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**Oxford City Council response
to Inspectors initial questions
and comments**

Question 5

July 2019

Question 5: Affordable Housing Provision

Policy H2, which seeks contributions towards the provision of affordable housing on sites of 4 to 9 homes, is contrary to the NPPF and we are minded to recommend the deletion of this part of the policy to ensure consistency with the NPPF. The Council are invited to comment. The purpose of the national policy does not solely relate to the viability of smaller sites. In addition, it is not clear why affordable housing contributions are sought in respect of student accommodation provided by the academic institutions on their own land, or from specialist accommodation such as Extra Care housing. Please can the Council set out the reason for their approach and their assessment of the policy's consequences for these uses.

Policy H2 and consistency with the NPPF

- 5.1 The Inspector is seeking clarity on the policy to deliver affordable housing from small sites, given the revised National Planning Policy Framework (Paragraph 63). The City Council fully anticipated this being a matter which would be raised during the examination and has already set out some justification in background papers outlining the exceptional local circumstances. In drafting policy H2 we considered we could provide enough evidence to support this departure from the Framework. We acknowledge the receipt of detailed representations about our approach which will be addressed in our hearing statements however, the paragraphs below seek to address the Inspector's concerns as set out in question 5.
- 5.2 It is well recognised as a matter of law that a policy contained within a local plan may depart from national planning policy, whether set out in the NPPF or otherwise, if local circumstances justify such an approach. That this is the case was most recently recognised by the Court of Appeal in *R (West Berkshire DC) v Secretary of State for Communities and Local Government* [2016] 1 WLR 3923 and indeed was supported expressly by a statement made in that case on behalf of the Secretary of State (see judgment para.28). It follows therefore that, as a matter of law, an individual policy within a local plan may, if justified by local circumstances, include a policy which departs from national planning policy as set out in the NPPF concerning securing affordable housing from development which is not major development. Moreover, the test of soundness in question set out in the NPPF at para.35; should be applied by reference to a whole plan, and a justified departure of an individual policy from the NPPF in light of local circumstances should not generate a finding that a local plan is unsound.
- 5.3 The approach to affordable housing in policy H2 and other policies is informed by local circumstances and these do not solely relate to viability. Other local authorities who

have included a policy to include seeking off-site affordable housing contributions from sites of 4-9 units include Reading Borough Council. The Inspector for the Reading Borough Council Local Plan requested further information to explain why Reading's local circumstances justified the policy approach to small sites. She requested that if the Borough Council wished the policy to be considered then they needed to provide further justification on the existing small site permissions, rates of small site completions, expected future financial contributions and details of the viability study to address viability concerns for sites below 10 dwellings. On receipt of this she supported Reading's approach. Reading Borough Council is currently consulting on its main modifications¹, which includes this policy following the public hearings for Local Plan Examination which took place between September and October 2018.

- 5.4 The Local Plan evidence base sets out several reasons why the City Council considers local circumstances justify policy H2 and other affordable housing policies in the plan. This evidence is signposted in more detail later in this answer. The evidence base demonstrates that there is an acute need for affordable housing and limited opportunities to meet this need due to significant constraints on land within the City.
- 5.5 Viability was not the starting point for policy development. It was established by the evidence base that there was an acute affordable housing need and constraints on land supply (set out below) which would justify a policy response. We then tested whether a locally specific policy response would be viable.

The scale of affordable housing need

- 5.6 Oxford's local circumstances justify the approach being taken; these include the severe affordable housing need in the city. The Affordable Housing Background Paper (BGP.1) outlines the scale of the affordable housing crisis in Oxford and goes on to explain the high need for affordable housing in Oxford, and that the affordability of the market is evidenced by assessments of housing need (HOU.3 and HOU.5). Paragraph 59 of BGP.1 provides another illustration of the pressure for affordable housing from homelessness in Oxford and the number of households approaching the council for housing support. More detail around the significant challenges with affordable housing in Oxford is detailed in the Council's Housing and Homelessness Strategy (HOU.18) and Tenancy Strategy (HOU.19).
- 5.7 Paragraphs 60-70 of BGP.1 also provides more detailed information about the issues around house prices and affordability in Oxford. The BGP sets out the particular local housing market circumstances that pertain to Oxford and explains why the affordability

¹ http://www.reading.gov.uk/media/10228/EM001-Main-modifications-consultation-document-June-2019/pdf/EM001_Main_Modifications_Consultation_Document_June_2019.pdf

situation is so extreme in Oxford. Oxford currently is and has been for several years one of the least affordable cities in the country to buy a home in terms of the average wage – house price ratio. In a 2019 Centre for Cities report² Oxford is identified as the least affordable city, with house prices being 17.3 times higher than annual earnings. This evidence justifies that a policy response to try and maximise affordable housing delivery in the City over the plan period.

Oxford's constrained land supply and efficient use of land

- 5.8 Oxford is a compact, constrained city with a growing population and a tightly drawn boundary. Its total area is approximately 4,600km². The river corridors of the Thames and Cherwell flow through the heart of the city. As such these river corridors and associated flood plans form much of the city's 1,287m² of Green Belt land. Thus there is all the more reason to make the most efficient use of land; as such the city is, by its very nature heavily reliant on small sites for the delivery of homes because there are fewer medium or large sites available within the city's boundaries that can deliver on-site affordable housing. All sites regardless of size are important in Oxford. The housing trajectory submitted as part of the forthcoming examination into the Oxford Local Plan 2036 consists of 90 sites which can deliver 10 or more units. Further examination of all the sites identified in the trajectory shows that 37 of the 90 sites are on sites of less than 1 ha in size, which further emphasises how constrained the city is and the lack of large areas of developable land.
- 5.9 In addition to the acute shortage of affordable housing in the city, the policy approach as set out in H2 is considered justified as so many of the sites within the housing trajectory will not deliver 50% on-site affordable housing owing to the specifics of the Oxford housing market. This includes a forecast of 136 units per year of windfall from small sites consisting of uses such as student accommodation, employer-linked housing, prior approvals and other existing commitments where policy does not require on-site delivery of affordable housing. Policies requiring affordable housing contributions from sites that will not deliver onsite affordable housing are particularly important in order to try to meet housing need, specifically affordable housing need. Thus the Council's position in continuing to seek affordable housing contributions from small sites in draft policy H2 is all the more important to maintain. Each site delivering 4-9 units has the opportunity to provide a small but significant contribution to the city's supply of market housing. Affordable housing contributions are achieved on these sites subject to viability. Although a low level of financial contributions have been secured since the implementation of policy HP4, this is a reflection upon a number of factors including the introduction of permitted development rights for residential conversions from office space (prior approval), a suspension of the policy between 2 February 2015 and 25 July

² <https://www.centreforcities.org/housing/>

2016 when the Council considered the Court of Appeal judgment regarding the Written Ministerial Statement of 28 November 2014 and the current period of uncertainty resulting from changes in the Framework about seeking contributions from small sites.

- 5.10 Table 1 below shows the windfall housing completion trends; it shows that windfalls on sites of 1-9 units have provided a consistent source of housing over time. It looks back over the previous eight years to 2011, which is the start date of the Sites and Housing Plan, the most current adopted local plan document containing general housing policies. This approach indicates there is still a supply that is reflected in the windfall rates calculation. Critics of the current policy HP4 suggest that it has suppressed sites of 4-9 coming forward, however the table demonstrates that a number of units have been delivered.

Table 1: Windfall housing completion trends:

Site size- no. units	2011- 12	2012- 13	2013- 14	2014- 15	2015- 16	2016- 17	2017- 18	2018- 19	Average per year
1-4	139	83	57	96	93	215 ³	31	69	98
5-9	43	53	13	34	37	62	21	41	38
Total windfall over 8 years: 1,087									
Average windfall per year 136									

Viability

- 5.11 As set out above, viability has not driven the approach to affordable housing. The evidence base justified a policy response to the acute affordable housing need. This response was then informed by the nature of development that is dominant in the City e.g. the prevalence of small sites and student accommodation making up future supply.
- 5.12 The viability evidence (GVA/Avison Young Economic Viability Assessment) supporting the plan clearly demonstrates that seeking affordable housing in the manner proposed is viable.

Impact on SMEs

- 5.13 Owing to the nature of developable sites within the city, there is a predominance of SMEs (small medium enterprises) operating in the development and construction sectors. It is considered that the requirement of policy H2 to seek contributions on

³ There is no clear reason as to why the number is so much higher during this year.

small sites (comprising of 4-9 units) in no way disadvantages SMEs in gaining development opportunities over and above larger scale “volume house builders” as the city has limited size of development sites and as such, the majority of house building is carried out by SMEs. There are few large scale developable sites beyond Barton Park (885 units) and Oxford North (500 units) within the city. This point is referenced in paragraph 3.18 of the emerging Oxford Local Plan 2036 and also referenced in the BGP.1 paras 10-20. There is no evidence to suggest that seeking affordable housing contributions from small sites disadvantage SMEs operating within Oxford. An analysis of the applicants who have submitted applications on sites of 4-9 units between April 2013- March 2019 show that all applicants were either individuals or SMEs with no large scale volume house builders represented. Affordable housing contributions need not be a disproportionate burden on SMEs as contributions should be fairly related in scale and kind and directly related to the proposed development. This is determined through viability testing.

Conclusions of Inspectors in respect of existing affordable housing policy

- 5.14 The City Council, through policy HP4 of the adopted Sites and Housing Plan 2011-2026, seeks a contribution to off-site affordable housing from small housing sites with capacity to deliver between 4 and 9 new dwellings. This policy continues to be applied by the City Council notwithstanding national policy which discourages seeking affordable housing (including affordable housing contributions) from small sites, as first set out in the Written Ministerial Statement and of 28 November 2014 and the associated changes to the PPG and latterly within the NPPF 2018 and 2019.
- 5.15 The extent to which policy HP4 remains an up to date policy, and one to which weight should be attached in development management decisions in light of more recent national policy, has been considered at appeal by planning inspectors on several occasions, including in an appeal concerning 8, Hollybush Row⁴, Oxford (decided on 12 July 2017) and an appeal concerning the former Quarry Gate Public House⁵, Oxford (decided on 29 June 2019). Both of those decision letters are available in Appendix A. It can be seen that in both decisions, the Inspectors considered policy HP4 in the context of national planning policy and concluded that weight should continue to be attached to the policy given particular local circumstances which justified seeking affordable housing contributions from small housing development. The Inspector is referred to paras.6-14 in the Hollybush Row decision letter in particular in this respect. Given that local circumstances have plainly justified continued weight being attached to HP4, notwithstanding more recent statements of Government policy, those same local circumstances justify policy H2 in the submitted local plan.

⁴ <https://public.oxford.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=O8HVLCMFGOQ00>

⁵ <https://public.oxford.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=O9MMBMMFGYX00>

5.16 A different conclusion was reached concerning policy HP4 by an inspector who determined an appeal concerning land adjacent to 75, Town Furze⁶ dated 21 December 2018. The Inspector dismissed the appeal but in so doing concluded, with brief reasons, that policy HP4 should be considered out of date by reason of conflict with national policy. As will be apparent from para.s22-25 of the decision letter, the Inspector was not provided with, and did not otherwise avail himself of, the contrary reasoning concerning the weight to be given to policy HP4 by the Hollybush Row and Quarry Gate Inspectors. The Town Furze decision was the subject of a claim for planning judicial review made by the City Council, specifically in respect of the Inspector's decision concerning HP4. That claim was refused permission by Dove J. in a judgment given on 8 July 2019 (attached). Permission for the claim to proceed was refused on a new procedural ground, namely that a claim for planning judicial review should not, absence exceptional circumstances, be brought by a party who was successful at appeal stage. Nonetheless, Dove J. held at para. 15 of his judgement that the lawfulness of the Town Furze decision should be considered in any future development management (or by analogy policy making) decision when its relevance arises. It is plain that the Inspector who determined the Town Furze appeal did not avail himself of a copy of the earlier decision letters referred to above which considered HP4 and as such, in his decision, he failed, as he was required to do, to consider and, if necessary, provide reasons for reaching a contrary decision to those earlier Inspectors. He was under an obligation to so do (arising from inter alia the decision of the Court of Appeal in *North Wiltshire DC v. Secretary of State [1993] P&CR 137*) and his substantial failure meet this obligation is such that his decision concerning the extent to which policy HP4 is should be given no weight.

Affordable housing contributions from student accommodation and specialist housing

5.17 The City Council is satisfied that the requirement to seek affordable housing contributions from student accommodation and specialist housing is justified. Student housing completions have been significant over recent years and have contributed a substantial amount of affordable housing contributions (£2,550,867.42).

5.18 The Council supports provision of student accommodation as the favoured alternatives to students "living out" in shared houses. Moving forward the housing trajectory demonstrates that student accommodation makes up a significant part of the future development in the City and without the proposed policy this will not contribute to addressing the acute affordable housing need identified in the evidence base. This approach has also been shown to be viable in the Economic Viability Assessment (SUP.3) prepared by GVA (now Avison Young). Of the 90 housing sites in the housing trajectory 25 are for student accommodation alone (1,963 units). A further 7 sites could be either

⁶ <https://public.oxford.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=OW9GZ9MFMB100>

for housing or student accommodation and the landowner has not expressed a preference. This analysis emphasises the significant proportion of sites dedicated to student housing in the city and hence the importance of their contribution to affordable housing.

5.19 In the absence of this policy, if a developer or landowner chooses to build student accommodation instead of housing on a site, there would be no affordable housing provided and therefore reduced costs. This may reduce the attractiveness of developing housing on suitable sites. It is not as simple to say that because land is owned by an academic institution it would never be appropriate for general housing as not all land owned by the institutions is on sites with student or academic uses currently and therefore could be appropriate for general housing.

5.20 A number of C3 extra care homes have been delivered in the city but owing to the nature of the schemes they have delivered on-site affordable units rather than making contributions towards affordable units.