

## 5 Infrastructure and Implementation

*Whether the infrastructure requirements for the Local Plan are soundly based and deliverable and whether the development proposed is viable with clear mechanisms for implementation and monitoring?*

**a) Which of the items of infrastructure identified in the Local Plan or the Infrastructure Delivery Plan are critical to the delivery of the Local Plan?**

The Council's letter and accompanying attachment sent to the Inspector on 10th February 2016 sets out the infrastructure projects the Council considers to be critical. The Council has nothing further to add to this issue at this time.

**b) Have the items of critical infrastructure been justified by the evidence base?**

The Council's letter dated 10th February 2016 sets out the infrastructure projects the Council considers to be critical. The critical projects mainly relate to the provision of flood defences, education and transport. The letter also highlights the potential for site specific measures, including public green space, community and health provision and such things as sustainable drainage. These may be 'critical' in some cases to make development acceptable.

The Derby HMA Education Position Statement Update (CD028) sets out the City and County Council's justification for the provision of school infrastructure over the plan period. This should provide comfort that there is a robust justification for the measures identified in the IDP. However, as noted in our previous letter, this is very much a 'worst case' scenario and contributions toward expanded schools will only ever be required in the event that there is insufficient capacity at the time of a full application.

Transport schemes included in the Council's response are a mixture of national infrastructure projects and local schemes. The critical elements of infrastructure have been identified through strategic transport modelling and the detailed assessment of individual sites (including taking account of often parallel processes of considering planning applications on certain sites). The measures identified are, therefore, justified by robust evidence.

As stated elsewhere, the OCOR project will bring numerous benefits to the City including bringing forward a number of potential brownfield development sites. With regard to Infinity Park; the flood alleviation scheme is an integral part of the development and agreed as part of the application and developed in conjunction with the EA.

**c) What would be the consequences for the strategy if any of the critical infrastructure was not delivered? Is there sufficient clarity about the funding sources for this infrastructure? Is there sufficient commitment at this stage from the relevant organisations responsible for delivery?**

This issue is addressed to an extent in the letter sent by the Council on 10th February 2016. We feel that the IDP provides sufficient detail to provide comfort in terms of funding sources and the relative commitment from developers and other providers. It should be noted that a considerable amount of funding has already been secured to deliver the infrastructure required and there are no concerns that it will not be delivered. The IDP identifies where this is the case. It may also be useful to refer to the site-by-site schedule attached in Appendix 3 for an alternative way of presenting the data.

Obviously, we are confident that all the critical infrastructure is capable of being delivered. It is difficult to predict the consequences of any individual piece of infrastructure not being delivered without getting into unnecessary levels of detail not suitable for this statement. Clearly, if any critical infrastructure were not to be provided then it would have consequences in terms of either the delivery of a site or the level of mitigation that could be provided. The significance of any impact would depend on whether the lack of infrastructure was permanent or likely to be delayed/phased and what it was intended to resolve.

There are always likely to be ways in which the Council could address such circumstances, including:

- While not ideal, the Council could bus children to schools further from the site. This would not be as sustainable a solution as providing on-site or nearby facilities, but is an option that could be considered - particularly if phasing is an issue - to help facilitate housing growth in the shorter term;
- The Council could decide to accept lower levels of mitigation where it felt the delivery of housing was of greater importance than the impact on congestion (for example). This would clearly be dependent on the scale of development proposed and the significance of the impact at the time. Again, this would not be ideal, but is something that can be considered;
- The Council can (and does) seek to minimise risk by finding alternative sources of funding to assist in delivery;
- The Council can (and does) enter into S106 agreements which defer payments on certain elements of infrastructure to facilitate development while retaining the potential for clawback or delivery at a later date;

This issue is one of basic risk management. The policy framework allows the Council to make decisions based on an assessment of the risks associated with not delivering the infrastructure against not delivering the housing. This can be assessed on a case by case basis. If the infrastructure has city-wide implications and the strategy is not deemed deliverable without it, then this could be addressed through either the Part 2 plan or through an early review of the Core Strategy. We do not believe, however, that the risk of this is significant or likely.

**d) Is it clear what infrastructure is required for the first 5 years of the plan and who is going to fund and provide it?**

Reflecting the joint approach adopted by the HMA authorities, the Council's Infrastructure Delivery Plan mirrors the approach taken by Amber Valley and South Derbyshire. The Inspector is directed to the fifth column of each specific infrastructure delivery schedule headed "Phasing/Timescale". This sets out the anticipated delivery dates for a specific piece of infrastructure. In some instances however, (for example for the provision of certain education infrastructure) delivery is dependent on certain development targets being met. For instance the new primary school which will serve Boulton Moor will come on-stream upon occupation of Phase 1; whilst the expansion of the local primary school to serve Fellowlands Way will be provided in the first five years of the plan. It is not considered that any of the major road schemes identified in the plan are absolutely critical within the next five years and OCOR is already under construction.

**e) Have the overall transport implications of the Local Plan been adequately assessed, including any traffic congestion effects? Will the identified infrastructure requirements be effective in addressing those impacts? Is it clear how the infrastructure will be delivered?**

A considerable amount of transport modelling has taken place throughout the plan making process. Documents EB071 to EB074 demonstrate that the implications of the strategy on transport have been adequately assessed.

It should be acknowledged that it is not possible to achieve 100% mitigation for growth on this scale on an already constrained network but proposed improvements will target key areas that will support continued functioning of the transport network, despite the considerable level of growth. It should also be noted that the prioritised A38 Derby Junctions Grade Separation has significant overall benefits for the local network. This is a Highways England scheme and, although the Core Strategy is not dependent on it, it will be a significant facilitator of growth and regeneration.

The IDP provides information on the delivery of the mitigation required. A mixture of developer contributions and public money will be needed to deliver the the South Derby Integrated Transport Link (SDITL) and A52 schemes (although all sources of public funding will be investigated to try to facilitate delivery). The A38 project will be funded by Highways England. Local mitigation measures - such as local junction improvements - will be delivered by the developers of sites. It is felt that this is made relatively clear in the Plan and supporting documentation.

**f) Does the Local Plan facilitate the use of sustainable modes of transport?**

The promotion of sustainable transport measures is a key component of the Council's plan and is embedded in the Vision, Spatial Objectives and individual policies. It is not necessary to list all of the policies which refer to the promotion of sustainable modes of transport but the Inspector is specifically directed to policies CP2, CP23 and the majority of the policies in the "Areas of Change" section, most notably Policies AC11 to AC26.

Providing sustainable travel options for strategic allocations was a primary transport priority and formed the basis of the first transport mitigation test for all land use scenarios. A series of sustainable transport measures has been identified for each strategic site, to be developed further through the planning process as the impact of the sites is tested individually. In addition, strategic sustainable transport improvements have been identified such as the 'Infinity Park Derby Sustainable Transport Project' (see IDP), supporting sustainable access to key employment areas.

**g) Are proposals for transport improvements in Policy CP24 justified and deliverable?**

The Council is confident that the transport improvements contained in Policy CP24 are justified and deliverable. The schemes included in the policy are projects promoted by Highways England, derived from the work to assess the transport implications of the Core Strategy or have been long-standing, 'third party' projects supported by the Council. While there are some 'aspirational' measures within the list (for example, connectivity to HS2), their inclusion is justified as a direct result of a Council or Government objective/support and likely progress during the plan period.

**h) Would the Local Plan be unsound if the Policies Map did not make a more specific allocation for the A52/Wyvern junction improvement?**

The plan would not be 'unsound' if it did not make a more specific allocation for the A52/Wyvern junction improvement. Until relatively recently, the exact land take requirements for the A52 scheme had not been finalised. Following various options having been considered and a public consultation being carried out, the Council recently submitted a planning application for the scheme. Delaying the publication of the Core Strategy in order to wait for this confirmation was not considered necessary or appropriate. It was considered that if it becomes necessary to 'allocate' specific land for the proposal then this can be done through the Part 2 plan. Any attempt to allocate specific land at the time of consultation is likely to have been misleading and may have been more prohibitive than what was included.

The idea of the indicative location on the policies map was to provide information to the reader about where along the A52 the road scheme was taking place and to give an indication where Part 2 would be likely to have to provide more detail. Importantly, the lack of an allocation does not prejudice or blight any land that is not needed for the scheme. Policy CP24 merely states that proposals that would prejudice the implementation of the A52 would not be permitted. If a proposal comes forward within the indicative area that would not prejudice the A52 proposal then it could still be permitted, subject to all other considerations.

Now that an application has been submitted, it will be clear to all what land will not be affected by the proposal and where development may be able to come forward. As noted above, this can be addressed in the Part 2 plan if it becomes necessary to identify the 'red line' of the application on the policies map. At present, however, as there is no prejudicial impact from the policy, it is considered to be 'sound' in its present form.

**i) Should the Local Plan include reference to Strategic Rail Freight Interchanges?**

This issue is addressed in more detail in Section 5 of document CD027. There is no evidence to suggest that there are any suitable sites for a Strategic Rail Freight Interchange within the City and nobody is promoting one through this process. It is hard to see, therefore, what benefit there would be in including a reference to such facilities within the plan. Any proposals for such uses either within the City or in neighbouring authorities, can be addressed adequately through other policies without the need for specific and potentially misleading references in this plan.

**j) Do Policies CP23 and AC4 and Appendix C accord with national policy for local parking standards, including the amendments in this regard in the Written Ministerial Statement of March 2015?**

Derby City Council in its role as highway authority takes a pragmatic view towards the level of parking at any development. Each proposal is considered on its merits according to location, availability of non-car modes of transport, the requirements of the developer and local knowledge of existing parking restrictions and problems.

At paragraph 32 NPPF is clear that:

"All developments that generate significant amounts of movement should be supported by a Transport Statement or Transport Assessment. Plans and decisions should take account of whether:

- the opportunities for sustainable transport modes have been taken up depending on the nature and location of the site, to reduce the need for major transport infrastructure;
- safe and suitable access to the site can be achieved for all people; and
- improvements can be undertaken within the transport network that cost effectively limit the significant impacts of the development. Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.

As a intensively developed urban area most proposed developments in Derby will either have access to, or the opportunity to extend well established non-car modes whether that be walking and cycling routes and/or buses. Through negotiations with developers DCC seek to achieve a balance between the availability to non-car modes of travel and a level off road parking that will not either cause parking problems or exacerbate existing parking issues. It is however considered useful to publish parking guidance as a starting point for discussions with developers, architects and designer, otherwise establishing parking from first principles for each development would be resource hungry. It is suggested therefore that our proposed parking policy does accord with the latest Ministerial Statement .

**k) Has the Local Plan taken appropriate account of water resources? To what extent is water supply a constraint on development?**

The Derby HMA Water Cycle Study (EB068) and Severn Trent’s Water Resource Management Plan highlighted the decline in water availability. However, it is not considered that the supply of water is a constraint to development due to the implementation of a number of projects and service improvements by Severn Trent Water. Section 6 of the Water and Flooding Position Statement (CD026) provides further information to support the Council’s assertions and provide the necessary comfort. We have liaised closely with STW through the DtC in drawing up the plan and they have confidence that any issues can be adequately addressed.

**l) Have the implications of the Local Plan for waste water infrastructure been appropriately identified and justified?**

The impact of future development on waste water infrastructure was identified at an early stage in the plan-making process through the preparation of the Derby HMA Water Cycle Study (EB068). This particularly considered the impact of any development occurring to the south of the City and the cumulative impact on the existing sewerage system. This enabled Severn Trent Water (STW) to consider a number of solutions to address the situation, develop a suitable scheme and allocate funding for its implementation.

On-going discussions with Severn Trent following the publication of the Water Cycle Study has ensured that the company is aware of the Council’s growth strategy and have taken the necessary steps to alleviate the sewerage capacity issues experienced in the south of the City. For more detail about this issue can be found in Section 7 of the Water and Flooding Position Statement (CD026) and the Infrastructure Delivery Plan.

It should be noted that, at the time of Submission, Severn Trent were still finalising their waste water strategy and, as such, a detailed solution was not included in the Infrastructure Delivery Plan. However, on-going discussions with the water company provide the Council with a degree of certainty that a suitable solution will be implemented and phased to ensure that any issues are addressed

**m) Have the education infrastructure implications of the Local Plan been appropriately identified? Is the infrastructure deliverable and are there effective mechanisms for implementation?**

The solution for the provision of education infrastructure has been developed through on-going discussions between the County and City Council education departments. We have also worked very closely with SDDC and have, where necessary, identified joint strategies for school place planning. The Inspector is directed to the Derby HMA Education Position Statement Update (CD028) for more detail on this subject. The Council is confident that the solution for the provision of education infrastructure is deliverable and effective. This is supported by the contributions already secured by the Council from a number of planning applications for our strategic housing sites indicates that the education infrastructure identified in the IDP is appropriate and is deliverable.

**n) Have the implications of the Local Plan for other community facilities been appropriately identified? Are any necessary additional facilities deliverable and are there effective mechanisms for implementation?**

The Council considers that the Local Plan is sufficiently flexible to take account of local need when determining the provision of community facilities required to support future development. Given the compact nature of the City, the provision of new community facilities may not be necessary, and the Council would consider the enhancement of existing facilities. In addition, many of the Council's allocations form part of a larger, cross-boundary site and many of the community facilities may not be located within the City itself. Although the IDP does not set out the specific requirements for each site, the Council is confident that its approach will ensure that every community, irrespective of its location, will be supported by the required community facilities.

**o) Does Policy CP22 make appropriate provision for higher and further education?**

Policy CP22 states that the Council is committed to supporting the continued growth and development of higher and further education establishments within the City. It specifically recognises the important role of Derby College and the University of Derby and sets out a range of measures that will assist in their continued growth. This includes identifying the University District and campuses and giving support to their expansion, making it clear that development outside these locations associated with their uses will be supported in principle and stating that the Council will resist proposals that would prejudice the ability of the College, University and University Technical College from carrying out their functions. This is an extremely positive policy and it is difficult to see how the plan could make any further provision for higher and further education.

**p) Is it justifiable to include public art in Policy MH1 as necessary and appropriate infrastructure? Is the approach to securing public art in Policy CP3 justified and appropriate?**

The Inspector is directed to consider the Spatial Vision which states that by 2028, Derby will be an attractive, thriving, healthy and lively city of growth. A key component to help achieve this

aspiration is the provision of public art; creating an attractive environment will make Derby a key destination for businesses, customers and future residents.

The Council consider that the Local Plan provides a balanced and considered approach to the provision of public art. The Council will only seek to require the provision of public art where it is necessary to mitigate the visual impact of development thus making the proposed development acceptable in planning terms. It is important to note that neither the NPPF, NPPG nor CIL Regulations (2010) specifically rule out securing public art through planning obligations.

The Council's approach set out in policy CP3 seeks to encourage the incorporation of public art as part of a wider approach to delivering high quality streets and spaces. CP3 goes on to specifically encourage the provision of public art in highly visible and prominent locations, on the basis that public art can make a positive contribution to the quality and appearance of new developments and enhance general townscape. This aspiration is consistent with the Council's desire of raising overall design standards within Derby.

In some cases, particularly where major development is proposed, the provision of appropriate public art can contribute to mitigating the visual impact of development, making a proposal appropriate in planning terms. Therefore, only in cases where considered appropriate (in terms of paragraph 204 of the NPPF), CP3 makes provision for the Council to secure public art (either on-site or contribution) through legal agreement, namely S106. This is not a blanket approach and allows for viability and the appropriateness of any requirement to be considered.

**q) Has the overall viability of development been appropriately assessed? Would the requirements of the policies in the Local Plan put the viability of its implementation as a whole at risk?**

National policy guidance states that evidence on viability should be proportionate to ensure plans are underpinned by a broad understanding of viability (paragraph 10-005-20140306) and that assessing the viability of individual sites is not necessary nor is it necessary to demonstrate that all sites in the plan are viable (paragraph 10-006-20140306). The Council considers that the most sensible way to judge whether an issue has been 'appropriately assessed' is in whether the resulting policies are appropriate and fit for purpose.

The evidence produced in the PBA Viability Report (EB040) and NCS Viability Report (CD024), complemented and supplemented by other evidence, including on-going S106 negotiations and viability assessments, have led the Council to propose a suite of policies that recognise the need for a balanced, flexible and pragmatic approach toward viability and delivery. The HMA-wide reports were produced by reputable companies who have a good track record in assessing plan-wide viability and there is no reason to conclude that their methodologies or assumptions are not robust. Contrary to what may have been suggested, the NCS report in particular did consider the costs of some policy inputs, but in the main the approach taken was to try and understand what scale of funding would be available to fund obligations.

The plan-wide assessments allowed the Council to consider 'the margins' that would be available to support S106 agreements or CIL after varying levels of affordable housing and/or other policy considerations (such as building to certain sustainable homes code levels) had been taken into

account. This allowed the Council to judge what types of policy it should implement in order to facilitate development, while ensuring the needs of residents continue to be met. The assessments demonstrated that viability in Derby varies to a very significant degree depending on the nature, scale and location of development and that a 'one size fits all' or 'lowest common denominator' approach to any policy would not be an appropriate response. It was also noted that there have been some considerable differences between the plan-wide assessments - which inevitably have to reflect a 'worst-case' scenario when it comes to such things as 'threshold land values', costs, development values and returns - and the viability assessments from developers on specific sites. The latter tended toward a more optimistic outlook but still demonstrated large variations and no clear pattern.

For these reasons, policies on affordable and specialist housing, sustainable construction and energy are deliberately flexible to try and ensure the maximum benefit from development but not creating a series of non-negotiable burdens that prejudice development and restrict growth.

Notwithstanding all of the above, perhaps some of the best evidence of the viability of the plan is that it is already being implemented to a significant extent. Only one strategic site identified in the Core Strategy is either not subject to a planning application or has not got permission. The proposals coming forward for all strategic sites are in-line with the policies as set out in the Plan and either the S106 packages already agreed or being discussed reflect the emerging policy position, as highlighted in the site-by-site document. The ability to negotiate a flexible S106 package allows the Council to mitigate the most significant and important impacts of the development whilst allowing it to go ahead in a timely fashion. A more rigid policy approach could hamper the delivery of housing, while reducing requirements to the 'lowest common denominator' would mean that the impact of development would not always be mitigated; leading to unsustainable development. Neither of these outcomes meets the requirements of the NPPF.

The long standing flexible and proactive approach advocated by both the current and emerging Local Plans in terms of negotiation and consideration of individual site viability - where necessary - responds to the evidence on viability and demonstrates a pragmatic, but realistic and flexible, approach that will ensure that the implementation of the plan as a whole cannot be put at risk. All of the evidence on viability considered throughout the plan making process has led the Council to the logical conclusion that the only way that it can ensure the delivery of the plan in a sustainable way is to adopt a pragmatic and flexible approach. The policies have been drafted to ensure that the implementation of the plan as a whole cannot be put at risk.

**r) Have appropriate allowances been made for infrastructure requirements in terms of s106 contributions, the CIL or other mechanisms and the climate change mitigation requirements of the Local Plan in assessing the overall viability of development?**

This is largely addressed in the Council's response to Matter 5(q). The model used by NCS in the preparation of their Viability Report (CD024) did include and allow for the consideration of different levels of 'cost' associated with S106 and the other costs associated with policy. The main report considered the impact of different levels of S106 (in particular affordable housing contributions) and



assumed a certain level of S106 contribution. Any 'margin' left over after taking account of the 'reasonable return' to both developer and landowner is also indicative of the level of expenditure.

The NCS assessment did consider the costs associated with the 'Code for Sustainable Homes' Level 4, which was a requirement in the Draft Plan. The Council used the information provided as part of the NCS report to consider the impact of reducing the requirement and found that it had a positive impact on viability, which in turn was factored into the policy in the Pre-Submission Plan. This was amended to be more flexible and be subject to the realities of viability and delivery. This approach appears consistent with the changes to national policy made by the Government since the publication of the Draft Plan.

**s) Does the approach to infrastructure requirements comply with CIL Regulation 122 where they would be sought by means of planning obligations?**

This issue is addressed in the Council's letter dated 10th February 2016. The Council is confident that the requirements in the plan are consistent with CIL Regulation 122. While there may be occasions where certain obligations listed in the plan would not be appropriate to be required for specific applications (for example, an education contribution would not be required to make the development acceptable in planning terms), it is considered that the principle of each requirement is in line with the regulation.

**t) Do the limitations on the pooling of s106 contributions have any implications for the delivery of critical infrastructure, particularly prior to the adoption of a CIL?**

This issue has already been addressed in the Council's letter to dated 10th February 2016 (EX002). This confirms that the pooling of S106 contributions will not pose an issue in the delivery of critical infrastructure.

**u) Is it appropriate for Policy MH1 to include the possibility of 'clawback' agreements in planning obligations with the intention of increasing contributions should the viability of development improve?**

The Council considers that the inclusion of 'clawback' in Policy MH1 is, for the City, an appropriate method of ensuring that unviable development can be brought forward. The Council has operated the approach of seeking 'clawback' agreements on certain developments for some time. It is seen as an innovative and effective way of enabling 'unviable' development to proceed while giving some assurance that the mitigation required by policy has some chance of being provided over the lifetime of the development. Without such agreements, development which does not, for example, provide a reasonable level of affordable housing or other mitigation may be refused. The risk in this approach actually lies with the Council as it is accepting that the mitigation required by policy may not be provided at all. In any event, the policy does not require a clawback agreement in every case only where it would be appropriate. Clearly, some forms of mitigation secured through S106 would not be appropriate for such agreements. This is another example where the Council is trying to provide a sensible balance between delivery and mitigation.

**v) Is it appropriate for Policy CP3 to include encouragement of sprinkler systems in new residential development?**

It is important to note that the Council has specifically refrained from specifying the use of residential sprinkler systems as a requirement or standard. It is recognised that this would be contrary to national guidance. CP3 only seeks to 'encourage' their use. This reflects a Corporate aspiration of the Council to improve the safety of new dwellings. The intention of the policy has received some support from other parties, such as the County Council and Derbyshire Fire and Rescue Service.

While it may be argued that such issues are best left to Building Regulations, as there is currently no requirement for such systems in England (as opposed to Wales which has recently made it law to include sprinklers in all new housing) there seems little harm in highlighting the fact that the City Council sees merit in their provision where possible. It will not prejudice development but it will highlight a Council priority and, should it help facilitate any improvements to health and safety of new housing stock, then it will be considered a successful policy.

**w) Does the reference to compliance with Supplementary Planning Documents in Policy CP21 reflect legal and national policy requirements?**

The reference to the SPD in Policy CP21 is meant to inform the reader that the SPD sets out how contributions are calculated and what form contributions might take. It was not the intention to imply that the SPD would create policy on the provision of community facilities - either in terms of site specific requirements and/or the provision of additional facilities not set out in either Policy CP21 or Policy MH1. It is understood that this would be contrary to the relevant regulations. As described in paragraph 7.1.7 of the Core Strategy, the purpose of the SPD is to "indicate the requirements that are likely to be needed, providing formulae for calculating contributions and ensuring transparency, certainty and speed in the application process."

If the intent of this part of the policy is mis-leading or unclear, then it may be possible to remove this particular reference without undermining the objectives or outcomes of the policy. Policy MH1 provides the necessary overarching guidance on planning obligations and a cross reference to this policy may be sufficient. This is something the Council would be happy to discuss with the Inspector at the appropriate hearing session.

**x) Does the Local Plan include clear arrangements for managing and monitoring its implementation?**

The Council considers that Section 8 of the Core Strategy provides a wide-ranging and robust framework for the monitoring the implementation of the Local Plan. It contains appropriate indicators for each policy and notes the fact that these will be reviewed throughout the lifetime of the Plan to ensure that monitoring remains effective.