



Hartlepool Local Planning Framework Emerging Local Plan

Matter 11

Development Management Policies and Housing Delivery



September 2017



Issue 1 – The soundness of specific development management policies

Policies CC1, CC2 and QP7

- Q1. **Is the requirement for a minimum of 10% of energy supply from decentralised and renewable or low carbon sources sound? Is it consistent with national policy (including paragraphs 95 and 96 of the NPPF)? What are the implications of the written ministerial statement of 25 March 2015?**

The requirement for a minimum of 10% of energy supply from decentralised and renewable or low carbon sources is sound.

Policy CC1 has been positively prepared, the Council state that they will work with partner organisations, developers and the community to help minimise and adapt to climate change. This positive approach is flexible and aligned with the aims to assist in achieving sustainable development.

Policy CC2 is justified, other approaches have been considered and the policy is based on proportionate evidence. The plan as a whole seeks to address climate change issues and Policy CC1 bullet point 9 is one way in which the Council can ensure developers contribute. Bullet point 9 is not prescriptive as to how the energy should be provided.

It is not necessary to prove that climate change problems exist and to try and pin point all the climate related problems within Hartlepool. The Council have taken the stance that there is a catalogue of evidence to state that the global temperatures are increasing and that there are more risks than benefits associated with the change.

Local evidence derives from a 2010 HBC paper *Energy supply from decentralised and renewable or low carbon sources* which was reviewed as part of the deliberations for formulating policy CC1. Although some of the information within the paper is dated, the paper is still deemed to be a credible evidence source when compared with recent practices in Hartlepool. The paper indicates that a 10% requirement is achievable without putting undue pressure on development. Viability assessments submitted by applicants and conditions discharged on numerous planning applications have proven that the provision of on-site renewable does not render schemes unviable. Furthermore appeal decisions issued by the Secretary of State (SoS) in relation to developments within Hartlepool have included the onsite energy condition thus suggesting that the SoS deems such a requirement to be acceptable.

The requirement is consistent with the national policy including NPPF paragraph 95 and 96.

Paragraph 6 of the NPPF states that “the purpose of the planning system is to contribute to the achievement of sustainable development”, paragraph 7 sets out the need for the planning system to perform numerous roles including an environmental role which includes mitigating and adapting to climate change, including moving to a low carbon economy. Paragraph 17 sets out the core planning principles and the 6th principle is to support the transition to a low carbon future including encouraging the use of renewable resources.

The Council considers that the provision of decentralised and renewable or low carbon sources is a significant factor in ensuring that development is sustainable and assists in moving to a low carbon economy and promotes the use of renewable resources.

NPPF paragraph 95 seeks to ensure that local planning authorities support the move to a low carbon future. Policy CC1 along with other policies in the plan seeks to ensure that development is planned in locations and ways which reduce greenhouse gasses. To further align with bullet point 2 of NPPF paragraph 95, bullet point 6 of policy CC1 has been amended to set out that the Council will actively support energy efficiency improvements on existing buildings (MM/CHP07/01).

NPPF paragraph 95 bullet point 3 relates to setting local requirements for a buildings sustainability in a way that is consistent with the Governments zero carbon policy and adopted nationally described standards

In the 2006 pre budget report the Labour Government promised that all new homes would be ‘zero carbon’ from 2016. On 27 July 2010 the Coalition Government stated “This Government are committed to ensuring that all new homes post-2016 can be zero-carbon”. Originally, the definition of ‘zero carbon’ was intended to include all the emissions that a home/household was responsible for. In May 2011 the Coalition Government excluded non-regulated energy use such as appliances and cooking from the zero carbon definition.

In October 2012 the Coalition Government announced a review of housing standards in a bid to reduce red tape.¹ The Housing and Construction Red Tape Challenge looked to, amongst other things; condensing the variety of guidance and standards that are applicable to house building.

On 25 March 2015 the government issued a ministerial statement, the statement is a material consideration in plan making and decision taking. In summary the statement states that new homes need to be high quality, accessible and sustainable. To achieve this, the government has created a new approach for the setting of technical standards for new housing. The statement sets out the government’s new national planning policy on the setting of technical standards for new dwellings. The statement should be taken into account when applying the NPPF, and in particular policies on local standards or requirements at paragraphs 95, 174, and 177.

The statement further states from the date the [Deregulation Bill \(2015\)](#) is given Royal Assent, local planning authorities plans should not set in their emerging Local Plans, or supplementary planning documents, any additional local technical standards or requirements relating to the construction, internal layout or performance of new dwellings.

On 26th March 2015 the Deregulation Act was enacted. Section 43 of the Deregulation Act seeks to revoke section 1(1)(c) of the Planning and Energy Act 2010. Section 1(1)(c) relates to energy efficiency standards. Section 1 (1) (a) and (b) are still in force and relate to energy generation as is the case with the requirement within policy CC1.

The ministerial statement has been considered in the formation of policy CC1 as have the provisions within legislation, which the Council give more weight to when considering both as material considerations.

Notwithstanding the ministerial statement, the Council considers that the Government’s commitment to this issue is weak, if the Government wished for more weight to be applied to the ministerial statement they would have sought to revoke all of the provisions within section 1 of the Energy Act (2010). The text within the ministerial statement appears weak when considered against the Government’s lack of action with regard to revoking all of the provisions in section 1 of the Energy Act (2010). This lack of action from the Government shows the Council that the Government still wish for this provision within the Act to be used as an effective tool that assists in reducing carbon emissions by providing clean energy, and thus assisting to reducing the Council’s climate impact.

Furthermore a ministerial statement cannot revoke provisions within an Act. Acts of Parliament are made following a process of debate in the House of Commons and the House of Lords. Provisions within an Act cannot be revoked unless they are debated again during the correct process, this process has not taken place therefore the provisions remain and the Council are justified in setting the local standard.

¹ <https://www.gov.uk/Government/news/independent-panel-to-help-Government-cut-housebuilding-red-tape-and-boost-growth>.

NPPF paragraph 96 states that local planning authorities should expect new development to comply with adopted local plan standards for decentralised energy unless it is not feasible or viable to do so. Bullet point 9 of policy CC1 and the final paragraphs set out that the Council will have due regard to feasibility and viability. The second bullet point in paragraph 96 relates to minimising energy consumption, the Council's policy approach to energy efficiency is set out in policy QP7, however policy CC1 does, at bullet point 7, cross reference to policy QP7.

The language used with NPPF paragraph 96 is that LPA's should 'expect' new development to...the Council have taken on board this use of language and supplemented the expectation for a requirement. The Oxford English definition of expect is to "require (something) as rightfully due or appropriate in the circumstances" and thus the terminology used by the Council is considered to be aligned with the language used within NPPF.

Q2. Has the viability of the policies been tested?

CC1 (Minimising and Adapting to Climate Change)

The Deliverability Risk Assessment (DRA) (EX/HBC/64) which has been submitted details the deliverability and risk of the Local Plan. Within this document a number of assumptions have been made in relation to the policy requirements of the plan. Table 3 of the DRA set out the developer contribution assumptions which have been made this details the costs expected to achieve policy requirements of the local plan including CC1 (Minimising and Adapting to Climate Change). This sets out the impact on deliverability of this policy.

With regard to residential development the most common way applicants have been satisfying this requirement, since 2010, is to provide solar panel on the roofs of buildings. The DRA estimates that a cost of £3,000 per dwelling would be required to cover the cost of installing renewable energy infrastructure, with the assumption that this will apply to 10% of dwellings.

Applications will be assessed on a case by case basis and in some instances certain aspects of the development could be changed to allow the site to be economically viable; such as a reduced developer profit or a reduced capital receipt for the land value and not all of the expected contributions will be required to make an application acceptable in planning terms for example a play contribution may be reduced if the site is not for family housing.

If one aspect was altered or one requirement was eliminated then the cost of delivering the site is reduced and therefore the residual money could be used to assist in meeting the other contributions which will include 10% on site renewable energy.

Overall is it considered that in some instances 10% on site renewable energy will not be viable, however as each case is assessed on its merits and within varying time periods and economic climates the requirement will be viable under some circumstances and therefore the requirement should remain.

Notwithstanding the findings of the deliverability risk assessment, the Council has been discharging conditions relating to on-site energy since 2010, and developers have successfully been delivering the requirement on site.

Based on Evidence and previous performance the Council are confident that this requirement can be met. However if the requirement would render a scheme unviable then the policy allows an applicant to demonstrate that fact and the Council will take viability into account when determining an application.

CC2 (Reducing and Mitigating Flood Risk)

Within the DRA, Table 2 sets out Development Type Assumptions, these include development size and relevant cost assumptions. Flood Risk is one of the Deliverability Criteria detailed in the *Appendix 1: Site Development Risk Assessments* of the DRA. These assumptions include a 10% Enabling Cost and 3% Contingency. The presumption is that where relevant these costs will facilitate mitigation of any risks identified.

QP7 (Energy Efficiency)

The Deliverability Risk Assessment (DRA) (EX/HBC/64) which has been submitted details the deliverability and risk of the Local Plan. Within this document a number of assumptions have been made in relation to the policy requirements of the plan. Table 3 of the DRA set out the developer contribution assumptions which have been made this details the costs expected to achieve policy requirements of the local plan including QP7 (Energy Efficiency). This sets out the impact on deliverability of this policy.

With regard to residential development, past experience has indicated that the cost of improving the fabric of the building 10% above building regulations is £250 – £550 per dwelling and thus an average cost of £400 has been applied.

As is the case with policy CC1, in some circumstances applying this energy efficiency measure can impact on viability, however as each case is assessed on its merits and variables such as profit, land value can be adjusted then in some circumstances the measures would not render a scheme unviable.

Notwithstanding the findings of the DRA the Council has discharged numerous conditions relating to energy efficiency and developers have successfully been delivering the efficiencies on site.

Based on Evidence and previous performance the Council are confident that the efficiencies can be achieved. However if the requirement would render a scheme unviable then the policy allows an applicant to demonstrate that fact and the Council will take viability into account when determining an application.

Q3. Is the Council suggested main modification [reference MM/CHP09/03] to “encourage” rather than “require” improvements to building fabrics above and beyond those prescribed in Building Regulations necessary for soundness?

The Council consider that the main modification is necessary to ensure that the plan is sound. The Council considers that the policy changes assist in setting out a more positive approach to ensuring energy efficiency soundness

The Council have a duty to ensure that the paragraphs within the NPPF are complied with, NPPF paragraph 96 sets out that local planning authorities should expect new development to take account of landform, layout, building orientation, massing and landscaping to minimise energy consumption. Bullet point 1 of policy QP7 is justified as it is aligned with the NPPF requirement. If an applicant cannot achieve the above requirements then the local planning authority will assess an application on its merits, bearing in mind that a proposal does not accord with NPPF paragraph 96.

The Council cannot `require` an applicant to improve the fabric of a building 10% above and beyond that of Building Regulation and therefore it is necessary to remove the word `must`.

The proposed main modification (MM/CHP09/03) is justified as it is an approach taken by the Council in order to assist an applicant meet with at least the aim of NPPF paragraph 96. The Council offers the

opportunity for a different approach to be taken, so that a planning application can be determined and reference drawn to the fact that the aim of paragraph NPPF 96 has been achieved.

The Council has been allowing this approach for a number of years and has routinely been discharging energy efficiency related conditions. This approach has allowed the Council to take comfort that at least the aim of NPPF paragraph 96 has been achieved and thus negate any concerns during decision making deliberations.

Policy QP6

- Q4. Should the policy be expanded with an additional criterion “the proximity of major hazard establishments”? Would this add appropriate specificity to a matter that may arise under the more general criterion 11?**

Yes, it is considered this may be appropriate in light of the comments to the plan from the Health and Safety Executive. The proposed change will be set out in the next addition of the Main Modifications document.

Issue 2 – Affordable Housing

Policy HSG9

- Q5. Is the Borough wide target for affordable housing sufficiently clear?**

Policy HSG9 states that an affordable housing target of 18% will be sought on all sites above the 15 dwelling threshold. The Council considers this to be sufficiently clear.

- Q6. Is the requirement for 18% affordable housing on sites of 15 dwellings or more justified?**

Modelling undertaken as part of the Strategic Housing Market Assessment (2015) suggests a net imbalance of 144 affordable dwellings each year across Hartlepool Borough. This represents an affordable housing need of 35% in relation to the proposed annual housing target of 410 dwellings. The requirement of 18% has been arrived at following the economic viability testing of the overall need figure.

- Q7. Does it reflect the evidence on viability? Is 18% at the margins of viability? Has the viability of 18% been tested against current market conditions or does it assume an expectation of future value rises?**

The level of 18% affordable housing target was set out within the Planning Obligations Supplementary Planning Document (HLP03/4), published in November 2015. Appendix 1 of this document sets out the Economic Viability Assessment which was undertaken supporting 18% as a viable target for affordable housing. As part of the Local Plan preparation the Deliverability Risk Assessment (DRA) (EX/HBC/64) has been produced, this considers the viability impact of policy requirements of the plan; therefore it presents a clearer position in terms of the viability of the emerging local plan which includes infrastructure requirements which were not planned at the time of preparation of the Planning Obligations SPD.

The DRA makes a number of assumptions in relation to development cost and revenue, the revenue assumptions consider the location, type of development and are based on revenues of similar developments experienced locally. The DRA does present that there is an impact on viability to some developments when

expected the developer contributions are assessed (this scenario considers all policy requirements in full), however if the cost of the infrastructure requirements are supported by grant funding the viability of the developments improve to demonstrate that affordable housing at this level is achievable on site. It is also important to note that the land value and profit levels presented in the DRA have been set at a certain level; these costs could be adjusted to improve overall viability of developments whilst ensuring that required developer contributions are secured.

Recent developments in Hartlepool have secured affordable housing contributions at a level of 18%, demonstrating that the policy requirement has been achieved within current market conditions. Policy HSG9 (Affordable Housing Provision) states that *'affordable provision and tenure and mix will be negotiated on a site-by-site basis, having regard to the economic viability of the development and the most up-to-date evidence of housing need, aspiration and the local housing market'*, thus the Council believes that there is sufficient flexibility within the policy.

Q8. Should the policy provide a guidance mix of 70% social-affordable rented housing and 30% intermediate housing as outlined in the SHMA?

The policy states that the affordable provision and tenure and mix will be negotiated on a site-by-site basis, having regard to the economic viability of the development and the most up-to-date evidence of housing need, aspiration and the local housing market. This approach is considered to maximise flexibility and takes into consideration that likelihood that housing needs evidence will be updated and potentially recommend a different affordable housing tenure split.

Q9. Is the policy justified and effective, particularly in terms of the effect on viability and the potential for off-site contributions? Would there be parity between on-site and off-site contributions?

Please see the response to Q7 regarding the effect on viability. Policy HSG9 is strongly supportive of on-site provision and on-site provision will normally be the Council's preferred option. However, the policy provides the flexibility for off-site provision where *'applicants can provide sound, robust evidence why the affordable housing cannot be incorporated on-site'*. The Planning Obligations SPD sets out off-site contributions will be calculated to ensure financial parity with on-site provision.