

Please Reply to: Derby  
Our Ref: NDA/CSL/C9842  
Your Ref: The Poyser Family (No 1043)  
Date: 8 June 2016



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Via email [programme.officer@derby.gov.uk](mailto:programme.officer@derby.gov.uk)

Dear Carmel

**Examination of the Derby City Local Plan Part 1 – Core Strategy: Supplementary Information on Derby Five Year Housing Land Supply**

I write further to the formal hearing sessions with regard to the Derby City Local Plan Part 1 and in particular the session held on 27 April 2016 where the Inspector had a number of queries in relation to the Council's five year housing land supply position.

Following the hearing session the Inspector wrote to the Council on 29<sup>th</sup> April (EX028) and 5 May 2016 (EX031) outlining the further work which the Council had agreed to undertake in respect of 5 year housing land supply matters. This work was published on 19 May 2016 (EX038, EX039 and EX040). Thank you for the invitation to submit comments on this new submission from the Council on behalf of our clients, I would be grateful if you could pass this letter to Mr Moore for his consideration.

DPDS has carefully reviewed the information submitted by the Council and would initially state that as per its previous "revised" submission under EX16, rather than presenting additional justification, the Council has presented another significant revision to its position.

Notwithstanding this, it is my client's view that that our original submissions to the hearing sessions and the points made verbally at the hearing sessions still stand and their position has not changed in that respect.

At this stage, my client's consider that to undertake a further "line by line" analysis of this latest submission, which includes and advances wholly new material, will only lengthen the Examination process further and add cost and complexity for those participants within the process. As such, my focus for these comments is on the "principle" issues relating to the letters dated 29 April 2016 and 5 May 2016.

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My clients have been key participants in the Examination with regard to housing land supply matters. Their key objective has been and remains to positively assist the examination process to contribute towards achieving an outcome which results in a Local Plan which has been positively prepared and justified, and is effective and consistent with national policy.

To this end my clients wish to make the following comments to assist consideration of the “Supplementary Information on Derby Five Year Housing Land Supply” submitted by the Council on 19 May.

### Rebasing the Land Supply to 2016

The Poyser Family wish to reiterate their comments set out in their Supplementary Statement to Matter 2: Housing: Main Issue 2(ii) (EX23) in respect of the appropriate base date of the 5 year housing land supply calculation.

Firstly, my clients welcome acknowledgement from the Council within EX35 at paragraph 2.1.1 and Appendix A, that the calculation presented within EX23 is sound and that based upon the evidence presented to the examination within EX16 and other elements of the Council’s evidence base, an adequate supply of housing land cannot be demonstrated. For the avoidance of doubt, the calculation presented within EX23 remains my client’s favoured starting point from which to consider the five year housing land supply.

However, from paragraph 2.1.2 – 2.1.9, the Council continue to advance justification for its “re-basing” of the calculation to begin in 2017.

As stated in our previous submissions, housing land supply calculations are a “snapshot in time”. It is my strongly held view that as part of undertaking a robust calculation of housing land supply, it is vital not to confuse and artificially influence the objective recording of “actual completions”, which generate the “requirement” side of the land supply calculation, with “likely completions” or projections, which must only form part of the professional judgement to inform the “supply” side of the calculation.

In my opinion, to allow an element of “assumption” (i.e. the “assumed” completions for 2016-17) to inform what should be an objective element of the assessment, is inappropriate and the Council has not directly challenged this point through its recent submissions. Rather the justification provided by the Council is based around the following:

- A former Audit Commission National Indicator which is acknowledged to be “no longer in force”;
- A concern that the plan (if found sound) would be adopted part way through a monitoring year and that this would be a “strange thing to do in the context of a forward looking Development Plan”; and,
- There has never been a challenge to this approach before.

Dealing with each of these points individually, firstly it is readily acknowledged that the National Indicator is no longer in force, this is because it no longer forms part of Government Policy in the NPPF era.

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If it were appropriate to use this methodology, it would be reflected in either the NPPF, the associated Planning Practice Guidance or evidenced within appeal decisions and reports produced by Planning Inspectors when considering Local Plans. I have been unable to find any examples of this methodology elsewhere in the Country and indeed the Council has not sought to support its position with examples.

Secondly, whilst my clients acknowledge and support a “forward looking Development Plan”, this misses the point that such a plan must be informed wherever possible by robust evidence and not unduly influenced by untested assumptions. Unless a plan were to be adopted on 1 April<sup>1</sup>, there would never be a “full five year supply monitoring period on adoption” and whilst the Councils ambition for this is understood, it is wholly unrealistic.

Thirdly, the statement regard to “challenge” by the Council is misconceived, our client’s position on this aspect as explained at paragraph 2.6 to EX23.

On this basis, therefore, it remains inappropriate that the housing land supply calculation should “commence” in 2017 and should reflect the correctly based “requirement” side of the calculation which is March 2016. This provides a certain and logical start point for basing the calculation to be undertaken as it is recorded information and not open to undue influence from assumptions that are yet to be proven to be realistic.

Basing the Plan on such assumptions could crucially effect the soundness of the Plan and in particular the need to demonstrate a 5 year housing land supply from the point of adoption. If the Plan is not properly effective from adoption and it becomes quickly apparent that a 5 year housing land supply cannot be demonstrated then under Paragraph 49 of the NPPF the relevant policies for the supply of housing would be considered out-of-date. It is therefore considered sound to use “actual completions” and seek to allocate further land to make up any identified shortfall.

In this regard the Council at Paragraph 2.1.7 of their statement state that identifying additional sites “**would cause significant delay in adoption of the plan**”. However, as has been advanced throughout the Local Plan process, the Poyser Family submit that a positive move to reallocate the 2.4 hectares of B1 employment land at Rykneld Road, Littleover (AC20) could (for reasons provided to the examination), deliver circa 70 dwellings in an area already identified as being a sustainable location for housing, and in particular a location not hindered by a “Green Wedge” designation. Reallocation of this land is unlikely to cause any significant delay in the process and will support the overall soundness of the plan.

#### Details of the basis for the Council’s conclusions on individual sites

The Poyser Family welcome the additional information with regard to the sites the Council has included in its 5 year housing land supply and the acknowledgment, in a number of cases, that their original assumptions regarding some sites were incorrect. However, notwithstanding this additional information, the Poyser Family in most cases stand by their original assumptions put forward in the Statement to Matter 2: Housing: Main Issue 2(ii) regarding many of the sites but wish the following aspects to be considered.

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<sup>1</sup> Unless “interim” monitoring information is provided at say 6 months

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Whilst not wishing to move the focus from the Council's revised submission, it should be re-emphasised what Government Guidance contained within the Planning Practice Guidance (PPG) states with regard to the deliverability of site.

Paragraph: 031 Reference ID: 3-031-20140306 of the PPG asks and answers **“What constitutes a ‘deliverable site’ in the context of housing policy?”** This includes sites allocated for housing within development plans. It states with regard to sites to be delivered within the 5 year supply that **“Local planning authorities will need to provide robust, up to date evidence to support the deliverability of sites, ensuring that their judgement on deliverability are clearly and transparently set out”** (my emphasis).

As was set out extensively in the Poyser Family's previous submissions the PPG acknowledges that **“The size of sites will also be an important factor in identifying whether a housing site is deliverable within the first 5 years. Plan makers will need to consider the time it will take to commence development on sites and build out rates to ensure a robust five-year housing supply”**.

Paragraph 1.4 of the supplementary information lists a number of sites which are either removed from or delivery rates revised within the trajectory. The removal or revision of the following sites within the 5 year housing land supply is supported by the Poyser Family:

- R/O 8-12 Agard Street;
- Abbots Hill Chambers; and
- North Riverside.

However, with regard to the Former Derbyshire Royal Infirmary site, it is still considered that due to the uncertainty around the development of later phases of this scheme, it is only reasonable to count the reserved matters permission of 34 dwellings within the 5 year supply. Notwithstanding this, and accepting the Council's revision, should the base date of the 5 year supply be 1 April 2016 then the site would only deliver some 150 dwellings within that period.

Paragraph 1.5 of the Council's report lists sites where delivery rates have been increased following conversations with developers/agents. In fact it would appear that it remains the case that the Council's assumptions on delivery rates have been almost entirely informed by such conversations and no evidence is provided by the Council to present any objective analysis of the information received from these developers/agents. In respect of this issue, The Poyser Family stand by their original assumptions put forward in the Statement to Matter 2: Housing: Main Issue 2(ii), particularly paragraph 2.7, footnote 2 and Appendix 2 which sets out why the nature of the justification provided by the Council should be treated with caution.

Overall, my clients are still concerned that there are overly optimistic delivery rates being provided by the Council and that the Plan does not have sufficient flexibility to respond should any of the strategic sites stall or deliver slower than anticipated. It is considered that on larger sites which are already being delivered through phased development, past build rates (i.e. construction start date and number of dwellings completed in monitoring years) should be objectively examined and used to inform professional judgment on future delivery.

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It is concerning that this point was raised at the examination. It is information that the Council has readily to hand but has not presented in a readily understandable format as part of the supporting evidence to the Local Plan.

#### Evidence for the assumed number of house completions in 2016/17

As set out above, it is considered inappropriate that the housing land supply calculation should “commence” in 2017. It should reflect the correctly based “requirement” side of the calculation which is March 2016. This provides a certain and logical start point for basing the calculation to be undertaken as it is recorded information and not contingent upon unrealistic assumptions.

Whilst the Council has provided evidence for an assumed number of housing completions in 2016/17, whether this is robust or not will only be realised through monitoring.

#### Use of the ‘Liverpool’ Method

The Council have responded to Inspector’s request to provide 5 year housing land supply calculations using the ‘Liverpool’ method as an alternative to ‘Sedgefield’ method.

Whilst it is acknowledged that the ‘Liverpool’ method has been found acceptable by Inspectors in other Local Authority area it should be emphasised that despite the Inspector’s request the National Planning Practice Guidance Paragraph: 035 Reference ID: 3-035-20140306 clearly states that **“Local planning authorities should aim to deal with any undersupply within the first 5 years of the plan period where possible”**.

The Council state at Paragraph 2.5.4 that the shortfall is either 1,296 dwellings (2016 base date) or 1,237 dwellings (2017 base date) which is 2 years and 1.9 years supply respectively. The Council cite the recent High Peak Local Plan Inspectors report (March 2016) as a precedent for using the ‘Liverpool’ method. However, I dispute that Derby City Council find themselves in a “comparable position” to High Peak Borough Council and set out the reasoning below.

Firstly, High Peak Borough Council is a largely rural Authority which differs from Derby as it is not the “driver” for a housing market area and it is uniquely constrained. Paragraph 4.5.2 of the [Local Plan](#) states that:

**“There are very significant constraints on the capacity of the plan area to physically accommodate the amount of development required by the SHMA and this is particularly so in terms of environmental considerations with limited scope to amend green belt boundaries. The significant environmental constraints to development in High Peak are the Peak District National Park and any impacts on the National Park and its setting from the development of land outside it; the Green Belt taking account of potential areas which could be removed (see para. 4.53); designated areas of wildlife interest including European sites of wildlife protection; areas which are subject to significant development constraints (such as Flood Zone 3 areas); and areas identified in the Landscape Impact Assessment as being of significant landscape value”**

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By comparison Derby's growth is not directly constrained by a direct relationship with the Peak District National Park, nor does Green Belt perform the same function within the City as within the High Peak area. As such, in respect of high level constraints to development (engaging footnote 9 to paragraph 14 of the NPPF), Derby City cannot be considered "comparable".

It is also notable that the Strategy for High Peak Borough Council involves a plan "**not dependent upon a small number of large sites**"<sup>2</sup> (converse to Derby), and has brought forward a single Local Plan which includes for all of its land allocations, it is not contingent upon a "part 2" process which in the case of Derby City Council may reveal additional housing land to meet its OAN. It is also important to note that the Council has acknowledged that this part 2 process will entail review of a "principle" environmental constraint to development within the City: The Green Wedge.

The Council suggest that one reason for 'spreading' the shortfall is that "**developers are unlikely to increase delivery to unrealistic levels and will more likely gradually increase delivery over the period as market/economic conditions improve**". However, this is clearly contrary to the Council's delivery assumptions on a number of sites within the housing trajectory which The Poyser Family still contend are unrealistic and is yet to be informed by further work.

At Paragraph 2.5.7 and 2.5.13 the Council refer to lead-in times and unrealistic delivery rates on strategic sites as being a driver for using the Liverpool method. The issue of lead-in times and unrealistic delivery rates is something that The Poyser Family highlighted to the Inspector in their hearing statement to Matter 2: Housing: Main Issue 2(ii). However, despite the Council's acknowledgment of these issues they are not reflected within the overall housing trajectory.

Clearly whatever method is used, the annual delivery rates required (911 – 922 dpa Liverpool and 1,073-1,068 dpa Sedgefield) have only ever been achieved twice since 2001 (2006 -2007 and 2007 -2008) and therefore it is concluded that additional housing sites will need to be found in order to maintain a 5 year housing land supply throughout the plan period.

#### The possibility of allocating further sites to establish a 5 year supply

The Council state at Paragraph 2.7.4 that they feel "**that there are no other suitable and deliverable opportunities for allocate further site at this time if it is considered that the Council cannot demonstrate a 5 year housing land supply using on of the options put forward**". However, this is proceeded by the Council outlining how they are to approve/have approved residential development on two unallocated Green Wedge sites<sup>3</sup> prior to the adoption of its emerging plan. In any event, given that these sites contribute towards the housing land supply from 2016 onwards, they should not be afforded any immediate role in contributing towards the 5 year housing land supply.

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<sup>2</sup> Paragraph 26 of the [High Peak Borough Local Plan Inspector's Report](#)

<sup>3</sup> [Derby City Council Planning Control Committee 26 May 2016](#)

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As The Poyser Family have advocated through their representations and at the Hearing Sessions it would be more appropriate for the Council to positively endorse and release sites such as that controlled by my clients at Rykneld Road, which is a location proven to reflect the “presumption in favour of sustainable development” and its associated planning balance, it is available, developable, and deliverable in preference to the release of Green Wedge locations within the City.

#### Wider Observations and Recommendation

The Poyser Family do not agree with the assertion that as “**there is no requirement in the Framework to account for possible losses**” these should readily be dismissed. In particular this approach contradicts the Council’s statement at Paragraph 2.1.8 with regard to housing land supply which states “**the approach the Council has used is the one that we have consistently taken to calculating the supply**”. It also contradicts the Council’s own acknowledgement that “**Derby is an urban area with a high proportion of brownfield land**”<sup>4</sup> and an authority that prioritises regeneration<sup>5</sup>. As such it is illogical and disingenuous not to include losses of dwellings through demolition as part of the 5 year housing land supply calculation. The removal of these losses adds some 140 houses to the Council’s land supply; however no robust justification has been provided to support this removal and it should as a component of the calculation be included.

The Council conclude at Paragraph 3.8 that they have “**clearly tried to do all it can to meet the Sedgfield approach**” and “**allocating more sites would not provide a sustainable solution**”. As The Poyser Family submit their site at Rykneld Road, currently allocated as employment land, is a suitable and viable option for delivery of additional housing. However, it is not just a case of using the ‘Liverpool’ method to spread a pre-existing short fall to avoid allocating further sites. It is our view that even using the ‘Liverpool’ at a 2016 base date would require additional sites to come forward to deliver the flexibility required by the NPPF to enable the Council to “adapt to rapid change” as the Council are still utilising what are considered to be unrealistic lead-in time and delivery profiles on a number of sites. Evidence of this was provided to the Inspector by DPDS at Matter 2: Housing: Main Issue 2(ii).

Despite the Council’s provision of further evidence at this late stage in the process, The Poyser Family are still of the view that the Council cannot demonstrate a 5 year Housing Land Supply and their land is required to immediately assist the Council in meeting the shortfall.

I trust these comments are of assistance, should further clarification be required by the Inspector or the Council we would be delighted to assist.

Yours sincerely

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<sup>4</sup> Paragraph 2.53 of [CD025](#)

<sup>5</sup> Numerous examples throughout the Local Plan and evidence base