exceptional circumstances for the release of land from the Green Belt exist.

2.8 St Philips detailed objections in relation to the above grounds are set out below:

Local Housing Need

- 2.9 The DLP's proposed housing requirement is 616 dwellings per annum (dpa) equating to 10,470 dwellings across the plan period against a LHN of 11,169 dwellings as calculated by the SM, leaving a shortfall of 699 dwellings which is anticipated to be exported through Duty to Cooperate to neighbouring authorities.
- 2.10 Since the regulation 18 consultation, Dudley's LHN has been reduced from 11,954 dwellings to 11,169 dwellings from the document following a reduction in affordability. However, the Council's housing requirement has also been reduced from 10,876 dwellings to 10,470 dwellings with no justification for the reduction.
- 2.11 However, as set out in detail within St Philips' IO representations, draft Policy DLP1 has not considered whether a housing requirement greater than the minimum LHN is justified and demonstrates the LHN will not be met in the plan period. In this context, paragraph 11b of the NPPF is clear that:
- “Strategic policies should, as a minimum, provide for objectively assessed needs for housing and other uses, as well as any needs that cannot be met within neighbouring areas, unless:*
- 1 *the application of policies in this Framework that protect areas or assets of particular importance provides a strong reason for restricting the overall scale, type or distribution of development in the plan area; or*
 - 2 *any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole”*
- 2.12 The NPPF also states that:

“To determine the minimum number of homes needed, strategic policies should be informed by a local housing need assessment, conducted using the standard method in national planning guidance...” (Para 61)

- 2.13 Despite the reduction in shortfall from the regulation 18 consultation, the Council are still not meeting their proposed housing need with a shortfall of 699 homes meaning they have failed to provide sufficient land to meet the minimum housing need, making the proposed spatial strategy unjustified as the DLP does not meet the LHN in its entirety. The PPG¹ is clear that the LHN figure generated by the SM method is a minimum starting point (i.e. actual housing need may be higher than this figure).
- 2.14 Draft Policy DLP1 (3) aims to export the 699 dwelling shortfall to neighbouring authorities. As set out below in more detail, there is an unmet housing need within the GBBCHMA that needs to be addressed through cooperation and suitable planning. Instead of seeking to maximise housing growth within Dudley and help reduce the severe shortfall, the DLP seeks to export 699 dwellings of its own needs.
- 2.15 Dudley’s Spatial Strategy Development document identifies potential (unconfirmed) contributions to the Black Country Authorities and GBBCHMA within table 1 of the document provided below.

Table 2.1 Summary of Direct Contributions to the GBBCHMA’s Housing Shortfall

Local Authority	Contribution	Status of Plan	Statement of Common Ground (SoCG)	Potential contribution towards Dudley’s shortfall
Shropshire	1,500 to BCA	Examination in Public	SoCG signed in July 2021 and addendum signed in September 2024	Potential appointment of 431 homes to Dudley. Subject to formal agreement/SoCG between BCAs.
South Staffordshire	640 to GBBCHMA	Regulation 19	Updated bilateral SoCG agreed and subject to formal sign off via Dudley MBC’s Cabinet 23 rd October 2024.	Potential appointment of 153 homes to Dudley. Subject to formal agreement/SoCG between BCAs and Birmingham City Council.
Telford & Wrekin	1,640 to BCA	Regulation 18	SoCG to be progressed as part of the GBBC HMA	Potential appointment of 242 homes to Dudley. Subject to formal agreement/SoCG between BCAs and Telford & Wrekin.
Cannock Chase	500 to BCA	Regulation 19	SoCG to be progressed as part of the GBBC HMA	Potential apportionment of 16 homes to Dudley. Subject to formal agreement/SoCG between BCAs and Birmingham City Council.

Source: Dudley’s Spatial Strategy Development Table 1

- 2.16 St Philips has concerns on the legitimacy of these contributions being delivered. Although the emerging Shropshire Local Plan identified a contribution of 1,500 dwellings towards the

¹ PPG ID: 2a-002

BCA, on the 29th October 2024, the Inspectors for the Shropshire Local Plan Examination issued a letter announcing they have significant concerns about the soundness of the Plan in respect of a number of areas. As such, the plan has been paused and given the Inspectors citing a number of significant concerns regarding the Local Plan, withdrawal is a likely prospect based on the protracted nature of proceedings to date.

- 2.17 Given this update, it is considered likely that the potential 431 dwellings contribution will not be delivered meaning the level of contribution from neighbouring authorities currently stands at 411 dwellings, leaving an unidentified shortfall of 288 dwellings.
- 2.18 St Philips has significant concerns regarding this approach, which is fundamentally underpinned by an unreasonable approach to the spatial strategy which seeks to not review the Green Belt but instead focuses on exporting their shortfall to neighbouring authorities, creating a significant and unprecedented challenge on the GBBCHMA authorities in terms of plan-making. Ultimately, St Philips considers that the Council is effectively seeking to defer rather than deal with this issue, contrary to paragraph 35c of the NPPF.
- 2.19 In addition, St Philips also raises concern in regard to the proposed supply of windfall sites and their associated deliverability, particularly given the DLP indicates 2576 dwellings will be delivered over the plan period. The delivery of windfall sites are not always guaranteed given the planning uncertainty, market viability concerns for developers and their often smaller in scale limiting the supply of homes. St Philips accepts that that the proposed supply of windfall development is based on past trends, however, the high degree of uncertainty and unidentified nature raises concern. Windfall allowances comprise a significant element of the housing supply in Dudley, which therefore means that a high degree of inaccuracy is associated with draft Policy DLP1.
- 2.20 Furthermore, the Council outlines the vision for Dudley Borough by 2041 to deliver a wide range of housing that will meet people’s needs. However, this is clearly not being delivered based upon the proposed spatial strategy by not meeting their housing needs in full. Therefore, the Council are required to identify additional land in order to meet this unmet need within Dudley to align with the DLP’s vision. As such, St Philips considers the release of Green Belt land to be the most suitable and viable option.
- 2.21 Notwithstanding St Philips’ comments above in relation to the Council’s housing requirement, as the Council will be aware, the Government has consulted on changes to the SM and the calculation of housing needs within the revised NPPF. The Council have not acknowledged this revision within the draft DLP which would see the Council’s LHN increase substantially by 143% as detailed below.

Changes to the Standard Method and NPPF

- 2.22 Following the election of the Labour Government, the government announced a consultation on proposed changes to the NPPF which underwent a consultation from the 30th July 2024 to the 24th September 2024.
- 2.23 The revised NPPF largely reverses the changes made in December 2023 to housing land supply and Green Belt. Draft NPPF paragraph 62 (previously referred to as paragraph 61 in the adopted NPPF) has reversed the stance that the SM is an advisory starting-point for establishing a housing requirement, instead the LHN, conducted via the SM, is a minimum target for housing development.

- 2.24 As part of the revised NPPF, a new SM is proposed which adopts the following two-step approach:
- 1 Take 0.8% of the current housing stock of the area;
 - 2 Apply an uplift, based on a three-year average of the median workplace-based affordability ratio, with an increase of 15% for every unit above four.
- 2.25 Based on the above methodology, the proposed new SM for Dudley would result in the LHN increasing to 1,594 dpa, an increase of 143% from the current LHN of 657 dpa, equating to 27,102 dwellings across the plan period, therefore, the Council would be required to identify a further 16,632 dwellings.
- 2.26 Although, the proposed changes to the SM have only recently undergone consultation and carry limited weight for the purposes of plan-making at this point in time, it is anticipated the NPPF is to be published in December 2024. The transitional arrangement in paragraph 226c of the draft NPPF indicate local plans should accord with the adopted NPPF if it can reach examination a month after the draft NPPF's adoption. Given the Council will need to examine the responses received as part of the regulation 19 consultation which the LDS considers will take several months up to the Spring/Summer 2025, it is highly unlikely the DLP will reach examination prior to then.
- 2.27 In addition, the Deputy Prime Minister, and Secretary of State for the Ministry of Housing, Communities & Local Government, Angela Rayner has clearly set out the Government's direction of travel with respect to addressing housing needs in her Written Ministerial Statement [WMS] (dated 30th July 2024) – this is a material consideration. In particular, the WMS is clear that *“local authorities will be expected to make every effort to allocate land in line with their housing need as per the standard method”*. When coupled with the proposed transitional arrangements set out in paragraphs 226-229 of the consultation document and given the Council's working timetable for the DLP, it is clear that the Council will need to plan for the new SM figures in the draft DLP.
- 2.28 In this regard, if adopted in December 2024 as currently proposed, it is critical the Council identify further land at this stage of the local plan production to meet the additional 16,628 dwellings from the new SM. When having regard to the Government's other proposed changes, particularly around the need for the release of the Green Belt, there is no justification for the Council's current proposed approach of not reviewing and releasing land from the Green Belt to meet its needs and address the c.16,600 dwelling unmet needs arising from the new SM figure.
- 2.29 When having regard to the above, it is clear that the Council will need to address a higher housing requirement through the DLP than currently proposed. The consequence of this will be that the Council will need to find further housing land to address these increased needs. As such, St Philips considers that the proposed changes to the NPPF and SM reinforce the position that there is, therefore, a legitimate and cogent need to allocate housing within the Green Belt to help meet the substantial increase in LHN and the increased unmet housing needs from the GBBCHMA.

GBBCHMA Unmet Housing Needs

- 2.30 As noted above, the Council’s proposed spatial strategy is seeking to export its shortfall to neighbouring authorities.
- 2.31 As a result, St Philips strongly contend that draft Policy DLP1 is **unsound** as it fails to acknowledge and address the unmet housing need arising from the GBBCHMA, and instead seeks to increase the shortfall and defer this matter to other authorities. An approach that is fundamentally contrary to NPPF paragraphs 35(b & c), as the Duty to Cooperate has not been fulfilled.
- 2.32 In this context, paragraph 11b of the NPPF is clear that:
“b) strategic policies should, as a minimum, provide for objectively assessed needs for housing and other uses, as well as any needs that cannot be met within neighbouring areas”
- 2.33 As the Council will be aware, it has long been established that the neighbouring Black Country Authorities [BCAs] are also facing land supply pressures as they progress their respective Local Plans. Following the cancellation of the Black Country Plan Review [BCPR], each Black Country Authority has started to prepare individual Local Plans, currently all reaching regulation 19 except for Walsall which has recently undergone a call for sites consultation. As currently presented in the latest versions of each authority’s emerging local plan, they all demonstrate a shortfall as demonstrated below in Table 2.2.

Table 2.2 Black Country Shortfall

Local Authority	Land Supply	Current SM	Shortfall
Dudley	10,470	11,169	699
Sandwell	10,434	29,456	19,022
Walsall	7,926	16,304	8,378
Wolverhampton	9,330	19,736	10,406
Total	38,160	76,658	38,498

- 2.34 The above table demonstrates a shortfall of 38,498 dwellings which is also going to be exported to neighbouring authorities, highlighting the level of pressure the BCA’s are already under.
- 2.35 In addition, Birmingham Local Plan has recently undergone a consultation on regulation 18 preferred options in which the plan demonstrated a significant shortfall as highlighted in Table 2.3 below.

Table 2.3 Birmingham Shortfall

Local Authority	Land Supply	Current SM	Shortfall
Birmingham	103,027	157,828	54,801

- 2.36 As a result of both the BCA’s and Birmingham’s LHN, the overall shortfall of the GBBCHMA is 93,299 dwellings. The level of shortfall is substantial given the urban context of the Black Country and Birmingham, demonstrating the importance of local planning authorities effectively delivering on their Duty to Cooperate.

- 2.37 Notwithstanding the existing shortfall identified within the GBBCHMA, the level of shortfall is anticipated to be impacted by the changes to the SM with the revised figures demonstrated below in Table 2.4.

Table 2.4 GBBCHMA Shortfall Based on the New SM

Local Authority	Land Supply	Proposed SM	Shortfall
Birmingham	103,027	109,384	6,357
Dudley	10,470	27,102	16,632
Sandwell	10,434	28,665	18,231
Walsall	7,926	23,283	15,357
Wolverhampton	9,330	22,092	12,762
Total	141,187	210,526	69,339

- 2.38 St Philips appreciates there has been a significant fall in Birmingham's housing need following the new SM, creating a lower overall shortfall for the GBBCHMA of 69,339 dwellings compared to 93,299 dwellings, however, a shortfall still exists for each local authority which are all proposing to be export onto neighbouring authorities within their draft local plans. As currently proposed, neighbouring authorities to the Black Country which are contributing to the GBBCHMA Unmet Housing Needs comprise the authorities listed in Table 2.5.

Table 2.5 Direct Contributions to the GBBCHMA's Housing Shortfall

Local Authority	Current Stage of Plan-making	Proposed Contribution
Cannock Chase	Regulation 19	500
Shropshire	Examination	1,500
South Staffordshire	Regulation 19	640
Stafford	Regulation 18	2,000
Telford & Wrekin	Regulation 18	1,680
Total		6,320

- 2.39 Notwithstanding St Philips' previous stance on the position of Shropshire's Local Plan status and the uncertainty surrounding Stafford's Local Plan following the pause in 2020, a significant unmet housing need would still remain within the GBBCHMA. The current level of contributions from neighbouring authorities of 6,320 dwellings is significantly insufficient to meet the existing shortfall of 93,299 dwellings from the GBBCHMA and the proposed shortfall (based on the new SM) of 69,339 dwellings, indicating the wider shortfall is unlikely to be addressed.
- 2.40 Ultimately, there is a significant, and persistent level of unmet housing need across the GBBCHMA and many of the Council's neighbouring authorities are already unable to meet their own needs within existing urban areas and are therefore unlikely to be able to accommodate the GBBCHMA significant shortfall of housing. The spatial strategy proposed by Draft Policy DLP1 is therefore considered to be unsound as the DLP does not reasonably assess the scale and implication of the identified unmet need, or whether reasonable alternatives exist to accommodate the growth within the Borough through Green Belt release and the high-risk associated with exporting the significant shortfall.

2.41 Additionally, there is no formal agreement between the authorities making up the GBBCHMA regarding the apportionment of this unmet need, and importantly, these ‘commitments’ do not form part of any adopted Local Plan that has been tested and approved through the examination process. There is no clear indication in regard to where the contributions will be allocated and so uncertainty remains.

2.42 To this end, St Philips considers it to be critical that the DLP meets its own housing unmet need within the confines of Dudley and makes a proportionate contribution to addressing the unmet housing needs of the GBBCHMA to ensure it aligns with the test of soundness as per NPPF paragraph 35 and fulfils its Duty to Cooperate in line with paragraph 24 of the NPPF.

Duty to Cooperate

2.43 As set out above, there is an unmet housing need within the GBBCHMA that needs to be addressed through cooperation and suitable planning. As part of the regulation 19 consultation a revised Duty to Co-operate Statement has been published in which it sets out how it assumes the shortfall will be addressed elsewhere through the local plan reviews of counterpart HMA authorities and the associated contributions.

Paragraph 4.4 of the revised Duty to Co-operate Statement states:

“Given that the BCAs are now pursuing their own individual plans, the existing ‘offers’ from neighbouring areas will need to be clarified and apportioned between the BCLAs as part of a formal agreement. This formal agreement will be via Statements of Common Ground (SoCG) which at the time of updating this DtC statement are currently being drafted and being agreed between the relevant local authorities.”

2.44 This confirms that Dudley is yet to agree to a Statement of Common Ground with the neighbouring HMA authorities in regard to how the contributions will be distributed within the Black Country. There is therefore a degree of uncertainty in regard to how Dudley’s housing shortfall will be met. In the absence of any signed SoCG, there is no agreement between the Councils, raising concern on the certainty associated with the distribution of the allocated and emerging contributions given that there is significant shortfall within the GBBCHMA.

2.45 As previously highlighted in Table 2.1, the Council has identified potential contributions for housing from neighbouring authorities from Shropshire, South Staffordshire, Telford & Wrekin and Cannock Chase. However, given the absence of a SoCG, St Philips considers these assumptions wholly flawed and misleading. Aforementioned, the status of the Shropshire Local Plan is unclear given its pause in examination, therefore, the contribution of 1,500 dwellings to the BCA’s is also undecided. St Philips currently considers the level of contribution to the GBBCHMA from neighbouring authorities is 6,320 dwellings meaning only 6.8% of the required contributions are being met.

2.46 The PPG² confirms that the preparation of SoCGs with neighbouring authorities will contribute to demonstrating whether the duty has been met:

² PPG: 61-031-20190315

“The local plan examination will first assess whether a local planning authority has complied with the duty to cooperate and other legal requirements. The Inspector will use all available evidence including statements of common ground, Authority Monitoring Reports, and other submitted evidence (such as the statement of compliance prescribed by Planning Inspectorate’s examination procedure guidance) to determine whether the duty has been satisfied.” [Emphasis added]

2.47 Until the Council has published such SoCGs and additional evidence detailing the discussions that have taken place, the duty to cooperate has not been fulfilled and a degree of uncertainty remains. The absence of any SoCG at this stage reinforces the apparent issues between the Black Country Authorities (“BCA”) as it is clear there remains a number of areas of disagreement regarding the distribution of the contributions.

2.48 Dudley’s shortfall will remain unaddressed given the BCA’s unmet need, and the lack of a signed SoCG. Indeed, this is particularly pertinent, given an Inspector’s recent letter on the Oxford Local Plan 2040³. The Inspector concluded in September 2024 that there is no mechanism to rectify a failure to comply with the duty to co-operate and recommended the Council to withdraw the Local Plan on the basis that the plan is unsound.

2.49 As currently presented, the Council have not demonstrated the Duty to Cooperate has been complied with in accordance with NPPF paragraph 24. The Council is demonstrably seeking to defer, rather than deal with the issue of unmet housing need through the DLP.

2.50 As a result, it is clear that the DLP is **not sound** and will result in a failure of the Duty to Cooperate. Dudley should therefore seek to ensure that the housing supply within its administrative area is truly maximised prior to being exported to other areas and needing to be addressed through a SoCG.

Draft Sustainability Appraisal

2.51 An updated Sustainability Appraisal (SA) has been undertaken as part of the regulation 19 consultation which presents the assessment of updated DLP policies and new/amended reasonable alternative sites that have come forward since the Regulation 18 stage. However, no further assessments have taken place on reasonable alternatives to the housing spatial growth options, maintaining the three previously identified growth options as identified in Table 2.7 below.

Table 2.6 Dudley Housing Spatial Growth Options Identified by DMBC

Housing Option	Description of Housing Spatial Growth Option
Option 1	Meeting the majority of our needs in the urban area alone and maintaining the existing ‘brownfield first’ strategy.
Option 2	Meeting the majority of our housing need through urban uplift in regeneration corridors and centres plus some development proposed on smaller areas of low-quality open space.
Option 3	Meeting all or the majority of our housing need through urban uplift in regeneration corridors and centres, some development proposed on

³ exam-20---inspectors-post-hearings-letter-to-council-september-2024
<https://www.oxford.gov.uk/downloads/file/3600/exam-20---inspectors-post-hearings-letter-to-council-september-2024>

Housing Option	Description of Housing Spatial Growth Option
	smaller areas of low quality open space, plus DtC contributions. To be formulated for Regulation 19 stage of the DLP.

Source: Table 5.1 of the Draft Sustainability Appraisal of the Draft Dudley Local Plan (September 2024)

- 2.52 As such, St Philips maintains its stance that the SA, which underpins Draft Policy DLP1, is unjustified as it does not take into account all reasonable alternatives for meeting the unmet housing need and providing a sufficient contribution toward the HMA’s unmet housing need, contrary to paragraph 35(b) of the NPPF.
- 2.53 The Council are continuing to progress the development strategy through option 3 despite paragraph 5.3.10 stating *“there is also some uncertainty in the impacts of this option given the unknown location of the exported proportion of growth”*. This could mean that the minimum housing need within Dudley is not met within the Local Plan period given the uncertainty, and therefore justifies the assessment of alternative options for housing growth. Given the severe unmet housing need within the GBBCHMA, St Philips does not consider this to be a sound strategy.
- 2.54 In this respect, the PPG⁴ confirms that reasonable alternatives are to be identified *“taking into account the objectives and the geographical scope of the plan or programme”*. Consequently, it is not within the remit or scope of the SA to appraise the sustainability credentials of exporting housing growth outside of the administrative area of Dudley.
- 2.55 As currently presented it appears there is no justification for the three housing options appraised, other than to achieve a predominantly brownfield-led development strategy, resulting in a shortfall which is to be exported to neighbouring authorities. The PPG advises that,
- “Reasonable alternatives are the different realistic options considered by the plan-maker in developing the policies in the plan. They need to be sufficiently distinct to highlight the different sustainability implications of each so that meaningful comparisons can be made.”*
- 2.56 St Philips considers that the three identified options are too similar and advises the Council to assess alternative options for housing growth with a focus on maximising housing supply. Instead St Philips believes the housing growth can be achieved by releasing Green Belt land for development purposes, an approach which has been omitted from the SA process to date in order to maintain the brownfield led approach.

The Deliverability of Brownfield Land

- 2.57 DLP indicates that 97% of the housing requirement will be delivered on brownfield land with the remaining 3% to be delivered on greenfield land. Whilst St Philips considers that it is appropriate to seek to redevelop brownfield land first in accordance with the NPPF (i.e., Footnote 27 and paragraphs 123, 128 and 146), St Philips has legitimate concerns regarding the actual deliverability of predominantly brownfield land and consider the overreliance on the source of delivery as unjustified.

⁴ PPG ID: 11-019-20140306

2.58 Although St Philips accepts brownfield redevelopment is an important strategy to delivering housing needs, there are concerns there are various restrictions which could limit the level of delivery on brownfield land as set out below.

- Brownfield sites are often constrained by soil and groundwater contamination from previous industrial or commercial activities, which requires costly remediation, adding significant monetary and time costs to the overall development. Moreover, securing financing for brownfield redevelopment can be challenging due to the perceived risks associated with contamination cleanup, longer construction timelines and uncertainties about the final development costs.
- They may lack the necessary infrastructure to support housing development such as utilities and roads. Given the potential existing constraints that the urban landscape can possess, upgrading or installing infrastructure can be costly, cause inconvenience to local residents and may require collaboration with local authorities, which is a time-consuming process.
- Due to the complexity of brownfield redevelopment, obtaining planning permissions and approvals from regulatory authorities may take longer compared to greenfield sites, leading to delays in project timelines.
- The physical constraints working on brownfield sites within the urban landscape means there is less available space for future expansion for future plan period.
- The location and history of brownfield sites may deter future residents from moving there, impacting their market appeal, potentially deterring developers from investing in the redevelopment of specific areas.

2.59 The challenges associated with the development of brownfield land have been acknowledged by paragraph 6.6 of the DLP which states:

“The DLP adopts a brownfield-first approach to maximise delivery of development within the urban area; however, poor ground conditions that are a legacy of the Dudley’s mining and industrial past are a significant constraint, in both physical and financial terms. Therefore, tackling significant and structural delivery constraints are a priority for interventions, as they affect much of the development land supply in the urban area.”

2.60 Given this position conceded by the Council, St Philips considers that the level of delivery anticipated by the DLP is unlikely to be delivered given the constraint from poor ground conditions which will limit certainty and investment from developers as outlined in the bullet points from paragraph 2.59. Despite the likelihood that the identified brownfield land supply will not deliver 97% of the housing requirement, the strategy is still insufficient to identify all of Dudley’s LHN, demonstrating draft Policy DLP1 is unsound and is not capable of meeting its own needs.

2.61 Furthermore, there are viability concerns on a brownfield led approach which will impact the delivery of affordable housing and family housing. The delivery of urban brownfield land tends to lend itself to the delivery of high-density flatted developments rather than housing, impacting on the range of housing mix and tenure available to the authority, contrary to paragraph 60 and 64 of the NPPF as well as the DLP’s own vision and Strategic Priority 6.

2.62 St Philips consider no one spatial strategy approach should be taken in isolation, and it is considered that a mix of brownfield and greenfield/Green Belt land is necessary to meet the Council's housing needs and make provision for a mix of types and tenures of dwellings to meet specific needs in line with the requirements of paragraphs 60,63 and 64 of the NPPF.

Transitional Arrangements of the Draft NPPF

2.63 Based on the reasons outlined throughout the representation, St Philips considers the DLP is unsound and would not proceed through an examination in public (EIP) and will likely be withdrawn. This position is supported based upon the rigorous stance taken by PINS in ensuring only sound plans will proceed through EIP as demonstrated by the withdrawals of the emerging Solihull Local Plan, North Lincolnshire Local Plan and the potential withdrawal of emerging Oxford Local Plan.

2.64 These actions follows Matthew Pennycook's letter to the chief executive of PINS on the 30th July 2024 in which he wants to empower Inspectors to take the tough decisions they need to at examination and focus their time on plans capable of being found sound. As such, Pennycook believes "*pragmatism should not be used to address fundamental issues with the soundness of a plan*" and "*an authority should not be submitting for examination a deficient plan believing the Inspector will use significant time and resource during the examination to 'fix' it.*"

2.65 Based upon Pennycook's letter encouraging PINS to adopt a firm approach and the robust position taken by inspectors on Local Plans at examination so far, the DLP is considered extremely unlikely to proceed through an EIP based on the plan not meeting its identified LHN, compliance with the draft NPPF which is considered to be adopted prior to the DLP reaching examination and not complying with its Duty to Cooperate.

2.66 Nevertheless, should the plan reach examination on or before the publication date + one month of the NPPF and proceed through examination without the inspector considering it unsound, based on the transitional arrangements of the draft NPPF outlined in paragraphs 226-229, local plans that reach adoption with an annual housing requirement that is more than 200 dwellings lower than the relevant published LHN figure will be expected to commence plan-making in the new plan-making system at the earliest opportunity to address the shortfall in housing need.

2.67 Noting Dudley's LHN is to increase by 15,933 dwellings, Dudley will be required to undertake a local plan review immediately following adoption. The current approach to hurry the DLP through to examination prior to the draft NPPF being adopted as currently presented will result in significant delays to the delivery of housing and will create additional public cost. Instead the Council should look to address the housing shortfall at this stage of local plan production.

2.68 Given the substantial increase in LHN of 143%, the Council is strongly encouraged to pause the progress of the DLP and identify a sufficient land supply to meet the required LHN at the earliest stage of plan production. Due to the significant scale of LHN, it is considered entirely reasonable and consistent with the NPPF for the Council to release Green Belt land to assist in addressing their own housing needs and supporting the GBBCHMA.

Exceptional Circumstances and Green Belt Release

- 2.69 Noting the forthcoming unmet need from the new SM, there is a clear requirement for the Council to identify further land to meet the increased LHN of 16,632 dwellings. Based on the current approach not to release the Green Belt and instead adopting a brownfield led strategy, this will result in a substantial shortfall which Dudley have cannot meet.
- 2.70 As previously highlighted, St Philips considers it unlikely the DLP will proceed to examination prior to the draft NPPF being published (+1 month in line with the transitional arrangements), as such, the DLP will need to meet the revised LHN figure of 16,632 dwellings.
- 2.71 As part of the revised NPPF, paragraph 142 (formerly paragraph 145) has been updated to reverse the change made in the December 2023 NPPF to now include the following text;
- “Exceptional circumstances include, but are not limited to, instances where an authority cannot meet its identified need for housing, commercial or other development through other means. In these circumstances authorities should review Green Belt boundaries and propose alterations to meet these needs in full, unless the review provides clear evidence that such alterations would fundamentally undermine the function of the Green Belt across the area of the plan as a whole”*
- 2.72 As the Council have confirmed they are unable to meet their LHN and a review of the Green Belt has not taken place within the SA to demonstrate it will be adversely impacted by an amendment to the boundary, St Philips considers exceptional circumstances exist. The Council has even accepted that the housing need cannot be accommodated in full on the available brownfield land within the administrative area. The extent of the Green Belt is such that, unless it is amended, it will significantly restrict the amount of residential development that could be accommodated in Dudley. St Philips considers there to be a legitimate and cogent need to consider the release of Green Belt land within Dudley to meet the significant shortfall and reduce the level of unmet housing needs arising from the GBBCHMA.
- 2.73 Notwithstanding St Philips position that the DLP should be complying with the draft NPPF, should the plan proceed through examination in its current format, the Council still cannot meet its existing LHN, let alone, the proposed LHN from the revised NPPF. As such, under the transitional arrangements of the NPPF in paragraphs 226-229, given the substantial increase the LHN, the Council will be required to undertake a local plan review immediately to identify a housing supply to meet the revised LHN. As a minimum, St Philips considers it appropriate at this stage of plan-making to safeguard land in order to quicken the process as part of the next LP review.
- 2.74 Paragraph 148c indicates that plans should *“where necessary, identify areas of safeguarded land between the urban area and the Green Belt, in order to meet longer-term development needs stretching well beyond the plan period”*. Given the considerable shortfall for the authority from the revised SM, St Philips consider this provides the necessary justification for the Council to allocated safeguarded land for development. St Philips considers there to be many sites within the authority’s Green Belt which would sustainably contribute to addressing the authorities unmet need as well as contribute

towards the GBBCHMA, one site being land at Foxcote Farm which is considered suitable, available and achievable.

2.75 Nevertheless, should the DLP proceed on the basis of the December 2023 NPPF, St Philips acknowledges the changes made in this version of the NPPF towards reviewing the Green Belt, however, these changes do not in and of themselves preclude a local planning authority from releasing Green Belt land, so long as a local planning authority has satisfied the sequential approach in utilising its supply of brownfield land, optimising densities and engaging with neighbouring authorities to assist in meeting needs and demonstrating that 'exceptional circumstances' exist (Para 146, NPPF). To this end, it is entirely reasonable and consistent with the NPPF for the Council to release Green Belt land to assist in addressing their own housing needs.

2.76 Therefore, when considering the sequential approach required to demonstrate whether 'exceptional circumstances' exist, St Philips consider that it is clear that:

- a There is insufficient brownfield land to meet the city's development needs and the land is expensive and complicated to develop;
- b By reason of this, the optimisation of densities on brownfield land is also unlikely to meet the city's development needs; and
- c Given the emerging c.93,000 dwelling scale of the unmet needs across the GBBCHMA, it is unlikely that other authorities within the GBBCHMA could meet these cumulative needs in full.

2.77 When having regard to the above, these housing needs might reasonably be considered an 'exceptional circumstance'.

2.78 Given that the local authority has adopted a strategy which is considered neither positively prepared nor aspirational, Green Belt release is considered vital in supporting the Council meet its unmet need in entirety whilst also supporting the GBBCHMA meet its shortfall. St Philips considers that despite changes to the NPPF in relation to the need for Green Belt release, it does not preclude an LPA from releasing Green Belt land. St Philips considers the most suitable strategy for achieving the required housing growth would be through the release of Green Belt land rather than depend on a brownfield led strategy, particular given the constrained urban nature of the borough.

2.79 Considering the LHN is to substantially increase to 27,102 dwellings creating a shortfall of 16,632 dwellings, this matter is considered a fundamental issue of the DLP which, unless resolved at the Regulation 19 stage, will most likely lead to it being found unsound at examination, particularly noting the rising unmet need within the GBBCHMA.

2.80 The Site Assessment Methodology 2024 used to support the production of the Local Plan indicates that the site at Foxcote Farm had not been assessed due to a gateway constraint, referring to its location within the Green Belt. Given that St Philips considers exceptional circumstances can be demonstrated for the release of Green Belt in order to meet the unmet needs arising from the amendment to the SM within the draft NPPF as well as contribute towards the unmet needs within the GBBCHMA, land at Foxcote Farm should be released from the Green Belt and allocated for housing development as it is considered suitable and deliverable within the plan period.

Non-Strategic Policies

Draft Policy DLP12 (Delivering Affordable, Wheelchair Accessible and Self-Build / Custom-Build Housing)

- 2.81 Policy DLP12 has been amended as part of the regulation 19 document to reflect the updated Housing Market Assessment in which the Council are requiring an increased proportions of affordable housing delivery in medium value zones of the Borough from 10% to 20% on brownfield land and from 20% to 25% on greenfield sites. However, this change does not address the concerns raised by St Philips in the regulation 18 consultation that the approach on a site-by-site basis. St Philips therefore objects to draft Policy DLP12 on the grounds of soundness as the policy should be implemented via plan-led viability testing.
- 2.82 It is noted that within draft policy DLP12 (Delivering Affordable, Wheelchair Accessible and Self-Build/Custom-Build Housing), paragraphs 8 and 9 of the Financial Viability Assessments section state that;
- “On sites where applying the affordable housing or wheelchair accessibility requirements can be demonstrated to make the development unviable, the maximum proportion of such housing will be sought that will not undermine the viability of the development, subject to achieving optimum tenure mix and securing other planning obligations necessary for the development to gain planning permission.*
- Financial viability assessments conforming to national guidance will be required to be submitted and, where necessary, independently appraised by an appropriate professional appointed by the local planning authority at the cost of the applicant. Flexible arrangements will be sought through planning agreements, wherever possible, to allow for changing market conditions in future years. Any viability assessment should be prepared on the basis that it will be made publicly available other than in exceptional circumstances, and in such circumstances an executive summary will be made publicly available.”* (Emphasis added)
- 2.83 This indicates that an application-led viability assessment will be required on a site-by-site basis. However, the NPPF clearly indicates in paragraph 58 that;
- “Where up-to-date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the plan and the viability evidence underpinning it is up to date, and any change in site circumstances since the plan was brought into force. All viability assessments, including any undertaken at the plan-making stage, should reflect the recommended approach in national planning guidance, including standardised inputs, and should be made publicly available.”* (Emphasis added)
- 2.84 As such, the draft Local Plan proposing for a viability assessment to be undertaken for all applications demonstrates a clear conflict with national policy which indicates it’s at the applicant’s discretion to produce a viability assessment under particular circumstances, and not on a site-by-site basis. This point is reinforced by paragraph 15 of the NPPF which

states that “*the planning system should be genuinely plan-led*” and not led on a site-by-site basis.

2.85 St Philips therefore objects to draft Policy DLP12 (Delivering Affordable, Wheelchair Accessible and Self-Build/Custom-Build Housing) and finds the Draft Policy to be unsound as the reliance on application-led viability testing within the draft Dudley Local Plan would appear contrary to paragraph 58 of the NPPF.

2.86 The deliverability of Affordable, Wheelchair Accessible and Self-Build/Custom-Build Housing is critical to deliver as part of the plan strategy to meet identified needs and should be able to be achieved on sites identified for delivery through the draft Local Plan.

Draft Dudley Local Plan Viability Assessment

2.87 The Council has not provided an updated viability assessment as part of the regulation 19 consultation. As such, St Philips comments raised in the regulation 18 consultation via a review by CBRE still stand. A summary of CBRE’s review of the Viability Assessment is provided as follows.

Brownfield Land Value Analysis

Absence of Transparency

2.88 When identifying sites for assessment, the VA has not disclosed the parameters of their search nor set out a schedule of comparable evidence, which fails the necessary requirement for transparency.

2.89 AV has not cited any tangible comparable evidence and does not provide a formal analysis of evidence to detail how the market comparable evidence (or information drawn from previous documents) has been translated into the BLVs adopted. This falls short of the requirements set out within PPGV11.

2.90 Given this lack of transparency, it is unclear how AV has arrived at the Existing Use Values ('EUVs') stated and applied when calculating BLV.

CBRE Market Evidential Cross-check

2.91 CBRE has undertaken independent research of brownfield land values in the Council’s area. This has included both the asking prices of brownfield sites available on the market in September 2023 and land transactional evidence.

2.92 There is an apparent scarcity of brownfield land entering the market, and land for industrial uses such as storage is in demand across the West Midlands.

2.93 As such, secondary industrial and storage land is being marketed and transacted at considerably higher prices than Aspinall Verdi’s EUV and BLV assumptions. CBRE has identified no sites on the market below £250,000 per gross acre.

2.94 CBRE's analysis concludes that existing low-grade and secondary active industrial sites will generate land values in excess of £500,000 per gross acre, without a premium applied for residential development potential.

2.95 By comparison, CBRE is aware that in the wider West Midlands market, secondary industrial land trades for in excess of £500,000 per gross acre and up to £1 million per gross acre for sites of circa 1 to 3 acres.

2.96 Ultimately, AV's adopted 'starting point' for setting BLVs, predicated on EUVs at £250,000 to £300,000 per gross acre is demonstrably too low and represents an unrealistic basis for the preparation of viability assessment evidence, which if relied upon could pose a risk to the deliverability of the DLP.

Flawed Correlation of Brownfield EUVs with Residential Value Zones

2.97 Aspinall Verdi's methodology applies lower brownfield EUVs (£250,000/gross acre) in designated 'low' and 'medium' residential value zones but then applies a higher brownfield EUV in the designated 'high' residential value zone.

2.98 Aspinall Verdi has not put any evidence forward to justify applying a lower EUV in a 'low' and 'medium' value zone, than in a 'high' residential value zone. Put simply, there is no evidential correlation between the residential value zones and the EUV of brownfield land.

2.99 CBRE advocates that, in reality, 'higher' value commercial brownfield locations are typically in the 'lower' value residential zones. Aspinall Verdi's methodology is flawed and needs to be addressed.

Net to Gross Efficiency of Brownfield Sites

2.100 Aspinall Verdi has assumed a net-to-gross efficiency of 100% for brownfield sites to reflect the net developable area available for residential redevelopment.

2.101 However, this assumption is not substantiated by Aspinall Verdi and is without evidential underwrite. CBRE contends this is an unrealistic proposition.

2.102 Based on recent planning permissions, CBRE concludes that a more realistic gross-to-net site efficiency on brownfield sites redeveloped for residential use would be c.75%.

2.103 Additionally, with the introduction of the mandatory 10% Biodiversity Net Gain requirement for sites seeking planning permission in February 2024, it is expected that brownfield site efficiencies will decrease further.

Uplift Multiplier

2.104 Aspinall Verdi adopts an uplift multiplier ('landowner premium') of between 5-10% over perceived EUVs.

2.105 Firstly, CBRE states that the multipliers adopted represent the lowest CBRE has seen proposed nationally within any viability assessment prepared for the purpose of informing Local Plan policies.

2.106 Secondly, this multiplier conflicts with multipliers typically advocated and supported at the planning application stage and via planning appeals. CBRE states that the typical adopted range is between 10% and 40%, with the application of a 20% premium in excess of brownfield site EUVs representing the industry 'norm'.

2.107 CBRE have not identified any evidence justifying the uplift multipliers adopted by Aspinall Verdi, or any market sense-check.

2.108 Therefore, it is requested that the methodology and evidence to justify the uplift multipliers is provided by Aspinall Verdi for further comment.

Market Sense Check - Planning Policy Compliant Residential Developments

2.109 CBRE has undertaken a search of recent planning permissions in the borough to determine the deliverability of 'Policy Compliant' residential developments on brownfield sites (i.e., delivering the target 25% affordable housing provision on all sites of 15 dwellings or more and providing other required planning obligations) to ascertain if this represents a commercially realistic proposition in recent years.

2.110 Officer Reports and Planning Committee records confirm that the majority of brownfield residential developments have faced viability challenges. In fact, grant funding has been awarded and utilised in some instances to deliver a greater proportion of affordable housing units and support deliverability on brownfield land.

2.111 The Officer Report to the Planning Committee for the recently consented residential development of 72no. units on the former quarry and tip at Bourne (Ref: P20/1306) confirm that a viability assessment was prepared and was independently verified. It was determined that no affordable housing provision or any other Section 106 contributions would be provided.

2.112 CBRE has been unable to further investigate site-specific viability challenges on other sites within Dudley as, contrary to the NPPF, Financial Viability Assessments and independent reviews have not been published by DMBC online.

2.113 CBRE requests that this information is disclosed and is made accessible within the public domain if Aspinall Verdi is to place any reliance on it.

2.114 AV reports on the basis of two 'scenarios', which are referred to as 'worst-case' and 'pragmatic'. CBRE consider AV's terminology misleading, and these 'scenarios' should be retitled as 'baseline' and 'optimistic' scenarios respectively. Within the optimistic ('pragmatic') scenario, AV has:

- a reduced construction costs to a lower range across all site typologies; and
- b reduced the developer's target profit margin. CBRE notes this now falls below margins accepted via Appeal Decisions determined during 2023 since which time market conditions have continued to deteriorate.

2.115 The impact of AV's optimistic ('pragmatic') adjustments increases the viability of site typologies, albeit not significantly, with all sites in the Low Value Zone remaining unviable and undeliverable, and the majority of sites in the Medium Value Zone remaining 'marginal', meaning that they still cannot fully comply with DLP policies.

2.116 CBRE understands that AV's recommendations to Dudley for setting policies within the DLP are predicated upon the results of the optimistic ('pragmatic') scenario, rather than the baseline (i.e., current market) scenario, which represents a more realistic assessment of current market conditions.

- 2.117 The impact will be that policy costs introduced on brownfield development sites will be unduly burdensome, which will either render sites undeliverable or preclude developers from bringing forward developments through the planning system that are in compliance with the adopted Plan.
- 2.118 In ES 23 of the VA, AV states that the viability threshold of sites within the designated 'Lower Value' zones is such that they cannot viably provide 10% affordable housing, based on the evidence in the VA. Despite this, it is recommended to the Council that the affordable housing target of 10% is applied in the Lower Value zones (or others where sites are unviable), with Dudley reliant on NPPF paragraph 65.
- 2.119 ES 29 of the VA proceeds by stating that:
- "In order for the Dudley to achieve its housing targets it is likely that grant funding will be required to facilitate development - particularly on Brownfield sites with an industrial legacy to overcome and/or in a low value market area."*
- 2.120 This is expanded upon further in ES 31 and ES 32 whereby AV recommend that the results of the viability testing under the optimistic ('pragmatic') scenario demonstrate sites in the Lower Value zones or brownfield sites would require gap funding via public sector grant awards of £100,000+ per affordable housing unit in order to secure their viable delivery with affordable housing provision in accordance with Policy DLP12.
- 2.121 This is also the case in Medium Value market areas, where sites are also demonstrably unviable on a policy-compliant basis. Paragraph ES 32 of the VA confirms that grant awards of £40,000 - £60,000 per affordable unit would be required to secure the viable delivery of sites with affordable housing provision in accordance with Policy DLP12.
- 2.122 It is therefore considered that the preparation of policies in the DLP utilizing AV's evidence base presents a high risk of failing the test of soundness, as per NPPF paragraph 35.
- 2.123 Having conducted a detailed review of the VA, CBRE has identified a series of technical deficiencies in the adopted methodology and inputs as discussed in Appendix 1. In addition, several requests for clarification from AV are made, where evidenced justification is lacking.

Policy Costs Applied within the VA

- 2.124 CBRE considers that there are a series of flaws in the costs of DLP policies applied to the viability assessment by AV. These serve to understate the development costs that will be incurred by development site typologies within the borough in the current market. This poses a material risk that the results overstate the financial viability of sites.
- 2.125 CBRE has identified flaws within the policy costs for the following draft Local Plan policies:
- Draft Policy DLP32 - Nature Recovery Network and Biodiversity Net Gain
 - Draft Policy DLP12 - Delivering Affordable, Wheelchair Accessible and Self-Build/Custom-Build Housing
 - Draft Policy DLP16 - Education Facilities
 - Policy DLP85 - Contaminated Land
 - Policy DLP42 - Energy Infrastructure

- 2.126 CBRE conclude that the costs for draft Policies DLP32 have been underestimated and recommends that AV should adjust the costs for inflation. This would result in an increase in the costs to present-day rates.
- 2.127 Regarding the cost associated with draft Policy DLP16 and DLP 85, it is not explained how this figure is calculated for the purpose of testing or whether it represents an up-to-date assessment of costs.
- 2.128 In terms of draft Policy DLP42, CBRE proposes that the VA should be updated to test a minimum rate of £10,000/unit, on the assumption that a cost towards the lower end of the spectrum may be achievable via technological advancement and the securing of economies of scale by volume housebuilders. However, CBRE is mindful that small to medium enterprises and regional-scale developers are less likely to be able to secure such economies.
- 2.129 CBRE notes that the VA makes no allowance for off-site highway reinforcement works and instead points to a sensitivity analysis for reliance. CBRE expects that most sites of modest scale and above will create traffic impacts that will necessitate off-site works to mitigate. As a result, it is expected that the exclusion of any allowance in the VA will contribute to an unduly optimistic position on viability outcomes.

Appendix 1 CBRE Technical Representations

Draft Dudley Local Plan Regulation 18 Consultation

Technical representation relating to the Dudley
Local Plan Viability Assessment

Prepared by CBRE UK Ltd on behalf of:

- St Philips

December 2023

Contents

- Introduction 2**
 - Procedural Matters.....2
- Matters of Representation 2**
 - Purpose.....2
 - Viability in Plan-making: Interpretation of Results.....2
 - Technical Deficiencies.....5
 - Conclusions13
- Enclosures 15**
 - Enclosure 1: Lichfields Letter – Dudley Stakeholder Workshop (05/07/23) Feedback.....16

Introduction

Procedural Matters

Instruction Purpose

1. CBRE UK Ltd ('CBRE') has been instructed by St Philips. St Philips has land and property interests in Dudley, to prepare a formal representation document setting out a technical response to the Dudley Metropolitan Borough Council ('DMBC') Draft Local Plan Regulation 18 consultation ('the DLP consultation').
2. CBRE's instruction relates specifically to preparation of representations on the Dudley Local Plan Viability Assessment (November 2023), hereafter referred to as the 'LPVA', which was prepared by consultants Aspinall Verdi ('AV') on behalf of DMBC and published as an evidence base document within the DLP consultation.
3. The LPVA was commissioned by DMBC as the evidence base to test the impact of drafted policy positions on the financial viability of the residential land supply across the borough and to inform DMBC's refinement of drafted policies within the Draft Local Plan.
4. An overarching representation to the DLP consultation has been prepared by town planning consultancy Lichfields. In addition, Lichfields participated in a Stakeholder Workshop with Officers and AV on 5th June 2023 at which AV presented on their initial work and invited feedback. Lichfields provided further feedback in a letter to DMBC Officers dated 19th July 2023. Much of the content remains relevant. This is provided within **Enclosure 1**.

Matters of Representation

Purpose

5. This representation is prepared on behalf of St Philips and provides detailed comments upon the LPVA, which primarily informs and underpin housing policies within the Draft Local Plan. Comments are set out under a set of thematic headings to assist cross-reference with the LPVA.

Viability in Plan-making: Interpretation of Results

6. Para. 34 of the National Planning Policy Framework ('NPPF') confirms that Plans should set out the contributions expected from development. This should include setting out the levels and types of affordable housing provision required, along with other infrastructure. Importantly, such policies should not undermine the deliverability of the Plan.
7. Para. 31 of the NPPF requires that the preparation and review of all Plan policies should be underpinned by relevant and up-to-date evidence. This should be adequate and proportionate, focused tightly on supporting and justifying the policies concerned, and take into account relevant market signals.

8. Paragraph 35 of the NPPF confirms that in order for a Plan to be found 'sound', it must pass the relevant four tests. Intrinsic to these are the requirements for Plans to be demonstrably justified – based on proportionate evidence – and effective. Critically, to be effective a Plan must be deliverable over the plan period.
9. Paragraph 58 of the NPPF subsequently confirms that all viability assessments, including any undertaken at the plan-making stage, should reflect the recommended approach in national planning guidance.
10. The Government's National Planning Practice Guidance for Viability ('PPGV') confirms the following:
 - a. Para. 002 states that viability assessment should be utilised to ensure that **policies are realistic** and the total cumulative cost of all relevant policies will not undermine deliverability of the plan.
 - b. Para. 002 also confirms that policy requirements, particularly for affordable housing, should be set at a level that takes account of affordable housing and infrastructure needs and **allows for the planned types of sites and development to be deliverable**, without the need for further viability assessment at the decision making stage.
11. This is reiterated in PPG for Plan Making at para. 39.
12. In summary, the NPPF and PPG require that both infrastructure provision and affordable housing needs must be taken account of when setting policy requirements in Plans, notably for affordable housing. The policy requirements must allow for the planned types of sites and development to be deliverable, without the need for further viability assessment at the decision making stage.
13. AV set out the recommended affordable housing targets for DMBC to adopt within the DLP within Table 1.1, which is replicated below. CBRE notes that these targets have been utilised within part 2 of Policy DLP12.

Table 1.1 - Recommended Affordable Housing Targets

Value Zone (new Zones)	Greenfield	Brownfield
	Affordable Housing (baseline 30%)	Affordable Housing (baseline 30%)
High Value Zone	30%	30%
Medium Value Zone	20%	10%
Lower Value Zone	10%	10%

Source: Aspinall Verdi

14. AV report on the basis of two 'scenarios', which are referred to as 'worst-case' and 'pragmatic'. Under the so called 'worst case' scenario, the AHVA confirms within Table 8.1 and supporting text that:
 - a. Only very few brownfield site typologies are financially viable on a DLP policy-compliant basis – with these being typically larger sites in the High Value Zone. However, many small to medium size sites typologies in the High Value Zone still cannot meet the 30% affordable housing target and require a reduction to 20% or less. Flatted schemes remain unviable even at 0% affordable housing, CIL at NIL and with remediation costs assumed to be NIL or met by public subsidy.

- b. Larger brownfield sites in the Medium Value Zone are unviable with any affordable housing provided, but become marginal or viable if CIL is reduced to NIL. This demonstrates the requirement for public sector gap / grant funding. Flatted development sites are unviable.
 - c. All sites are unviable in the Low Value Zone.
- 15. CBRE consider AV's terminology misleading and these 'scenarios' should be retitled as 'baseline' and 'optimistic' scenarios respectively. Within the optimistic ('pragmatic') scenario, AV has:
 - a. reduced construction costs to a lower range across all site typologies; and
 - b. reduced the developer's target profit margin. CBRE notes this now falls below margins accepted via Appeal Decisions determined during 2023 since which time market conditions have continued to deteriorate.
- 16. The impact of AV's optimistic ('pragmatic') adjustments increase the viability of site typologies, albeit not significantly, with all sites in the Low Value Zone remaining unviable and undeliverable, and the majority of sites in the Medium Value Zone remaining 'marginal', meaning that they still cannot fully comply with DLP policies.
- 17. Moreover, AV's appraisal summary of DMBC's priority brownfield sites within the DLP confirms that, with the exception of Ketley Quarry, all sites are not fully viable and are only classified as 'marginal' – even when applying AV's optimistic ('pragmatic') assumptions.
- 18. CBRE understands that AV's recommendations to DMBC for setting policies within the DLP are predicated upon the results of the optimistic ('pragmatic') scenario, rather than the baseline (i.e. current market) scenario, which represents a more realistic assessment of current market conditions.
- 19. This is despite AV acknowledging in para. 8.7 on p.93 that DMBC's site selection and spatial strategy for an, *"...urban-led approach, coupled with the significant expenses associated with remediation, is anticipated to negatively influence financial viability outcomes"*.
- 20. In ES 23, AV states that the viability threshold of sites within the designated 'Lower Value' zones is such that they cannot viably provide 10% affordable housing, based on the evidence in the LPVA. Despite this, it is recommended to DMBC that the affordable housing target of 10% is applied in the Lower Value zones (or others where sites are unviable), with DMBC reliant on NPPF para. 65.
- 21. The LPVA proceeds in ES 24 to recommend that, in order to "deliver the required housing numbers" that DMBC will need to take a more proactive role in delivery of housing – particularly on brownfield sites - in these areas of the borough to address market failure. This is reiterated in ES 29, within which the AHVA states the following:

"In order for the Dudley to achieve its housing targets it is likely that grant funding will be required to facilitate development – particularly on Brownfield sites with an industrial legacy to overcome and/or in a low value market area."
- 22. This is expanded upon further in ES31 and ES32 whereby AV recommend that the results of the viability testing under the optimistic ('pragmatic') scenario demonstrate sites in the Lower Value zones or brownfield sites would require gap funding via public sector grant awards of £100,000+ per affordable housing unit in order to secure their viable delivery with affordable housing provision in accordance with Policy DLP12.
- 23. This is also the case in Medium Value market areas, where sites are also demonstrably unviable on a policy compliant basis. Para. ES 32 confirms that grant awards of £40,000 - £60,000 per affordable unit would be

required to secure the viable delivery of sites with affordable housing provision in accordance with Policy DLP12.

24. CBRE considers that preparation of policies in the DLP utilising the AHVA evidence base creates three primary risks for failure of the tests of soundness, as follows:
- a. Placing reliance on a brownfield-led housing land supply to meet the requirements in the DLP that, based on the available evidence, is demonstrably financially unviable and undeliverable without public sector intervention and subsidy, which is by no means secured or guaranteed.
 - b. Placing emphasis or even reliance on an unquantified ‘placemaking premium’ generated by regeneration, which itself is reliant on largely unsecured public funding as set out above.
 - c. Setting an affordable housing policy within Policy DLP12 that is not justified based on the available evidence, and therefore places at risk the deliverability of sites within the land supply and ultimately, the Plan.

Technical Deficiencies

25. Having conducted a detailed review of the AHVA, CBRE has identified a series of technical deficiencies in the adopted methodology and inputs.
26. In addition, several requests for clarification from AV are made, where evidenced justification is lacking.

Affordable Housing Transfer Values

27. Table 6.7 on p.85 within the AHVA sets out the affordable housing transfer values for each tenure adopted by AV within viability testing.
28. CBRE observes the following:
- a. First Homes are stated as being set at an affordable housing transfer value expressed as 75% of market value. This is assumed to be a text error, as it conflicts with the requirement for First Homes to be at a minimum discount of 30% to market value (with a cap of £250,000 per unit).
 - b. Affordable and Social Rent tenures are grouped together, with an affordable housing transfer value for each set at 60% of market value. This is highly unusual practice in CBRE’s experience, as the transfer values for each of these tenures typically significantly differs due to the variant rent levels at which they are restricted. Typical practice is that Affordable Rent levels are restricted to the lower of the Local Housing Allowance (‘LHA’) rate for the relevant property size (as published by the VOA) or 80% of market rents. CBRE has provided the LHA rates below for ease. Once allowing for management costs, void and bad debt, and then capitalising the net rents at an appropriate investment yield, the unit values generated are significantly below 60% of market value. In fact, CBRE’s calculation is that the transfer values for Affordable Rent units would be between 32% and 44% of market value dependent on the unit size (by bedrooms). This indicates that AV has significantly overstated the transfer value of Affordable Rent units within the viability assessments conducted within the AHVA. This will result in scheme typologies appearing to generate higher levels of viability than is realistic. The AHVA states that the transfer values have been “provided in consultation with the relevant housing teams” and the “subject of stakeholder consultation”. CBRE requests that evidence is provided to demonstrate that transfer values of 60% of market value are regularly achieved on Affordable Rent or Social Rent S106 affordable housing units within the borough, absent of any grant. Failing this, reassessment must be undertaken with transfer values adjusted downward accordingly.

Weekly LHA rate for November 2023**Black Country BRMA**

Shared Accommodation Rate:	£60.18 per week
One Bedroom Rate:	£91.82 per week
Two Bedrooms Rate:	£117.37 per week
Three Bedrooms Rate:	£136.93 per week
Four Bedrooms Rate:	£172.60 per week

Downloads about the Black Country Broad Rental Market Area (BRMA):

- ▶ [BRMA map \(the area where this LHA rate applies\)\(2899.8 KB, \(PDF\)\)](#)
- ▶ [Information about the BRMA \(719.5 KB, \(PDF\)\)](#)

Policy Costs Applied within the AHVA

29. CBRE considers that there are a series of flaws in the costs of DLP policies applied to the viability assessment by AV. These serve to understate the development costs that will be incurred by development site typologies within the borough in the current market. This poses a material risk that the results overstate the financial viability of sites.

Policy DLP32 – Nature Recovery Network and Biodiversity Net Gain

30. The AHVA states on p.35 that viability testing has allowed for a net gain delivery cost of £1,003 per housing unit for greenfield development and £268 per housing unit for brownfield development. This is based upon the West Midlands regional cost (central estimate) in the Net gain delivery cost tables (Tables 16 and 17) from the DEFRA Biodiversity net gain and local nature recovery strategies Impact Assessment 15/10/2019.
31. Review of the DEFRA document confirms that the costs are based on 2017 prices and AV has directly transposed them without adjusting for the passage of time. Given the significant inflationary climate occurring over the last several years, CBRE strongly recommends that best practice would be for AV to adjust the costs for inflation utilising a recognised industry metric such as the RICS BCIS All-in Tender Price Index ('TPI'). This would result in an increase in the costs to present day rates, which CBRE estimate would be in the region of 30% in excess of the costs adopted in the AHVA.

Policy DLP12 – Delivering Affordable, Wheelchair Accessible and Self-Build / Custom-Build Housing

32. The AHVA states on p.37 that viability testing has allowed for the extra-over costs for optional Building Regulation requirements, being M4(2) category 2 accessible and adaptable housing at £521 per unit and M4(3) category 3 wheelchair adaptable housing at a cost of £10,111 per unit. This is based on the DCLG housing Standards Review, Final Implementation Impact Assessment, March 2015, paragraphs 153 and 157.
33. As above, AV has directly transposed the costs without adjusting for inflation in the intervening period in order to incorporate the costs on present day rates. Allowing for inflation, CBRE estimate the appropriate current market costs as at Q4 2023 would equate to £750 per unit and £14,558 per unit respectively for M4(2) and M4(3).

Policy DLP16 – Education Facilities

34. A rate of £4,471.40 per unit is applied to viability testing in the LPVA for development typologies over 100 units. However, it is not explained how this figure is calculated for the purpose of testing or whether it represents an up-to-date assessment of costs.

Policy DLP85 - Contaminated Land

35. The LPVA states on p.38 that a generic remediation cost of £133,000 per ha (£53,823 per acre) is applied to the construction cost for brownfield site typologies. However, it is not stated as to how this cost was derived as reasonable or representative of the typical costs incurred.

Policy DLP42 – Energy Infrastructure

36. The AHVA states on p.40 that AV has incorporated the interim uplift to the Future Homes Standard 2019 Consultation on changes to Part L (conservation of fuel and power) of the building regs, which have been implemented from June 2022 (i.e. Building Regulations Part L 2022). These require all new homes to produce 31% fewer carbon emissions. It subsequently references the Future Homes Standard (2025), which will require all homes constructed from 2025 onwards to produce 75-80% fewer carbon emissions.
37. The AHVA states that a cost of £6,500 per unit has been incorporated to reflect the full extra-over cost of new housing meeting the 2025 Future Homes Standard. The AHVA does not provide evidenced justification.
38. CBRE’s professional opinion is that this cost is insufficient to reflect the extra-over sum to meet both Part L (2022) and Future Homes Standard (2025). Based on engagement with both volume and regional housebuilders, CBRE understands that the current estimated costs to meet both Part L/F Building Regulations (2022) and 2025 Future Homes Standard range from £8,000/unit to £16,000/unit. The AHVA rate of £6,500 per unit falls short of the minimum rate within the spectrum.
39. CBRE proposes that the AHVA should be updated to test a minimum rate of £10,000/unit, on the assumption that a cost towards the lower end of the spectrum may be achievable via technological advancement and the securing of economies of scale by volume housebuilders. However, CBRE is mindful that SME and regional scale developers are less likely to be able to secure such economies.

Transport Infrastructure

40. CBRE notes that the AHVA makes no allowance for off-site highway reinforcement works, and instead point to a sensitivity analysis for reliance. CBRE expects that most sites of modest scale and above will create traffic impacts that will necessitate off-site works to mitigate. As a result, it is expected that exclusion of any allowance in the AHVA will contribute to an unduly in an optimistic position on viability outcomes.

Baseline Construction Costs

41. The AHVA adopts lower quartile construction costs sourced from RICS BCIS for residential estate housing. This is the lowest rate typically adopted, but CBRE acknowledge that volume housebuilders in mid-lower market locations could deliver to this rate if the design and materials specification is adjusted accordingly. At these rates it should be noted that Part L (2022) and Future Homes Standard (2025) construction standards would be excluded and would necessitate full extra-over costing in addition (as referenced above).

Developer Return

42. CBRE supports the adoption of a developer’s return of 20% on gross development value (‘GDV’) on open market housing. In the current challenging market trading conditions, which are impacting heavily on reservation and transaction rates as well as suppressing values, it is appropriate that risk adjusted returns are applied at the upper end of the range set out within PPGV.
43. It should be noted that returns of 18.5% to 20% on GDV have been recommended by Inspectors within Appeal Decisions during 2023, with Inspector’s recognising and accommodating the elevated level of commercial risk for developers operating in the current market and seeking to deliver schemes over the next several years.

44. However, CBRE disagree with AV's assertion within para. 6.57 on p.89 that this represents "a generous margin and allows for 'buffer' in addition to the contingency allowance".
45. CBRE also notes that in the 'pragmatic' (optimistic) scenario, AV has downward adjusted the developer's return to 18% on GDV. Whilst representing broadly a mid-point in the PPGV range, this would reflect a significantly lower risk environment only derived via enhanced property market and macro-economic conditions.

Finance Rate

46. Oddly, the AHVA makes no reference to the finance (debt interest) rate applied to land and construction costs within the viability assessment, or the underpinning rationale. However, from review of the appraisal summary sheets in the appendices, it appears a rate of 7.5% is applied.
47. CBRE note that the 5-year SONIA rate stands at c.4.5% and the BoE base rate increased to 5.25% on 3rd August 2023 and is likely to remain at this rate until mid-2024, with the BoE holding rates at this level for third time in December 2023 and signalling that rate cuts are not presently on the table. This has significantly driven up the cost of securing development finance. This has hit SME developers and those delivering higher-risk regeneration projects particularly hard, with debt finance at a project level typically ranging from 10%-12% including fees. Volume housebuilders have been more insulated due to longer-term facilities, but as these end and require renegotiating on current market terms, it has fed through to a higher cost of capital across the industry. On balance, CBRE therefore considers an 8.0% debit rate on 100% of land and development costs the absolute minimum representative in the current market (i.e., circa 3% premium over the BoE base rate).
48. CBRE advocates that the AHVA rate of 7.5% will overstate the financial viability of site typologies tested, as it will underestimate the cost of debt required to deliver development across the borough.

Benchmark Land Values

49. CBRE has reviewed the Land Market Paper ('the Paper') prepared by AV dated July 2023 and provided within Appendix 4 of the LPVA. The Paper sets out AV's review of available evidence of land values across the borough. This is in turn used to inform the Benchmark Land Values ('BLV's') applied as viability thresholds for appraisals within viability testing.
50. The Paper appears to rely heavily on the DMBC's existing (historic) evidence base and AV's previous work in preparing the Black Country Local Plan (2021), which has not been tested via Examination in Public.
51. In overarching terms, CBRE is of the professional opinion that AV's methodology for setting brownfield BLVs falls short of the requirements set out within PPGV. CBRE's rationale is detailed within the subsequently sub-sections.

Suitable Available Evidence

52. AV acknowledge that establishing generic brownfield BLVs is challenging due to variables such as existing use, site clearance costs and/or historic legacy costs. There is a limited pool of evidence within Dudley, which indicates that the land supply arising from brownfield sites has been limited within recent years. This is demonstrated by AV's defaulting to utilise evidence from beyond Dudley itself and across the wider Black Country Boroughs.

Absence of Transparency

53. In total, AV has reportedly identified 69no. brownfield sites within their analysis which are either listed on the market or represent recorded transactions. Of those sites identified, AV cite that 48no. are for sale or sold with the potential for residential development.

54. However, AV has not disclosed the parameters of their search nor set out a schedule of comparable evidence, which fails the necessary requirement for transparency.
55. AV has instead quoted value ranges for commercial development land (£160,000 to £3,400,000 per acre), brownfield commercial development land (£160,000 to £500,000 per acre), residential development land (£35,000 to £1,048,000 per acre) and brownfield residential land (£100,000 to £500,000 per acre). It is unclear from the Land Market Paper if AV has calculated these values on a gross or net acre basis.
56. However, AV has not cited any tangible comparable evidence and does not provide a formal analysis of evidence to detail how the market comparable evidence (or information drawn from previous documents) has been translated into the BLVs adopted. This falls short of the requirements set out within PPGV¹.
57. Given this lack of transparency, it is unclear how AV has arrived at the Existing Use Values ('EUVs') stated and applied within the BLV Table 4 within the Paper. This has been extracted directly from the Land Market Paper for ease of cross-reference and set out overleaf.

Table 4: Land Market Paper | Benchmark Land Values

Typology	Location	Greenfield /Brownfield	EUV -					Uplift Multiplier x [X] x [Y]%	BLV -	
			(per acre) (gross)	(per ha) (gross)	Net: Gross (%)	(per acre) (net)	(per ha) (net)		(per acre) (net developable) (rounded)	(per ha) (net developable) (rounded)
Residential/Commercial	Low Value Area	Brownfield	£250,000	£617,750	100%	£250,000	£617,750	5.0%	£262,500	£648,638
Residential/Commercial	Medium Value Area	Brownfield	£250,000	£617,750	100%	£250,000	£617,750	7.5%	£268,750	£664,081
Residential/Commercial	High Value Area	Brownfield	£300,000	£741,300	100%	£300,000	£741,300	10.0%	£330,000	£815,430
Residential	Low Value Area	Greenfield	£7,225	£17,853	80%	£9,031	£22,316	21.1	£200,000	£494,200
Residential	Medium Value Area	Greenfield	£7,225	£17,853	80%	£9,031	£22,316	23.9	£225,000	£555,975
Residential	High Value Area	Greenfield	£7,225	£17,853	80%	£9,031	£22,316	26.7	£250,000	£617,750

Source: Aspinall Verdi Land Market Paper (July 2023) / Table 6.12 - Benchmark Land Value Assumptions - LPVA

¹ MHCLG (2019) National Planning Practice Guidance – Viability: Paragraph: 015 Reference ID: 10-015-20190509

CBRE Market Evidential Cross-check

58. To cross-check the brownfield BLV assumptions used by AV, CBRE has undertaken independent research of brownfield land values in the borough. This has included consideration of both the asking prices of brownfield sites available on the market in Q4 2023 and land transactional evidence.
59. The following sites are of particular relevance, and it is unclear if AV has taken these into account:
- A secondary industrial site in Brierley Hill comprising 2.06 acres is currently on the market for £412,621 per gross acre. Situated within the 'lower' value residential pricing zone.
 - Storage land in Brierley Hill comprising 1.38 acres is currently on the market for £253,623 per gross acre. Situated within the 'lower' value residential pricing zone.
 - A brownfield site in Stourbridge comprising 1.3 acres is currently on the market for £769,231 per gross acre. Situated within the 'medium' value residential pricing zone.
60. There is an apparent scarcity of secondary brownfield land coming to the market, and land for industrial uses such as storage is in demand across the West Midlands.
61. As such, secondary industrial and storage land is being marketed and transacting at considerably higher prices than AV's EUV and BLV assumptions. CBRE has identified no sites on the market below £250,000 per gross acre and only a very limited number of sites falling within the range of Aspinall Verdi's EUV levels.
62. Given the dearth of land availability and transactions, CBRE has also analysed the capital values of low-grade and secondary industrial standing stock to ascertain underlying industrial EUVs (as a proxy for land values), which acts as a logical sense check against current asking prices for brownfield land and Aspinall Verdi's adopted EUVs.
63. CBRE's analysis concludes that existing low-grade and secondary active industrial sites will generate land values in excess of £500,000 per gross acre, without a premium applied for residential development potential. Comparable evidence of standing industrial stock demonstrates capital values ranging between £25-£45/ft² for low-grade units and £65-£85/ft² for superior quality secondary units. Example analysis of existing industrial sites is summarised below.
- Nine Locks Works, Mill Street, Brierley Hill – In July 2023, the 63,042ft² industrial unit on a 3.25-acre site sold for £2,700,000, equating to £43/ft² or £830,769 per gross acre. The unit was sold with vacant possession.
 - Unit 9, Gibbons Industrial Park, Kingswinford – In July 2022, the 30,300ft² industrial unit on a 1.33-acre site sold for £785,000, equating to £26/ft² or £590,226 per gross acre. The unit was sold as an investment on undisclosed lease terms.
64. Furthermore, by comparison, CBRE is aware that in the wider West Midlands market, secondary industrial land trades for in excess of £500,000 per gross acre and up to £1m per gross acre for sites of circa 1-3 acres.
65. AV's adopted 'starting point' for setting BLVs, predicated on EUV's at £250,000 to £300,000 per gross acre is demonstrably too low and represents an unrealistic basis for preparation of viability assessment evidence, which if relied upon could pose a risk to the deliverability of the DLP.

Flawed Correlation of Brownfield EUVs with Residential Value Zones

66. AV's methodology applies lower brownfield EUVs (£250,000/gross acre) in designated 'low' and 'medium' residential value zones, but then applies a higher brownfield EUV in the designated 'high' residential value zone.
67. CBRE considers this counter-intuitive and erroneous. It is logical for brownfield sites to generate higher EUVs in traditional industrial locations that are typically located outside of traditional (or existing) residential locations – and typically if near to established residential areas, such areas are frequently of lower value.
68. AV has not put any evidence forward to justify applying a lower EUV in a 'low' and 'medium' value zone, than in a 'high' residential value zone. Put simply, there is no evidential correlation between the residential value zones and the EUV of brownfield land.
69. CBRE advocates that, in reality, 'higher' value commercial brownfield locations are typically in the 'lower' value residential zones.
70. AV's application of brownfield EUVs to the market areas is deemed to be flawed and requires revisitation and addressing.

Net to Gross Efficiency of Brownfield Sites

71. AV has assumed a net to gross efficiency of 100% for brownfield sites to reflect the net developable area available for residential redevelopment.
72. However, this assumption is not substantiated by AV, and is without evidential underwrite. CBRE contends this is an unrealistic proposition.
73. CBRE's conclusion is supported by a review of recent planning permissions on brownfield sites approved by DMBC. For example:
 - Taylor Wimpey is developing a site off Old Wharf Road, Stourbridge² comprising 256no. units. This reflects a net developable area of c.79% of the gross site area.
 - Barratt Homes is developing a site off Marriott Road Industrial Estate, Netherton³ comprising 90no. units. This reflects a net developable area of c.74% of the gross site area.
74. CBRE conclude that a more realistic gross to net site efficiency on brownfield sites redeveloped for residential use would be c.75%.
75. Moreover, with the introduction of the mandatory 10% Biodiversity Net Gain ('BNG') requirements for sites seeking planning permission from January 2024, it is expected that the brownfield site efficiencies will decrease further, as developers where possible will seek to mitigate this requirement in part or in totality on-site given the high-cost associated with securing off-site BNG credits.

² Split application comprising Old Wharf Road reserved matters application Ref: P21/0123, approved November 2021 and Tudor Dairies reserved matters application Ref: P22/0203, approved July 2022.

³ Planning application ref: P22/0758, reserved matters pending determination.

Uplift Multiplier

76. AV adopts an uplift multiplier ('landowner premium') of between 5-10% over perceived EUVs.
77. Firstly, the multipliers adopted of 5-10% in excess of brownfield EUVs represent the lowest CBRE has seen proposed nationally within any viability assessment prepared for the purpose of informing Local Plan policies.
78. Secondly, this multiplier range sits at odds with multipliers typically advocated and supported at the planning application stage and via planning Appeals. CBRE's experience of the typical adopted range is between 10% and 40%, with the application of a 20% premium in excess of brownfield site EUV's representing the industry 'norm'.
79. CBRE cannot see any supporting evidence or explanation justifying how the proposed EUV uplift multipliers have been calculated by Aspinall Verdi, or any market sense-check. PPGV⁴ stipulates that:

"Plan makers should establish a reasonable premium to the landowner for the purpose of assessing the viability of their plan. This will be an iterative process informed by professional judgement and must be based upon the best available evidence informed by cross sector collaboration."
80. CBRE therefore request that the methodology and evidence to justify the multipliers adopted is provided by AV for further comment.

Market Sense Check – Planning Policy Compliant Residential Developments

81. CBRE has undertaken a search of recent planning permissions in the borough to determine the deliverability of 'Policy Compliant' residential developments on brownfield sites (i.e., delivering the target 25% affordable housing provision on all sites of 15 dwellings or more and providing other required planning obligations) to ascertain if this represents a commercially realistic proposition in recent years.
82. Officer Reports and Planning Committee records confirm that the majority of brownfield residential developments have faced viability challenges. In fact, grant funding has been awarded and utilised in some instances to deliver a greater proportion of affordable housing units and support deliverability on brownfield land.
83. For example, the planning application (Ref: P22/0203) for Taylor Wimpey's development in Stourbridge comprised a split application across two sites: Old Wharf Road (256no. units) and Tudor Dairies (51no. units). According to the Officer's Report to Planning Committee, the original outline application secured that the Tudor Dairies site would offer 100% affordable housing despite a viability assessment concluding that the Education contribution and affordable housing provision was not viable. Delivery on this basis would reflect a 16.6% affordable housing provision across the two sites.
84. The Officer Report to Planning Committee for the recently consented residential development of 72no. units on the former quarry and tip at Bourne (Ref: P20/1306) confirms that a viability assessment was prepared and

⁴ MHCLG (2019) National Planning Practice Guidance – Viability: Paragraph: 016 Reference ID: 10-016-20190509

was independently verified. It was determined that no affordable housing provision or any other Section 106 contributions would be provided.

85. CBRE has been unable to further investigate site-specific viability challenges on other sites within Dudley as, contrary to the NPPF, Financial Viability Assessments and independent reviews have not been published by DMBC online.
86. CBRE request that this information is disclosed and is made accessible within the public domain if Aspinall Verdi are to place any reliance on it.

Conclusions

87. PPG Plan Making (para. 039 ref: 61-039-20190315) confirms that, in Plan Making, the Council must prepare a viability assessment in accordance with guidance to ensure that policies are realistic and the total cost of all relevant policies is not of a scale that will make the plan undeliverable.
88. NPPF, PPG and RICS Guidance⁵ therefore requires that a 'policy-on' approach must be adopted with the full costs of Plan policies (including affordable housing) accounted for. It is not appropriate or justified to set policies within a Plan that are not deliverable and where the underpinning evidence demonstrates (as in this case) that it would be necessary to revert to viability at decision taking stage.
89. In the setting of brownfield BLVs, CBRE's analysis concludes that Aspinall Verdi's assumptions of EUV are unrealistic and not supportable. The values stated are significantly below the levels expected by landowners and demonstrably achievable in the local market. Their subsequent assumptions regarding net to gross site efficiencies and the setting of EUV+ 'premiums' are also unrealistic and lacking in evidential underwrite. The result is that the brownfield BLVs adopted by AV are flawed.
90. Consequently, CBRE can only conclude that AV inappropriately assume that brownfield land will be released for residential development at lower land prices than is realistic in the Dudley market. The implication is that this will overstate the financial viability and deliverability of the brownfield land supply typologies within AV's viability assessment for the purposes of informing DLP policies, rendering said policies unrealistic.
91. In addition, CBRE understands that AV's recommendations to DMBC for setting policies within the DLP are predicated upon the results of the optimistic ('pragmatic') scenario. CBRE considers that AV should have made recommendations for setting policy on the baseline scenario, which represents a more realistic assessment of current market conditions in line with market signals.
92. The impact will be that policy costs introduced on brownfield development sites will be unduly burdensome, which will either render sites undeliverable or preclude developers from bringing forward developments through the planning system that are in compliance with the adopted Plan.
93. This is demonstrated by the results of site typology viability testing in the AHVA, which confirm that under AV's optimistic ('pragmatic') adjustments all sites in the Low Value Zone remaining unviable and

⁵ RICS Guidance Note (March 2021) Assessing viability in planning under the National Planning Policy Framework 2019 for England. Para. 3.7.14

undeliverable, and the majority of sites in the Medium Value Zone remaining ‘marginal’, meaning that they still cannot fully comply with DLP policies.

94. Moreover, AV’s appraisal summary of DMBC’s priority brownfield sites within the DLP confirms that, with the exception of Ketley Quarry, all sites are not fully viable and are only classified as ‘marginal’ – even when applying AV’s optimistic (‘pragmatic’) assumptions.
95. This strategy ultimately represents a significantly risk to the deliverability of the DLP, should it place reliance on a brownfield land supply in delivering upon its housing requirements over the Plan period.
96. Specifically, CBRE considers that preparation of policies in the DLP utilising the AHVA evidence base creates three primary risks for failure of the tests of soundness, as follows:
 - a. Placing reliance on a brownfield-led housing land supply to meet the requirements in the DLP that, based on the available evidence, is demonstrably financially unviable and undeliverable without public sector intervention and subsidy, which is by no means secured or guaranteed. This is contrary to the NPPF and Government’s guidance set out in PPG
 - b. Placing emphasis or even reliance on an unquantified ‘placemaking premium’ generated by regeneration, which itself is reliant on largely unsecured public funding as set out above.
 - c. Setting an affordable housing policy within Policy DLP12 that is not justified based on the available evidence, and therefore places at risk the deliverability of sites within the land supply and ultimately, the Plan.
97. CBRE’s views have been prepared on behalf of St Philips and CBRE reserves the right to provide further information and undertake detailed analysis of AV’s outputs upon disclosure of further evidence presented.
98. This technical representation has been prepared and approved by the following personnel:

Sophie Borrowdale MRICS

Associate Director

National Planning & Development

CBRE UK Limited

Matt Spilsbury MRICS MRTPI

Senior Director

National Planning & Development

CBRE UK Limited

Enclosures

Enclosure 1: Lichfields Letter – Dudley Stakeholder Workshop (05/07/23) Feedback

Dudley Planning Policy Team
Dudley Metropolitan Borough Council
Council House
1 Priory Road
Dudley
DY1 1HF

Date: 19 July 2023

Our ref: 60644/01/JK/MSe/26809651v1

Dear Dudley Planning Policy Team

Dudley Stakeholder Workshop (05/07/2023): Feedback

On behalf of our Client St Philips, Lichfields attended the Council's Stakeholder Workshop in regard to the Dudley Local Plan Review on 05/07/23. Subsequently, Lichfields have been instructed to provide initial feedback in response to the information presented.

To inform the preparation of the Local Plan, Dudley Council have commissioned consultants Aspinall Verdi to prepare a Viability and Delivery Assessment. This study will form an important part of the Local Plan Review's evidence base and will test the policies to be contained within the Draft Local Plan. In addition to the viability and delivery assessment work, the workshop also included a presentation from the Dudley Planning Policy Team in regard to the preparation of the Strategic Housing Land Availability Assessment (SHLAA). The purpose of this workshop was to cover the following matters:

- 1 Viability and Delivery consultation - facilitated by Aspinall Verdi
- 2 SHLAA – facilitated by Dudley Planning Policy team

As part of the workshop, Aspinall Verdi and Dudley MBC's Planning Policy Team requested feedback on the information presented in order to help refine the assumptions and prepare a Viability Report ready for public consultation. Given the nature of the data presented by Aspinall Verdi, we request the right to reserve a position to prepare and submit a detailed assessment of the working assumptions at a date later than 21 July 2023. We note that once the Viability Report has been published, a public consultation will be held offering the opportunity to submit representations to the Council.

Our initial observations are as follows.

Viability and Delivery consultation

Residential Value Assumptions

The following residential value assumptions were presented during the workshop:

Figure 1 Residential Value Assumptions

Property type	Lower Value area	Medium Value Area	Higher Value Area
1 Bed Flat	£125,000	£130,000	£145,000
2 Bed Flat	£135,000	£145,000	£175,000
2 Bed House	£190,000	£220,000	£245,000
3 Bed House	£225,000	£275,000	£335,000
4 Bed House	£275,000	£345,000	£400,000
5 Bed House	£335,000	£400,000	£495,000

Source: Dudley Stakeholder Workshop (05/07/2023)

During the workshop, it was stated that the residential value assumptions have been drawn from market research consisting of UK and Regional Market data, the Council's existing evidence base on residential sales values and Aspinall Verdi's independent research.

Notwithstanding this position, the Council presented no specific evidence to underpin the working assumptions in regard to residential value. In the absence of such evidence, St Philip's would request that any future viability modelling in regard to residential value should be based on the most up-to-date evidence to ensure the conclusions presented within the Viability Report are accurate and credible. Evidence should be made available at the time of presentation of future iterations of the viability modelling to ensure transparency of the data presented.

Garage Assumptions

During the workshop, it was stated that a cost per garage space of £8,000 has been assumed. However, it has not been made clear what evidence supports this assumption and therefore, until evidence is provided, we reserve our position and are unable to support this assumption.

Affordable Housing Assumptions

It is assumed that Aspinall Verdi have relied upon the Black Country Housing Market Assessment Final Report March 2021.

Should this be the case, this document having been prepared to support the Black Country Plan is now out of date and may fail to reflect demographic change and the requirements of specific groups within Dudley Borough with regard to affordable housing need.

It is suggested that any future iteration of the viability modelling should be based upon an updated assessment of housing need within the Borough.

With regard to affordable housing, Aspinall Verdi have assumed that 30% of the overall mix will comprise affordable housing. Additionally, it has been assumed that of the 30% affordable housing, 60% will be social rent, 15% will be intermediate and 25% will be first homes.

The proportion of affordable housing does not align with the findings of the Black Country Housing Market Assessment Final Report March 2021. In this respect, paragraph 8.7 sets out that;

“The total annual affordable housing need in the Black Country of 867 per year (as set out in Chapter 6) represents 21.6% of the annual dwelling growth of 4,019 in the housing market area as assessed using the revised Standard Method. It would be reasonable to expect this proportion of new housing as affordable to be delivered on a large housing site in the Black Country, where a figure of 25% would be plausible (subject to viability). The Councils can therefore be confident that the affordable housing need identified in the model will be addressed by the dwelling growth identified by the Standard Method and no adjustment is required to this figure.”

Based upon the evidence within the report therefore, St Philips consider that the level of affordable housing tested through the viability model should be set at 25%.

Additionally, Aspinall Verdi have assumed the following Affordable Housing mix:

- 1 Bedroom Flat – 22.50%
- 2 Bedroom House – 12.40%
- 2 Bedroom Flat – 12.40%
- 3 Bedroom House – 26.82%
- 4 Bedroom House – 25.88%
- 5 + Bedroom House – 5.90%

In addition, the viability modelling does not appear to take account on the needs of different groups and types of affordable housing to include;

- Older persons
- People with disabilities
- Family households

Whilst the viability model has tested specific proportions of affordable housing, this is not referenced to specific evidence and consequently, it is unclear how the specific proportions have been derived and consequently whether these would meet the needs of specific groups within the Borough.

Site Specific S106

It was stated that total of £9,884 per unit for houses and flats above 100 units has been assumed as a cost assumption. Aspinall Verdi made clear this information had been provided by the Council and is inclusive of open space, sport provisions, education and healthcare.

Although this assumption has been provided by the Council it was not confirmed whether the evidence underlining this assumption is from a credible source and is up-to-date. Therefore, until this is confirmed, we cannot agree with this working assumption.

Cost Assumptions – Design Policies

In respect of the design policies, the following cost assumptions have been made by Aspinall Verdi:

- BNG
 - i £1,003 per unit for greenfield sites
 - ii £268 per unit for brownfield sites
- M4(2) Category 2 – Accessible and Adaptable housing
 - i +£521 per unit, Low Value = 20% of all units, Medium and High = 85% of all units
- M4(3)(2)(b) Category 3 - Wheelchair Adaptable dwellings
 - i +£10,111 per unit (15% of all units in medium and high value zone)
- Net Zero Carbon (2025 Standard)
 - i £6,000 per unit, in addition to the BCIS
- EV Charging
 - ii £1,000 per unit house
 - iii £2,500 per 4 flats

In terms of BNG, it was stated that the DEFRA Biodiversity net gain and local nature recovery strategies Impact Assessment (15/10/2019) has been utilised to inform the identified costs. This information is however now significantly out of date and is provided in the absence of any site specific information. It is also provided in the absence of any Borough wide strategy for achieving a BNG solution off site as may be required in the case of urban brownfield land.

Should such a solution not be achievable off site, any reliance on the delivery of brownfield land may be unachievable given the requirement that all future planning applications will be required to achieve a minimum of 10% BNG.

In regard to M4(2) category 2, we do not agree with this working assumption as it was stated that the underlining evidence is the DCLG Housing Standards Review, Final Implementation Impact Assessment, March 2015. In order to be credible, the underlining evidence will need to be updated to reflect current values. St Philips consider that a cost of £850 per dwellings would be a more realistic assumption.

In terms Net Zero Carbon a cost of £6000 per unit to achieve the 2025 standard requirement is assumed. St Philips consider that a more realistic costs would be £6,850 per dwellings.

In terms of M4(3)(2)(b) Category 3 and EV charging, we do not agree with these assumptions as to our knowledge, there is currently no evidence underlining this information.

Benchmark Land Value (BLV) & Existing Use Value (EUV)

It was stated during the workshop that Aspinnall Verdi have used the following approach for assessing BLV:

- 1 Existing Evidence Base Review (inc. Neighbouring Authorities)
- 2 UK Land Context
- 3 Agricultural / Paddock Land
- 4 Residential Development Land
- 5 Greenfield / Brownfield

The EUV working assumptions presented during the Stakeholder Workshop are outlined within Table 1 below:

Table 1 EUV – Working Assumptions

Typology	Location	Greenfield/Brownfield	EUV			BLV	
			(per acre) (gross)	(per ha) (gross)	Net: Gross (%)	Per acre (net)	Per ha (net)
Residential/Commercial	Low Value Area	Brownfield	£250,000	£617,750	100%	£262,500	£648,638
Residential/Commercial	Medium Value Area	Brownfield	£250,000	£617,750	100%	£268,750	£664,081
Residential/Commercial	High Value Area	Brownfield	£300,000	£741,300	100%	£330,000	£815,430
Residential	Low Value Area	Greenfield	£7,225	£17,853	80%	£200,000	£494,200
Residential	Medium Value Area	Greenfield	£7,225	£17,853	80%	£225,000	£555,975
Residential	High Value Area	Greenfield	£7,225	£17,853	80%	£250,000	617,750

Source: Dudley Stakeholder Workshop (05/07/2023)

Concern exists that the assumptions around EUV and BLV are not based upon any defined evidence or available market intelligence and are set at a significantly lower level that would be able to be achieved in the local property market.

The implication of utilising such artificially low levels could be to overstate the deliverability of brownfield land through the Local Plan process, which could result in the failure to deliver new housing over the plan period.

Utilising such values also risks reliance on policy requirements, in particular affordable housing, that may not be achievable or viable.

Furthermore, in terms of the existing use value (EUV), Aspinall Verdi have assumed a net to gross percentage of 100% for brownfield sites and 80% for greenfield sites. It was stated that this is a measure of the developable area associated with a site. Until credible evidence underlines these working assumptions, we do not agree with the information presented by Aspinall Verdi. As an initial observation, the net to gross assumptions in regard to developable land are considered to be unrealistic and unachievable in terms of both brownfield and greenfield sites and should be refined in-line with supporting evidence.

As stated above, we respectfully request the right to reserve a position to submit detailed evidence at a later date in order to accurately support Aspinall Verdi when refining these working assumptions.

We look forward to receiving a response and are more than happy to organise a meeting with the Council in order to discuss our views.

Yours Faithfully



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