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The Planning Inspectorate
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RW/22.306/CL
24 January 2024

Dear Mr McCormack

Examination of the Warwick Net Zero Carbon DPD

Written ministerial statement: local energy efficiency standards – 13 December 2023

I write on behalf of Vistry Homes (West Midlands) (Part of Vistry Group) following instructions to prepare and submit representations to the Net Zero Carbon DPD in relation the Written Ministerial Statement on Local Energy Efficiency Standards Update made on 13th December 2023 by the Parliamentary Under Secretary of State (Baroness Penn).

Background

Following pre-application discussions, Vistry submitted a planning application for ‘Demolition of existing buildings and erection of 55 dwellings and associated works’ at Woodside Conference Centre, Glasshouse Lane, Kenilworth, CV8 2AL on 27/03/2023, which was assigned reference no. W/23/0415. Following revisions to the scheme and several notable delays, the application was reported to the planning committee on 14th December 2023, with an officer recommendation for approval, subject to completion of a S106 agreement. Despite, the officer recommendation, and the WMS, the committee proceeded to resolve a motion to refuse the application with a single reason for refusal as follows:

‘The emerging Warwick District Council Net Zero Carbon Development Plan Document which has reached an advanced stage, requires all new developments of one dwelling or more to demonstrate through the submission of a detailed energy statement how the development has been designed to minimise carbon emissions from new buildings within the District to support the achievement of national and local carbon reduction targets.

In the opinion of the Local Planning Authority, the submitted application fails to demonstrate compliance with the requirements of the emerging DPD in reducing carbon emissions through sustainable energy measures and increasing the performance of buildings to minimise the energy demand.

The proposal is therefore considered to be contrary to the emerging Net Zero Carbon Development Plan Document to which significant weight can be attached.'

Vistry did not make representations to the Regulation 19 consultation for the DPD, nor were they present at the examination hearing sessions. However, following recent events, this matter is now highly pertinent, and they respectfully request the opportunity to make the following comments.

Comments

The revised NPPF, issued in December 2023, re-iterates at Paragraph 6 that WMS's are (where relevant) material when preparing plans and deciding planning applications, stating that

'Other statements of government policy may be material when preparing plans or deciding applications, such as relevant Written Ministerial Statements and endorsed recommendations of the National Infrastructure Commission. This includes the Written Ministerial Statement on Affordable Homes Update (24 May 2021) which contains policy on First Homes.'

The WMS sets out the Government's current approach to improving energy efficiency on a national scale including the 2021 enhancements to Part L of the Building Regulations, and the Future Homes standard anticipated in 2025 updates to Part L. The WMS is very clear that, *'In this context, the Government does not expect plan-makers to set local energy efficiency standards for buildings that go beyond current or planned buildings regulations'*. The risk of such actions is iterated as *'The proliferation of multiple, local standards by local authority area can add further costs to building new homes by adding complexity and undermining economies of scale.'*

Considering the above, the WMS states that:

'Any planning policies that propose local energy efficiency standards for buildings that go beyond current or planned buildings regulation should be rejected at examination if they do not have a well-reasoned and robustly costed (my emphasis) rationale that ensures:

- *That development remains viable, and the impact on housing supply and affordability is considered in accordance with the National Planning Policy Framework.*
- *The additional requirement is expressed as a percentage uplift of a dwelling's Target Emissions Rate (TER) calculated using a specified version of the Standard Assessment Procedure (SAP).'*

It is essential to note, as emphasised above, that policies should be rejected at examination where they have not been robustly costed. The Net Zero Carbon DPD sets out at paragraph 11.1 that:

'In preparing this DPD, the Council has undertaken a high-level viability assessment. This demonstrates that the majority of development types, in the majority of locations are viable.'

Undertaking a 'high-level' viability assessment cannot be considered to constitute a robust cost assessment as is required by the WMS.

Similarly, Para 11.1 identifies that the majority of development types are viable in the majority of locations. However, this is not the test set out within the WMS. The WMS is clear that policies must ensure development remains viable, not 'the majority of development'.

Subsequent to the two bullet points in the WMS, the text identifies that such policies should be applied flexibly to decisions on planning applications and appeals where the applicant can demonstrate that meeting the higher standards is not technically feasible, in relation to the availability of appropriate energy infrastructure and access to adequate supply chains. Again, it is essential to note that the WMS is seeking a flexible approach to the application of the policies pertaining to the technical feasibility of achieving the requirements, not in relation to viability.

As drafted, Policies NZC2(A) and (B) are both caveated to provide exceptions to the requirements as a result of the viability of the proposals, as follows:

'Policy NZC2(A): Making Buildings Energy Efficient

Where full compliance is not feasible or viable having regard to the type of development involved and its design, proposals must demonstrate through the energy statement that carbon reductions to the greatest extent feasible through energy efficiency measures have been considered and incorporated.'

And

'Policy NZC2(B): Zero or Low Carbon Energy Sources and Zero Carbon Ready Technology

Where full compliance is not feasible or viable having regard to the type of development involved and its design, proposals must:

- demonstrate through the energy statement that additional renewable, zero and low carbon energy technologies have been provided to the greatest extent feasible and viable.*
- incorporate 'zero carbon ready' (as opposed to immediately providing 'low/zero carbon') technologies.'*

Typically, it would be encouraged that any policies imposing obligations on a developer would include a requirement for flexibility. In this instance, whilst the inclusion of flexibility is welcomed, it is highlighted that this is not compliant with the WMS (which only requires flexibility in relation to technical feasibility) and should not be a way to circumnavigate the explicit requirement that the policies must be robustly costed for development to remain viable. If the introduction of these policies were to make a number of developments unviable or introduce a need to undertake viability assessments as part of the planning application process, it would add additional cost and time to the planning process. The process of undertaking a viability assessment as part of the planning application process, including the preparation of additional evidence to support the application and paying the Council's independent viability assessor, does not appear to have been included within considerations in the viability assessment. In the inclusion of review of viability during an application process can add notable time to the determination of the application.

The effect of the uplift costs of the proposed requirements, without the flexibility in relation to viability, is that the delivery of affordable housing will inevitably be impacted. This is presented by the viability assessment underpinning

the DPD which acknowledges that there will need to be a trade-off, in some instance, if these new requirements are to be met. The report concludes that *‘the impact of these additional costs will vary between schemes and between locations within the District. Where viability is already on the margins, other policy requirements may need to be reduced in order to compensate for these costs. In lower value areas, there may be a need for a trade-off of affordable housing to accommodate the higher climate change costs. However, in higher value areas, the trade-off required is likely to be significantly lower as there will be more ‘surplus’ residual value in excess of existing use values. Where schemes are more viable and residual land values exceed benchmark land values by a greater margin, there would be no need for any reduction in affordable housing.’*

Whilst the above trade-off has been acknowledged within the viability assessment, this consideration, along with the impact on housing delivery as a whole has not been sufficiently considered and justified, in accordance with the requirements of the WMS.

It is acknowledged that the Viability Assessment tests a number of development typologies, land values and price points and that in reading the results, it is important to distinguish between typologies which are unviable prior to the NZC DPD policies being applied and those that become unviable after the NZC DPD policies are applied. The associated tables identify the impact of the climate change requirements in scenarios of seeking 40-30% affordable housing. However, in light of the potential impact on affordability, noted as a consideration within the WMS, the tables should go further to test a greater number of scenarios for lower affordable housing scenarios to fully understand at what affordable provision, development would become unviable/viable. Such further testing would allow an understanding of the likely impact on affordable housing delivery/affordability.

At present, whilst the viability assessment acknowledges that there will need to be a trade-off of affordable housing, the extent of this has not been established and therefore it cannot be considered that the DPD currently complies with the WMS.

Notwithstanding the above, it is not evident that the impact on housing supply and affordability of the DPD has been sufficiently considered in order to demonstrate compliance with the WMS. If the Council wish to proceed with the DPD, evidence should be presented in relation to this matter; this evidence should then be consulted on and examined.

Costs

It is noted that a circa 3% build cost uplift is proposed for residential developments. Whilst Vistry has not been able to undertake any detailed calculations themselves given the timings of recent events, the responses provided on behalf of David Wilson Homes, Taylor Wimpey and IM Land are acknowledged and supported by Vistry.

As set out in the response on behalf of DWH, Vistry share the concerns regarding the historic nature of the build costs relied upon, with particular reference to National Government’s Future Homes Standard Impact Assessment (Ministry of Housing, Communities & Local Government [MHCLG], 2019). Whilst this was ‘only’ circa 5 years ago, there has been significant periods of inflation in the intervening period which will have undoubtedly altered build costs.

In relation to the build costs uplift, Vistry re-iterate the concerns raised on behalf of Taylor Wimpey and IM Land at Paragraph 2.3 of Examination Document 11B, where they state:

‘There appears to be either a conflict or a change in justification of the 3% build cost uplift between the Net Zero Carbon DPD Reg.22 Consultation Statement [SUB 7] and the Viability Note Addendum. Paragraph 4.20 of the Reg.22 Consultation Statement confirms that the residential build cost uplift was calculated at a range of 2.6-2.7% but this “was rounded up to 3% to allow a margin of error”, whereas the latter Viability Note Addendum summarises a build cost uplift range of 2.6-3.5% uplift in Table 5, and states that the uplift from 2.6% to 3% allows for both “a margin of error and an allowance for the fact that some homes will use PV rather than offsetting”. It is not clear that the tested 3% build cost uplift for residential projects provides sufficient allowance for the cost of PV as the preferred solution to achieving compliance with policy NZC1 and NZC2(B).’

It is noted that a number of assumptions have been used for costs associated with existing policies and requirements, including CIL and S106. However, Vistry has concern regarding the assumptions made in relation to S106 costs as a result of changes to CIL legislation. Previously, Councils were required to publish a Regulation 123 list on which funding would be spent and Councils were unable to pool S106 contributions, limiting obligations to site-specific mitigations. These requirements were removed in 2019 and subsequently it has enabled a greater level of request for obligations. At 4.36 of the Viability Assessment, its set out that to account for residual Section 106 requirements an allowance of £13,000 per unit for residential development. However, Vitry’s planning application referred to above, was subject to requests for £26,222 per unit. The adjoining development of circa 600 is understood to have had a s106 requirement of circa £21,600 per plot. Both instances are notably higher than the assumption in the viability assessment.

Concluding Remarks

The WMS makes clear that the Government does not expect plan-makers to set local energy efficiency standards for buildings that go beyond current or planned buildings regulations. The proliferation of multiple, local standards by local authority area can add further costs to building new homes by adding complexity and undermining economies of scale.

In light of the above, Vistry consider that the emerging policies should be rejected at examination as they propose local energy efficiency standards for buildings that go beyond current building regulation standards and are not robustly costed to ensure that development remains viable and the impact on housing supply and affordability has not been duly considered and evidenced.

Yours sincerely



RICHARD WEST BA (Hons) MRTPI
Director

