

Sent by EMAIL ONLY to planning.policy@dudley.gov.uk

28/11/2024

Dear Sir/ Madam

Response by the Home Builders Federation to the Dudley Reg 19 Local Plan Part One and Part Two consultation, October 2024

1. Please find below the Home Builders Federation (HBF) response to the Dudley Reg 19 Local Plan consultation, November 2024. We have noted the contents of the Reg 19 documentation, and the errata document.
2. HBF is the principal representative body of the housebuilding industry in England and Wales and our representations reflect the views of discussions with our membership of national and multinational corporations through to regional developers and small local housebuilders. Our members account for over 80% of all new housing built in England and Wales in any one year, and include some housing association and self/custom house builder members.
3. HBF have not commented on every policy only those of relevance to our members.

Overarching comments

Consultation on amendments to the NPPF

4. At the end of July, the Government commenced a consultation on a number of amendments to the NPPF. The proposed revisions have the potential to significantly impact current document requiring changes. There is a strong possibility that neighbouring authorities will be required to prepare plans that are consistent with the changes being proposed to the NPPF, which will impact on both their own plans and the interface with the Dudley Local Plan.
5. Alongside the changes to the NPPF the Government have also consulted on a new standard method. While our comments will be based on the current NPPF we will refer to the potential impact of the proposed changes within our representations.



6. The council will need to fully consider the implications of any changes to the NPPF and standard method on their Plan. For example, if the Dudley Local Plan is submitted under the current proposed transitional arrangements the Council will need to assess both the implication on their plans, and on plan making in neighbouring areas as part of the Duty to Co-operate.
7. Para 226(a) of the draft NPPF is clear that the policies of the draft will apply for the purpose of preparing local plans unless, the emerging annual housing requirement in a local plan that reaches or has reached Regulation 19 stage on or before the NPPF (plus one month) and is no more than 200 dwellings below the new relevant Local Housing Need figure. This would not apply in relation to this Plan and therefore the Council are not future-proofing the Plan to ensure unnecessary delays are avoided. The DLP will therefore need to revise its calculation underpinning the local housing need figure in order to reflect the most up-to-date data, and consequently seek to plan for a minimum of 1,394 (under para 226(a) protections).
8. Whilst the proposed amendments to the NPPF can only be given limited weight with regard to the Local Plan at this point in time, it is important to note that Inspectors are already asking Local Plans at Examination for comment on the proposed changes and the Written Ministerial Statement 'Building the Homes We Need' that was published early this year and it will be necessary for Dudley Local Plan consider the need for an immediate review should it be submitted prior to the implementation of any changes.

The Need for Review

9. In particular the changes to national policy being proposed by the Government mean that the plan will require modification to set out an immediate review of the plan to take account of proposed changes to the NPPF that are currently being consulted on. While these changes are still out for consultation should the remain as currently presented consideration will need to be given to paragraph 227 in the draft NPPF which states:

"Where paragraph 226 c) applies, local plans that reach adoption with an annual housing requirement that is more than 200 dwellings lower than the relevant published Local Housing Need 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."
10. In HBF's view, this underlines the importance of the Council taking efforts now to minimise the level of any unmet and unplanned for need in the first place. Irrespective of the detail in any revised NPPF the national policy direction of meeting housing needs of the nation in full, is clear even now. As such new Local Plans should be proactively planning to do all they can to help address the housing crisis. In HBF's view Dudley's Reg 19 Local is not achieving this objective and not contributing as much as it could or should be to meeting the key national policy goal, as such it is currently unsound.

Plan Period

The Plan is not considered to be sound as it is not justified or effective or in line with national policy.

11. HBF note that the Plan Period runs only to 2041. Para 22 of the NPPF requires that 'strategic policies should look ahead over a minimum 15-year period from adoption'.
12. Although we note that the Plan is now at Reg 19 submission stage, it can and does take time to proceed through the remaining stages of plan preparation- the examination process, main modification consultation, Inspector's report and adoption of the Local Plan. HBF therefore question whether the plan period need extending. Extending the plan period by one or two years and rolling forward the housing requirement to these future years would seem a reasonable approach to address this issue. The supporting evidence would probably need to reflect this longer timeframe too.
13. HBF suggest that for this plan to be sound, the plan period needs extending. A plan period of less than 15 years on adoption fails to comply with the NPPF requirements for effective plan making. It will also be important that the evidence base reflects the plan period.

Duty to Co-operate

14. Although HBF welcomes the Council's efforts to ensure that they have an up to Local Plan, it is very disappointing that the Council is not positively planning for the future growth of Dudley including planning for all the new homes and jobs that it needs, recognising its role within the West Midlands area.
15. HBF notes there is a significant interaction between housing issues across the wider West Midlands housing market, which are simply not being adequately addressed. Unfortunately, the history of strategic planning in the West Midlands (as set out in the Councils own DTC statement) demonstrates an ultimately unsuccessful collaboration around plan-making, which has led to the housing needs of the West Midlands Region being unplanned for, and unmet for many years.
16. Unfortunately, HBF have observed the history of under delivery of housing in the West Midlands, and a lack of meaningful cooperation that has resulted in a failure to properly plan for the area as a whole. HBF are very concerned that without tackling this issue, it will be very difficult for this new Local Plan to deliver against the national, regional and local housing objectives, which are even more important as we are in the midst of a housing crisis, and new Government's ambitions to deliver 1.5 million homes. Whilst we welcome Dudley's efforts to continue with plan-making, some issues, including housing needs at the HMA level and infrastructure, are difficult to address within the confines of a single Local Planning Authority and would be better addressed at the wider City/Region level.

17. HBF are concerned that the approach now being pursued in this Plan, and the insular focus considering the Borough in isolation, will add to this history of under delivery of housing. We are concerned that a continuation of the failure of joined-up plan making and wider lack of cooperation will continue the failure to properly plan for the area, leaving housing need unmet.
18. Plan-making is a fundamental part of a Local Authority's role and is essential to support the delivery new homes and jobs. HBF agree that there are many factors that support the need for a new Local Plan for Dudley, and therefore although we welcome the efforts of the Council to engage in plan-making for its area, this must not be done in isolation.
19. HBF note that a Duty to Cooperate Statement dated Oct 2024 has been prepared, <https://www.dudley.gov.uk/media/3xsemys5/dudley-local-plan-publication-plan-reg-19-dtc-statement-october-2024.pdf>. However, this simply highlights the failure of the West Midlands Authorities to deliver joined-up plan-making and the refusal attempts to transfer needs between LPAs, rather than recognising the need for the wholesale green belt review.
20. The information in the Oct 2024 Duty to cooperate statement also needs updating as it has now been superseded by events particularly the Shropshire Local Plan Examination. It is currently unclear if the approach of asking neighbouring authorities to help to meet Dudley's housing needs, is realistic, deliverable and/or supported by partners.
21. HBF would therefore encourage the Council to take a broader view of the role of its Plan. The new Dudley Local Plan should not be trying to progress its plan in isolation, ignoring its context within the wider area. There is clearly a need to acknowledge the role and location of Dudley within the wider West Midlands Region and Housing Market Area, and for the Plan to be proactive in supporting growth and development of the Region. This necessitates planning for a higher number of much needed homes.
22. HBF's main concerns around Duty to Cooperate is the need to ensure the required amount of housing is delivered in reality. This is particularly important because the current Plan the indicates a shortfall so the issue of fully meeting housing needs within Dudley remains. Our more detailed comments on this issue can be found in response to the Policy DLP1: Development Strategy. HBF request that Council should do more to meet its own needs and minimise or eliminate the amount of unmet so it does not need to rely on neighbouring authorities to meet it for them.
23. HBF notes the Council's stated intention to be proactive and pro-growth. However, the issue of potential unmet need requires clearly evidenced and ongoing cooperation. This will be essential to show that the Duty to Cooperate has been met.

24. HBF are currently unclear if the Duty to Cooperate has been met. Although we welcome the DTC Statement, which we requested in our Reg 18 response, the current position of neighbouring authorities in relation to Dudley's Local Plan is in flux. The current position needs to be reflected in the DTC, and HBF would suggest that the demonstrated challenges of seeking to rely on neighbouring authorities to meet your housing need, provides further evidence of the need and justification for a full green belt review.

Problems with the Shropshire Local Plan EIP

25. Table 4.2 references the potential of a continuation of 431 homes from Shropshire towards meeting Dudley's need. However, HBF note that Inspectors of the Shropshire Local Plan have recently written to Shropshire Council expressing significant concerns about the soundness of their Plan and the planned future EIP hearing sessions on the Shropshire Plan have been cancelled. See <https://www.shropshire.gov.uk/planning-policy/local-planning/local-plan-review/draft-shropshire-local-plan-2016-2038-examination/examination-calendar/> and <https://www.shropshire.gov.uk/media/29185/id46-stage-2-hearings-holding-letter.pdf>
26. This would seem to raise questions around the soundness of the Dudley Plan if this Plan is seeking to rely on Shropshire delivering housing to meet some of Dudley's unmet need.
27. HBF would be keen to understand the Council's view on the implication of this latest development in the Shropshire Local Plan EIP on the Duty to Cooperate in relation to Dudley's Plan. What conversations have been undertaken during, and subsequent to, the Shropshire EIP soundness issues coming to light? At the very least the DTC statement will need updating to reflect the current position. Without this information being publicly available at this point in time HBF are unable to fully assess the impact of this issue on compliance with the Duty to Cooperate.
28. HBF's main concerns around Duty to Cooperate continue to relate to ensuring that Dudley's required amount of housing is delivered in reality. This is particularly important because the current Plan the indicates a significant amount of unmet need. The issue of fully meeting housing needs within Dudley remains. Our more detailed comments on this issue can be found in response to Policy DLP1: Development Strategy.

Vision for Dudley

The Vision is not considered to be sound as it is not justified or effective or in line with national policy.

29. HBF is disappointed that the vision for Dudley Council does not include specific reference about the need to facilitate the provision of market housing and affordable housing. It is therefore very important that this is explicitly referred to in the vision for the Dudley Local Plan. We are in the midst of a housing crisis, making it even more important that the Plan continues to provide an appropriate mix of housing types, sizes and tenures to meet the housing needs of all residents in the Borough and to support the Council's growth aspirations. This will necessitate a need for both market and affordable housing to meet the housing needs of Dudley in full.
30. HBF would request that the vision is updated to include a more wording on this issue, as meeting housing needs in their entirety must therefore be a key part of the vision for the Plan.

Objectives

The Vision is not considered to be sound as it is not justified or effective or in line with national policy.

31. HBF would request that meeting housing need in full should be an objective of the Dudley Local Plan. In light of the housing crisis this is very important and a such provides the justification for consideration of Green Belt release through a wholesale Green Belt review. This would also mean that the objectives about Green Belt should include recognition of the role this may need to play in meeting housing need. This is particularly important in light of the Government's expressed intention to deliver new development including housing on Green Belt sites within the Green Belt.
32. The objectives of the plan should also explicitly recognise the interrelationship between housing and economic growth and the consequences that failing to provide for enough homes will have on the economic ambitions of both Dudley and the wider West Midlands region.

Planning for Sustainable Development

Policy DLP1: Development Strategy

The Policy is not considered to be sound as it is not justified or effective or in line with national policy.

33. The Policy states that "Table 5.1 shows how the full housing and employment land requirements for the Dudley Borough will be met through identified sites, and through reliance on neighbouring and other local authorities who have a functional link with Dudley via the Duty to Cooperate. Those development needs that cannot be accommodated within the Dudley administrative area will be exported to sustainable locations in neighbouring local authority areas." As such the Plan is failing to proactively plan for its area in not meeting its own need.

34. HBF would ask what evidence is there that this approach will be delivered. More detail on our concerns is set out in our Duty to cooperate comments and is not repeated here. However, in summary, our understanding is that neighbouring authorities are themselves declaring unmet needs and looking for Dudley to help to meet their needs. The Dudley Local Plan needs to offer certainty as to how the full housing needs of Dudley will be met. It is clearly unacceptable for unmet need to not be met anywhere.
35. In the Regulation 18 consultation on the Dudley Plan Table 5.1 set out a need for 11,954 new homes to 2040/41 of which 1,078 were to be “exported through the Duty to Cooperate”, and of the 72 Ha of employment land is needed within the Borough, but 47 Ha are to be ‘exported through the Duty to Cooperate. At the time they therefore intended provide just over 90% of its housing need and only 35% of its employment need within the borough, and HBF suggest the housing requirement figure should be higher to start with. This was a concern for the HBF.
36. However, the Reg 19 version of the Plan reduced the housing figure to deliver at least 10,470 net new homes 22.6ha of employment land. It should be clear from the Plan how this figure has been arrived at. How much housing need remains unmet and how this is going to be addressed by neighbouring authorities. This should be clearly set out in the policy, and not relegated to supporting text. HBF do not believe the approach being proposed in Dudley is reasonable and it will not meet the housing needs of the area, and further sites are needed to do this, this will require a green belt review.
37. HBF suggests that before seeking to export Dudley’s housing needs to other areas the Authority must assure itself that it has done all it can to meet its own needs. This warrants Dudley Council revisiting its approach to housing delivery to ensure it is doing everything it can to meet its own needs. HBF strongly suggest the Council could do more to meet its own needs and minimise, or eliminate, the amount of unmet need it has, so that it does not need to rely on neighbouring authorities to meet it for them. The revision to the NPPF give further support to the HBF’s suggestion more needs to be done within Dudley for the Council to meet its own housing needs in full.
38. HBF notes that the Plan therefore proposes not only an unmet housing need but also a significant unmet employment need. This will constrain the ambitions for Growth in Dudley, and the wider region. HBF are of the view that these circumstances warrant a full Green Belt review and the allocation of sites to meet the housing and employment requirements of the Borough even if these are within the current Green Belt.
39. More fundamentally though the housing requirement has to be set at the right level before consideration is given to how, and indeed whether or not, it can be fully met within the Plan. HBF believe the housing requirement should be higher to start with and so the percentage of unmet need would be even higher. Even, setting this aside for now, HBF is concerned about this proposed shortfall. Failure to meet the housing needs of Dudley will inhibit growth and do nothing to address the current housing crisis, with implications

for the economy and population of wider region. It will be important for the Council to clearly show how the unmet need will be met, and what they will do to ensure that it is. However, the Council needs to first establish the appropriate housing requirement for Dudley before considering if and how this could be met.

40. Para 61 of the newly revised NPPF still says 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. The outcome of the standard method is an advisory starting-point for establishing a housing requirement for the area”. Para 67 states that “The requirement may be higher than the identified housing need if, for example, it includes provision for neighbouring areas, or reflects growth ambitions linked to economic development or infrastructure investment.
41. The Dudley Plan needs to acknowledge that establishing the housing requirement begins with a calculation using the Government’s standard method based on household growth projections. However, HBF suggest that this should still be only the starting point for consideration of the housing requirement itself. HBF strongly support the need for more housing in the Dudley Local Plan for a variety of reasons including addressing the current housing crisis, meeting housing need, providing affordable housing and supporting employment growth. HBF would request that the Council considers the annual LHN as only the minimum starting point and fully considers all of the issues that may result in a need for a higher housing requirement, including the need to provide a range and choice of sites, the need for flexibility, viability considerations and whether higher levels of open-market housing are required in order to secure increased delivery of affordable housing.
42. Paragraph 22 of the NPPF requires that strategic policies should look ahead over a minimum 15-year period from adoption. HBF note that the current plan period is to 2041. We would question if the plan period is long enough to cover this requirement as the plan-making process, even having reached Reg 19 will take some time, especially because in the HBF’s view additional Green Belt release is needed to meet housing need which will require a Green Belt review and additional consultation and SA work. HBF would therefore suggest that the plan period needs to be extended.
43. There will also need to be an update to the evidence base as is important for the evidence base to be consistent with the extended Plan Period. Extending the plan period would also require an increase to the housing requirement to cover the additional years, and consequential additional housing supply.
44. The Government’s commitment to 1.5 million homes over the next five years has seen ambitions to plan for 370,000 per year in order to deliver the national target of 300,000 new homes per year. HBF note that the standard method housing requirement has always been the minimum starting point for setting the housing requirement, and HBF support more housing than the standard

method housing requirement in order to support economic growth, provide a range and type of sites and to support small and medium house builders.

45. HBF suggest that each of these reasons on its own could justify an increase in the housing requirement for Dudley and the Council should consider planning for an additional amount of housing to address each reason in turn. However, as previously mentioned it is important that the housing requirement is established, before any consideration is given to any issues around housing land supply, or lack thereof.
46. The plan-led system requires Council to proactively plan to meet the needs of their community. This means that there is a need to provide a range and choice of sites, a need for flexibility and viability considerations to be taken into account, and a need for the Council to consider whether higher levels of open-market housing are required in order to secure the delivery of affordable housing and/or support economic growth.
47. Once the housing requirement has been set, the next phase is to consider housing land supply. It is important to both minimise the amount of any unmet needs that cannot be accommodated within the Borough and clearly set out how any unmet need will be addressed elsewhere. HBF note the Council's view of the constrained nature of the Borough but suggest more can be done to reduce the size of the shortfall in Housing and Employment land being proposed in this plan. It is important that the housing needs of Dudley are met in full.
48. HBF would also suggest that Table 5.1 should be moved into the policy, and not left relegated within supporting text or elsewhere in the Plan, so that the status of the sites being allocated is clear and unambiguous. We would however request the contents of Table 5.1 are expanded to include additional sites that will be allocated to ensure that the Plan is doing more to meet the housing needs of Dudley with the administrative area of Dudley, which will necessitate a Green Belt review to identify further sites. We recognise that this will require additional work, including SA, and further public consultation.
49. Although HBF is pleased to see the Council commit to ongoing working with neighbouring authorities to try and address the issue of how to meet the housing needs of Dudley in full, the overreliance on doing this through the Duty to Cooperate is unsound. The fact remains that the Local Plan's policies should ensure the availability of a sufficient supply of deliverable and developable land to deliver Dudley's housing requirement. If it is not possible to do this within the boundary then Green Belt release may be needed.
50. HBF believe that Dudley's inability to meet its housing (and employment) needs requires revisiting the Spatial Strategy results in the 'exceptional circumstances' that would require the need for a Green Belt review as set out in para 140 of the NPPF.
51. The issue of fully meeting housing needs within Dudley remains a critical issue, perhaps even more so now the work on Black Country Plan has ended.

Having established the standard method housing figure for the area, the Dudley Plan then undertake its own calculations for the housing need and establish it's housing requirement. Then this requirement should be robustly tested to establish how much of the requirement can be met within Dudley and how much (if any) is an unmet need. This issue is both a soundness and a Duty to Cooperate issue.

Policy DLP2: Growth Network Regeneration Corridors and Centres

The Policy is not considered to be sound as it is not justified or effective or in line with national policy.

52. HBF does not comment on individual sites or allocations, other than to say the Plan should provide for a wide range of deliverable and developable sites across the area in order to provide competition and choice to ensure that housing needs are met in full. HBF would wish to see the Plan set out a logical settlement hierarchy which meets all the housing needs and addresses all areas of the housing market, with a range of sites proposed for allocation. The soundness of strategic and non-strategic site allocations, whether brownfield or greenfield, will be tested in due course at the Local Plan Examination.
53. If as the HBF suggest, additional housing allocations are required in Dudley Local Plan, including potentially new Green Belt sites, the locational strategy in the Plan will be one of the considerations to pick up in the Green Belt review.

Policy DLP3: Areas outside the Growth Network

The Policy is not considered to be sound as it is not justified or effective or in line with national policy.

54. HBF reiterates that it does not comment individual sites or allocations but does support the need for the Plan to provide for a wide range of deliverable and developable sites and to ensure that housing needs are met in full.
55. HBF notes point six of the policy states that Dudley's Green Belt boundaries will be maintained and protected from inappropriate development. However, HBF would argue that the current housing crisis and the inability of Dudley to meet its own needs provide just such exceptional circumstances to necessitate a Green Belt review, which must include the consideration of both employment and housing sites.
56. Para 11 of the NPPF states that "all plans should promote a sustainable pattern of development that seeks to: meet the development needs of their area; align growth and infrastructure; improve the environment; mitigate climate change (including by making effective use of land in urban areas) and adapt to its effects".

57. NPPF para 60 clearly states that “to support the government’s objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay.”
58. HBF support ambitious growth aspirations in Dudley. HBF highlight the need to consider the interaction between employment and housing. An increase in the number of jobs can it itself generate a requirement for additional housing, and failure to provide housing can have negative impacts on the economic and social wellbeing of the area.
59. HBF believes the Council’s inability to meet their own housing need in the midst of a housing consider is a factor that constitutes the exceptional circumstances that justify Green Belt release.
60. The Plan need to ensure there is a sufficiency of Housing Land Supply (HLS) to meet the housing requirement, ensure the maintenance of a 5 Year Housing Land Supply (5YHLS) and achieve Housing Delivery Test (HDT) performance measurements. HBF cannot see how achieving these aims is possible without Green Belt release. It is noted that this may in turn also effect the spatial strategy for the Local Plan.
61. HBF also suggest the Council should give explicit consideration to whether BNG development is acceptable within the Green Belt and/or if green belt boundaries need to be revised in order to accommodate schemes that deliver off-site, and possibly even on-site biodiversity gains.

Policy DLP6: Infrastructure Provision

The Policy is not considered to be sound as it is not justified or effective or in line with national policy.

62. HBF observe that Criteria three of the policy seems to be seeking to give Local Plan policy status to SPDs that have yet to written, which is not appropriate and contrary to national guidance. Planning policy must be made through the Local Plan process and be subject to the requirements for public consultation and independent scrutiny through the Examination process.
63. HBF note that criteria four allows for flexibility in relation to proposed development not meeting its on-site and off-site infrastructure only in exceptional circumstances and it remains unclear how this has influenced the Local Plan.
64. HBF note that a viability appraisal for the Dudley Local Plan was published in Nov 23 and HBF provided some detailed comments on it questioning some of its assumptions and highlighting some errors and omissions as part of our

Regulation 18 stage back in Dec 2023. However, despite our comments it has not been updated. We would therefore question the robustness of this evidence base and the Local Plan policies that rely. IN HBF's view it has yet to be shown that the Dudley Local Plan is viable, deliverable or sound.

65. HBF's concerns about the viability report itself, which are detailed more fully in our response to Policy DLP12 Delivering Affordable, Wheelchair Accessible and Self-Build / Custom-Build Housing. For brevity they are not repeated here.
66. Para ES20 of the Local Plan Viability appraisal says "we recommend that the policy should be differentiated by housing market zone and greenfield/brownfield land.", but then goes on to suggest the same affordable housing targets for both greenfield and brownfield sites of 30% in the High Value Zone, 20% in the Medium Value Zone and 10% in the Lower Value Zone. Para ES24 then sets out a justification for keeping a 10% affordable housing requirement in lower value areas, even though the paragraph before said it was viable.
67. HBF request that the Aspinall Verdi Viability Appraisal is fully checked and reviewed by the Council (and/or their consultants) to ensure it is correct, internally consistent and reflects the findings of the Dudley specific viability appraisal that have been undertaken. Once this has been undertaken HBF would request that the fourth criteria of the policy is then revisited to ensure it reflects the findings of the viability appraisal. HBF suggest additional flexibility in the policy wording is likely to be needed. It should not be necessary for developers to have to go through the process and cost of a site-specific viability appraisal when the evidence at the plan-making stage has already shown it to be unviable.

Policy DLP9: Healthcare Infrastructure

The Policy is not considered to be sound as it is not justified or effective or in line with national policy.

68. In relation to criteria three of this policy HBF would draw the Council's attention to HBF would draw attention to the High Court Decision on R (on the application of the University Hospitals of Leicester NHS Trust) versus Harborough District Council. This has drawn into question the legitimacy of asking for develop contributions for acute healthcare that is funded through general taxation.
69. For brevity our comments on viability are not repeated here, however they may have a consequential impact on the wording of criteria 8, which would need amending.

Policy DLP10: Delivering Sustainable Housing Growth

The Policy is not considered to be sound as it is not justified or effective or in line with national policy.

70. With regards criteria one, HBF's detailed comments in relation to the amount of housing needed in Dudley can be found in our response to Policy DLP1-Development Strategy. In summary, HBF request that the standard method LHN should be the minimum starting point for establishing the housing requirement and the Council should then fully considers all of the issues that may result in a need for a higher housing requirement, including the need to provide a range and choice of sites, the need for flexibility, viability considerations and whether higher levels of open-market housing are required in order to secure increased delivery of affordable housing.
71. HBF suggests that these considerations should result in a higher housing requirement for Dudley which set be set out in the Local Plan. Only then should consideration around deliverability and housing land supply come into play, the housing requirement should be established first. HBF conclude that insufficient sites are being allocated to meet the housing needs of Dudley and allocation of further sites, including greenfield and Green Belt sites are needed.
72. The Plan should clearly explain, within the Plan itself (within the policy and/or supporting text), how the housing number has been arrived at. The policy should include a dwellings per annum target which is essential for effective monitoring.
73. In relation to Table 8.1 HBF note that the council is looking to phase the plan and delivery of the housing requirement. For the plan to be effective and justified, a clear explanation of this approach and the reasoning behind for it is needed. As HBF is of the view that the overall housing requirement for Dudley should be higher, it follows that our view is that the numbers in each phase should be higher too.
74. HBF supports the principal of discounted the housing land supply to take account of non-implementation rates. HBF agrees that the Plan should include lapse rate for existing permissions and these figures should be clearly evidenced. As currently drafted, there is potential for confusion between the text and the numbers. It should be clear form the Plan what the figures are before a discount was applied, what level of discount was applied and what the resulting final figure is. HBF also notes that no allowance is made for non-delivery of windfall sites, and we believe one is needed. HBF would question if the discount rates should in fact be higher especially for sites that are currently occupied in employment use.
75. HBF note that para 8.6 states "Together, these discounts provide sufficient flexibility in the housing land supply to meet any unforeseen circumstances". HBF would strongly disagree. The discounts applied reflect the reality of development and as such the discounted houses are not expected to be

brought forward. As such this does not provide any flexibility in relation to housing numbers, flexibility and a range and choice in sites can only be provided through additional allocations (or windfalls), not discounting of sites that will not forward in practice.

76. HBF are very also concerned that the Council is expecting to deliver 97% of their new housing on brownfield land, and question how realistic this is. Although HBF agree that the NPPF is clear in its support for a 'brownfield first' approach, it must also be recognised that housing on greenfield sites is essential to address the housing crisis and ensure a range of sites are provided to deliver a range of housing reflecting the mix, type and tenure.
77. HBF remain unclear about the rationale behind, and plans that will create, a loss of current housing of 340 over the Plan period. The text in relation to this policy appears silent on this issue.
78. HBF also suggests further thought should be given to the interaction between employment sites and housing suggesting there is a need for housing and employment to be considered together, and implications of not meeting with the housing and employment need of the borough present the exceptional circumstances required to justify Green Belt release.
79. The NPPF requires Local Plans to identify land to accommodate at least 10% of the housing requirement on sites no larger than one hectare, unless there are strong reasons why this cannot be achieved. The HBF has undertaken extensive consultation with its small developer members. One of the chief obstacles for small developers is that funding is extremely difficult to secure without a full, detailed, and implementable planning permission. Securing an implementable planning permission is extremely difficult if small sites are not allocated. Without implementable consents lenders are uneasy about making finance available or the repayment fees and interest rates they set will be very high. Small developers, consequently, need to invest a lot of money and time up-front in the risky business of trying to secure an allocation and a planning permission, and this is money that many small developers do not have.
80. HBF would therefore wish to see the 10% small sites allowance delivered through allocations (and not windfall). Indeed, we would advocate that a higher percentage of small sites are allocated if possible. Such sites are important for encouraging the growth in SME housebuilders who will tend to develop these sites but rarely see the benefits that arise from the allocation of sites in a local plan. Up until the 1980s, small developers once accounted for the construction of half of all homes built in this country resulting in greater variety of product, more competition, and faster build-out rates. Since then, the number of small companies has fallen by 80%.
81. HBF also note that support for small and medium builders need not be limited to only small sites of less than 1Ha. SMEs also deliver on other types of non-strategic sites (for example up to 100 units). The inclusion of additional non-

strategic allocations would expand the range of choice in the market, and (possibly most importantly), be of a scale that can come forward and making a contribution to housing numbers earlier in the plan period.

82. In relation to criteria three, HBF notes that NPPF (para 72, Dec 2023) only permits an allowance for windfall sites if there is compelling evidence that such sites have consistently become available and will continue to be a reliable source of supply. HBF are also of the view that any buffer provided by windfall sites should be in addition to the buffer added to the housing need figures derived from the Standard Method to provide choice and competition in the land market. However, by including windfalls within the Plan's housing requirement supply, any opportunity for windfalls to provide some additional housing numbers and flexibility is removed. Windfalls do not provide the same choice and flexibility in the market as additional allocations.
83. Para 8.7 of the Plan says "the Plan period has been divided into four phases – 2023 to 2028 (five years), 2028 to 2033 (five-ten years), 2033 to 2038 (ten-fifteen years) and 2038 to 2041 (fifteen to eighteen years). A trajectory showing delivery for each phase is shown in the most up to date SHLAA, which demonstrates a steady supply of housing completions over the Plan period." HBF suggest this trajectory should be included within the Plan, as it forms a fundamental part of the monitoring framework. It should not be relegated to a separate document.
84. It should also be possible to see from Housing Trajectory how much reliance is being made on windfalls, and from when. To be both justified and effective the Housing Trajectory should include break down the housing numbers into different sources of supply. It should also be possible to see when the demolitions are expected and if and how they relate to regeneration projects.
85. The trajectory should also provide a site-by site projections of housing permission and completions to enable effective monitoring of the housing supply, enabling the council to take action if monitoring shows an under-delivery of much needed housing.
86. The Council will need to monitor the delivery of housing and publish progress against a published Housing Trajectory Housing monitoring should be undertaken on a site-by-site basis. Therefore, the detailed housing trajectory including for specific sites should be included within the Plan.

Windfall Developments

87. In relation to windfall, HBF are concerned about the Councils reliance on windfall in place of allocating housing sites. The Plan currently includes 2685 homes on windfall sites, with 358 in the first phase from 2023-2028. HBF are of the view that any allowance for windfall should not be included until the fourth year of a housing trajectory, given the likelihood that dwellings being completed within the next three years will already be known about (as they

are likely to need to have already received planning permission to be completed within that timeframe).

88. HBF contend there is need for greenfield development in Dudley to address the housing crisis and meet the housing requirement, some of these greenfield sites may need to be on Green Belt land. If monitoring showed underperformance of housing delivery additional housing will need to be brought forward which could include allowing additional green field sites. The policy should be amended to account for this possibility.
89. It should be noted that HBF also support the need for additional greenfield allocations to meet the housing requirement.

Policy DLP11: Housing Density, Type and Accessibility

The Policy is not considered to be sound as it is not justified or effective or in line with national policy.

90. HBF would also question how realistic the densities proposed in criteria three are noting that the setting of residential density standards should be undertaken in accordance with the NPPF (para 125). HBF suggest that density needs to be considered on a site by site basis to ensure schemes are viable, deliverable and appropriate for the site, and policy needs to include some flexibility if needed to enable it to respond to site specific circumstances.
91. HBF would question of the density proposed are realistic deliverable and viable as the deliverability of high-density residential development in Dudley will be dependent upon the viability of brownfield sites and the demand for high density city centre living post Covid-19. It is important that delivery of the housing requirement does not rely overly ambitious intensification of dwellings, and policy enables for the range of housing types and tenures to be provided to meet the range of need and demand in Dudley.

Policy DLP12: Delivering Affordable, Wheelchair Accessible and Self/custom build Housing

The Policy is not considered to be sound as it is not justified or effective or in line with national policy.

Affordable Housing

92. Although HBF welcomes the recognition in criteria one, that the delivery of affordable housing in Dudley may raise issues of viability, viability must be an integral part of the plan-making process, and the findings of the viability appraisal should have helped inform and test policy development. HBF have concerned about some of the detail of the Viability Assessment as it has not considered a number of key costs and requirements. For example, HBF

information suggests that complying with the current new part L is costing £3500 per plot. The Future Homes Standard Part L in 2025 is anticipated to cost up to £7500+ per plot. There will also be the addition of the Building Safety Levy that is coming in pay for cladding. This will be a per plot basis around the UK, and initial values are around £1500- £2500 per plot. These costs appear to have not been considered in the viability appraisal.

93. Other factors that need to be taken into account include increasing costs of materials and labour due to inflation and the costs of mandatory BNG, which are still emerging as the off-site market is yet to be established. Although the initial price of statutory credits is now known this national fallback option has been deliberately highly priced to discourage their use. Whilst this intention is understandable, at present the lack of functioning local markets for off-site credits causes viability problems because HBF members experience to date suggests that any scheme that needs to rely on statutory credits becomes unviable. HBF have numerous concerns about the whole plan viability study, including the omission of some key policy costs. For example, an realistic and evidenced allowance for mandatory BNG needs to be included within the viability assessment of the Local Plan.
94. The costs of BNG should have been considered as part of the planning obligations and should be specified as a single specific item. There are significant additional costs associated with biodiversity net gain, which should be fully accounted for in the Council's viability assessment, some of which are unknown at this time. It is important that BNG does not prevent, delay or reduce housing delivery. As this is an emerging policy area and the market for off-site provision, and statutory credits are not yet known, any figure used for BNG costs will need to be kept under review as BNG implementation progresses and a greater understanding of actual costs become available. The Whole Plan Viability Assessment should clearly set out how it considered the implications of mandatory BNG and how it arrived at the most up to date BNG costs information available to use.
95. At a very basic level viability can be improved by reducing costs or increasing values. Sometimes, therefore changing the type of affordable housing provided can help to improve viability of a specific site, and the plan should recognise this. In this situation there could be a change of the percentages of different types of affordable housing provided, but the headline figure of how much affordable housing is provided would remain the same. Flexibility in the policy is important to allow for these kind of considerations.
96. The geographical distribution of development may impact on the Plan's ability to deliver affordable housing where it is most needed. HBF notes that the level of open-market housing provided may also impact on the amount of affordable housing that can be developed.
97. It will be also be important to understand if there any geographically specific viability considerations, such as whether higher levels of open-market housing are required in particular areas in order to secure increased delivery

of affordable housing in that location in a way that remains viable. Similarly, brownfield city centre sites tend to be most suited for apartments or retirement living. There will therefore be a need to include green fields allocations which are more likely to deliver family housing and a higher percentage of affordable housing, in order to provide flexibility in the housing land supply and ensure a range of housing types and tenures is provided. This adds further weight to the need to consider Green Belt release(s).

98. HBF does not comment on individual sites, other than to say the Plan should provide for a wide range of deliverable and developable sites across the area in order to provide competition and choice and a buffer to ensure that housing needs are met in full. The soundness and viability of strategic and non-strategic site allocations, whether brownfield or greenfield, will be tested in due course at the Local Plan Examination.

99. As HBF said in response to Policy DLP6 Infrastructure Provision, additional flexibility in the policy wording is needed to address issues of viability. It should not be necessary for developers to have to go through the process and cost of a site-specific viability appraisal when the evidence at the plan-making stage has already shown it to be unviable. Criteria 2, also needs amending to address this point.

100. Criteria 3 of the policy seems to be seeking to give Local Plan policy status to SPDs that have yet to be written, which is not appropriate and contrary to national guidance. Planning policy must be made through the Local Plan process and Borough Wide Design Guides that are subject to the requirements for public consultation and independent scrutiny through the Examination process.

National Wheelchair Accessibility Standards

101. This policy seeks to require 20% of homes in lower value areas to meet M4(2) (Accessible and adaptable dwellings) of Building Regulations and 15% in higher value areas to meet M4(3) (Wheelchair user dwellings) and all the remaining to meet M4(2) on schemes of more than 10 homes.

102. The requirements to meet Part M4(2) will be superseded by changes to residential Building Regulations. The Government response to 'Raising accessibility standards for new homes' states that the Government proposes to mandate the current M4(2) requirement in Building Regulations as a minimum for all new homes, with M4(1) applying in exceptional circumstances. This will be subject to a further consultation on the technical details and will be implemented in due course through the Building Regulations. The requirement to address this issue in planning policy is therefore unnecessary.

103. HBF are of the view that this matter should be left to Building Regulations, however if a policy were to be needed, the wording needs to differentiate between Part a) and part b) of M4(3) technical standards. M43a

sets out standards for wheelchair adaptable housing, where M43b relates to wheelchair accessible housing which can only be required on affordable housing where the Council has nomination rights. Any such requirements would also need to be fully considered from a viability perspective.

104. The PPG states:

“What accessibility standards can local planning authorities require from new development?”

Where a local planning authority adopts a policy to provide enhanced accessibility or adaptability they should do so only by reference to Requirement M4(2) and/or M4(3) of the optional requirements in the Building Regulations and should not impose any additional information requirements (for instance provision of furnished layouts) or seek to determine compliance with these requirements, which is the role of the Building Control Body. They should clearly state in their Local Plan what proportion of new dwellings should comply with the requirements. There may be rare instances where an individual’s needs are not met by the wheelchair accessible optional requirement – see paragraph 011 below.

Local Plan policies should also take into account site specific factors such as vulnerability to flooding, site topography, and other circumstances which may make a specific site less suitable for M4(2) and M4(3) compliant dwellings, particularly where step free access cannot be achieved or is not viable. Where step-free access is not viable, neither of the Optional Requirements in Part M should be applied.”

Paragraph: 008 Reference ID: 56-008-20160519

Revision date: 19 05 2016

105. The PPG sets out some of the circumstances where it would be unreasonable to require M4(2) and M4(3) compliant dwellings. Such factors include flooding, typography and other circumstances. HBF note that some flexibility is provided in criteria six but suggest additional flexibility is needed to reflect other site-specific characteristics. HBF would also question the viability evidence in support of these policy, in light of our concerns about the viability appraisal (which are set out elsewhere within our representation).

Self-Build and Custom Build Plots

106. In relation to Self-Build and Custom Build Plots, the policy requires sites of 100 or more dwellings, to provide at least 5% as serviced plots for self and custom build, if there is evidence of demand. If after twelve months of a thorough and proportionate marketing exercise the plot remains unsold, the requirements falls away.

107. HBF does not consider that requiring major developments to provide for self-builders is appropriate. Instead, the HBF advocates for self and custom-build policies that encourage self and custom-build development by setting out where it will be supported in principle. The HBF considers that Councils can play a key role in facilitating the provision of land as set in the PPG. This could be done, for example, by using the Councils' own land for such purposes and/or allocating sites specifically for self and custom-build home builders- although this would need to be done through discussion and negotiation with landowners.
108. It is considered unlikely that the provision of self and custom build plots on new housing developments can be co-ordinated with the development of the wider site. At any one time, there are often multiple contractors and large machinery operating on-site from both a practical and health and safety perspective, it is difficult to envisage the development of single plots by individuals operating alongside this construction activity.
109. HBF agree that if demand for plots is not realised, it is important that plots should not be left empty to the detriment of neighbouring properties or the whole development. The timescale for reversion of these plots to the original housebuilder should be as short as possible from the commencement of development because the consequential delay in developing those plots presents further practical difficulties in terms of co-ordinating their development with construction activity on the wider site. There are even greater logistical problems created if the original housebuilder has completed the development and is forced to return to site to build out plots which have not been sold to self & custom builders. Therefore, if the current policy requirements are retained HBF would support the suggestion that any unsold plots remaining after a six-month marketing period revert to the original developer. The policy should be changed from twelve to six months.
110. Again, as HBF have said elsewhere is our representation, it is not appropriate for the policy to seek to give Local Plan status to SPDs. Any reference to SPDs and their content should be in the supporting text.

Financial Viability Assessments

111. As the whole plan viability methodology uses typologies, this means there may be individual sites that are not viable, for example if the costs or values of a specific site fall outside the parameters used of a typology that was tested. Some sites will be on the very margins of viability and other sites may already be unviable even without a change of circumstances. HBF therefore support the recognition of the potential need for flexibility in relation to site specific viability issues. As such overage clauses may not be appropriate in all cases, and the Plan should allow for such circumstances.

Policy DLP31: Nature Conservation

The Policy is not considered to be sound as it is not justified or effective or in line with national policy.

112. HBF note that LNRS have yet to be prepared. It will be important for the Plan to reflect the current position of the LNRS preparation as plan-making processes continue.
113. The ** note at the end of the policy seems to be seeking to give Local Plan policy status to SPDs that have yet to be written, which is not appropriate and contrary to national guidance. Planning policy must be made through the Local Plan process and be subject to the requirements for public consultation and independent scrutiny through the Examination process. The use of ** notation within the policy itself is also confusing and the payout of the policy needs revisiting to ensure clarity and effectiveness.

Policy DLP32: Nature Recovery Network and Biodiversity Net Gain Policy

The Policy is not considered to be sound as it is not justified or effective or in line with national policy.

114. Environment Act 2021 the introduction of Biodiversity Net Gain for planning application did not come for large sites until Feb 12th 2024, and for small sites on 2nd April 2024.
115. HBF has been involved in a significant amount of work, being led by the Future Homes Hub, on BNG preparedness for some time, including feeding into the BNG Planning Practice Guidance and the DEFRA BNG Guidance. It is important for this policy to fully reflect all the new legislation, national policy and MHCLG and DEFRA guidance.
116. HBF note that this represents a lot of new information that the Council will need to work through and consider the implications of, in order to ensure that any policy on Biodiversity Net Gain policy complies with the latest policy and guidance now it has been published. It should also be noted that the PPG is clear that there is no need for individual Local Plans to repeat national BNG guidance.
117. It is the HBF's opinion that the Council should not deviate from the Government's requirement for 10% biodiversity net gain as set out in the Environment Act. The Plan should provide certainty for developers and a clear BNG policy with a fixed 10% figure, rather than the policy including the phrase "at least 10%" would help to provide this.
118. Any requirements to go beyond 10% BNG needs to be clearly demonstrated with evidence including considering the implications of the policy approach as part of the whole plan viability appraisal. In particular, HBF would question how the viability of more than 10% BNG can be

established when the market for off-site credits, and therefore the costs of delivering the 10% mandatory BNG system are still emerging.

119. HBF notes that the proposed policy wording and supporting text will need to reflect both that the Environment Act which requires 10% Biodiversity Net Gain, and the emerging policy, guidance and best practice on how Mandatory Biodiversity Net Gain will be implemented. There is an important policy distinction to be made between the national mandatory requirements and any optional further requests from LPAs to go further and faster. In particular the 10% national target is non-negotiable from a viability perspective, but policies seeking over 10% can be challenged on viability grounds. This distinction needs to be recognised within the Local Plan.
120. HBF suggest particular care is needed in terminology to ensure the Sandwell policy reflects the national policy and guidance. For example, on site and off-site biodiversity is referred to as units, and the statutory national credit system of last resort is referred to as credit. It is important for the wording of the policy to accurately reflect the legalisation and guidance.
121. HBF question the wording of criteria five, as it should be for the BNG plan to set out what happens if monitoring shows any BNG measure are ineffective. For large and complex sites where the development is phased, the guidance is clear that the 10% must be delivered at the end of the development, and this may not result in 10% BNG on each phase.
122. It is also important to note that for large and complex sites where the development is phased, the guidance is clear that the 10% must be delivered at the end of the development, and this may not result in 10% BNG on each phase. Additional advice on phased development has been provided in the new BNG PPG.
123. The costs of BNG must also be considered as part of the whole plan viability assessment and should be specified as a single specific item, and not combined into a generic s106 costs item. There are significant additional costs associated with biodiversity net gain, which should be fully accounted for in the Council's viability assessment, some of which remain unknown at this time. It is important that BNG does not prevent, delay or reduce housing delivery. The costs relate both the financial costs and also land take- which will impact on densities achievable if BNG is provided on site.
124. As this is still a new policy area and the market for off-site provision, and statutory credits are not yet known, any figure used for BNG costs will need to be kept under review as BNG implementation progresses and a greater understanding of actual costs become available. The Whole Plan Viability Assessment must clearly set out how it considered the implications of mandatory BNG and how it arrived at using the most up to date BNG costs information available. There may need to be further additional flexibility in policies elsewhere in the Plan to reflect the non-negotiable nature of 10% BNG costs.

125. HBF suggest that there is also a need for this policy and supporting text to say more about how BNG will be considered in relation to applications in advance of the Local Nature Recovery Strategies. As the LNRS emerges it will be important for this Local Plan to be kept under review and further public consultation on the interaction between the two documents and/or changes to Local Plan policy and/or its implementation, to reflect the LNRS may be needed.
126. HBF would also encourage the Council to ensure the Local Plan fully considers the new BNG requirements in relation to site allocations. This is likely to require undertaking an assessment of the baseline to support the allocation to enable an understanding the BNG requirements for a site to be allocated and the impact this may have on viability and other policy requirements and considerations. It will be important to understand the BNG costs of mandatory BNG as this is non-negotiable and as such may impact on the viability of the site and its ability to deliver against other policy requirements such as affordable housing or other s106 asks.
127. HBF also notes that there seems to be significant potential for confusion around environmental hierarchy, and suggest particular care is needed to avoid any confusion between the well-established mitigation hierarchy and the new BNG hierarchy. There is need for the policy wording and/or supporting text to be clearer about the differentiation between the mitigation hierarchy (which seeks to avoid harm in the first place, then mitigate and only then compensate it in relation to protected habitats) and the BNG delivery hierarchy (which prioritises on-site BNG delivery, then off-site units and finally allows for statutory credits). There seems to be significant potential for confusion between the two difference hierarchies. HBF therefore suggest that the Council should take particular care to explain how the requirements of the two-part BNG hierarchy work in different ways and that they seek to achieve different aims.
128. BNG will also impacts on the density of housing schemes that can be provided, as land used for on-site BNG is not available for housing. This may require larger and/or additional housing sites to be allocated.
- ~~129. HBF again note LNRS for the area has yet to be prepared. HBF were involved in a significant amount of work, being led by the Future Homes Hub, on BNG preparedness for some time and note that it is somewhat unfortunate that the timing of the release of the draft Planning Practice guidance from DLUHC and the Draft DEFRA BNG Guidance has seen this information released midway through your consultation period.~~
- ~~130. HBF note that there is a new information for the Council to work though and consider the implications of, in order to make the necessary changes to the Biodiversity Net Gain policy so that it complies with the latest policy and guidance as it finalised.~~
- ~~131. The BNG PPG has been published in draft form to allow for "familiarisation" and as such some details may change between now and the~~

implementation date in January 2024. Similarly, HBF understand the DEFRA Guidance is still being refined before the implementation date, and indeed may be further refined once mandatory BNG is working in practice, to reflect any early lessons learnt.

132. — There are clearly some areas of your guidance that need revising and updating, particularly because the (draft) PPG is clear that there is no need for Local Plan policies to repeat national guidance. For example, HBF would suggest criteria five and eight needs amending to allow for off-site BNG where this may be more appropriate and the use of statutory credits where no other option is available. Criteria six and seven may be unnecessary as they are merely repeating national policy, and criteria ten needs to properly reflect how BNG will work in practice. It should be noted that compliance with the national BNG condition is a post permission consideration and a final BNG Plan can only be submitted once planning permission has been granted. Management and monitoring of BNG will be part of this plan, and as such may be separate to the planning permission.

133. — It will be important for the Council to fully consider the PPG and DEFRA guidance once it has been formally published, which HBF notes will be in January 2024, after the close of this consultation period. Although no significant changes to the approach to BNG are expected, further clarity may be needed on some of the finer details, and some amendments and additional advice and guidance are anticipated.

134. — It is the HBF's opinion that the Council should not deviate from the Government's requirement for biodiversity net gain as set out in the Environment Act. There are significant additional costs associated with biodiversity gain, which should be fully accounted for in the Council's viability assessment. It is important that BNG does not prevent, delay or reduce housing delivery.

135. — Any requirements to go beyond 10% BNG needs to be clearly demonstrated with evidence including considering the implications of the policy approach as part of the whole plan viability appraisal. In particular, HBF would question how the viability of more than 10% BNG can be established when the market for off-site credits, and therefore the costs of delivering the 10% mandatory BNG system are still emerging.

136. — HBF notes that the proposed policy wording and supporting text will need to reflect both that the Environment Act which requires 10% Biodiversity Net Gain, and the emerging policy, guidance and best practice on how Mandatory Biodiversity Net Gain will be implemented. There is an important policy distinction to be made between the national mandatory requirements and any optional further requests from LPAs to go further and faster. In particular the 10% national target is non-negotiable from a viability perspective, but

~~policies seeking over 10% can be challenged on viability grounds. This distinction needs to be recognised within the Local Plan.~~

~~137. HBF suggest particular care is needed in terminology to ensure the Dudley policy reflects the national policy and guidance. For example, on-site and off-site biodiversity is referred to as units, and the statutory national credit system of last resort is referred to as credit. It is important for the wording of the policy to accurately reflect the legalisation and guidance.~~

~~138. HBF suggest that it should be for the BNG plan to set out what happens if monitoring shows any BNG measure are ineffective. It is also important to note that large and complex sites where the development is phased, the guidance is clear that the 10% must be delivered at the end of the development, and this may not result in 10% BNG on each phase. Additional advice on phased development is still awaited.~~

~~139. As mentioned previously, Local Nature Recovery Strategies are new initiative, and one has yet to be prepared that covers Dudley. As the LNRS emerges it will be important for this Local Plan to be kept under review and further public consultation on the interaction between the two documents and/or changes to Local Plan policy to reflect the LNRS may be needed.~~

Policy DLP33: Provision, retention and protection of trees, woodlands, Ancient Woodland, and Veteran trees

The Policy is not considered to be sound as it is not justified or effective or in line with national policy.

140. HBF are keen to understand how this policy interacts with other policies on BNG and nature conservation, and viability. HBF suggests that the Council needs to fully consider if and how the tree policy could impact on the land uptake for any development and the implications this may have for the density of developments, which in turn has the potential to have an impact on the viability. As currently written the Plan is not clear, as is therefore ineffective.

Policy DLP34: Provision, retention, and protection of Hedgerows

The Policy is not considered to be sound as it is not justified or effective or in line with national policy.

141. HBF would question if criteria one is necessary in Local Plan policy as repeats other national legislation and protection. HBF are also keen to understand how this policy interacts with other policies on BNG and nature conservation, and viability. HBF suggest further flexibility is needed in the policy, for example hedgerow removal may be an essential to gain access to a site, but BNG policies which require 10% net gain from the pre-development baseline so any loss would already have to be compensated. HBF suggest

the Council should give more thought to how the suite of environmental policies are intended to work together so that developers are completely clear what is expected of them, and to ensure that the policies do not serve to make development undeliverable. The interrelationships between the BNG policy and other environmental policies needs to be fully considered and explained. As currently written the Plan is not clear, as is therefore ineffective.

Policy DLP39: Design Quality

The Policy is not considered to be sound as it is not justified or effective or in line with national policy.

142. HBF are supportive of the use of 'Building for a Healthy Life' as best practice guidance but suggest its use should remain voluntary rather than becoming a mandatory policy requirement. Building for a Healthy Life is not really a 'standard' to be achieved, but rather a toolkit for considering design and thinking about the qualities of successful places.

143. In light of the new NPPF revision HBF are keen to understand if and when the Council is intended to produce a Borough Wide Design Code.

Nationally Described Space Standard

144. The HBF supports the Government's intention to set standards for energy efficiency through the Building Regulations. The key to success is standardisation and avoidance of individual Council's specifying their own policy approach to energy efficiency, which undermines economies of scale for product manufacturers, suppliers and developers. The Councils do not need to set local energy efficiency standards in a Local Plan policy because of the higher levels of energy efficiency standards for new homes set out in the 2021 Part L Interim Uplift and proposals for the 2025 Future Homes Standard, which are currently out for consultation.

145. HBF does not support the introduction of the optional Nationally Described Space Standards through policies in individual Local Plans. If the Council wanted to do this, they will need robust justifiable evidence to introduce the NDSS, as any policy which seeks to apply the optional nationally described space standards (NDSS) to all dwellings should only be done in accordance with the NPPF¹, which states that "policies may also make use of the NDSS where the need for an internal space standard can be justified".

146. The NPPF requires that all policies should be underpinned by relevant and up to date evidence, which should be adequate, proportionate and focussed tightly on supporting and justifying the policies concerned. The

¹ para 130f & Footnote 49

PPG identifies the type of evidence required to introduce such a policy. It states that 'where a need for internal space standards is identified, local planning authorities should provide justification for requiring internal space policies. Local planning authorities should take account of the following areas:

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

147. HBF also remind the Council that there is a direct relationship between unit size, cost per square metre (sqm), selling price per sqm and affordability. The Council's policy approach should recognise that customers have different budgets and aspirations. An inflexible policy approach to NDSS for all new dwellings will impact on affordability and effect customer choice. Well-designed dwellings below NDSS can provided a good, functional home. Smaller dwellings play a valuable role in meeting specific needs for both open market and affordable home ownership housing.

148. An inflexible policy approach imposing NDSS on all housing removes the most affordable homes and denies lower income households from being able to afford homeownership. The introduction of the NDSS for all dwellings may mean customers purchasing larger homes in floorspace but with bedrooms less suited to their housing needs with the unintended consequences of potentially increasing overcrowding and reducing the quality of their living environment. The Council should focus on good design and usable space to ensure that dwellings are fit for purpose rather than focusing on NDSS.

149. HBF considers that if the Government had expected all properties to be built to NDSS that they would have made these standards mandatory not optional.

150. If the proposed requirement for NDSS is carried forward, then the Council should put forward proposals for transitional arrangements. The land deals underpinning residential sites may have been secured prior to any proposed introduction of the NDSS. These sites should be allowed to move through the planning system before any proposed policy requirements are

enforced. The NDSS should not be applied to any reserved matters applications or any outline or detailed approval prior to a specified date.

151. Again, the wording of this policy, seeks to give Local Plan status to SPD which it not appropriate. Any reference to SPDs should be limited to the supporting text.

Policy DLP41: Increasing Efficiency and Resilience

The Policy is not considered to be sound as it is not justified or effective or in line with national policy.

152. As the Plan should be read as a whole, HBF questions what this policy adds to existing policies already with the Plan, and question if is necessary, or if it is a duplication that could create confusion.
153. HBF would also draws the Council's attention to the recent Ministerial Statement on this issue which says "the Government does not expect plan-makers to set local energy efficiency standards for buildings that go beyond current or planned buildings regulations. The proliferation of multiple, local standards by local authority area can add further costs to building new homes by adding complexity and undermining economies of scale." See <https://questions-statements.parliament.uk/written-statements/detail/2023-12-13/HCWS123>
154. The long-awaited consultation on the Future Homes standard was held between Dec 13th 2023 and 6 March 2024. The consultation documents can be found online at <https://www.gov.uk/government/consultations/the-future-homes-and-buildings-standards-2023-consultation>

Policy DLP42: Energy Infrastructure

The Policy is not considered to be sound as it is not justified or effective or in line with national policy.

155. HBF is concerned about mandatory requirements to connect to district heating networks. HBF considers that it is important that this is not seen as a requirement and is instead implemented on a flexible basis. Heat networks are one aspect of the path towards decarbonising heat, however, currently the predominant technology for district-sized communal heating networks is gas combined heat and power (CHP) plants. Over 90% of district networks are gas fired. As 2050 approaches, meeting the Government's climate target of reducing greenhouse gas emissions to net zero will require a transition from gas-fired networks to renewable or low carbon alternatives such as large heat pumps, hydrogen or waste-heat recovery but at the moment one of the major reasons why heat network projects do not install such technologies is because of the up-front capital cost. The Council should be aware that for the foreseeable future it will remain uneconomic for most heat networks to install

low-carbon technologies. This may mean that it is more sustainable and more appropriate for developments to utilise other forms of energy provision, and this may need to be considered.

156. Government consultation on Heat Network Zoning also identifies exemptions to proposals for requirements for connections to a heat network these include where a connection may lead to sub-optimal outcomes, or distance from the network connection points and impacts on consumers bills and affordability.
157. Furthermore, some heat network consumers do not have comparable levels of satisfaction as consumers on gas and electricity networks, and they pay a higher price. Currently, there are no sector specific protections for heat network consumers, unlike for people on other utilities such as gas, electricity or water. A consumer living in a building serviced by a heat network does not have the same opportunities to switch supplier as they would for most gas and electricity supplies.
158. The Council's proposed policy approach is unnecessary seeks to go beyond the 2021 Part L Interim Uplift and the Future Homes Standard without justification. It is the Government's intention to set standards for energy efficiency through the Building Regulations. The key to success is standardisation and avoidance of individual Council's specifying their own policy approach to energy efficiency, which undermines economies of scale for product manufacturers, suppliers and developers.
159. The Council should be aware note that the long awaited consultation on the Future Homes standard was held between Dec 13th 2023 and 6 March 2024. The consultation documents can be found online at <https://www.gov.uk/government/consultations/the-future-homes-and-buildings-standards-2023-consultation>
160. HBF is also concerned about any policies which mandate on-site renewable energy generation, which may not be appropriate in all cases- see comments in response to DLP47.

Policy DLP47: Renewable and Low Carbon Energy and BREEAM Standards

The Policy is not considered to be sound as it is not justified or effective or in line with national policy.

161. HBF is concerned about any policies which mandate on-site renewable energy generation. HBF considers that it is important that this is not seen as a requirement and is instead implemented on a flexible basis. HBF recognises that there may be potential for renewable energy generation on-site, however, it may be more sustainable and efficient to use larger scale

sources rather than small-scale, it is also noted this policy also takes no account of the fact that over time energy supply from the national grid will be decarbonised.

Policy DLP49: Green Belt

The Policy is not considered to be sound as it is not justified or effective or in line with national policy.

162. As we have previously highlighted elsewhere in our representation, we are in the midst of a Housing Crisis. Housing delivery is therefore a key challenge facing Dudley Borough. To address the housing crisis the Council needs to allocate enough sites to meet the housing requirement and provide choice and flexibility in supply. This will require the allocation of a mix and range of sites in a variety of locations. The policies in the Plan with then need careful monitoring to ensure they are delivering the housing. The Dudley Local Plan must ensure the delivery of new housing to meet both open market and affordable housing needs.

163. The issue of housing is critically important and needs urgently addressing through the plan-making process. HBF believes that the Council needs to explore any and all options to meet the housing need and requirement of Dudley. This must include full consideration of the current Housing Crisis and if it results in the 'exceptional circumstances' that would require the need for a Green Belt review. A plan that does not meet the area's housing needs in full is simply not good enough and does represent an effective use of the plan-led system.

164. HBF therefore suggest that there is a need for housing monitoring to be undertaken across the wider region. If other areas are providing housing to meet Dudley's need, Dudley will need to be monitoring this delivery to ensure its needs are being met. However, HBF firmly believe Dudley should be doing more to address its own needs, including through Green Belt release. As such the Green Belt policy will need amending to reflect changes elsewhere in the Plan that HBF believe are necessary to make the Plan sound.

Policy DLP63: Public Open Space within New Large Housing Developments

The Policy is not considered to be sound as it is not justified or effective or in line with national policy.

165. Criteria 2 and 3 of the policy seems to be seeking to give Local Plan policy status to SPDs, which is not appropriate and contrary to national guidance. Planning policy must be made through the Local Plan process and be subject to the requirements for public consultation and independent scrutiny through the Examination process.

Policy DLP64: Children's Play Areas

The Policy is not considered to be sound as it is not justified or effective or in line with national policy.

166. Criteria 3 of the policy seems to be seeking to give Local Plan policy status to SPDs, which is not appropriate and contrary to national guidance. Planning policy must be made through the Local Plan process and be subject to the requirements for public consultation and independent scrutiny through the Examination process.

Policy DLP83: Access for All

The Policy is not considered to be sound as it is not justified or effective or in line with national policy.

167. Although HBF is fully supportive of the need for accessible environments, Criteria 2 of the policy seems to be seeking to give Local Plan policy status to an SPD which is not appropriate and contrary to national guidance. Planning policy must be made through the Local Plan process and be subject to the requirements for public consultation and independent scrutiny through the Examination process.

The Need for Delivery, Monitoring, and Implementation

168. HBF suggest there is a need for a monitoring framework within the Plan. Flexibility is needed within the plan so that it is able to respond to any changing circumstances and monitoring can play an important part in this. HBF do not support the inclusion of policies within a Local Plan that merely triggers a review of the Local Plan if monitoring shows housing delivery is not occurring as expected. Such a policy does nothing to address the housing crisis or undersupply of homes. There are other more effective and immediate measures that could be introduced into policy that would enable the Council to address housing under deliver, much more quickly than would be possible through the production of another plan, or plan review.
169. It is important that houses are brought forward, and the matter addressed as soon as possible, if under delivery is observed. HBF would suggest, as a minimum, explicit reference should be made within the Plan's policy to the potential to bring forward supply earlier. However, as the housing need and requirement figures for the Plan are minimum (not maximum) figures the Council could also specifically identify reserve sites, particular sites that could/would be brought forward sooner to address any under delivery whatever the reason for that under performance. This could be a shortfall in market housing permissions granted and/or completions, affordable housing permissions granted and/or completions and any failure against the Housing Delivery Test or local plan monitoring. The Plan needs to set out how and when

monitoring will be undertaken and more is needed on what action(s) will be taken when if monitoring shows under delivery of housing.

170. The HBF would encourage the Council to fully consider the housing needs of the Borough and robustly consider the need for additional housing in the housing requirement before then considering how much of the housing requirement can be met within the Borough, and how much may be unmet. It is important for the housing requirement to reflect the housing needs and growth aspirations of the Borough and not be restricted by capacity considerations, which should be considered after the housing requirement has been set.

171. HBF suggest that the Plan should include a monitoring framework at the end of the Plan. HBF note that as we are in the midst of a housing crisis, it is very important that the Council ensures that the Local Plan delivers all the housing that is being planned for. Dudley should also monitor the delivery of any unmet need by neighbouring authorities and actively participate in local plan consultation and examination to ensure the need for other authorities to meet their need is robustly supported in neighbouring Local Plans.

Dudley Local Plan: Part Two

172. HBF does not comment on individual sites, but we would reiterate that the Plan should provide for a wide range of deliverable and developable sites across the area in order to provide competition and choice and a buffer to ensure that housing needs are met in full. The soundness of strategic and non-strategic site allocations, whether brownfield or greenfield, will be tested in due course at the Local Plan Examination.

173. We would also suggest that the implication of BNG should be considered as part of the Plan allocation process as details in our representations on Part One of the Dudley Plan.

Appearance at the EIP and Future Engagement

174. HBF requests to participate in the Hearing Sessions for the Local Plan Examination, the HBF considers that their involvement is necessary to ensure that the home building industry is able to respond to any housing related issues raised during the hearing sessions.

175. I trust that the Council will find these comments useful as it continues to progress its Local Plan. I would be happy to discuss these issues in greater detail or assist in facilitating discussions with the wider house building industry.

Yours faithfully

