

## All Agenda Items Common Planning Policy

### 1. Planning Policy Considerations

- 1.1 Section 38 (6) of the Planning and Compulsory Purchase Act 2004 provides that planning applications must be determined in accordance with the provisions of the Development Plan (hereafter referred to as the 'DP'), unless material considerations indicate otherwise.

#### a) Development Plan

- 1.2 Section 38(3)(b) of the 2004 Act defines the DP as the DP documents (taken as a whole) that have been adopted or approved in that area.

- 1.3 The DP for Harborough comprises:

- The Harborough District Core Strategy adopted November 2011; and
- The saved policies of the Harborough District Local Plan adopted April 2001.

- 1.4 Material considerations include any consideration relevant in the circumstances which has a bearing on the use or development of land. The material considerations to be taken into account in considering the merits of these applications include the DP referred to above, the National Planning Policy Framework and the National Planning Policy Guidance, together with responses from consultees and representations received from all other interested parties in relation to material planning matters.

#### o Harborough District Core Strategy

- 1.5 The Core Strategy (hereafter referred to as the 'CS') was adopted in November 2011 and covers the period from 2006 to 2028.
- 1.6 Policy CS1 sets out the spatial strategy for Harborough which is to "maintain the District's unique rural character whilst ensuring that the needs of the community are met through sustainable growth and suitable access to services".
- 1.7 Policy CS2 sets out the housing land requirement and distribution.
- 1.8 Sun-section (b) of Policy CS2 advises all new developments should be of the highest design standard (in conformity with Policy CS11) and have a layout that makes the most efficient use of the land and is compatible with the built form and character of the area in which it is situated; contain a mix of house types; and have a minimum density of 30 dwellings per hectare.
- 1.9 Policy CS3 deals with delivering housing choice and affordability and sets out a requirement for all residential development to contribute towards meeting affordable housing needs and states that a minimum number of 30% of dwellings are expected to be affordable dwellings, with a minimum of 40% of dwellings to be affordable within the two highest value sub-market areas of Harborough Rural South West and Harborough Rural North and Central. *Planning Policy Guidance gives specific circumstances where contributions for affordable housing and tariff style planning obligations (section 106 planning obligations) should not be sought from small scale and self-build development. This follows the order of the Court of Appeal dated 13 May 2016, which give legal effect to the policy set out in the Written Ministerial Statement of 28 November 2014. These circumstances include that contributions should not be sought from developments of 10-units or less, and which have a maximum combined gross floorspace of no more than 1000sqm*

- 1.10 Sub-section (a) of Policy CS3 states that where it can be demonstrated that these minimum requirements would make the development of a site unviable, a reduced percentage of affordable dwellings and/or change of tenure split will be negotiated.
- 1.11 Policy CS5 advises that the majority of future development will be located in areas well served by local services to reduce the need to travel, where people can gain convenient access to public transport services for longer journeys and where local journeys may be undertaken on foot or by bicycle.
- 1.12 Policy CS8 policy seeks to secure a high quality, accessible and multi-functional green infrastructure network across both rural and urban areas of Harborough district which contributes to healthy lifestyles and a rich, diverse natural environment.
- 1.13 Policy CS9 requires new development to be directed towards the most sustainable locations; it will support and encourage the use of sustainable materials and construction methods and suggests that new non-residential developments over a certain size threshold should provide a percentage of energy on site.
- 1.14 Policy CS10 advises development will be directed towards areas at the lowest risk of flooding within the District. All new development will be expected to ensure that it does not increase flooding experienced in other areas and that surface water run off should be managed in all developments to minimise the net increase in the amount of surface water discharged into the local public sewer system.
- 1.15 In recognition of the importance of good design and the built heritage of the District, Policy CS11 seeks to ensure that the highest standards of design in new development will be achieved to create attractive places for people to live, work and visit. Heritage assets within the District, and their setting, will be protected conserved and enhanced, ensuring that residents and visitors can appreciate and enjoy them.
- 1.16 Policy CS12 aims to deliver the strategic objectives of the Plan and where appropriate, development will be required to contribute to funding elements of the Infrastructure Schedule (contained in Appendix 2 of the Plan), either by means of planning obligations entered into at the time of granting planning permission or in due course.
  - o Harborough District Local Plan – April 2011
- 1.18 The Plan was adopted in 2001 with an original end date of 2006. A small number of policies have been "saved" beyond that time.

b) Material Planning Considerations

- o The National Planning Policy Framework
- 1.19 The National Planning Policy Framework (hereafter referred to as 'The Framework') published in March 2012 replaces previous national guidance set out set in Planning Policy Guidance and Planning Policy Statements.
- 1.20 The overarching policy objective of the Framework is the presumption in favour of sustainable development. It identifies three dimensions to sustainable development: economic, social and environmental (paragraph 7). These are mutually dependent and in order to achieve sustainable development economic, environmental and social gains should be sought jointly and simultaneously through the planning system (paragraph

- 8). The presumption in favour of sustainable development is the “golden thread” that should run through both plan-making and decision-taking.
- 1.21 The Framework indicates that where development accords with an up to date DP it should be approved (paragraph 12). Even though the CS pre-dates the Framework it is considered that the DP as a whole is up to date and therefore this application should be determined in accordance with it unless material considerations indicate otherwise. The weight to be accorded to housing supply polices are subject to the ability of the LPA (hereafter referred to as the ‘LPA’) to demonstrate a 5 year housing land supply and this is discussed in more detail below.
- 1.22 Paragraph 14 of the Framework states that when making decisions on development proposals the decision maker should “approve development proposals that accord with the DP without delay”. It goes on to say where the plan is absent, silent or where relevant polices are out of date, permission should also be granted , unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the Framework taken as a whole, or specific polices in the Framework suggest development should be restricted.
- 1.23 Paragraph 17 sets out the 12 core ‘planning principles’ which should underpin decision making. Summarising, they: (1) are led by local plans which set out a vision for the future of the area; (2) enhance and improve the places where people live; (3) drive sustainable development; (4) secure a high quality of design and a good standard of amenity; (5) protect the diversity of different areas; (6) support the transition to a low-carbon future; (7) help conserve and enhance the natural environment; (8) encourage the re-use of land; (9) promote mixed use developments; (10) conserve heritage assets; (11) make full use of public transport, walking and cycling; and (12) improve health, social and cultural wellbeing.
- 1.24 Paragraph 32 states that all developments that generate significant amounts of movement should be supported by a Transport Statement or Assessment. Decisions should take account of whether: (a) the opportunities for sustainable transport modes have been taken up depending on the nature and location of the Site, (b) safe and suitable access to the Site can be achieved for all people; and (c.) improvements can be undertaken within the transport network that cost effectively limit the significant impacts of the development. Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.
- 1.25 Paragraph 35 states that developments should be located where practical to give priority to pedestrian and cycle movements, and have access to high quality public transport facilities.
- 1.26 The Framework sets out the Government’s key housing objective, which is “to boost significantly the supply of housing”. Paragraph 47 sets out how LPA’s should achieve this boost in the supply of housing, including a requirement to identify and annually update a supply of deliverable Sites sufficient to provide five years worth of housing against their housing requirements, with an additional buffer either 5% or 20% - the latter where LPA’s have demonstrated a record of persistent under delivery of housing.
- 1.27 Paragraph 49 provides that housing applications should be considered in the context of the presumption in favour of sustainable development and makes it clear that where a 5 year supply of deliverable housing land cannot be demonstrated then this is one circumstance where relevant polices for the supply of housing will be deemed out of date for the purposes of paragraph 14 unless adverse impacts would significantly and

demonstrably outweigh the benefits or specific policies in the Framework indicate otherwise.

*Richborough Estates Partnerships LLP v Cheshire East Borough Council (March 2016) is a statement on the extent of NPPF Paragraph 49 and defines the relationship between housing and environmental policies including:- ...Our interpretation of the policy does not confine the concept of "policies for the supply of housing" merely to policies in the development plan that provide positively for the delivery of new housing in terms of numbers and distribution or the allocation of sites. It recognizes that the concept extends to plan policies whose effect is to influence the supply of housing land by restricting the locations where new housing may be developed*

- 1.28 Paragraph 52 notes that the supply of new homes can sometimes be best achieved through planning for larger scale developments, such as new settlements or extensions to existing villages and towns that follow the principles of Garden Cities.
- 1.29 Paragraph 56 provides that good design is a key aspect of sustainable development and indivisible from good planning. Paragraph 59 states that developments should establish a strong sense of place, create attractive and comfortable places to live and visit, optimise the potential of the Site to accommodate development, respond to local character, and be visually attractive as a result of good architecture and appropriate landscaping.
- 1.30 Paragraph 61 advises that planning decisions should address the connections between people and places and the integration of new development into the natural, built and historic environment.
- 1.31 Paragraph 69 advises that planning decisions should aim to achieve places which promote opportunities for meetings between members of the community through mixed use developments, strong neighbourhood centres and active street frontages and safe and accessible environments with clear and legible pedestrian routes and high quality public spaces.
- 1.32 Paragraph 75 seeks to protect and enhance public rights of way and access
- 1.33 To support the move to a low carbon future, new development should comply with adopted local plan policies on the requirements for decentralised energy supply and seek to minimise energy consumption (Paragraph 96).
- 1.34 Paragraph 103 advises that in determining planning applications consideration should be given to ensuring flood risk is not increased elsewhere.
- 1.35 Paragraph 109-115 address the protection and enhancement of the natural and local environment
- 1.36 Paragraph 118 advises LPAs when determining planning "to conserve and enhance biodiversity".
- 1.37 To prevent unacceptable risks from pollution, planning decisions should ensure that new development is appropriate for its location (Paragraph 120).
- 1.38 In determining applications, LPA's should take account of:
  - the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;

- the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
  - the desirability of new development making a positive contribution to local character and distinctiveness (paragraph 131)
- 1.39 When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be (paragraph 132)
- 1.40 Paragraph 173 makes reference to delivery and viability in relation to development proposals and states:
- "To ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable."
- 1.41 Paragraphs 183-185 encourage communities to develop neighbourhood plans and advises that when the neighbourhood plan has demonstrated its general conformity with the strategic policies of the Local Plan and is brought into force, the policies it contains take precedence over existing non-strategic policies in the Local Plan for that neighbourhood.
- 1.42 The Framework advises LPA's to approach decision-taking in a positive way to foster the delivery of sustainable development (paragraph 186) and seek to approve applications for sustainable development where possible
- 1.43 Paragraph 196 reiterates Section 38 (6) of the Planning and Compulsory Purchase Act 2004 which requires all applications to be determined in accordance with the DP unless there are material considerations which indicate otherwise and advises the Framework is a material consideration in planning decisions.
- 1.44 In respect of planning obligations, the Framework advises that these should only be used where it is not possible to address unacceptable impacts through a planning condition. They should, in addition, meet all of the following tests, which mirror those in the Community Infrastructure Levy Regulations 2010:
1. necessary to make the development acceptable in planning terms;
  2. directly related to the development; and
  3. fairly and reasonably related in scale and kind to the development.
- 1.45 Where obligations are being sought or revised, LPA's should take account of changes in market conditions over time and, wherever appropriate, be sufficiently flexible to prevent planned development being stalled.
- 1.46 Paragraph 206 advises LPA's to only impose planning conditions where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.
- 1.47 Annex A to the Framework advocates how the Framework should be implemented. In particular it advocates:
- only due weight should be given to relevant policies in a Local Plan according to their degree of consistency with the Framework and

- the weight to be afforded to emerging plans, which is to be determined having regard to their stage of preparation, the extent of unresolved objections and the degree of consistency with the Framework.
- o National Planning Practice Guidance
- 1.48 The National Planning Practice Guidance (hereafter referred to as the NPPG) published 6th March 2014 replaces a raft of previous planning guidance documents that have been cancelled as part of the Government's drive to simplify the planning process. The NPPG complements The Framework.
- o New Local Plan
- 1.49 On 3 December 2012, the Council resolved to prepare a new Local Plan for Harborough District. The new Local Plan will incorporate a focused review of the Harborough CS (adopted in November 2011) and will also identify key areas of land for development, thereby obviating the need for an allocations plan. The Plan will allocate the SDA in the manner approved under the current CS and will include strategic policies for the SDA that reflect the evidence in the SDA Master Plan (considered below).
- 1.50 The new local plan scoping consultation was completed in April 2013. The Scoping Consultation noted that the Plan Period would be extended to 2031 and that an increase in the annual housing requirement was likely. On 27<sup>th</sup> July 2015 Council agreed a draft Options Consultation paper for the emerging new Local Plan, and proposed consultation arrangements.
- 1.51 It is envisaged that the plan will be adopted in March 2017. Consequently, the emerging plan currently carries very limited weight in determining planning applications.
- b) Other Relevant Documents
- o Community Infrastructure Levy Regulations
- 1.52 The Community Infrastructure Levy (hereafter referred to as 'CIL') is a planning charge, introduced by the Planning Act 2008 as a tool for local authorities to help deliver infrastructure to support the development of their area.
- 1.53 Regulation 122 of the CIL Regulations 2010 introduced into law three tests for planning obligations in respect of development that is capable of being charged CIL. This includes most buildings. Obligations should be:-
  - necessary to make the development acceptable in planning terms
  - directly related to the development
  - fairly and reasonably related in scale and kind to the development

9<sup>th</sup> November 2015 letter by Brandon Lewis MP, Minister of State for Housing and Planning included: *The Government attaches great importance to the effective and flexible negotiation of Section 106 planning obligations, including on affordable housing, and intends to introduce a dispute resolution mechanism to help speed up Section 106 negotiations*
- o Circular 11/95 Annex A - Use of Conditions in Planning Permission

1.54 Although publication of the NPPG cancelled Circular 11/95, Appendix A on model conditions has been retained. These conditions are not exhaustive and do not cover every situation where a condition may be imposed. Their applicability will need to be considered in each case against the tests in paragraph 206 of the Framework and the guidance on the use of planning conditions in the NPPG.

o Supplementary Planning Guidance

1.55 A series of guidance notes were adopted as Supplementary Planning Guidance (hereafter referred to as 'SPG') to the Harborough District Local Plan in March 2003. They cover a range of topics relating to layout and design issues. Council agreed (19th December 2011) to retain the said SPGs and link them to CS policies as applicable, until a new Supplementary Planning Document is produced.

o 5 Year Housing Land Supply Statement

1.56 The Council produces bi-annual monitoring reports on the level of housing supply within the District. These reports include a five year housing land supply calculation and a housing trajectory for the remainder of the DP period. The latest report of 22<sup>nd</sup> June 2016 covers the period from 1 April 2016 to 31 March 2021 and demonstrates a housing supply of 4.66 years.

o Leicester and Leicestershire Strategic Housing Market Assessment

1.57 The Leicester and Leicestershire Strategic Housing Market Assessment (hereafter referred to as the SHMA) uses population and economic forecasts to predict the number and type of new homes needed to accommodate the growing population in the period to 2031 and to 2036 which will inform the new Local Plan for the District. The SHMA recommends that meeting the full objectively assessed need for housing in the District requires building 9,500 dwellings between 2011 and 2031, or 475 dwellings on average per year during this period. This compares to the a total requirement of 7,700 dwellings planned for in the Core Strategy between 2006 and 2018, or 350 dwellings on average per year during this period. This significant uplift in the number of dwellings required for the District is an important material consideration in the determination of this application.

o Strategic Housing Land Availability Assessment

1.58 The Strategic Housing Land Availability Assessment (hereafter referred to as the 'SHLAA') identifies Sites within the District with potential for housing; assesses their housing potential in terms of suitability, availability and achievability and assesses when they are likely to be delivered

o Planning Obligations Developer Guidance Note

1.59 The Planning Obligations Developer Guidance Note was approved by the Council's Executive in September 2009 and sets out the range of infrastructure, services and facilities that the Council will normally seek to secure via planning obligations in relation to development proposals within the District.

1.60 The Note advises if the requirement for developer contributions or for the provision of infrastructure result in viability concerns being raised it will be the responsibility of the applicant to provide an independent financial viability assessment to substantiate the situation. If the assessment is accepted as reasonable the Council may request lower

contributions for a particular Site provided that the benefits of developing the Site outweigh the loss of the developer contribution.

1.61 There are two supporting documents associated with this guidance note:

- Provision for Open Space, Sport and Recreation (September 2009) which provides details of the arrangements for assessing contributions to open space; and
- Assessment of Local Community Provision and Developer Contributions (October 2010) which provides additional evidence to support the case for developer contributions to local indoor community and sports facilities.

o Statement of Requirements for Developer Contributions in Leicestershire

1.62 The Statement of Requirements for Developer Contributions in Leicestershire is the County Council's developer contributions policy document. The document was approved as Leicestershire County Council policy in November 2014.

o District Wide Landscape Character Assessment and Landscape Capacity Studies)

1.63 These assessments included an identification of Landscape Character Areas and a detailed analysis of the sensitivity of land around the edge of settlements and capacity to accommodate future development principally in landscape terms

- o District wide Landscape Character Assessment (September 2007)
- o Market Harborough Strategic Development Area Landscape and Visual Assessment (June 2012)
- o Leicester PUA Landscape Character Assessment and Landscape Capacity Study (September 2009)
- o Lutterworth and Broughton Astley Landscape Character Assessment and Landscape Capacity Study (December 2011)
- o Market Harborough Landscape Character Assessment (April 2009)
- o Rural Centres Landscape Character Assessment and Landscape Capacity Study (July 2014)

o Leicestershire Local Transport Plan

1.64 The 3rd Leicestershire Local Transport Plan (LTP3) covers the period 2011-2026. It sets out the transport vision and longer term strategy for the County and identifies priorities and objectives to help deliver the vision. Objectives include tackling congestion, improving access to facilities for all, reducing the impact of transport on the environment, and improving road safety.

1.65 The LTP3 focuses, in particular, on the need to tackle congestion by increasing the use of public transport, walking and cycling with less growth in car mileage. This would be achieved by improving access to facilities including employment, education, health care and food shops.

o Leicestershire County Council 6C's Design Guide

1.66 The 6Cs Design Guide (hereafter referred to as 6CsDG) deals with highways and transportation infrastructure for new developments

o 6C's Green Infrastructure Strategy



1.67 The 6C's Green Infrastructure Strategy (hereafter referred to as '6CsGIS') was prepared on behalf of a partnership of local authorities and agencies for the East Midlands, setting out a strategic spatial framework needed to safeguard, manage, and extend networks of Green Infrastructure.

1.68 The 6CsGIS indicates a Sub Regional Green Infrastructure Corridor along the Grand Union Canal and an Urban Fringe GI Enhancement Zone.

#### Planning (Listed Buildings and Conservation Areas) Act 1990

1.69 Sections 66 & 72 impose a duty on Local Planning Authorities to pay special regard/attention to Listed Buildings/assets and Conservation Areas, including setting, when considering whether to grant planning permission for development. For Listed Buildings/assets, the Local Planning Authority shall "have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses" (Section 66) and for Conservation Areas "special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area" (Section 72).

#### Public Sector Equality Duty

1.70 Section 149 of the Public Sector Equality Act 2010, introduced a public sector equality duty that public bodies must, in the exercise of their functions, have due regard to the need to (a) eliminate discrimination, harassment, victimisation; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it. Protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.