

DH/HR/P19-1638

10th July 2020

Chichester District Council
East Pallant House
Chichester
West Sussex
PO19 1TY

Dear Sir/Madam

Chichester District Council
Draft Interim Policy Statement for Housing Development
Representations on behalf of Redrow Homes Limited

On behalf of my client Redrow Homes Ltd (RHL), please find set out below representations on Chichester District Council's Draft Interim Policy Statement for Housing Development (IPS) (2020).

These representations are made in response to the live consultation on the IPS, which commenced on the 12th June 2020 and closes on the 10th July 2020.

General Commentary

1. RHL commend the LPA for preparing an Interim Policy Statement to help reduce housing shortfalls and to re-establish a five year housing land supply [see IPS 2.5].
2. RHL also support the identification of sites in sustainable locations, adjacent to existing settlements [4.5].
3. RHL is however concerned that the IPS is being used to introduce new development management policy requirements that should only be brought forward through the full Development Plan process.
4. As expanded upon in more detail below, RHL has particular concerns about the new environmental standards that are being introduced through paragraph 8, which step well beyond the requirements of adopted Local Plan Policy 40.

The Presumption in favour of sustainable Development [IPS 6]

5. The text at paragraph 6 refers to the presumption in favour of sustainable development and indicates that it applies where the Council is unable to demonstrate a five-year housing land supply (5YRHLS).
6. That is correct, but the absence of a 5YRHLS is just one of the circumstances in which the presumption applies. It will also apply when the most important policies for determining a planning application are out of date.
7. This should also be made clear. The LPA accept that from 15th July 2020 its housing policies will be deemed out of date [IPS 3.4]. the LPA might reach a position where it can demonstrate a 5YRHLS, but the housing policies would still remain out of date. The presumption would also still apply in those circumstances.

Environmental Standards [IPS 8]

8. Redrow Homes Ltd (RHL) are concerned that the LPA is seeking to introduce new and onerous policy requirements through the IPS document that should taken through the proper Development Plan process with independent examination.
9. For ease of reference IPS Paragraph 8 states that:-

“Development proposals shall not compromise on environmental quality and should demonstrate high standards of construction in accordance with the Council’s declaration of a Climate Change Emergency. Applicants will be required to submit necessary detailed information within a Sustainability Statement or chapter within the Design and Access Statement to include, but not be limited to:

- **Achieving the higher building regulations water consumption standard of a maximum of 110 litres per person per day including external water use;**
- **Minimising energy consumption to achieve at least a 19% improvement in the Dwelling Emission Rate (DER) over the Target Emission Rate (TER) calculated according to Part L of the Building Regulations 2013. This should be achieved through improvements to the fabric of the dwelling;**
- **Maximising energy supplied from renewable resources to ensure that at least 10% of the predicted residual energy requirements of**

the development, after the improvements to the fabric explained above, is met through the incorporation of renewable energy; and

- **Incorporates electric vehicle charging infrastructure in accordance with West Sussex County Council’s Car Parking Standards Guidance.”** (our emphasis)

10. The 19% improvement in the Dwelling Emission Rate (DER) is arbitrary and is nowhere to be found in Policy 40.
11. The 10% requirement for renewables in addition to the above (and calculated after the fabric improvement) is also nowhere to be found in Policy 40.
12. The latter represents a further ratcheting up of requirements that the LPA has been seeking (without justification) on recent planning applications as the 10% renewables requirement is now in addition to the 19% fabric improvement whereas in the past the 19% reduction has been a combination of renewables and fabric improvements.
13. Vehicle charging points are also now proposed to be an additional standard. These are not identified in Policy 40.
14. Section 5 of the Town and Country Planning Regulations (2012) stipulates that any development management policies which are intended to guide the determination of applications for planning permission are to be prepared as local development documents. It states that:-

“(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.** (our emphasis)

15. In addition to the above, Section 5 (2) confirms:-

“(2) For the purposes of section 17(7)(za) of the Act the documents which, if prepared, are to be prepared as local development documents are—

(a) any document which—

(i) relates only to part of the area of the local planning authority;

(ii) identifies that area as an area of significant change or special conservation; and

(iii) contains the local planning authority’s policies in relation to the area; and

(b) any other document which includes a site allocation policy.”
(our emphasis)

16. It is evident that the requirements identified in paragraph 8 are seeking to guide applications for planning permission in Chichester.

17. Indeed, the draft IPS is even cited in a Reason for Refusal in connection with a planning application for 143 dwellings at the corner of Oving Road and A27, Chichester (application reference: O/19/01951/FUL). It is clear from the Delegated Report that the proposals were tested against the 19% reduction in emissions [p.27-28]. A copy of the Delegated Report is enclosed in **Appendix 1**.

18. Whilst the intentions of the LPA may well be laudable, the imposition of new policy standards in this way should not be allowed to shortcut the Development Plan process.

19. The remit of interim policy guidance has been confirmed through the High Court judgement of Mr Justice Jay in *R (oao Skipton Properties Ltd) vs Craven District Council [2017] EWHC 534 (Admin)*. He held that there is no lawful role for interim planning guidance where the subject matter falls within any of the categories of documents listed within Section 5 of the Town and Country Planning Regulations

Page | 4

(2012), which must be prepared through a local development document. A copy of the High Court judgement is enclosed in **Appendix 2**.

20. Given that the requirements of IPS Paragraph 8 are seeking to guide the determination of planning applications, it is not in accordance with the Town and Country Planning Regulations (2012) and is therefore unlawful.
21. To rectify the situation RHL consider that paragraph 8 should be deleted and the technical specification of the buildings should be left to Building Regulations.
22. This would be consistent with the Housing Standards Review (2013) which makes it clear that a single minimum benchmark standard, called 'Sustainable Housing Standards' should be embedded into Building Regulations, as opposed to through the planning system.
23. On 25 March 2015 the Government published a Written Ministerial Statement (WMS) on 'Housing: optional technical standards'. It followed the Housing Standards Review and made clear that the intention of Government was that sustainable construction matters should be considered through Building Regulations rather than through the planning system.
24. As indicated in paragraph 6 of the NPPF the WMS represents a material consideration in the determination of the intensified scheme. In the context of decision taking the WMS was explicit:

"...the government's policy is that planning permissions should not be granted requiring, or subject to conditions requiring, compliance with any technical housing standards other than for those areas where authorities have existing policies on access, internal space, or water efficiency..."
25. The WMS explains that the optional new national technical standards should only be required through any new Local Plan policies if they address a clearly evidenced need, and where their impact on viability has been considered, in accordance with the National Planning Policy Framework and Planning Guidance.
26. In the case of the IPS there is no evidence that the LPA has tested the implications of this policy on the viability of development. Planning Practice Guidance (PPG) confirms that plans should set out the contributions expected from developments, and that the policy requirements should be:-

“Informed by evidence of infrastructure and affordable housing need, and a proportionate assessment of viability that takes into account all relevant policies, and local and national standards, including the cost implications of the Community Infrastructure Levy (CIL) and section 106. Policy requirements should be clear so that they can be accurately accounted for in the price paid for land.”¹ (our emphasis)

27. The PPG confirms that during plan-making, the viability of developer contributions, all relevant policies, alongside national and local standards, should be assessed as a whole. This has not been done and would need to be examined through the normal plan making process.

28. The NPPG was also updated on 27 March 2015 to reflect the WMS. The introduction is similarly explicit²:

“The government has created a new approach for the setting of technical standards for new housing. This rationalises the many differing existing standards into a simpler, streamlined system which will reduce burdens and help bring forward much needed new homes. The government set out its policy on the application of these standards in decision taking and plan making in a written ministerial statement...which also withdraws the Code for Sustainable Homes aside from legacy cases.”

29. The PPG goes on to explain that the only permissible optional additional technical requirements that exceed the minimum standards required by the Building Regulations are in respect of access and water and an optional nationally described space.

Design and Heritage [IPS 9]

30. RHL supports the encouragement of high-quality design but would urge caution with the language used.

31. The requirements should be amended to “respect or enhance” the character of the settlement. The requirement for positive enhancement will often be too subjective.

32. In relation to heritage assets the requirement to enhance also goes further than the statutory duties in the Planning (Listed Buildings and Conservation Areas Act) 1990.

¹ Paragraph: 001 Ref ID: 10-001-20190509

² Paragraph: 001 (Ref ID: 56-001-20150327)

33. For designated heritage assets it should be “preserve or enhance” to be consistent with the aforementioned Act.

For non-designated heritage assets the wording should better reflect NPPF paragraph 197.

Nitrate Neutrality [IPS 12]

34. Nitrate neutrality does not need to be raised in the IPS if it is simply seeking to cross refer to Natural England’s guidance. This would be a material consideration for a planning application in any event.

35. If it is intended to be applied as policy, then the arguments set out above with regards to non-compliance with the regulations comes back into play again.

36. RHL are mindful that the Partnership for South Hampshire is working towards finding mitigation measures and strategies for dealing with this matter and other LPA’s appear to be making progress on short term mitigation measures but there is no mention of what is being achieved in Chichester (see PFSH Nutrient Neutrality Update, Appendix 1, dated 7th July 2020).

37. Action along these lines would be more effective than what is being proposed with the IPS

Conclusions

RHL support the principle of the IPS to ensure that housing sites continue to come forward ahead of the Local Plan Review and to maintain a sufficient supply of housing land.

However, RHL consider that the IPS transgresses into areas that really ought to be addressed and properly tested through the Local Plan Review.

In particular there are concerns about paragraph 8 and the additional policy requirements that this seeks to impose on new development. **For the reasons already outlined, paragraph 8 must be deleted.**

I look forward to receiving confirmation that this Representation has been received.

Should you require any further information, please do not hesitate to contact me.

Yours faithfully,



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Executive Director

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Enc. **Appendix 1** Oving Road Delegated Report (reference: O/19/01951/FUL)

Appendix 2 *R (oao Skipton Properties Ltd) vs Craven District Council [2017] EWHC 534*
(Admin) (case number: CO/5521/201)