


Planning Policy Team  
East Devon District Council  
By Email Only



15<sup>th</sup> January 2023

Dear Sirs,

**CHURCHILL RETIREMENT LIVING RESPONSE TO THE EAST DEVON LOCAL PLAN 2020-2040 (REGULATION 18) CONSULTATION**

Please find below our comment on the draft policies within this consultation insofar as they impact the delivery of specialist accommodation for older persons.

Policy 28: Net Zero Carbon

The Council's commitment to meeting both its and the UK Government's target of net zero carbon emissions by 2040 is commendable and detailed at length in the justification to *Policy 27 and 28*

The wording of the policy requires all new development to be 'zero carbon by design' from the point of adoption.

It is our view that the stepped approach to net zero in the Building Regulations is more pragmatic, as it allows developers appropriate time to suitably amend their designs and specifications in an efficient way and for the cost of energy efficiency technologies to fall.

Were the Council to seek net zero from new development from the point of the Local Plan's adoption then we would respectfully remind the Council that the PPG states that "*The role for viability assessment is primarily at the plan making stage. Viability assessment should not compromise sustainable development but should be used to ensure that policies are realistic, and that the total cumulative cost of all relevant policies will not undermine deliverability of the plan*" (Paragraph: 002 Reference ID: 10-002-20190509).

Appropriate uplift to build costs for delivering net zero embodied carbon should be allowed for in the forthcoming Local Plan Viability Assessment.

Policy 34: Embodied Carbon

The Council's commitment to meeting both its and the UK Government's target of net zero carbon emissions by 2040 is commendable.

The wording of the policy encourages requires all new development to reduce embodied carbon, through the re-use of existing buildings stating that the '*Replacement of existing habitable buildings with new developments will only be supported in exceptional circumstances and will need to demonstrate that the full lifecycle carbon emissions will be net-zero*'.

It is our view that the stepped approach to net zero in the Building Regulations is more pragmatic, as it allows developers appropriate time to suitably amend their designs and specifications in an efficient way and for the cost of energy efficiency technologies to fall.

The policy is also ambiguous in its scope as the term 'habitable building' is undefined. Does office or industrial space constitute habitable space, or is the policy limited to residential dwellings.

Were the Council to seek net zero from new development from the point of the Local Plan's adoption then we would respectfully remind the Council that the PPG states that "*The role for viability assessment is primarily at the plan making stage. Viability assessment should not compromise sustainable development but should be used to ensure that policies are realistic, and that the total cumulative cost of all relevant policies will not undermine deliverability of the plan*" (Paragraph: 002 Reference ID: 10-002-20190509).

Appropriate uplift to build costs for delivering net zero embodied carbon should be allowed for in the forthcoming Local Plan Viability Assessment.

#### **Policy 40: Affordable Housing**

The consultation has not made a Local Plan Viability Assessment (LPVA) publicly available. There is therefore no evidence demonstrating that a 40% affordable housing requirement is viable.

We would highlight that the respondents were surprised that a Planning Authority would choose to publish a (Regulation 18) Local Plan without having ascertained that the policies within it are deliverable. By limiting scrutiny of the Local Plan Viability Assessment to the Regulation 19 consultation the Council is reducing the opportunities for comment on a crucial element of the evidence base and the Local Plan would be less robust as a consequence.

We would highlight that Paragraph 58 of the NPPF states that:

*...All viability assessments, including any undertaken at the plan-making stage, should reflect the recommended approach in national planning guidance, including standardised inputs, and should be made publicly available.*

The PPG makes it clear that Local Plan process is a collaborative process stating that '*It is the responsibility of plan makers in collaboration with the local community, developers and other stakeholders, to create realistic, deliverable policies. Drafting of plan policies should be iterative and informed by engagement with developers, landowners, and infrastructure and affordable housing providers*' (Paragraph: 002 Reference ID: 10-002-20190509).

The inability to scrutinise a Local Plan Viability Assessment is particularly concerning as the East Devon Local Plan contains a substantial number of enhanced, and costly, policy requirements, such as the requirement for all new development to be net zero carbon. Given the range and scope of planning policy requirements detailed in the Local Plan, it is critical that their cumulative costs are robustly tested,

We would also like to respectfully remind the Council that the viability of specialist older persons' housing is more finely balanced than 'general needs' housing and the respondents are strongly of the view that these housing typologies should be robustly assessed in the LPVA. This would accord with the typology approach detailed in Paragraph: 004 (Reference ID: 10-004-20190509) of the PPG which states

that. *“A typology approach is a process plan makers can follow to ensure that they are creating realistic, deliverable policies based on the type of sites that are likely to come forward for development over the plan period.*

It is our view that the Council should make the Local Plan Viability Assessment publicly available for comment prior to the Regulation 19 consultation.

#### **Policy 41: Housing to Meet the Needs of Older People**

Churchill Retirement Living is an independent, privately owned housebuilder specialising in sheltered housing for older people.

Paragraph 1 of the PPG Housing for Older and Disabled people states:

*“The need to provide housing for older people is critical. People are living longer lives and the proportion of older people in the population is increasing. .... Offering older people, a better choice of accommodation to suit their changing needs can help them live independently for longer, feel more connected to their communities and help reduce costs to the social care and health systems. Therefore, an understanding of how the ageing population affects housing needs is something to be considered from the early stages of plan-making through to decision-taking”.*

Paragraph: 001 Reference ID: 63-001-20190626

The *Local Housing Needs Assessment (2022)* (LHNA) advises that the Authority has an older demographic profile than the regional and national average. It also states an idealised need for 6,224 units of specialist older persons' housing in the district over the Plan period, approximately a third of the overall local housing need.

The delivery of a suitable level of specialist older persons' housing will be a substantial undertaking over the Local Plan period and unless action is urgently taken the Council will struggle to address this need.

Sub-clause 5) of the policy is supportive of the need to deliver specialist older persons' housing at suitable locations in East Devon where this widens choice, which is commendable and supported accordingly.

Sub-clause 6) of the policy stipulates a requirement for strategic development sites over a certain threshold to provide 20% of all units as specialist older persons' housing. While this is welcomed, strategic sites are frequently inappropriate locations for some forms of specialist older persons' housing, it may not be possible for such sites to achieve the locational criteria in sub-clause 4) for example.

The wording of the policy frequently makes reference for developers to provide up-to-date evidence of local need. However, the need for these forms of accommodation is self-evident and detailed at length in the LNHA and the justification to the policy itself.

#### **Policy 42: Accessible & Adaptable Housing**

Churchill Retirement Living are independent housebuilders specialising in retirement living housing for older people.

We note however the accessibility standards for specialist older persons' housing are higher than those for 'general needs' housing, with **the policy advising that 100% of units must be built M4(3).**

Footnote 49 of the Framework clearly sets out that planning policies for housing should make use of the Government's optional technical standards for accessible and adaptable housing, where this would address an identified need for such properties.

Paragraph 002 (Reference ID 56-002-20160519) of the [Planning Practice Guidance \(PPG\)](#) reiterates that local planning authorities have the option to set additional technical requirements for accessibility and adaptability, however, they will need to gather evidence to determine whether there is a need for additional standards in their area, and justify setting appropriate policies in their Local Plans.

The supporting text for this policy advises that:

8.43 *M4(3) Category 3 Category 3 wheelchair users housing Based on gross modelled need, the ORS study forecasts a net additional 1,010 households over the plan period in East Devon will need wheelchair adapted housing. This equates to about 6% of the local housing need. The 5,119 net adapted need housing already encompasses households counted as having a health problems or disability that affects their housing need. That figure already includes households with wheelchair users so the latter should not be double counted. There's also a very significant overlap between wheelchair users housing need and the forecast additional 6,224 specialist older persons housing need. The study concludes that it may be appropriate to adopt a target of 100% wheelchair accessible housing. This could reduce the proportion of general needs housing that would need to meet the M4(3) Category 3 requirements.*

The *East Devon, Exeter, Mid Devon and Teignbridge Local Housing Needs Assessment* by OBR (Sept 2022) provides the following justification for 100% of specialist older persons' housing to be built to M4(3).

7.56 *Whilst not all over 75 households needing wheelchair adapted housing will live in specialist older person housing, it is likely that at least a tenth of those moving to specialist older housing will need wheelchair adapted homes. It is also likely that some older households will progress to using a wheelchair whilst living in specialist housing due to a deterioration in their health. Considering that a given older persons residence may house multiple residents in its lifetime, it becomes even more likely that at some stage a resident requires a wheelchair. Furthermore, it may be noted that where it is possible to retrospectively adapt residences, this may be costly or difficult.*

7.57 *On this basis it may be appropriate to adopt a target of 100% wheelchair accessibility (where viable) for specialist accommodation for older people to avoid potential inequality of provision. This could also reduce the proportion of general needs housing that would need to meet the M4(3) Category 3 requirements.*

The respondents consider the justification for a 100% M4(3) requirement for wheelchair adaptations is predicated on several flawed assumptions. In the first instance, the rationale that 9.3% of households where the representative was 85 years and older require a wheelchair does not mean that a tenth of those moving into specialist older persons' housing, particularly specialist housing for the active elderly, will require wheelchair accessible housing.

Churchill Retirement Living have been building retirement living apartments since 1994 and have accrued significant expertise in building specialist housing that enables older people to live independently. Recent research into existing Churchill Retirement Living developments has resoundingly demonstrated that there is no need for our

apartments to meet M4(3) requirements with less than 1% of our occupiers using a wheelchair full time.

Factors that contribute to the low-level of wheelchair need for retirement living housing are that long-term or lifetime wheelchair users will have moved into suitably adapted homes earlier in their lives and are more likely to remain in these homes.

Individuals who move into a retirement living apartment but then require a wheelchair in the short-term due to a bout of illness or a physical injury, can do so in a home built to M4(2) as rooms and circulation space can accommodate a wheelchair.

Individuals who progress to needing a wheelchair permanently, do so as a result of serious illness or injury in which case specialist accommodation with a greater degree of care, such as a residential care or nursing home is more likely to be appropriate.

People with long term mobility disabilities would be in a different setting and as such would not occupy an independent living retirement development. Given the lack of demand for the requirement for M4(3) in this form of accommodation it would simply be a cost to development and ultimately an increased purchase cost whilst serving no identified need.

Building to M4(2) provides sufficient accessibility and adaptability for all our current users and future users and is very much in keeping with the product of providing an independent retirement living lifestyle for those aged 60 and over.

Additionally, Paragraph 009 (*Reference ID: 56-009-20150327*) of the PPG sets out that local plan policies for wheelchair accessible homes should be applied only to those dwellings where the local authority is responsible for allocating or nominating a person to live in that dwelling.

There is no policy requirement or control that the LPA can impose over open market private apartments that could mandate that they must be sold to a wheelchair user.

To that end, I refer the Council to Paragraph 67-69 of the attached appeal decision at Stanford Hill, Lymington (APP/B1740/W/20/3265937). This sets out a view on Optional Technical Standards and in particular a Local Plan policy requirement for 100% of specialist older persons' accommodation to be built to M4(3) dwellings, with the Appeal Inspector concluding:

*I am mindful also that the design of the appeal scheme seeks to achieve the M4(2) Optional Building Regulations standard for accessible and adaptable dwellings – albeit that without a condition specifying this, I accept that the Council could not enforce this standard. In any event, the proposed development would cater for a range of occupants, and not only those with impaired mobility. Consequently, I am not persuaded that a requirement for the higher optional standards to be deployed in all of the proposed dwellings would be either reasonable or necessary in this case.*

It is clear from this decision that, despite having an adopted policy, the Inspector considered the provision of M4(2) sufficient to cater for a range of occupants and that this technical breach of the policy was not so significant to outweigh the very significant benefits of the scheme.

We are aware that a small number of emerging and adopted Local Plans have introduced policies requiring 100% of specialist older persons' accommodation to be built to M4(3). There may, accordingly, be the mistaken assumption that such policies constitute best practice however for the reasons set out in this representation, we strongly advise the Council that this is not the case. The specialist older persons'

housing sector is increasingly challenging such policies at Examination in Public and, in the rare instances they have been adopted, at Appeal.

Finally, we would respectfully remind the Council that the PPG states that “*The role for viability assessment is primarily at the plan making stage. Viability assessment should not compromise sustainable development but should be used to ensure that policies are realistic, and that the total cumulative cost of all relevant policies will not undermine deliverability of the plan*” (Paragraph: 002 Reference ID: 10-002-20190509).

The evidence base published with the Preferred Options (Regulation 18) does not make the Local Plan Viability Assessment (LPVA) publicly available. The cost to build a typical 40-unit retirement living development, including all the requisite communal facilities to meet M4(3) would be considerable.

Considering the above I would respectfully advise that imposing a 100% M4(3) requirement for all specialist older persons’ housing would not meet the tests of soundness in the NPPF accordingly.

#### **Policy 43: Housing Mix**

Policy 43 advises that new residential development is required to provide a mix of property sizes across the site, demonstrating how the site responds to the housing mix detailed in Table 52 of the LHNA 2022.

Sub-clause 4 of the policy provides a number of circumstances where a departure from the above housing mix is justified. However, these circumstances do not include an exemption for specialist housing types, such as retirement living, extra care or purpose built student housing which are not conducive to providing a mix of house types in-block. The design of these forms of accommodation are specific to their intended residents and the features and facilities are of no benefit to individuals who do not require them – these forms of development are restricted to a particular demographic accordingly.

We therefore request that sub-clause 4 is amended to include the following:

- *Specialist forms of development such as specialist older persons or student housing*

#### **Policy 44: Self Build & Custom Build Housing**

Policy 44 states that a minimum of 5 per cent of new market plots on sites providing 20 or more dwellings should be made available as self or custom build plots, where appropriate, unless this requirement would have an unacceptable impact on the economic viability of a scheme.

This practicalities of the threshold for providing self-build housing are unsuitable for specialist forms of accommodation, such as retirement living apartments for the elderly. These are typically high-density forms of development in small and medium sized sites (under 05 ha) near town or neighborhood centers. Simply put, there is insufficient room to accommodate a self-build plot on such sites.

The threshold also seems incompatible with other forms of specialist housing, more generally to flatted developments and other small and medium sized sites in urban area.

We are therefore of the view that the threshold for self-build plots should be reviewed with the requirement applied to units over a certain area – we suggest 1 hectare or to more appropriate housing typologies

#### Policy 54 – Resisting the loss of Employment sites

The respondent appreciates the need to retain high-quality employment sites within the Authority, however there are some concerns over the wording of *Policy 54*.

In the first instance, the term '*employment*' is not defined within either the policy or the supporting text. Is employment land defined as sites falling within Use Classes B2 and B8 or is it a 'catch all' term for any use that generates employment. The respondent is of the view that the latter definition of employment is inflexible and does not take create a positive policy framework for the redevelopment and / or regeneration of previously developed land.

Businesses frequently relocate from premises in predominantly residential areas due to inadequacies inherent in the site (for example tensions with neighbours over noise, and traffic). The retention of the existing use is not always in the best interest of an area or the employer.

Meeting all the requirements of the preconditions listed in Policy 54 before the redevelopment of employment uses will be allowed is both extensive and time consuming and will act as a barrier to the development of previously developed sites.

While requiring stringent criteria precluding redevelopment is justified in certain circumstances is justifiable; for example, on employment sites of strategic value or in the primary shopping retail area, it is considered both unnecessary and onerous to apply a blanket requirement across the District.

The conclusions of the East Devon HELAA Report (2022) advises that the scale of potential employment land supply is substantial, with circa 421ha available over the Plan Period. The HELAA advises that this is likely to be much more than is needed (Para 9.26).

In light of the findings of the HELAA, such a restrictive policy for the redevelopment of non-strategic employment or commercial sites appear misguided and will likely only serve to prevent or delay the regeneration of previously developed sites.

In light of the above it is our view that Policy 54 is currently too wide ranging and poorly defined and is contrary to Paragraph 123 of the NPPF which advises that:

*'Local planning authorities should also take a positive approach to applications for alternative uses of land which is currently developed but not allocated for a specific purpose in plans, where this would help to meet identified development needs. In particular, they should support proposals to:*

- a) *use retail and employment land for homes in areas of high housing demand, provided this would not undermine key economic sectors or sites or the vitality and viability of town centres, and would be compatible with other policies in this Framework;*

#### Policy 57: Town Centre development

The respondent supports the revised boundaries to the Exmouth Town Centre and Primary Shopping Area on the Proposals Map which now excludes the Builder's Merchants on Fore Street.

This site was included within both the town centre and primary shopping area boundaries of the *East Devon Local Plan 2013-2031* (adopted 2016).

The site is in a peripheral location to the core retail centre, predominantly surrounded by residential uses, with narrow roads unsuited to HGV's which is part of the rationale behind the existing occupier's proposed relocation.

Churchill Retirement Living have an application for the redevelopment of the site '54 retirement living apartments and 6 retirement living cottages, including communal facilities, access, car parking and landscaping and 178sqm of commercial use (Class E)' (Ref: 22/2120/MFUL) currently pending consideration. It is our view that the site's location and characteristics make it ideally suited for specialist older persons' housing and that the proposed development would enhance the viability and vitality of Exmouth town centre.

Irrespective of the Council's decision on this application, it is firmly our view that due to the characteristics of the site, it should not remain within the town centre / primary shopping area.

### **Policy 87: Biodiversity Net Gain**

The Council's commitment towards biodiversity net gain in the Authority is commendable. The requirement for 20% Biodiversity Net Gain (BNG) however is in excess of the requirements set out in *The Environment Act 2021*.

The 20% BNG requirement appears counterintuitive for urban areas / previously developed sites. Such sites are generally small in area and built to higher densities, with a benefit being a commensurate reduction in the need to bring forward greenfield sites, which is inherently beneficial to biodiversity.

The additional planting required to achieve 20% net BNG requirement in urban areas may require a reduction in densities in sites. While it can be argued that urban sites tend to have lower baseline BNG and so the measures required to achieve 20% BNG may be relatively limited, the benefits are commensurately slight and outweighed by the costs of the associated long-term management and monitoring costs.

It is therefore our view that a 20% BNG requirement, if viable, should be limited to sites that are over 1ha in area, so as to not prejudice the efficiency of small and medium sized sites coming forward in urban areas.

We would also respectfully remind the Council that the PPG states that "*The role for viability assessment is primarily at the plan making stage. Viability assessment should not compromise sustainable development but should be used to ensure that policies are realistic, and that the total cumulative cost of all relevant policies will not undermine deliverability of the plan*" (Paragraph: 002 Reference ID: 10-002-20190509).

A suitably robust allowance for the cost of providing Biodiversity Net Gain of 20% should therefore be allowed for in the Local Plan Viability Assessment.

The *DEFRA Evidence Base and Impact Assessment Report for Biodiversity Net Gain* was published in 2017 and was based on costs data that preceded this date – the costs cited are therefore at least 5 years old. It has been well established and well publicised that there has been significant inflation in the intervening period. The DEFRA is therefore not considered an appropriately robust basis for determining the cost of biodiversity net gain.



Thank you for the opportunity for comment.

Yours faithfully



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