

10 May 2019
Delivered by email

Planning Policy
East Devon District Council
Blackdown House
Border Road
Heath Park Industrial Estate
Honiton
EX14 1EJ

Dear Sirs

**EAST DEVON DRAFT AFFORDABLE HOUSING SUPPLEMENTARY PLANNING DOCUMENT
REPRESENTATION**

Introduction

This representation is submitted on behalf of Bloor Homes and Stuart Partners ('the Representors'), who have significant land interest in East Devon.

The Representors share control of significant landholdings between the A30 and the A3052, to the east of Exeter (within East Devon), which can deliver future mixed-use development of a strategic scale.

East Devon District Council ('the Council') has published the Draft Affordable Housing Supplementary Planning Document ('DAH SPD') and has requested comments during the consultation period, which runs from Thursday 28 March until 5.00 pm Friday 10 May 2019.

The DAH SPD is stated to provide guidance to land promoters and developers on the implementation of the adopted affordable housing policies in the East Devon Local Plan 2013-2031, and the Cranbook Plan (when adopted).

This letter of representation sets out the Representor's comments on the DAH SPD, which reference the paragraph numbering in the DAH SPD as appropriate to aid cross-reference.

Matters of Representation

Viability Guidance

DAH SPD paragraph 3.10 states that any submitted viability assessment should follow the approach set out in Planning Practice Guidance: Viability¹ ('PPGV') "*and the Council's published guidance on viability*". The Council's Viability Guidance Notes (numbered 1-6) are regarded as providing the Council's preferred approach to:

¹ Planning Practice Guidance: Viability 24 July 2018

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- Viability assessment;
- Provision of overage clauses;
- Vacant building credit;
- Exception sites; and
- CIL

Whilst the Council provides guidance, it is regarded as essential that the Council must enter each viability assessment recognising that each application must be judged on its own merits (and reflecting the specific issues facing each site), as the information provided within the Viability Guidance is regarded as highly restrictive in scope, with limited flexibility, especially when considering schemes of considerable or strategic scale.

Benchmark Land Value

One fundamental matter that is briefly covered within Viability Guidance Note 1 is the calculation of land value within a viability assessment.

Reference is made to a “*benchmark land value*”, which we regard as appropriate for comparison with the residual land value generated by an appraisal of scheme viability, and which is reflective of PPGV.

Guidance Note 1 states “*benchmark land values should be calculated on the existing use value of the land, plus a premium for the land owner (EUV+)*”. Reference is made to the Parkhurst High Court case² and Guidance Note 1 quotes from the Parkhurst case as follows: the premium “*...should reflect the minimum price at which it is considered a rational land owner would be willing to sell their land*”.

In addition, DAH SPD paragraph 3.11 states that appraisals should be “*based on the existing use value of the land plus a premium for the land owner, in determining the premium for the land owner regard will be had to the approach currently taken by Homes England in assessing funding bids which is a 20% uplift on the existing use value*”.

The Representors regard the reference to a 20% uplift on the existing use value (EUV) of land as highly inappropriate. Firstly, specification of an arbitrary premium does not accord with the methodology prescribed for determining benchmark land value by PPGV. Secondly, the EUV of some development land (for example agricultural greenfield land) is low, and application of only a 20% premium on the EUV would generate unacceptable returns. This would deter a reasonable landowner from releasing land for development.

Whilst Viability Guidance Note 1 makes reference to the Parkhurst case³ it must be noted that the High Court Judgment provides critique of the use of an “*arbitrary number and....method [that] does not reflect the workings of the market*”. The use of an arbitrary 20% uplift on the EUV is therefore also regarded as contrary to the Parkhurst High Court Judgment.

² Parkhurst Road Limited and Secretary of State for Communities and Local Government and the Council of the London Borough of Islington [2018] EWHC991 (admin), [57] and [145]

³ Ibid

DAH SPD Paragraph 3.11 also states that “*Regard will also be had to other up to date evidence of land values including case law where the guidance of the NPPF 2018 and any subsequent amendments have been tested*”.

PPGV supports the use of up to date evidence of land values, requiring plan makers to:

“*...establish a reasonable premium to the landowner for the purpose of assessing the viability of their plan. This will be an iterative process informed by professional judgement and must be based upon the best available evidence informed by cross sector collaboration. For any viability assessment data sources to inform the establishment the landowner premium should include market evidence...⁴*

Crucially, PPGV confirms that the benchmark land value set must reflect the “*...reasonable expectations of local land owners*”.

The Representors regard it as essential for transactional evidence to be accepted in the setting of appropriate benchmark land values and request that the DAH SPD and Viability Guidance Notes are amended to provide clarity in this regard, removing reference to an arbitrary 20% uplift on EUV.

It is noted that the DAH SPD makes reference to the National Planning Policy Framework 2018 (“NPPF”), and the Viability Guidance Notes (1-6) are stated to have been last updated on either 28 June 2018; 23 October 2018; or 13 December 2018. The NPPF was last updated on 19 February 2019 and the Representors request that all documents must be updated to reference the implications of current the NPPF and PPGV.

Overage Clause

DAH SPD paragraph 3.14 requires that an overage clause will be inserted into the Section 106 Agreement for any scheme where affordable housing is reduced below adopted policy requirements.

DAH SPD paragraph 3.15 requires that a reassessment of viability following completion of a scheme must adopt the actual cost and values generated by a scheme, with further guidance stated to be available within the Council’s “Viability Guidance Note 3: Overage”.

Viability Guidance Note 3 refers to the submission of a “*Development Account*”, but no definition of Development Account is provided. Reference is also made to the use of a “*developer's actual purchase price, actual development costs, actual sales receipt and actual percentage profit*”.

The Representors regard a requirement for full release of all development information as unusually onerous and a very challenging process to undertake and manage in practice, especially when considering a scheme of strategic scale involving multiple developers with various works of infrastructure to be provided by different parties within a multi-phase cashflow period.

Overage clauses are most frequently incorporated within S106 Agreements on the basis that the final sales value of the completed residential units being compared against the originally assessed level of accepted construction costs (inflated to the date of overage assessment), with potential for abnormal development costs to be specifically evidenced. Such provision is significantly simpler to manage and evidence than the Council’s proposed approach. The Representors request that the Council reconsiders the proposed approach to overage assessment to ensure that such provision is based on a logically appropriate methodology that is simple to administer, minimises the time/cost burden on respective stakeholders and avoids increasing the unreasonable prospect of disagreement and delay.

⁴ MHCLG (2018) PPGV: Paragraph: 016 Reference ID: 10-016-20180724

Viability Guidance Note 3 states that “*a model overage clauses [sic] for inclusion in a Section 106 Agreement can be found here (to follow)*”.

From the wording within Viability Guidance Note 3, it appears that sample overage clauses were proposed to be provided for both a single phase scheme and a multi phased scheme, but no links to the documents are currently provided. It is not, therefore, possible to provide fully informed comments on the overage clause provision set out within the DAH SPD. It is requested that the Council provides copies of the sample overage clauses for review.

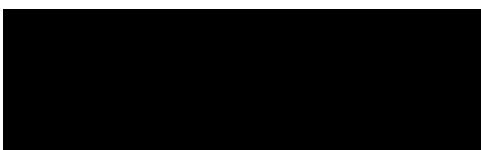
Strategic Site Viability Assessment

DAH SPD Figure 3.2 summarises that the affordable housing target for one area of East Devon is 50% and a 25% target applies to the remainder of East Devon, including “*major strategic ‘west end’ development sites*”.

The Cranbrook site submission draft DPD is informed by the Council’s evidence base, and the testing of the Cranbrook strategic residential development “*shows that the proposed expansion of Cranbrook is not viable as tested with 25% affordable housing. However, the viability is improved by reducing the proportion of affordable housing.*”⁵ The Council’s evidence determines that the large scale greenfield development “*will be viable with a lower rate of affordable housing (15%) but will not be able to support a CIL.*”⁶

To reflect the reduced affordable housing provision and nil CIL rate assessed for the Cranbrook site, it is regarded as important that the cost implications of delivery of strategic sites are referenced within the DAH SPD. Specifically, it should be made clear that the cost burden of meeting servicing/infrastructure requirements represents a prospective justification for the Council accepting reduced levels of affordable housing.

Yours sincerely



Steve Smith MRICS

Associate Director, Development Viability



⁵ Paragraph 6.4.2 CIL Review and Cranbrook Plan DPD Viability Study January 2019

⁶ Executive Summary Paragraph 5 CIL Review and Cranbrook Plan DPD Viability Study January 2019