

East Devon Local Plan 2020 to 2042

Second Regulation 19 Publication draft Local Plan

Representations on behalf of the DABB Partnership

22 January 2026

Introduction

CarneySweeney acts for the Dabb Partnership in connection with WHIM_11 and WHIM_08a which are proposed to be allocated for 33 homes and 50 homes respectively.

CarneySweeney submits the following representations on behalf of our client which are to be read in conjunction with previous representations submitted to the Regulation 19 Publication draft in March 2025 (1st Reg 19 draft LP) which are appended.

Scope of the Previous Regulation 19 Representation

The Reg 19 Rep commented on the following matters and policies within the draft East Devon Local Plan 2020 to 2042 (draft EDLP):

Policy Context for Plan Making

Site Allocation

- Strategic Policy SD29 (Development allocations at Whimple)

General Policy Comments

- Local Plan Vision Statement
- Housing Targets / Delivery
- Viability

Specific Policy Comments

- Strategic Policy CC06: Embodied Carbon
- Strategic Policy AR02: Water efficiency
- Policy HN04: Accessible and Adaptable Dwellings
- Policy HN05: Self-build and custom build housing
- Strategic Policy PB05: Biodiversity Net Gain

Scope of the Second Regulation 19 Representation

Where the above policies have not been amended in line with our previous comments and requested changes the previous Reg 19 representations are reiterated and should be given full weight in the Examination Process.



Where policies have been amended, we set out further comments.

Site Allocation Policy

Strategic Policy SD29: Development allocations at Whimble proposes to allocate two sites for Whim_11 for 33 new homes and Whim_08 for 50 homes and a community orchard.

The full policy text and allocation map as amended in the Second Stage Reg 19 draft are included in full below:

Land at Station Road (Whim_11)

This site is proposed for 33 new homes. Part of the site is at risk of flooding and a Level 2 SFRA has been undertaken, the results of which should be taken into account in any development proposals. ~~There may~~Where development cannot be a need located outside of the area at risk for a site-specific Flood Risk Assessment at this site flooding (over the lifetime of development) an FRA will be required to assess the risk of fluvial and surface water flooding and therefore to inform development proposals, so that no gardens or other domestic features are sited within the area of flood risk.

A line of trees to the site frontage and two trees within the field are subject to Tree Preservation Orders. These must be retained in development proposals.

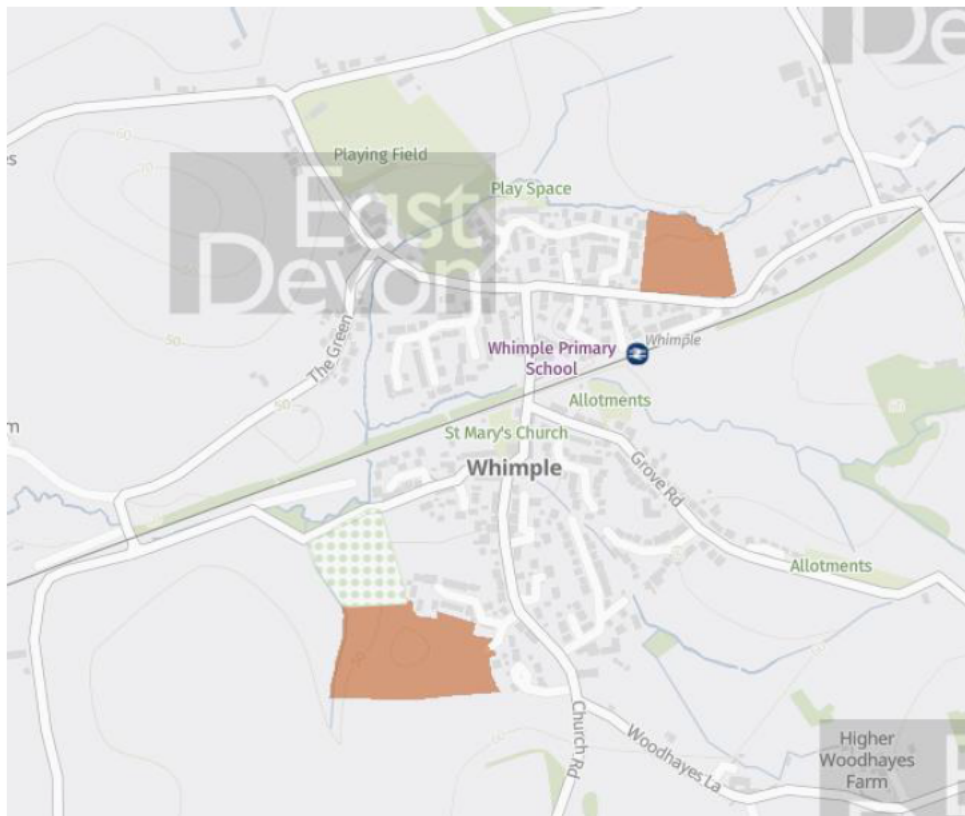
Site layout should be planned to enable convenient east to west pedestrian and cycle links to the site frontage, but behind the existing hedge and protected trees. Development proposals should deliver a footway extension from the west and tie into the site. A pedestrian access opposite the Withey should be provided if compatible with protection of trees and highway safety. Careful attention should be paid to conserving and enhancing the setting of Slewtun House, a Grade II listed building including through appropriate building heights, layout and landscaping. The development will need to maximise opportunities for localised improvements/contributions to enhance sustainable travel modes.



Land west of Bramley Gardens (Whim_08a)

The site is allocated for 50 homes and a community orchard. The residential development element of the scheme should be located south of the existing Bramley Gardens development. Provision of an orchard, that could include open space provision associated with new housing, will be encouraged on land to the north of the

new houses. Part of the site is at risk of flooding and a Level 2 SFRA has been undertaken, the results of which should be taken into account in any development proposals. A sequential test has been undertaken as part of the local plan. Where development cannot be located outside of the area at risk of flooding (over the lifetime of development) an FRA will be required to assess the risk of fluvial, surface water and groundwater flooding and therefore to inform development proposals so that no gardens or other domestic features are sited within the area of flood risk. Access would need to be off Bramley Gardens. The development will need to maximise opportunities for localised improvements/contributions to enhance sustainable travel modes. Prior to development, an archaeological investigation should be undertaken to understand the nature and extent of the structure noted in the Devon Historic Environment Record (HER no. MDV112700).



We continue to support the allocation of these sites.



It is worth noting however that the new text (in red) simply largely repeats the provisions of Strategic Policy AR01 Flooding, Policy HE02: Listed Buildings and associated provisions of the NPPF. While this may not in itself make the Policy unsound, the new text is considered superfluous and could be removed without diluting the provisions of Strategic Policy SD29.

Policy Comments

DABB Partnership reiterates its support for the aspirations of the plan to raise standards and deliver high quality development and good design and the need to assess and mitigate the impacts of development, subject to the following caveats:

- All proposed local policies must be justified.
- Potential impacts on viability and deliverability must be properly understood.
- Policies should not seek to unnecessarily replicate the NPPF or Building Regs (or other regulatory regimes).
- Policies should not be drafted in such a way that they hinder or discourage development.
- Where any standards or thresholds are set out there needs to be flexibility built into the policy to take account of site specific, technical feasibility and viability considerations.

Local Plan Vision Statement

All previous comments regarding the lack of references in the Vision Statement to meeting development need, and in particular housing need, remain valid

Housing Targets / Delivery

The proposed housing targets and stepped trajectory set by Strategic Policy SP02: Levels of future housing development have not been amended and so our previous comments regarding the validity of this approach remain valid.

While associated paragraph 3.8 has been amended to identify that the plan will be reviewed/updated if housing delivery falls short or future housing needs change, this is not considered sufficiently robust or clear as to how and when this would take place.

Paragraph 3.9 refers to addressing housing needs by establishing a clear housing requirement based on the New Standard Method. To clarify, the 2nd Reg 19 draft LP only meets around 80% of the New Standard Method housing need.



The identified 'headroom surplus' for housing supply at paragraph 3.11 has increased to 12.18% but this is due to the accounting period being adjusted to 2025 rather than additional allocations being identified. The previous comments and concerns about the identified number and stepped trajectory remain and it is considered a 20% buffer would be more robust and in line with national policy.

The previous comments about the apparent conflict between Strategic Policy HN02 (Affordable Housing), and Policy SP06 regarding the certainty of windfall development also remain valid.

Viability

It is noted that financial implications of the Building Safety Level are now addressed in the Viability Addendum.

Specific Policy Comments

The following policies have been amended and further comments are provided:

CHAPTER	CHAPTER 7. ADAPTING TO CLIMATE CHANGE
Policy	Strategic Policy AR01: Flooding
Comment	<p>Our previous comments on this policy have not been addressed and additional requirements added which make the policy more stringent and prescriptive.</p> <p>Mandating flood mitigation measures beyond those necessary to address the impact of the development in accordance with relevant guidance could impact on scheme viability and delivery.</p> <p>Prohibiting car parks in areas at risk of flooding is not reasonable as such use can be water compatible.</p>
Requested Amendments	Delete all new additions and the requirements for assessment of land within 5 metres horizontal distance of Flood Zone 2 and identifying wider community flood risk benefit.
Policy	Strategic Policy AR02: Water efficiency
Comment	<p>This policy has been significantly expanded to include 4 additional requirements in relation to water efficiency. Our comments on these additional points are set out below:</p> <p><i>A – Sets out circumstances when Planning Permission will not be granted due to adverse impacts on the water environment but does refer to the use of Grampian conditions</i></p> <p><u>Comment</u> – In respect of the reference to planning permission being refused for development that would overload the foul sewer network (A.3) this is not a land use planning matter for consideration on an application-by-application basis and should not therefore be a requirement set out in local plan policy.</p>



Water companies are subject to statutory duties under Section 94 of the Water Industry Act 1991 (WIA 1991), which imposes a fundamental duty to provide, improve and extent public sewer systems to ensure their area is “effectively drained”. Section 106 of the WIA 1991 confers a power to connect to a public sewer. Section 106(1) states that the owner of any premises or the owner of any private sewer which drains premises, shall be entitled to have its drains or sewer communicate with the public sewer of any sewerage undertaker and therefore discharge foul water and surface water from those premises or that private sewer.

Specifically, in relation to wastewater, the Supreme Court considered this matter in 2009 – see Barratt versus Welsh Water [2009] UKSC 13. Paragraph 23 of the decision is salient. Given its importance in the context of wastewater it is recited in full below:

“The right to connect to a public sewer afforded by section 106 of the 1991 Act and its predecessors has been described as an “absolute right”. The sewerage undertaker cannot refuse to permit the connection on the ground that the additional discharge into the system will overload it. The burden of dealing with the consequences of this additional discharge falls directly upon the undertaker and the consequent expense is shared by all who pay sewerage charges to the undertaker. Thus, in Ainley v Kirkheaton Local Board (1891) 60 LJ (Ch) 734 Stirling J held that the exercise of the right of an owner of property to discharge into a public sewer conferred by section 21 of the 1875 Act could not be prevented by the local authority on the ground that the discharge was creating a nuisance. It was for the local authority to ensure that what was discharged into their sewer was freed from all foul matter before it flowed out into any natural watercourse.”

Consequently, it is inappropriate and unsound to include a policy requirement in the local plan that would prevent development from progressing in relation to a matter that is not the developer’s responsibility to resolve nor that they are legally responsible for. Rather it is the responsibility of water companies, working with local authorities and the Environment Agency, to plan for the future demand for water services relating to the development requirements proposed in local plans.

B – Appropriate Assessment where likely significant effect on a European Wildlife Site

Comment – The requirement for an Appropriate Assessment is governed by the Habitat Regulations and so does not need to be repeated in the policy.

C – Water efficiency measures and Optional Technical Housing Standard of 110 litres per day per person

Comment - Concerns were raised previously that the specified standard of 110 litres per day per person of water usage was not evidence or justified as the Water Cycle Study (WCS) which the supporting text identified as the evidence for this higher standard, had not been published at the time.



	<p>The WCS has now been published and is referenced at Section 7.4 of the draft EDLP referencing water quality and supply with improved water efficiency measures playing a key role in reducing demand on water resources.</p> <p>In terms of the WCS Section 3.2.1 confirms that East Devon is a ‘Not Serious’ water stress area by the EA with water bodies in East Devon being classified as having ‘low ‘or ‘medium’ stress and so being comparable to areas outside of East Devon. However, at Section 4.1.4 the WCS does refer to predicted water supply deficits for water abstraction and that reducing per person consumption is one of the ways this can be addressed and is set as a target by 2050 in SWW’s draft Water Management Plan and the West Country’s Water Resources Group (WCWRG’s) 2050 draft regional resources plan. As such a policy requiring the higher technical standard is recommended by the WCS at 7.2.</p> <p>However there remains a concern that the mandatory wording of the policy could cause issues with viability and delivery and so a more flexible wording should be applied,</p> <p><i>D - All development proposals to demonstrate and incorporate measures that can reasonably be taken to enhance the water environment,</i></p> <p><u>Comment</u> – This is a very vague requirement so could risk uncertainty and confusion over what is required, and the level of assessment and mitigation.</p> <p><i>E - Developers shall undertake thorough risk assessments of the impact of proposals on surface and groundwater systems considering avoidance and mitigation.</i></p> <p><u>Comment</u> –</p> <p>This is also very vague and is a matter covered by other legislation. While noted that it may not apply to the draft LP if it remains under the transitional arrangement the direction of travel in the current NPPF consultation re-iterates the position that LP policies should not duplicate other regs.</p>
<p>Requested Amendments</p>	<p>The following amendments are required for the policy to be considered sound: A – delete</p> <p>B – delete</p> <p>C -amend as follows:</p> <p>All development should, Developers are encouraged to, wherever possible, seek opportunities to implement water efficiency, water storage and water recycling measures. All new dwellings should achieve at least the Optional Technical Housing Standard of 110 litres per day per person for water efficiency as described by Building Regulation subject to considerations of viability.</p> <p>D – delete</p>



	E - delete
CHAPTER	CHAPTER 8. MEETING HOUSING NEEDS
Policy	Policy HN04: Accessible and adaptive housing
Comment	<p><u>50% M4(2)</u></p> <p>While we welcome the reduced requirement for M4(2) standards down to 50% there would still be concerns with meeting this on some sites. Additionally, the added reference to “or higher standards” creates uncertainty and undermines the clarity of the policy.</p> <p>As set out previously many sites do not have suitable topography to fully meet the M4(2) standards, M4 (2) external parking standard has a potentially significant cumulative effect on developable areas affecting site yield and/or street scene quality and for flat blocks this will require lifts which for occupiers and in particular RP’s would cause additional maintenance costs burdens.</p> <p>A more reasonable and achievable level would be 30%.</p> <p>It is also maintained that mandating M4(2) standards on self and custom build plots (discussed further below) would go against the essence of allowing people to design and build their own bespoke home.</p> <p><u>15% affordable rent M4 (3) (a) or affordable homeownership M4 (3) (a) or (b)</u></p> <p>Reference to the provision of either M4 (3) (a) or (b) welcomed but need should be evidenced. For all the reasons set out previously the provision of M(3) units raise issues of viability and site coverage, and such a high percentage is not considered justified.</p>
Requested Amendments	<p>The following amendments are required for the policy to be considered sound:</p> <p>Point A:</p> <p>A further reduced percentage requirement (e.g. 30%) for M4 (2) dwellings would be more acceptable and reasonable for the reasons set out in previous representations.</p> <p>Delete “or higher standards than this” at point A</p> <p>Flats, 1 bed units, and self and custom build plots should be excluded entirely.</p> <p>Point D:</p> <p>M4 (3) a or b only where up to date evidence of need and subject to appropriate testing of viability through the Local Plan process including what assumptions have been made in relation to the requirement for M4(3)(2)(a) (wheelchair adaptable) vs M4(3)(2)(b) (wheelchair accessible), the latter of which is considerably more expensive</p>
CHAPTER	CHAPTER 11. SUSTAINABLE TRANSPORT AND COMMUNICATIONS
Policy	Strategic Policy TR02: Protecting transport sites and routes



<p>Comment</p>	<p>Our previous comments have not been addressed and on further review the reference to addressing transport impact of later development is not considered to be sound.</p> <p>Accounting for the effects of committed development is national policy, whereas it would not be appropriate for LP policy to require developers to provide infrastructure or capacity for developments which have no status in planning and are outside of the LP period / geographical area</p>
<p>Requested Amendments</p>	<p>Amend ‘potential that may arise though later developments in adjoining or nearby areas’ to ‘potential that may arise though committed developments in adjoining or nearby areas’.</p>
<p>Policy</p>	<p>TR03: Travel plans, transport statements and transport assessments</p>
<p>Comment</p>	<p>This policy, which seeks to set the parameters for Transport Statements, Transport Assessments and Travel Plans, should be amended to reflect (or simply reference) national policy and guidance on the matter, including that which is set out in the NPPF and the NPPG:</p> <ul style="list-style-type: none"> • The policy appears to have a presumption that all development proposals will need to ‘secure new sustainable transport arrangements’ – whereas, in many areas, existing or future active travel networks may be appropriate in themselves, without the need for ‘new’ infrastructure. • C. should reference ‘other committed development’, in line with policy. New developments should not have to take account of the theoretical transport impacts of other sites which have no status in planning. • D. Consideration should be given to the overall traffic effects of development across the day, rather than simply at peak times, in line with recent caselaw including the Penwortham decision (attached). Those traffic effects must be weighed as part of the overall planning balance, rather than being treated as determinative. E.g.: <p style="padding-left: 40px;">307. Even if the residual cumulative impacts on the highways could be described as severe, this does not necessarily lead to a conclusion that the appeal proposal should be refused, particularly bearing in mind that the appeal site is an allocated site in the adopted local plan. I return to this point in the planning balance. [89]</p>
<p>Requested Amendments</p>	<p>It is considered that Policy TR03 would be better addressed as a validation requirement.</p>
<p>Policy</p>	<p>Policy TR04: Parking standards and electric vehicle charging provision</p>
<p>Comment</p>	<p>The previous comments about the parking standards have not been addressed so remain valid.</p> <p>Additional requirements relating to electric vehicle charging have been added cross referenced to the additional assessment work carried out in respect of the impact of vehicle emissions on the Pebblebed Heaths SAC/SPA.</p>



	<p>As EV charging is covered by the Building Regulations robust evidence is required to justify a higher standard. The technical assessments and preliminary mitigation strategy that have been produced by the Council have not been subject to full public consultation and there are serious concerns about such a significant piece of work being introduced almost by stealth as part of the draft EDLP evidence base. There are contradictory statements regarding the scope of impact between the technical assessment, mitigation strategy, and Strategic Policy PB04 and these need to be fully tested before being applied as policy. This is discussed further below in respect of Strategic Policies PB01: Protection of internationally and nationally important wildlife sites and PB04: Habitat Regulations Assessment (HRA) and Mitigation Strategies.</p> <p>Requirements for developers to encourage electric vehicle use are also considered to be unreasonable and unnecessary given that developers already provide EV charging in accordance with the Building Regulations and travel planning measures.</p>
<p>Requested Amendments</p>	<p>Any standard needs to be properly justified.</p> <p>Flexibility should be included in relation to inclusion of garages as parking spaces with reference to a minimum garage size as referred to.</p> <p>Delete reference to electric vehicle charging.</p>
<p>CHAPTER</p>	<p>CHAPTER 13. OUR OUTSTANDING BIODIVERSITY AND GEODIVERSITY</p>
<p>Policy</p>	<p>Strategic Policy PB01: Protection of internationally and nationally important wildlife sites and Strategic Policy PB04: Habitat Regulations Assessment (HRA) and Mitigation Strategies</p>
<p>Comment</p>	<p>These policies have been significantly amended.</p> <p>Strategic Policy PB01 is not considered necessary as it simply restates the existing requirements of the Habitat Regulations.</p> <p>Strategic Policy PB04 has been significantly amended with the expanded reference to mitigating vehicle emissions on protected areas and in particular the Pebblebed Heaths (as referenced above in respect of Policy TR04).</p> <p>The additional text effectively sets out:</p> <ul style="list-style-type: none"> • That development in large parts of the district could impact the Pebblebed Heaths. • Application of a policy beak clause which could see development refused. • Requirements for assessment and monitoring. • Requirement for financial contributions to off site mitigation measures.



The policy does not identify any catchment or impact zone for these impacts which introduces significant uncertainty for new developments as to whether or not they will be affected.

The Technical Assessment which underpins this new requirement concludes that:

“In summary, for the EDLP in isolation and in-combination, any LSE from airborne NOx can be discounted for all qualifying features across the site. For the remaining pollutants, LSE can be completely discounted for some features and some areas of the site, however the potential for adverse impacts remains in some areas of the site, for European dry heaths, the European nightjar and the Dartford warbler.

A mitigation strategy (“ED21793_East Devon Pebblebed Heaths_Mitigation Strategy_i1”) has been developed in parallel with and drawing on the outputs from the HRA Stage 1 screening undertaken in this technical report, focussing on the following features:

- *European dry heaths*
- *European nightjar *Caprimulgus europaeus**
- *Dartford warbler *Sylvia undata**

In the following area of the site:

- *North/South along the B3180, < 400 m from the road (SSSI units 1, 6, 7, 9, 10, 11, 14);*
- *East/West along the A3052 Exeter Road, < 600 m from the road (SSSI units 7,8);* •
- *Bystock Nature Reserve & Withycombe Raleigh Common adjacent to B3179, < 300 m from the road (SSSI units 15, 16); and*
- *Dalditch Common, < 150 m from the road (SSSI unit 13)”*

However, the preliminary Mitigation Strategy (the detailed mitigation strategy is noted as still being in production) refers to proposed allocations in Sidmouth and Seaton, as well as service centres in East Budleigh, Woodbury and Otterton, Tipton St John are likely to be the allocations that contribute the most traffic to roads passing through the SAC and SPA. The Viability Addendum also notes that the mitigation will not be required across of all East Devon.

As such the policy wording, technical evidence, and viability assessment are inconsistent and contradictory in terms of the scope and application of this new policy requirement.



	<p>Reference is made in the Mitigation Strategy to consultation with Stakeholders, but this did not include any representatives from the development industry or members of the public. As such this has not been properly scrutinised or independently assessed.</p> <p>A “long list” of potential mitigation measures is identified at Section 13.20 of the draft EDLP supporting text but the majority of these measures will be reliant on third party delivery. It is not clear who will be responsible for monitoring impacts and how the mitigation measures will be implemented in the absence of the detailed mitigation strategy.</p> <p>The Viability Assessment Addendum does address the additional costs of this mitigation using a ‘reasonable allowance’ agreed with the Council of £112 per dwelling however, as noted above, this has not had any inputs from the development industry. The listed measures are very broad in their scope and so could have significantly varied costs which need to be properly tested.</p> <p>There are serious concerns about such a significant piece of work with potentially serious implications on development viability and delivery being introduced almost by stealth at such a late stage in the LP process.</p> <p>This does not amount to “limited new material” as stated at the start of the consultation draft and does not meet the NPPF test of soundness.</p>
Requested Amendments	The additional reference to the The Pebblebed Heaths Air Quality Mitigation Strategy should be deleted.
Policy	Strategic Policy PB05: Biodiversity Net Gain
Comment	The additional supporting text which refers to the “significant nature conservation assets” and “environmental designations” within East Devon are not considered sufficient justification for the higher BNG % being proposed as these assets and designations are protected through other mechanisms and policies in the draft EDLP.
Requested Amendments	Policy should be deleted.
Policy	Policy PB09: Monitoring requirements for new planting schemes
Comment	Deletion of the requirement for a financial bond supported but the requirements set out at A and B are still considered unnecessary for both the applicant and the Council. No evidence has been presented to demonstrate that the new requirements are necessary. This is a role for the Council as enforcement authority following the introduction of a standard landscape planning condition.
Requested Amendments	This policy should be deleted.
CHAPTER	CHAPTER 16. COMMUNITY FACILITIES



Policy	Policy CF02: Loss of Community Facilities
Comment	The footnote reference to the Marketing Statement Guidance which sets out a minimum of 12 months marketing is noted. “Community value” is a subjective term and is not defined. An alternative wording could be “...and is at least a like for like replacement in terms of size and facilities.”
Requested Amendments	Policy should be amended to provide greater clarity.

Consultation Draft NPPF (December 2025)

It is acknowledged that the 2nd Reg 19 draft LP will be examined against the provisions of the NPPF December 2023. However, the direction of travel is material insofar as the national Development Management policies contained in the December 2025 draft NPPF will prevail if there is a conflict with Local Plan policies. There seems little point in finding local plan policies sound that we already know will ultimately attract only limited weight in the planning balance if/when the new NPPF is published – which is likely to be before the examination of this plan. A prime example of this is the proposed blanket 20% BNG requirement on all sites, as set out in Strategic Policy PB05: Biodiversity net gain (BNG).

SUMMARY

The above representations are submitted by CarneySweeney on behalf of DABB Partnership.

Site Allocation

We continue to support the allocation of Land at Station Road (WHIM-08a) and Land at Bramley Gardens (WHIM_11) for residential development

Both sites are deliverable and there are no adverse impacts/technical issues identified that would preclude the sites from coming forward but the additions to the policy wording are not necessary being covered by other policies.

Policies

There are a number of policies that impose technical and other standards that while entirely laudable, have not been properly evidenced or justified and as such are, in themselves, unsound. Cumulatively these policies could hinder housing delivery by placing undue burdens on developers and landowners and affecting scheme viability.



