

Sunderland Local Plan Examination

Burdon Lane Consortium - Burdon Lane

Matter Statement 10 - Infrastructure and Delivery

Issued May 2019

1.0 The evidence base underpinning the LP

(1.1) Does the Plan and Whole Plan Viability Study make realistic assumptions about land values, sales values, profit and development costs?

- 1.1 We respond to Matter 10 on behalf of the Burdon Lane Consortium (consisting of Taylor Wimpey, Persimmon Homes and Story Homes) (“our Client”). Our Client considers that the assumptions are realistic and reasonable.

2.0 Transport Network

(2.1) Are the transport routes identified in Policy SP10 necessary to support sustainable development?

- 2.1 Our Client supports the list of works identified in Policy SP10. Further clarity is welcomed though on whether the works are needed to address existing issues or if the works are needed to support the development anticipated to take place during the plan period.
- 2.2 The first sentence in Policy SP10 indicates that some of the works will be funded by developer contributions. Whilst our Client does not oppose this reference, Policy SP10 should be consistent with the planning obligations tests (NPPF 2012 paragraph 204) and Community Infrastructure Levy Regulations 2010. The works should also explore other funding sources and seek developer contributions as a last resort.
- 2.3 Accordingly, our Client suggests the following revision to the first sentence in Policy SP10:

“To improve connectivity and enhance the city’s transport network, the council, working with its partners and utilising developer contributions (where justified and in the absence of other funding sources) will seek to:...”

(2.2) Will the routes support the use of sustainable modes of transport?

- 2.4 The works in sub points 1 and 2 relate mainly to strategic highway schemes although. The works in sub point 2 also encourages schemes to promote walking, cycling and bus corridors. Sub points 3 to 6 relate to schemes to improve bus and Metro routes; encourage reopening of disused railways lines and improving the cycle network.
- 2.5 Accordingly, our Client considers that the works identified in Policy SP10 will support and promote the use of sustainable modes of travel.

3.0 Policies ID1 and ID2

(3.1) Will Policy ID1 and the allocation policies of the Plan ensure that necessary infrastructure is delivered and in a timely fashion?

3.1 Our Client is of the opinion that Policy ID1 and the allocations policies should ensure the timely provision of the necessary infrastructure.

(3.2) Is Section 2 of Policy ID1 and the link to the IDP too prescriptive?

3.2 CSDP Paragraph 4.31 sets out that:

“The IDP is a ‘live’ document that the council will monitor and review on a regular basis to reflect the current circumstances and to inform the Development Management process.”

3.3 On the basis the IDP is kept up to date, our Client have no issue with the prescriptive nature of the link. It is essential that any amendments to the IDP are subject to consultation with the development industry.

(3.3) Are the policies consistent with the legal and policy tests for planning obligations?

Policy ID1

3.4 Our Client considers that revisions are needed to ensure the policy is consistent with national policy. NPPF paragraph 203 states that “Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations.” Further, paragraph 204 of the NPPF states that:

“Planning obligations should only be sought where they meet all of the following tests:

- necessary to make the development acceptable in planning terms;*
- directly related to the development; and*
- fairly and reasonably related in scale and kind to the development.”*

3.5 As such, our Client requests the following revisions in order to make Policy ID1 consistent with national policy and thereby sound:

“1. Development will be expected to provide, or contribute towards the provision of:

i) measures to directly mitigate the impacts of the development ~~and~~ to make it acceptable in planning terms and where appropriate contribute towards the delivery of essential infrastructure identified in the IDP. Planning obligations will only be sought where they are necessary, directly related and reasonably related to the development scheme; and

ii) contribute towards the delivery of essential infrastructure identified in the IDP.

2. The timing and prioritisation in the delivery of essential infrastructure ~~will~~ should seek to accord with the priority needs established through the IDP.

Policy ID2

3.6 Our Client considers that changes are required in order to make draft Policy ID2 sound.

3.7 NPPF paragraph 203 states that “Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations.” Further, paragraph 204 of the NPPF states that:

“Planning obligations should only be sought where they meet all of the following tests:

- necessary to make the development acceptable in planning terms;
- directly related to the development; and
- fairly and reasonably related in scale and kind to the development.”

3.8 Accordingly, the following revisions are requested in order to make Policy ID2 consistent with national policy:

1. “Where the requirement is fully justified and necessary, in accordance with national guidance, Section 106 planning obligations will be sought, where viable, to:

i. secure affordable housing (see Policy H2); and

ii. local improvements to mitigate the direct or cumulative impact of development where evidenced and/or additional facilities and requirements made necessary by the development to make the development acceptable in planning terms, in accordance with the Planning Obligations SPD.

~~*2. To facilitate the delivery of the mitigation measures the council will seek maintenance, management, monitoring and such related fees.*~~

3. Where there are site specific viability concerns, development must be accompanied by a Viability Assessment.

3.9 Policy ID2 sub point 1(ii) outlines that contributions will be expected towards the provision of non-specific and more general infrastructure requirement as set out in the Planning Obligation Supplementary Planning Document (SPD).

3.10 Notably, our Client requests that sub point 2 is deleted as the CSDP should not require planning obligation monitoring fees as they are not justified or necessary to make development acceptable in planning terms. Our Client has also submitted representations to the consultation on the Planning Obligation SPD in July 2018.

(3.4) Are the policies clear as to the effects of viability on the ability to make infrastructure and other contributions/obligations?

3.11 Our Client consider that Policy ID2 sub point 3 takes account of viability when prescribing obligations for developers to meet.

(3.5) Is the requirement within Policy ID2 to seek monitoring fees justified?

3.12 Our Client considers that the reference to monitoring fees should be removed from sub point 2. Such clauses within planning obligations are not justified since they are not necessary to make development acceptable in planning terms, as required by NPPF paragraph 204. Furthermore, this matter was considered in the high court (*Oxfordshire County Council v Secretary of State for Communities and Local Government & Others [2015] EWHC 186 (Admin)*). Relevant extracts from the judgment states:

“It seems to me that the Circular and the Guidance envisaged that the cost of essential administration, monitoring and enforcement would be met out of the authority’s own budget, not by charging the developer. An authority is able to incur expenditure incidental to its functions under section 106 by virtue of section 111 of the Local Government Act 1972.” (paragraph 41)

“There is nothing in the wording of the TCPA 1990, the Planning Act 2008, the CIL Regulations, the NPPF or the Guidance which suggests that authorities could or should claim administration and monitoring fees as part of planning obligations.” (paragraph 45)

3.13 As such, our Client considers there is no justification for the Council to require developers to pay monitoring fee costs.

4.0 Greenspace

(4.1) Will Criteria 2 and 3 of Policy NE4 deliver sufficient greenspace alongside new development so as to create well-designed neighbourhoods which support healthy lifestyles and well-being?

4.1 Our Client agrees with the Council that accessible, quality green spaces make a significant contribution to the health, wellbeing and social cohesion of communities. Our Client suggests, however, that the requirements upon developers should be fully justified and not overly onerous.

4.2 Accordingly, the following revisions are proposed:

3. requiring all major residential development to provide, where viable:

i. a minimum of 0.9ha per 1000 bedspaces of amenity greenspace on site, unless

ii. a financial contribution for the maintenance/upgrading to neighbouring existing greenspace is considered to be more appropriate;

4.3 Paragraph 10.26 in the supporting text provides detail on the assumptions and the bedspaces which will be used to calculate the required amount of open space/financial contributions. Our Client considers that this methodology is high and not reflective of actual populations per site and occupancy rates. For instance, it is unrealistic to assume that 4 (reduced from 5) people occupy every 3 bedroom property. In calculating open space requirements in County Durham, the Council assumes an average occupancy rate of 2.4 people per dwelling (regardless of the number of bedrooms).

4.4 With regards to our Clients site, which forms part of the South Sunderland Growth Area (SSGA), it is important that the Council does not seek to request areas of open space in addition to Suitable Alternative Natural Greenspace (SANG) as this would be double counting.

4.5 It is considered that the CSDP should take a similar approach to ensure the open space requirement is *“fairly and reasonably related in scale and kind to the development”* to comply with the tests within NPPF paragraph 204.

5.0 Pooling of Contributions

(5.1) Are there likely to be any implications arising from the pooling restrictions within the Community Infrastructure Levy (CIL) Regulations for the delivery of infrastructure going forward?

5.1 Our Client considers this to be a matter for the Council to respond to.

6.0 IDP

(6.1) Is the IDP clear as to what infrastructure projects are critical to the delivery of the LP, when infrastructure will be delivered, sources of funding and who is responsible for delivery?

6.1 Our Client considers this to be a matter for the Council to respond to.