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29/07/2024

Dear Inspector

West Berkshire Local Plan EIP – AP37

Thank you for allowing further submissions on the council proposed amendments to policy DM4, as set out in EXAM39. The proposed amendments remove reference to the space heating demand and replace these with Fabric Energy Efficiency (FEE) metric currently used in assessing building performance as part of the Standard Assessment Procedure (SAP).

In commenting on the soundness of the proposed amendment it is helpful to consider the High Court judgement handed down in early July [The King (on the application of) Rights Community Action Ltd (Claimant) and Secretary of State for Levelling Up, Housing and Communities [2024] EWHC 1693 (admin)] which considered whether the Written Ministerial Statement on energy efficiency published in December 2023 unlawfully removed the ability of local planning authorities to set energy efficiency targets, as permitted in the Planning and Environment Act 2008, below those established by building regulations.

The final decision by Justice Lieven on these matters was that the WMS did not remove that ability for local authorities to set higher targets and that it was perfectly within the scope of the WMS to require these to be framed with regard to building regulations in order to avoid fragmentation with different standards being used in different LPAs. It was also considered acceptable for the Government to require, where standards are proposed that are an improvement on those set out in building regulations, that the LPA provide a well-reasoned and robustly costed rationale that ensures development remains viable and the impact on housing supply and affordability are considered.

Use of FEE

Our first concern is the use of FEE and whether this is consistent with national policy. The WMS is clear that any standard should be set as a percentage uplift of the dwellings target emission rate (TER). While the first part of DM4 is consistent with this approach the use of FEE would appear to be inconsistent with the WMS. HBF recognises that in setting a requirement based on FEE the Council are ensuring the approach is consistent with SAP. However, given the WMS seeks to limit the approaches used in relation to these types of policy to TER the HBF would consider that even with the proposed amendment this aspect of DM4 remains inconsistent with national policy.

Achieving TER before on site renewable energy generation.

Whilst no amendments are proposed to the first bullet in part 1 of policy DM4 HBF would continue to object to the assessing TER performance of a building prior to the addition onsite renewable energy. Such an approach is potential inconsistent with the Future Homes Standard. The recent consultation on these standards proposes a option which would require the installation of photovoltaics and as such the measurement of a building's performance is likely to include these. As the High Court judgment recognises a key aspect of the approach to setting alternative standards is that these remain consistent with existing regulations. As such to require assessment prior to the addition of onsite renewable energy may well be inconsistent with the approach being taken forward in building regulations.

Regulated and unregulated energy

DM4 requires development to achieve net zero carbon for both regulated and unregulated energy has not been amended. As set out in our written representations and at the hearings HBF continue to consider this approach to be unsound. A developer cannot control how a building is used once it is occupied and it is unreasonable and unfair to require the developer to address a matter that is beyond its control. In assessing building performance development should only be required to consider this against regulated energy use.

Cost and deliverability

HBF do not consider, as is included on Page 61 of Appendix B to of EXAM39 that a 5% uplift in building costs is a safe figure to test for viability. As set out in our representation the costs of delivering net zero could be much higher and we would suggest other scenarios are tested to consider the impact on viability should these requirements add between 10% to 20% to the cost

of build a house. In addition to viability the council must consider whether these standards will impact on the deliverability of residential development. The need to implement higher standards could mean sites coming forward later in the plan period or reducing the number of homes that can be delivered each year. Without any consideration of these issues the policy cannot be considered justified in relation to the issues they are required to consider by the WMS.

Yours faithfully

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Mark Behrendt MRTPI
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Home Builders Federation

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