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Moving Development Forward

- HEARING STATEMENT -

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EXAMINATION IN PUBLIC OF THE DRAFT TELFORD & WREKIN, LOCAL PLAN REVIEW (SUBMISSION VERSION)

MATTER 6, ISSUE 1 (DEVELOPMENT MANAGEMENT POLICIES)

ON BEHALF OF : F. WALLACE & J.TEMPLETON AND MONTAGUE LAND (MIDLANDS) LTD

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STATEMENT 2 OF 4 - MATTER 6, ISSUE 1 (DEVELOPMENT MANAGEMENT POLICIES)

Issue 1: Whether the other housing policies are justified, effective, and consistent with national policy.

2.1. The following section engages with the draft Development Management policies in respect of housing, given nomenclature HO1 to HO12 of the submission version. We do not object to the policies in totality, however we consider that amendments are required to their wording so as to ensure that they are *justified, positively prepared* and *consistent* with national policy.

ID04 Question 61: Are the provisions of Policy HO4 in terms of affordable housing requirements justified by the evidence and deliverable?

2.2. This policy sets out the expectations of delivery of affordable housing. The policy appears generally appropriate, with the exception of criterion 1 and 5, as below:

2.3. HO4 Criterion 1: stipulates the delivery of either 25% or 35% affordable housing. However, the wording does not take into account the provisions in paragraph 65 of the National Planning Policy Framework (the Framework) which permits the proportionate reduction in affordable housing delivery where the proposals will result from the redevelopment of brownfield sites hosting vacant buildings (i.e. vacant building credit):

> 65. Provision of affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas (where policies may set out a lower threshold of 5 units or fewer). To support the re-use of brownfield land, where vacant buildings are being reused or redeveloped, any affordable housing contribution due should be reduced by a proportionate amount[30].

2.4. National policy allows, as per footnote 30, a reduction equivalent to the existing gross floorspace of the buildings that are to be demolished. However, this is not included nor referenced within the policy wording, creating risk of confusion and uncertainty.

2.5. Therefore, we recommend amendment of the wording to:

Current wording (with proposed amendment mark-ups shown)
Subject to the provisions of national policy in respect of Vacant Building Credit, all major residential developments (as defined in national policy) will look to maximise affordable housing delivery and be required to deliver a minimum of: a. 25% affordable homes in the Telford built-up area; and b. 35% affordable homes in Newport and the rural area

ID04 Question 62: Is it clear how Policy HO4 and Policy HO5 are expected to work together? Are the policies clear and unambiguous in respect of reduced or zero provision and how the HO4 and HO5 policies and relate to each other?

2.6. Policy HO4 Criterion 5: describes the expectation of a viability assessment where development cannot deliver affordable housing. However, this pre-supposes that viability is the only basis upon which the delivery of affordable housing may not be achievable. In reality, there may be a range of other factors that impede meeting the policy expectations, and which may otherwise trigger zero on-site provision and/or off-site financial contributions in line with policy HO5. Examples include, but are not limited to:

- *Inability to secure a Registered Social Landlord* to manage affordable units; a lack of RPs willing to purchase these units means developments can become stalled. Sometimes developers may struggle to provide the specific mix or type of affordable housing tenure required by the local authority in that particular location, further hindering agreement.

- *Section 106 and CIL Issues:* The primary mechanism for securing affordable housing is through Section 106 agreements. However, in areas where Community Infrastructure Levy applies, developers cannot easily reduce mandatory CIL payments even if a site has viability issues, putting pressure on their ability to deliver affordable housing via S.106.

- *Policy Changes:* Frequent changes in government policy, such as the introduction of the 'First Homes' scheme, have been criticised for displacing other tenures (like social rented housing) and creating uncertainty for long-term planning and delivery of affordable homes.

- *Previously unknown or unexpected development constraints:* Some sites may have specific physical or environmental constraints (e.g., topography or utilities) that make building affordable housing challenging or impossible whilst meeting an LPA's set standards.

2.7. In order to allow the policy to address these situations and ensure that the policy is effective and justified, we recommend that the following amendments:

Current wording (with proposed amendment mark-ups shown)
Developments that do not meet the policy requirements must provide a clear justification supported by appropriate documentary evidence; for example, a viability assessment, or other technical reports that demonstrate why affordable housing delivery cannot be achieved. Within this, consideration should also be given to other methods of delivery, as set out in Policy HO5.

ID04 Question 66: Is Policy HO12 (Housing in Rural Areas) justified and effective? Is it consistent with, and does not duplicate, national policy?

2.8. We consider that in order to be justified, positively prepared and consistent with national policy, the policy wording needs significant amendments across several of the criteria.

Criterion 1 c):

2.9. The wording of this criterion permits development within or adjoining "key" settlements. However, this is inconsistent with national policy because the Framework provides a variety of exceptions that permit new rural housing development within *all types of* settlements (irrespective of their ranking status in the LP hierarchy) providing that they are sufficiently sustainable and meet other relevant criteria (i.e. green belt).

2.10. Additionally, the policy refers to the term "limited" but this is not defined. In the context of "limited infilling" this is often taken to mean less than 5no. dwellings, often typically 2-3no. However, in the context of a small rural housing sites, this number could feasible be materially greater than this and yet still be acceptable in a village or hamlet with amenities. The key focus should not be on restricting delivery to a 'limited' quantum, but instead of ensuring that the quantum is an appropriate in scale for the context and location (i.e. a large village could feasibly accept more new housing than a small one).

2.11. Furthermore, the wording is generally too 'clumsy', and therefore at risk of introducing subjectivity [uncertainty] that is likely to increase appeals against unfavourable LPA decisions. For example, the word "immediately" is superfluous – if land is adjacent, then it already meets the tests in national policy.

2.12. We recommend amendment of the wording to:

Current wording (mark-ups shown)	Proposed wording (Clean)
Supporting ~~a limited amount~~ ~~of~~ new housing development of an appropriate scale (relative to the existing spatial character of the locality) within or ~~immediately~~ adjoining ~~the built confines of in~~ ~~key~~ recognised settlements, so as not to result in isolated rural dwellings within these areas;	Supporting new housing development of an appropriate scale (relative to the existing spatial character of the locality) within or adjoining recognised settlements, so as not to result in isolated rural dwellings within these areas;

Criterion 1:

2.13. The draft policy is entirely lacking in a criterion that permits redevelopment of Previously Developed Land (PLD) / brownfield sites in the rural area as per paragraph 89 of the Framework. The Framework confirms that redevelopment of PDL sites that are physically well-related to existing settlements should be permitted, irrespective of whether they are within, adjacent to or even beyond the confines of that settlement. This is shown as extracted below [our emphasis highlighted]:

> 89. Planning policies and decisions should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport. In these circumstances it will be important to ensure that development is sensitive to its surroundings, does not have an unacceptable impact on local roads and exploits any opportunities to make a location more sustainable (for example by improving the scope for access on foot, by cycling or by public transport). The use of previously developed land, and sites that are physically well-related to existing settlements, should be encouraged where suitable opportunities exist.

2.14. There are many such small and medium sites in rural locations; ranging from MOT garages, disused hotels and pubs, petrol fitting stations, equestrian yards and similar. Redevelopment of those sites at an appropriate scale could provide a valuable contribution to housing delivery if the council were to amend the policy wording.

2.15. In order to achieve consistency with national policy and be positively prepared with the intention of boosting housing land supply by enabling such windfall sites, a revised approach is warranted. And, for the plan to be effective, justified and consistent we recommend a new policy criterion 1 e) is required:

Proposed wording (New Criterion 1e)
e) Supporting new housing development of an appropriate scale (relative to the existing spatial character of the settlement) on Previously Developed Land, and other land that is occupied by permanent and substantial buildings; where the land is well-related to existing settlements and which is demonstrated to be sufficiently sustainable, having regard to the Sustainable Travel polices found within Chapter 11 of the Local Plan.

Criterion 2 (infilling):

2.16. This criterion seeks to restrict limited infilling to only a single self-build dwelling, or custom-build dwellings. There is no justification to restrict the quantum to a single unit. Small numbers of infill sites, less than 5no. dwellings, often typically 2-3no. open market dwellings in sustainable rural locations can make valuable and important contributions to housing delivery as is explained in paragraph 73 of the Framework.

2.17. Furthermore, cross-refence to the Rural Settlement Paper is unduly restrictive. The inclusion appears to be based on an incorrect assumption that every in-fill site within the borough has been assessed to determine its appropriateness; this is clearly not the case. There will be many such infill sites that have received no consideration at all within the Paper and which should be legitimately considered as part of the planning application process. It is sufficient for the policy to 'have regard to' the Paper just as it would an SPD and compliance with it need not be mandatory.

2.18. Lastly, long-term restrictive occupancy conditions are unlikely to be appropriate for self-build or custom-build dwellings. It is only the first occupant who needs to be a custom/self-builder...beyond this, the dwelling will revert to being open market. Conditions cannot be used to tie ownership and occupation together; only legal agreements can achieve this, and so the 'tail-piece' of this criterion should be deleted.

2.19. For the plan to be effective, justified and consistent we request amendments to criterion 2:

Current wording (mark-ups shown)	Proposed wording (Clean)
Supporting sustainable infill development for a limited number of open market dwellings, ~~single~~ self-build and/or custom-build dwellings within the built confines of existing settlements ~~as identified in~~ whilst having regard to the Rural Settlement Paper. ~~These~~ Self-build or custom-build dwellings will require a legal agreement/conditions to ensure that the dwelling is delivered as a self-build or custom build dwelling ~~including appropriate occupancy conditions.~~	Supporting sustainable infill development for a limited number of open market dwellings, self-build and/or custom-build dwellings within the built confines of existing settlements whilst having regard to the Rural Settlement Paper. Self-build or custom-build dwellings will require a legal agreement/conditions to ensure that the dwelling is delivered as a self-build or custom build dwelling~~.~~

Criterion 4 g) (permitted development rights):

2.20. This criterion states that permitted development rights will be automatically removed from replacement dwellings. This is inconsistent with national policy in paragraph 55 of the Framework that specifically dictates that PD rights should not be removed unless there is clear justification as shown extracted below:

> 55. Similarly, planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so.

2.21. Granting approval for a replacement dwelling is not a clear justification in and of itself – it is not carte blanche to remove PD rights simply by obtaining a grant of permission.

2.22. Often, these dwellings will be an improvement over what exits there already. As per paragraph 54 of the Framework which discusses Article 4 Directions, removal of PD rights should only occur in situations where, for example:

- removal is necessary to avoid unacceptable adverse impacts
- necessary to protect local amenity or the well-being of occupants of the area
- is based on robust evidence, and applied to the smallest geographical area;
- applied to specific classes of potentially harmful development only.

2.23. Householder permitted development rights are already subject to further restrictions in respect of dwellinghouses on article 2(3) land (Conservation Areas, National Parks and AONBs). Had government intended to remove or restrict these rights elsewhere, such as in rural areas, it would have done so within the Order. Certainly, there is reasonable argument to suggest that PD rights should be removed from all replacement dwellings in the rural area but that replacement dwellings on Article 2(3) land are unaffected and can retain those rights – that is plainly an illogical and disproportionate approach.

2.24. Removal of PD rights by the LPA should be rare, targeted and specific. Directed solely at preventing reasonably foreseeable harms that could arise in future on a case-by-case basis. This was a point articulated by Sarah Clover of Counsel at Kings Chambers:

> *"It is not appropriate to impose conditions, or obligations in order to achieve outcomes unrelated to the proposed development. Eg: the PPG confirms, in respect of the test as to whether a condition is relevant to the development permitted that 'a condition cannot be imposed in order to remedy a pre-existing problem or issue not created by the proposed development.' The same argument applies to a problem or issue that post-dates the proposed development – ie: future development. ...*

The analysis continued: …*"Conditions can be used to curtail or remove certain permitted development rights. However, the Planning Practice Guidance confirms that such conditions "may not pass the test of reasonableness or necessity" and in order to be imposed the condition needs to be justified and the permitted development rights to be withdrawn/curtailed clearly defined."*

2.25. The point is made that PD rights cannot be removed for all and any rights whatsoever. Conditions must meet the tests within paragraph 58 of the Framework and Regulation 122(2) of the Community Infrastructure Levy Regulations 2010. The conditions must be necessary to make the development being applied for, acceptable, or permission should be refused.

> 58. Planning obligations must only be sought where they meet all of the following tests[25]:
>
> a) necessary to make the development acceptable in planning terms;
>
> b) directly related to the development; and
>
> c) fairly and reasonably related in scale and kind to the development.

2.26. For the Plan to be consistent with national policy and justified, the wording of Criterion 4 g) should be amended as follows:

Current wording (mark-ups shown)	Proposed wording (Clean)
In appropriate instances, to be determined on a case-by-case basis, relevant Classes of Permitted development rights ~~will generally~~ may be removed from replacement dwellings in the rural areas; if it is judged that exercise of those rights could foreseeably create harm to amenity and/or other polices within this Plan.	In appropriate instances, to be determined on a case-by-case basis, relevant Classes of Permitted development rights may be removed from replacement dwellings in the rural areas; if it is judged that exercise of those rights could foreseeably create harm to amenity and/or other polices within this Plan.

Criterion 5 e) (conversion and extension to heritage assets):

2.27. This criterion states conversion of heritage assets should only occur within the existing shell of the building *unless* the proposed extension is enabling development. This imposes a threshold test higher than is required by the Framework.

2.28. The framework permits extension and alteration to heritage assets (both designated and non-designated) providing that the proposals do not cause harm to the asset; and/or that the harm is less than substantial and is otherwise outweighed by the befits of the proposals.

2.29. In order to be consistent, this criterion should be amended as follows:

Current wording (with proposed amendment mark-ups shown)
The conversion of heritage assets should be contained within the existing building(s) without extension, unless i) the proposed new development is demonstrated to be enabling development to secure the future of the heritage asset(s); and/or ii) the proposals to extend the building do not cause harm to the asset; or iii) that the harm is less than substantial and is otherwise outweighed by the benefits of bringing the asset into beneficial use.