

Sent by email to: planningpolicy@chichester.gov.uk

03/07/2020

Dear Sir/ Madam

Response by the Home Builders Federation to the consultation on the Interim Housing Policy Statement

Thank you for consulting the Home Builders Federation (HBF) on the Interim Housing Policy Statement (IHPS). The HBF is the principal representative body of the housebuilding industry in England and Wales and our representations reflect the views of discussions with our membership of national and multinational corporations through to regional developers and small local housebuilders. Our members account for over 80% of all new housing built in England and Wales in any one year.

In general, we will welcome the Council's decision to publish the interim policy statement recognising that the housing requirement in their adopted local plan is now more than 5 years old as such considered out of date under paragraph 11 of the NPPF. However, we would urge the Council to speed up the process of preparing its local plan. It has been 18 months since the Council undertook a consultation the local plan review with publication prior to submission is not expected until spring of 2021. Such timelines for a review of a local plan are too long and the Council should ensure it has the resources to increase the pace of plan preparation.

Whilst we welcome the recognition that the Council will need to increase housing supply, we have concerns regarding the approach taken by the Council in its assessment of housing needs the inclusion of additional standards in part 8 of the proposed IPS.

Local Assessment of Housing Needs

The Council state in paragraph 1.3 that from the 15th of July the Council will assess their housing supply and delivery against the figure of 635 dwellings per annum (dpa). However, it is not clear how the Council arrived at this figure. Where plans are more than five years old and strategic housing policies require updating paragraph 68-005 of Planning Practice Guidance (PPG) states that housing land supply should be measured against local housing needs assessment (LHNA) as calculated using the standard method. As the Council will be aware this is set out in paragraph 2a-004 of PPG. Using this methodology, as set out below, results in a capped annual minimum



housing need of 753 dpa¹ over 100 dpa higher than the Council stated position in the IHPS. We recognise that the IHPS cannot cover the parts of the Borough covered by the South Downs National Park but the level of delivery in the SDNP Local Plan covering Chichester BC is 62 dpa² and as such results in an LHNA for the area outside of the national park of at least 691 dpa. It would therefore be helpful for the evidence to be presented in the IHPS as to how the Council arrived at the minimum annual requirement a 635 dpa which is substantially less than the 753 dpa that would be required using the standard method and the 691 dpa required if delivery expectations in the national park are taken into account.

Introduction of new policy

Part 8 of the IHPS seeks to introduce additional building standards with regard to environmental performance on new development that are not established in the adopted local plan. These include:

- 19% improvement in Dwelling Emission Rates above part L;
- 10% of predicted energy consumption to be met through renewable energy source; and
- Incorporation of electric vehicle charging points as set out in West Sussex County Council's parking standards guidance.

All these are new policies as are none of these requirements are included as part of any existing policies in the adopted local plan. As such the requirement to meet these standards as set out in the IHPS is not consistent or compliant with legislation concerning the process of adopting and using planning policy. If the Council, following this consultation, decides to adopt and implement these provisions in the IHPS it will be open to legal challenge. In order to avoid this situation, and the unnecessary additional costs to both the Council and our members, we suggest that these elements of part 8 of the IHPS are deleted. If the Council wishes to introduce the standards proposed in part 8 it can only be achieved through the review of the local plan. These matters are explored in more detail below

Whilst not titled as a supplementary planning document (SPD) it is evident that for the purposes of considering its status as a planning document it would fall into this category. The relevant legislation defining Local Plans and SPDs and their status as policy documents is the Town and Country Planning Regulations (2012). These define an SPD in regulation 2 as “*any document of a description referred to in regulation 5 (except and adopted policies map or statement of community involvement) which is not a local plan.*” Therefore, it can be concluded, as stated above, that whilst SPDs are Local Development Documents they are not local plans. It is also important to note that regulation 2 defines the local plan as:

¹ $((13.18-4/4) \times 0.25) + 1) \times 538 = 846$. As the adjustment factor is greater than 40% the LHNA is capped at 40% above household growth resulting in an LHNA of 753 dpa.

² Table 1 of SDNP Duty to Co-operate statement 2017.

“any document of the description referred to in regulation 5(1)(a)(i), (ii) or (iv) or 5(2)(a) or (b), and for the purposes of section 17(7)(a) of the Act these documents are prescribed as development plan document”

Regulation 5 in turn states:

“5(1) For the purposes of section 17(7)(za)(1) of the Act the documents which are to be prepared as local development documents are—
(a) any document prepared by a local planning authority individually or in cooperation with one or more other local planning authorities, which contains statements regarding one or more of the following—
(i) the development and use of land which the local planning authority wish to encourage during any specified period;
(ii) the allocation of sites for a particular type of development or use;
(iii) any environmental, social, design and economic objectives which are relevant to the attainment of the development and use of land mentioned in paragraph (i); and
(iv) development management and site allocation policies, which are intended to guide the determination of applications for planning permission;”

Taken together these regulations mean that a local plan is a document that contains statements as to the:

- development and use of land which the local planning authority wish to encourage during any specified period;
- allocation of sites for a particular type of development or use; and
- development management and site allocation policies, which are intended to guide the determination of applications for planning permission.

We would suggest that the application of the proposed higher standards in part 8 of the IHPS fall under regulation 5(1)(a)(iv) and are development management policies which are intended to guide the determination of applications for planning permission and should only be adopted in a local plan following the prescribed process. As such their adoption through the IHPS without the need for examination in public is wholly inappropriate. This issue was explored in detail in the recent High Court Judgement between William Davis Ltd, Bloor Homes Ltd, Jelson Homes Ltd, Davidson Homes Ltd & Barwood Homes Ltd and Charnwood Borough Council. In this case Justice Gilbert quashed the SPD on the grounds that it contained policies that should have been contained in the local plan because they could be considered to fall under regulation 5(1)(a)(i) and 5(1)(a)(iv).

The only point at which the Council can adopt new policy is as part of the examination of the local plan during which a full and proper consideration as to the evidence supporting such standards can be considered and they can be considered against the tests of soundness set out in paragraph 35 of the NPPF. It is worth remembering that this requires policies to be justified. In the case of additional building standards this means that they have been included in a viability assessment of that local plan. The

Government has placed greater emphasis on the considering viability at the plan making stage (paragraph 34 and 57 of the NPPF and paragraph 10-002 of PPG) and not through site by site negotiations. The Council's approach in part 8 of the IHPS is at odds with this approach by placing an additional cost on development without having the cumulative impact on development viability of these policies properly and robustly considered as part of an examination in public.

Weight given to policies in the Local Plan Review

We recognise that paragraph 48 of the NPPF states that weight may be given relevant policies in emerging plans. However, in relation to the standards in paragraph 8 no weight can be attached to these policies until they have been properly tested at examination. In addition, the Government's policy in relation to such standards is currently being developed through the future homes standards. Until there is further clarity on the approach taken by the Government in relation to such standards it would be inappropriate to give any weight to these policies as set out in the Local Plan Review. We would suggest that reference to LPR Policy DM16 is deleted.

Conclusion

Had the Government intended for such higher standards to have been adopted through SPD, without the need for public examination, it would have said so. The Council's decision to adopt these new standards through IHPS is contrary to national planning policy and legislation governing the contents of SPDs and Local Plans. We would suggest the Council reconsiders its approach in the light of the evidence presented in this representation and does not include the second, third and fourth bullets in part 8 of the IHPS.

We hope these comments are helpful and if you would like to discuss these issues further please contact me.

Yours faithfully



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