

Planning Policy Department
Medway Council
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Kent
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20316/A3

25 May 2012

Dear Sir/Madam

**REPRESENTATIONS ON THE MEDWAY SUBMISSION DRAFT CORE STRATEGY
DEVELOPMENT PLAN DOCUMENT (DPD)**

EXAMINATION IN PUBLIC MATTERS AND ISSUES

We write to Medway Council (the Council) on behalf of our client, Berkeley First, to make further representations on the Council's Local Development Framework and in particular the Council's Submission Draft Core Strategy, February 2012.

Section 70 of the Town and Country Planning Act 1990 explains that in determining planning applications, the Council shall:

'...have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations'

The National Planning Policy Framework (NPPF), published in March 2012, forms part of the Development Plan. The NPPF sets out policy context for local planning authorities in relation to drafting, consulting upon and adopting Core Strategies. Paragraph 182 of the NPPF states that the role of the independent Inspector is to assess whether the plan has been prepared in accordance with the 'Duty to Cooperate', legal and procedural requirements, and whether it is sound. The NPPF defines the four key components of soundness as follows:

- *'Positively prepared – the plan should be prepared based on a strategy which seeks to meet objectively assessed development and infrastructure requirements, including unmet requirements from neighbouring authorities where it is reasonable to do so and consistent with achieving sustainable development;*
- *Justified – the plan should be the most appropriate strategy, when considered against the reasonable alternatives, based on proportionate evidence;*
- *Effective – the plan should be deliverable over its period and based on effective joint working on cross-boundary strategic priorities; and*
- *Consistent with national policy – the plan should enable the delivery of sustainable development in accordance with the policies in the Framework.'*



In the context of the Town & Country Planning Act 1990 and the Planning & Compulsory Purchase Act 2004, the Core Strategy should accord with national planning policy which is the NPPF. It should also be consistent with the relevant regional planning policy which at the time of writing is the South East Plan 2009 (Regional Strategy). The Regional Strategy remains part of the Development Plan and the requirement for the Core Strategy to be in general conformity with it remains although that may change during the course of the Core Strategy Examination in Public (EiP).

Our client wishes to comment as below on the Matters and Issues set out in the Core Strategy Examination Paper and in accordance with its guideline set out in Section 9 of the Paper.

Draft Policy CS3: Mitigation and Adaptation to Climate Change

1. Which particular part of the Core Strategy is unsound?

The second paragraph of draft Policy CS3 which states:

'All residential development will be required to contribute to the progression to sustainable and zero carbon homes by 2016 through meeting the following requirements:

- *Code Level 4 until the end of 2013*
- *Code Level 5 between 2014 and 2016*
- *From the beginning of 2016 Code Level 5 plus any additional requirements needed to meet the Government's definition of Zero Carbon (potentially Part L of the Building regulations) plus 'allowable solutions'.*

We consider that the Code for Sustainable Homes section of draft Policy CS3 fails to be sound for the reasons stated below.

2. Which soundness test(s) does it fail?

Draft Policy CS3 is unsound as it fails the NPPF soundness test that it should be justified because it is not the most appropriate strategy when considered against the reasonable alternatives, based on proportionate evidence.

3. Why does it fail?

We highlight to the Inspector that the Code for Sustainable Homes is due to be consulted upon and updated to reflect changes to Building Regulations Part L 2013 and the emerging definition of zero carbon homes. Our client cannot commit to achieving a standard when there is no certainty about what that standard will be following the above mentioned changes.

There is currently limited understanding of the health implications relating to living in homes with low levels of air leakage as required by Code for Sustainable Homes Level 4 and above. Until these implications are better understood, we consider it unwise for policy to prejudice these findings.

The Berkeley Group has identified the energy target to be a cost driver in moving towards higher levels of the Code for Sustainable Homes. The stringent energy requirements proposed by the Council are also likely to have significant effects on the fabric make-up of buildings, some of which may be undesirable to our client's purchasers including reduced air permeability, reduced fuel choice and the requirement to implement expensive technological solutions; all of which have an impact on the viability of house building in Medway.

Furthermore, the Code for Sustainable Homes becomes increasingly restrictive at Level 4 and sites that are in a higher flood risk zone or unable to achieve all of the 'Ecology' credits can either find it

costly to achieve Level 4, or due to its restrictiveness, be forced to implement design solutions that are undesirable to our client's purchasers .

Draft Policy CS3 needs to be amended to introduce a reasonable level of flexibility until greater certainty is achieved on the updated Code for Sustainable Homes. If this flexibility is not provided then there is a high risk that draft Policy CS3 will:

- a. Stall the delivery of the number of new homes required to meet the Regional Strategy requirements / identified needs as outlined in Matters and Issues Housing Supply and Location 3(a). In particular, our client's site Victory Pier is identified by the Council as being deliverable and developable during the plan period, having been carried forward from the local plan.
- b. Hinder the reasonable prospect that the identified sites are deliverable/developable during the plan period, particularly those sites that have been carried forward from the local plan, as outlined in Matters and Issues Housing Supply and Location 3(c).

Draft Policy CS3 also fails to comply with paragraph 95 of the NPPF which states:

'To support the move to a low carbon future, local planning authorities should:

- *plan for new development in locations and ways which reduce greenhouse gas emissions;*
- *actively support energy efficiency improvements to existing buildings; and*
- *when setting any local requirement for a building's sustainability, do so in a way consistent with the Government's zero carbon buildings policy and adopt nationally described standards.'*

The Housing Minister Grant Shapps formally confirmed the Government's revised definition of zero carbon homes on 19 May 2011. Shapps stated,

'In order to prevent excessive burdens on industry and to protect the viability of development, the Government will work with local authorities and developers to ensure that the cumulative impact of regulation and other costs can be assessed, without adding complex and unwieldy bureaucracy to plans.'

The Government's zero carbon policy recommends improvements over Part L 2006 Building Regulations of 44% in 2013 and 100% in 2016. Draft Policy CS3 effectively requires 100% improvement by 2014 and is therefore inconsistent with the NPPF and adds complex and unwieldy bureaucracy to the Core Strategy. Draft Policy CS3 requires, 'Code Level 5 plus any additional requirements needed to meet the Government's definition of Zero Carbon (potentially Part L of the Building regulations) plus 'allowable solutions'.' The Government's zero carbon policy provides for 'allowable solutions' to count towards the 100% emissions reduction target and therefore this draft policy is inconsistent with national policy.

4. How can the Core Strategy be made sound?

The current wording of draft Policy CS3 is premature in relation to the immediate mandatory introduction of Code for Sustainable Homes Level 4 until the end of 2013 because the Code for Sustainable Homes is due to be consulted upon and therefore uncertainty exists at present as to what its requirements will be following the Building Regulations Part L changes in 2013. Therefore Policy CS3 should be amended as below to become much more flexible where commercial viability renders this unachievable.

5. What is the precise modification/wording that is being sought?

The wording of Policy CS3 should be amended as follows:

'All residential development will be required to contribute to the progression to sustainable and zero carbon homes by 2016 through meeting the following requirements, where commercially viable and subject to the requirements for the Code for Sustainable Homes being determined:

- *Code Level 4 until the end of 2013*
- *Code Level 5 between 2014 and 2016*
- *From the beginning of 2016 Code Level 5 plus any additional requirements needed to meet the Government's definition of Zero Carbon (potentially Part L of the Building regulations) plus 'allowable solutions'.*

Draft Policy CS4: Energy Efficiency and Renewable Energy

1. Which particular part of the Core Strategy is unsound?

The first paragraph of draft Policy CS4 which states:

'All new development will be expected to maximise energy efficiency savings through passive design and building fabric improvements. Developments of 10 dwellings or more, or over 1,000 sqm of non-residential floorspace should also meet 20% of the residual on-site energy requirements from decentralised, renewable energy sources.'

2. Which soundness test(s) does it fail?

Policy CS4 as it is currently worded is unsound as it fails to be consistent with national policy and is not flexible, a requirement of the Spatial Strategy as stated in Matters and Issues Spatial Vision 2(b).

3. Why does it fail?

Draft Policy CS4 fails the soundness test because it is not in accordance with section 1 of the NPPF which relates to 'building a strong, competitive economy'. In particular, this policy does not comply with paragraph 21 which states that investment in business should not be over-burdened by the combined requirements of planning policy expectations. Our client contends that their business should not be unduly over-burdened with the combined requirements of planning policy expectations including the unfeasibly high level of 20% of the residual on-site energy requirements are supplied from decentralised renewable energy sources.

An example of a more flexible approach was discussed in the Draft Replacement London Plan (DRLP) EIP Panel Report which states that in relation to the 20% target for on-site renewable energy generation serving new development, 'As the Mayor indicated, it should be regarded as a signpost for the direction of travel rather than a target that should necessarily be met, and we accept that it does not warrant strategic policy expression in that respect'. London Plan (2011) Policy 5.7 which relates to renewable energy states:

'Within the framework of the energy hierarchy, major development proposals should provide a reduction in expected carbon dioxide emissions through the use of on-site renewable energy generation, where feasible.'

If Medway's proposed on-site renewable energy generation standard is more onerous than neighbouring boroughs, this will result in developers deciding not to deliver residential developments including the delivery of affordable housing in Medway. Therefore in order to be sound, our client contends that Policy CS4 should be made more flexible in order to not be an over-burden on investment in business and residential development investment in particular.

In addition, draft Policy CS4 fails to comply with the Government's zero carbon policy which allows for a flexible approach to emissions reduction with no specific targets set for renewable energy

generation. 'Climate Change within Local Development Frameworks', March 2010, was published by the South East Partnership Board in support of the Regional Strategy. On page 12 it states,

'The strengthening of building regulations, as set out in the Code for Sustainable Homes, will mean that on site renewables will be required to meet carbon compliance standards on new residential developments. Therefore LPAs should specify energy requirements in accordance with the code rather than specifying a percentage of energy generated to come from renewable and low carbon sources.'

Therefore draft Policy CS4 is in direct contradiction with both national and regional planning policy. If this policy is not amended then there is a high risk to the Borough's housing supply, customer choice and housing delivery. The cumulative effect of this policy and other Core Strategy policies will have a major impact on density and the number of homes which can be built on a given site. They will considerably add to the cost of homes making them unaffordable for the people they are designed to house. The end result will be that land will not be used efficiently and more land will be required to produce the same number of homes.

4. How can the Core Strategy be made sound?

Core Strategy Policy CS4 should assist in building a strong, competitive economy in Medway and so should be consistent with the NPPF. The wording of this policy should be amended to ensure that, while it promotes the sustainable reduction in carbon dioxide emissions through the use of on-site renewable energy generation, it is not overly onerous and should allow for a level of flexibility to ensure business is not over-burdened with planning policy when draft Policy CS4 and other policies cumulate as expectations to be met.

5. What is the precise modification/wording that is being sought?

The wording of this section of draft Policy CS4 should be amended as follows:

'All new development will be expected to maximise energy efficiency savings through passive design and building fabric improvements. Developments of ~~1020~~ dwellings or more, or over ~~1,000~~ 2,000 sqm of non-residential floorspace should also aim to meet 20% a proportion of the residual on-site energy requirements from decentralised, renewable energy sources, where feasible.'

Draft Policy CS15: Housing Design and Other Housing Requirements

1. Which particular part of the Core Strategy is unsound?

Draft Policy CS15 which confirms that housing developments help to balance the size, type, tenure and affordability of the local housing stock. Paragraph 50 of the NPPF states that local planning authorities should 'widen opportunities for home ownership' and 'identify the size, type, tenure and range of housing that is required in particular locations, reflecting local demand'. The third bullet point of draft Policy CS15 confirms that one of the criteria for providing housing is that 'Housing complies with space and other standards laid down in the Medway Housing Design Standards'.

The Council adopted the Interim Medway Housing Design Standards (Design Standards) as planning guidance in November 2011. Page 6 of the Design Standards explains where they are derived from:

'The Interim Medway Housing Design Standards are based on the minimum gross internal area (GIA), room sizes and dimensions set out in the London Plan (July 2011) and Interim Edition of the London Housing Design Guide (September 2010). This is a set of standards supported by a robust evidence base of anthropomorphic data. It is simple to apply and will be familiar to many developers operating in Medway.'

The Standards represent reasonable universal minima that ensure that homes allow all residents to comfortably undertake their day-to-day living activities.'

Our client highlights to the Inspector that the reference to the Design Standards in draft Policy CS15 is unsound for the reasons set out below.

2. Which soundness test(s) does it fail?

Draft Policy CS15 fails the soundness test that a plan should be justified by being based on proportionate evidence.

3. Why does it fail?

Policy CS15 fails to be consistent with national policy which promotes the delivery of sustainable development in accordance with the policies set out in the NPPF because:

- a. It will not allow for the delivery of sustainable development in accordance with national and regional policy or identified needs as outlined in Matters and Issues Spatial Vision 2(a).
- b. It will hinder the delivery of the number of new homes required to meet the Regional Strategy requirements and identified needs.

In respect of Matters and Issues 2(a) we refer to paragraph 21 of the NPPF which states that 'Investment in business should not be over-burdened by the combined requirements of planning policy expectations'. Our client contends that Policy CS15 as it is currently worded with its reference linking it to the Design Standards is overly restrictive and will result in investment in residential development being over-burdened by the combined requirements of planning policy expectations. Our client made representations to the Council during the consultation period of the draft Design Standards SPG and stands by their views that:

- a. The Design Standards should be used as guidance only and not linked by policy reference to the Core Strategy. Draft Policy CS15 as it stands does not comply with paragraph 59 of the NPPF which states that '... design policies should avoid unnecessary prescription or detail and should concentrate on guiding the overall scale, density, massing, height, landscape, layout, materials and access of new development in relation to neighbouring buildings and the local area more generally'. Draft Policy CS15 hinders the paragraph 50 NPPF requirement to 'widen opportunities for home ownership'. Adopting the Design Standards as policy linked to the Core Strategy by Policy CS15 is unnecessarily prescriptive and does not concentrate on the overall parameters of new residential development.
- b. The Design Standards do not reflect local circumstances and will result in development that does not reflect market value. For example, residential minimum space standards set out in Table 3.3 of the adopted London Plan, July 2011, are derived from land values, property prices and market need assessments for London as established in the Draft London Housing Design Guide: Cost and Delivery Impact Assessment Pre Publication Draft, published on 29 March 2010. This 'universal' approach taken by the Council is not in compliance with paragraph 47 of the NPPF which states that local planning authorities should 'set out their own approach to housing density to reflect local circumstances'. It is therefore wrong to use London Plan standards. The local circumstances of Medway in terms of land prices, house prices, salaries, housing need etc. differ significantly from those of London. For example, the London Borough of Barking and Dagenham was the Borough with the lowest average house prices considered as part of the evidence base for the Mayor's Standards. It has the lowest house prices in London (45% below the average London house price) with an average house price of £179,093. To put this into context, Medway has an average flat price of £138,500.
- c. The dwelling sizes are too large for viable residential development in Medway. Berkeley First have undertaken extensive marketing research in relation to marketing the first apartment for private sale at Victory Pier which confirmed a price ceiling in this area. The policy

requirement for larger flats would increase build costs which would be passed onto purchasers and the local market would not be able to meet the increased prices. Adopting the Housing Standards as policy would be a serious consideration any developer would take into account before deciding on the viability of buying land for redevelopment in the Medway towns. At the EiP of the DRLP, evidence was presented which indicated that even only relatively small increases in spaces standards can result in disproportionate increases in build costs which may be passed onto purchasers. The Panel Report of the DRLP EiP states that the arguments are finely balanced between cost and affordability issues and the need to ensure a flexible, sustainable and high quality new housing stock.

Therefore, and particularly in light of the current climate and the need for regeneration to be stimulated in Medway, we propose that greater flexibility to reflect the distinct circumstances of development opportunities should be allowed by retaining the Design Standards as guidance only rather than being linked by policy to the Core Strategy.

4. How can the Core Strategy be made sound?

The Council adopted the Design Standards as interim planning guidance in November 2011. For the reasons stated above, the Design Standards should remain in the form of guidance only. Therefore the Core Strategy should be made sound by removing the reference to the Design Standards in Policy CS15.

5. What is the precise modification/wording that is being sought?

The third bullet point of Draft Policy CS15 should be deleted as follows:

~~'Housing complies with space and other standards laid down in the Medway Housing Design Standards'~~

Draft Policy CS35: Developer Contributions

1. Which particular part of the Core Strategy is unsound?

Draft Policy CS35.

2. Which soundness test(s) does it fail?

The wording of draft Policy CS5 means that this part of the plan at present is not the most appropriate strategy based on proportionate evidence and is therefore not justified and unsound. This policy as it is currently worded fails to be sound as it is not flexible, a requirement of the Spatial Strategy as stated in Matters and Issues Spatial Vision 2(b).

3. Why does it fail?

Draft Policy CS35 fails to be sound because it does not fully allow for sufficient reasonableness in relation to legal agreements between the Council and developers. In particular, it does not make full provision for the consideration of changing economic conditions at the time of entering legal agreements between councils and developers.

4. How can the Core Strategy be made sound?

The Core Strategy can be made sound by amending the wording of Policy CS35 to make it more reasonable. Therefore additional wording should be inserted into this policy in order that it can be made fully sound.

5. What is the precise modification/wording that is being sought?

Policy CS5 should be amended by the addition of the words underlined below:

'Developers will be required to make reasonable provision for infrastructure where the need arises directly from development. The Council will seek to enter into a legal agreement with developers to provide for new or improved physical infrastructure, social, recreational and community facilities (including education facilities) and environmental mitigation or compensation measures where mitigation on site is impossible or inadequate on its own. Provision will be sought in proportion to the size and nature of the individual development and will take into account the existing pattern of provision in the locality.

Provision will be made on the site where this can be reasonably achieved. When this is not the case, a reasonable level of contributions taking into consideration current economic conditions and other factors affecting viability will be sought for the provision of new or improved infrastructure or facilities and ecological features elsewhere, provided their location can adequately serve the development site or are appropriately related to it. The Council will produce and implement a Community Infrastructure Levy (CIL) Charging Schedule that will specify the levels of payments required in respect of specific types of development. This will replace legal agreements in appropriate cases to fund necessary infrastructure projects.

This policy will be adapted, as necessary, in the Guide to Developer Contributions to reflect Government guidance and regulations in force at the time.'

We trust that our comments are helpful and please feel free to contact us if you have any queries or would like further clarification on any matters raised.

Yours faithfully



STUART BLAKLEY
Associate

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