



## Cheshire East Local Plan

# Site Allocations and Development Policies Document

Cheshire East Council Hearing Statement

## **Matter 6: General Requirements**

**Hearing date: Thurs 21 Oct 2021**

## Introduction

1. This hearing statement has been prepared by Cheshire East Council in response to the Inspector's Matters, Issues and Questions for the Examination Part 1 [INS/08] and addresses Matter 6: General Requirements.
2. The abbreviations used in this hearing statement are as defined in the Inspector's MIQs.

## Key Documents

3. The following key documents are relevant to this response:
  - Revised Publication Draft SADPD Sustainability Appraisal [ED 03]
  - Local Plan Site Allocations and Development Policies Viability Assessment [ED 52]
  - SADPD Regulation 20 Representations Statement (Consultation Statement Part II) [ED 56a]

## Design Principles (Policy GEN 1)

### **Q100 Does Policy GEN 1 serve a clear purpose, avoiding unnecessary duplication of policies in the NPPF and in the LPS, including Policies SD 1 and SD 2?**

4. As highlighted in the council's 'SADPD Regulation 20 Representations Statement (Consultation Statement Part II)' [ED 56a] (p165), Policy GEN 1 provides a clear purpose in building on the content of strategic LPS Policies SD 1 'Sustainable Development in Cheshire East' and SE 1 'Design'. The policy provides further detailed guidance and design principles for an applicant to consider at an early stage to ensure good design. Policy GEN 1 acknowledges the importance placed on design to contribute to the borough's quality of place and local identity, including through inclusive design principles. The importance and purpose of policy GEN 1 is highlighted in the Equality Impact Assessment, in section G of the Revised Publication Draft SADPD Sustainability Appraisal, where policy GEN 1 is considered to have a positive impact upon all of the protected characteristics of the Equality Act 2010 ([ED 03], Table G.2, p 347).

### **Q101 Is principle 1 of Policy GEN 1 clearly written and unambiguous, so it is evident how a development proposal would 'fail to take the opportunity to support the quality of place of the local area'? Is the policy justified in only determining failure against this principle as a basis for resisting a proposal on design grounds?**

5. The policy is clear and unambiguous, and it is evident how a decision maker should react to development proposals. The policy is not written in an overly-prescriptive manner to allow the decision-maker to exercise an appropriate degree of professional judgement, taking into account the circumstances of each case. The preceding section of criterion 1 of Policy GEN 1 details the

factors that the decision maker may consider in making a judgement including matters of scale, height, density, layout, grouping, urban form, siting, good architecture, massing and materials. Criterion 1 of Policy GEN 1 is consistent with ¶134 of the NPPF, in stating that development that is not well designed should be refused.

**Q102 Are Policy GEN 1 and its supporting justification consistent with the updated national policy on design set out in the 2021 NPPF, in particular with regard to the National Model Design Code and the emphasis on development reflecting local design policies and guidance?**

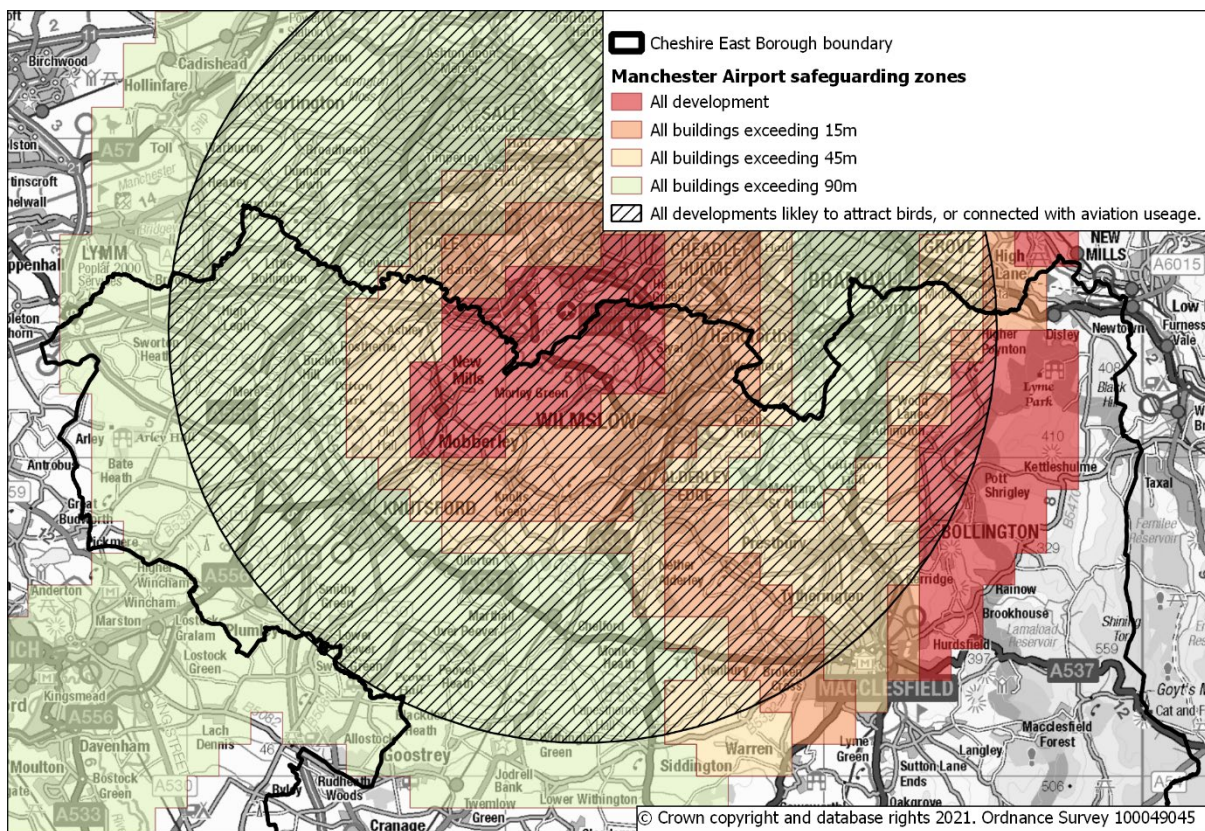
6. Policy GEN 1 is consistent with updated national policy on design. The policy seeks to support high quality, beautiful and sustainable places in line with ¶126 of the NPPF. ¶3.4 of the supporting text is clear about the need for effective engagement with relevant stakeholders throughout the design process, in line with ¶126 of the NPPF. Policy GEN 1 also sets out clear expectations around design considerations and makes appropriate references in ¶3.5 to the Cheshire East Design Guide SPD. This is consistent with the approach taken in ¶¶127–128 of the NPPF. Policy GEN 1 also reflects several criteria listed in ¶130 of the NPPF, for example, ensuring development functions well, establishes a strong sense of place and creates places that are safe, inclusive and accessible.
7. ¶3.5 of the supporting text refers to the national design guide alongside various other documents, including area specific design guidance; this could feasibly include the consideration of design codes. Design codes are also referred to, in the supporting text (¶3.4), as a tool that can be used to support the delivery of larger proposals.
8. The supporting text (¶3.6) also refers to Building for Life 12 (or as updated) as a design assessment framework. This approach is also consistent with ¶133 of the NPPF in ensuring that councils have access and make appropriate use of tools for assessing and improving the design of development. Building for healthy life is specifically referred to as an assessment framework in the NPPF; this is the new name for Building for Life 12.

## **Aerodrome Safeguarding and Airport Public Safety Zone (Policies GEN 5 and GEN 6)**

**Q103 Regulation 9 of the of the Town and Country Planning (Local Planning) (England) Regulations 2012 requires the adopted policies map to illustrate geographically the application of policies in the development plan. In the light of this, does the Council consider that, to ensure legal compliance, those parts of the Aerodrome Safeguarding area and the Airport public safety zone for Manchester Airport that are located within Cheshire East and to which Policies GEN 5 and GEN 6 apply, should be shown on the Policies Map?**

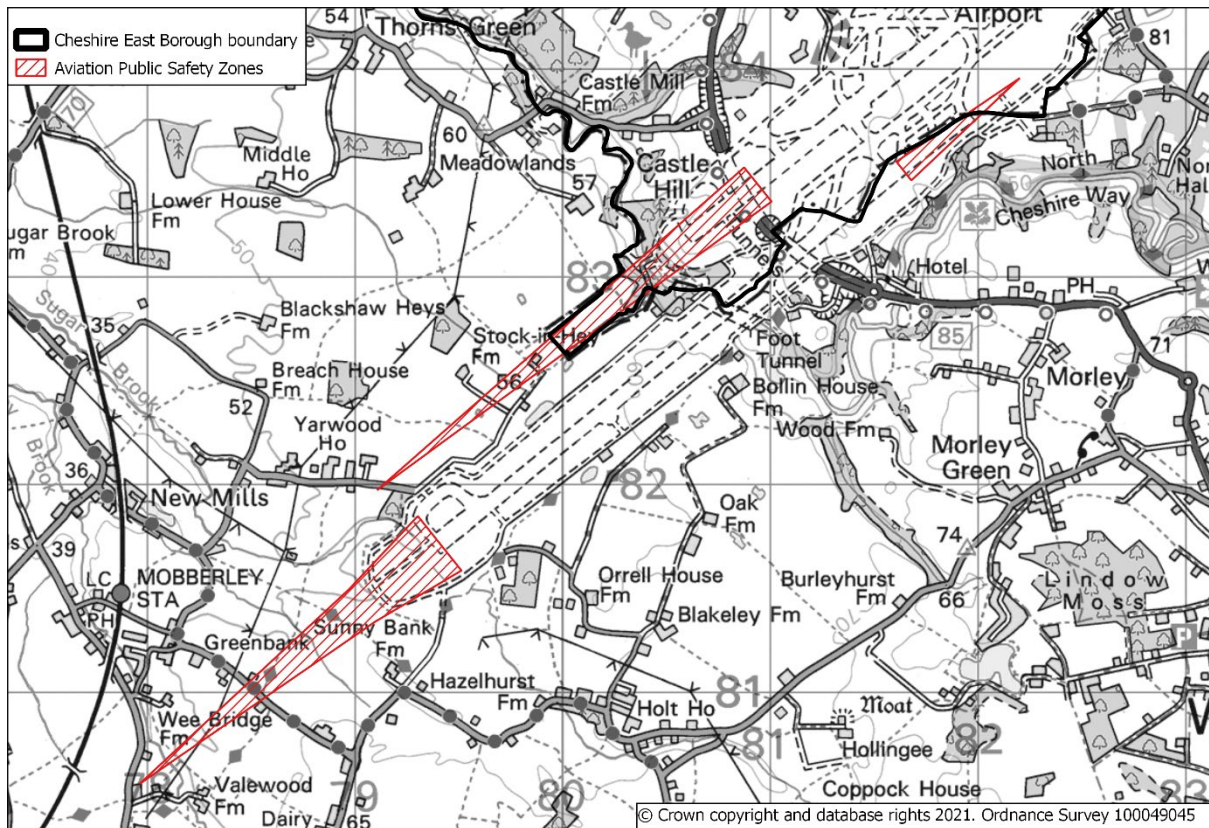
9. There are several different and overlapping safeguarding zones for Manchester Airport, covering large parts of the borough. These safeguarding

zones are shown below in Figure 1 and define the different areas in which Manchester Airport is a statutory consultee for planning applications for different types of development.



**Figure 1: Manchester Airport safeguarding zones**

10. The safeguarding zones define the areas in which the council must consult Manchester Airport on applications for the various types of development, but they do not specifically define the area in which Policy GEN 5 ‘Aerodrome safeguarding’ applies. Policy GEN 5 would apply to any development that would adversely affect the operational integrity or safety of Manchester Airport or Manchester Radar, regardless of whether Manchester Airport is a statutory consultee for the particular type of development proposed (by virtue of it being located in a safeguarding zone). The council does not consider it necessary to show the various safeguarding zones on the adopted policies map to ensure legal compliance.
11. The airport public safety zones (as shown below in Figure 2) are not defined by the plan, but they do illustrate the area in which Policy GEN 6 ‘Airport public safety zone’ applies.



**Figure 2: Airport public safety zones**

12. The airport public safety zones could be shown on the adopted policies map for information, if necessary.

## Recovery of Forward-Funded Infrastructure Costs

**Q104** Have the costs associated with forward funded infrastructure been taken into account in the viability assessments of the LPS and SADPD? If so, do these demonstrate whether or not allocations and future windfall development on which the local plan relies can viably support those costs?

13. The proportion of costs that the development industry is expected to meet, to fulfil policy and infrastructure requirements identified in the Cheshire East Local Plan, have been taken into account in the viability assessment work undertaken for the LPS (through the Draft Core Strategy and CIL Viability Assessment (October 2013)<sup>1</sup> and SADPD (Local Plan Site Allocations and Development Policies Viability Assessment [ED 52]). The Infrastructure Delivery Plan<sup>2</sup> that accompanies the LPS identifies the overall strategic infrastructure needed to deliver the Local Plan development requirements. This includes infrastructure, particularly strategic road schemes, that will involve forward funding on behalf of the council. The viability assumptions underpinning this were found sound in the examining Inspector's report [BD 05] (¶¶119&120) and the LPS was subsequently adopted. Many of the 61

<sup>1</sup> <https://www.cheshireeast.gov.uk/pdf/planning/spatial-planning/en-ldf-viabilityassessment.pdf>

<sup>2</sup> <http://cheshireeast-consult.limehouse.co.uk/file/4094467>

strategic sites in the LPS are active in that they have received planning permission, are under construction or have been developed, implying that there are generally no viability issues on the allocated LPS sites. This includes sites where S106 contributions to forward funded infrastructure have been secured and are being sought. A total of 20 sites in the LPS have a reference in the policy to the need for a contribution towards specific road infrastructure, much of which is being provided by the council through forward funding.

14. The SADPD viability work has considered the costs associated with new national policy requirements introduced since the LPS was adopted, the additional policy requirements introduced by the SADPD itself and the costs associated with the CIL charge that was implemented in Cheshire East in March 2019. It represents the council's up to date viability evidence to support the proposals contained in the SADPD and has been undertaken in accordance with planning practice guidance on viability. The SADPD viability work uses the average contribution of £5,202 per housing unit towards infrastructure costs previously used in the viability work related to the council's adopted CIL charge. The Local Plan Site Allocations and Development Policies Viability Assessment [ED 52] uses a typology approach (rather than site specific viability assessments) and only considered the allocations in the SADPD since the LPS strategic sites are already adopted. It is accepted that strategic sites are likely to be subject to higher strategic infrastructure and mitigation costs. However, sensitivity testing of up to £25,000/unit was carried out in this regard (Table 10.4) and it was concluded that "*the analysis shows that, should higher levels of developer contributions be sought, there is only limited impact on the number of typologies that are shown as viable*" (Local Plan Site Allocations and Development Policies Viability Assessment [ED 52] ¶12.69). The cumulative cost of other planning policy requirements has also been factored into the assessment. CIL is assumed to be payable at the prevailing rates as per the Instalment Policy.
15. Within the viability appraisal, the S106 payments are assumed to be payable pro-rata through the life of the scheme. The precise timing of payments made will be a matter for agreement between council and the developer. It is accepted that sometimes the S106 payment may be more than the £5,202/unit assumption used, equally sometimes it will be less. The £5,202/unit figure is non-specific, it is simply an average of historic payments. It could be for education, highways or open space (or a mix of these); equally it could be for immediate requirements, or for forward funded requirements.
16. The findings indicate that it may be challenging to deliver average infrastructure costs and all other policy requirements on sites in the medium and low value areas based on the typology approach recommended in planning guidance. However, it is concluded in the Local Plan Site Allocations and Development Policies Viability Assessment [ED 52] (¶12.63) that policy requirements on the allocated LPS sites yet to be developed and the SADPD proposed sites can be met if the council has a flexible approach to viability, and potentially accept a lower level of affordable housing or other policy requirements. It also notes that development is coming forward in these areas. The council is mindful of this and already considers the level of off-site

infrastructure contributions, including those delivered through forward funding, using site specific viability assessments at the planning application stage if required.

17. The overall conclusion states that *"the findings of this update are broadly similar to those in the 2019 Viability Assessment. The CEC area has a vibrant and active property market. All types of residential and non-residential development are coming forward. In the current market, the analysis in this report shows that the Council can be confident that the sites in the emerging SADPD are deliverable when taking into account the full cumulative impact of the policies in the SADPD and the adopted LPS. Further the additional policies in the SADPD are unlikely to prejudice the allocations in the adopted LPS"* Local Plan Site Allocations and Development Policies Viability Assessment [ED 52], ¶12.98. This demonstrates that allocations and future windfall developments on which the local plan relies can viably support the costs to developers associated with S106 contributions including forward funded infrastructure.

**Q105 Given the guidance in the PPG<sup>3</sup> that 'it is not appropriate for plan-makers to set out new formulaic approaches to planning obligations in supplementary planning documents, as these would not be subject to examination', is Policy GEN 4 consistent with national policy in relying on SPD to set out the mechanism for calculating the cost of contributions?**

18. The council does not consider that Policy GEN 4 is advocating the use of a formulaic approach to calculating planning obligations in SPDs. A formulaic or standardised approach is a set requirement that can be applied, where relevant, regardless of the circumstances pertaining to a development. The requirements for affordable housing and open space standards are examples of such an approach that the LPS sets out through its policies. As the circumstances related to forward funding infrastructure are unique to each piece of infrastructure and the developments that rely on it to be acceptable in planning terms, it is impossible to apply this as a set formula within policy.
19. Instead, Policy GEN 4 outlines the overall approach and factors that will be used to determine the cost of the S106 obligation. The detail, by necessity, has to be provided through an SPD or through individual planning application negotiations as the calculations on S106 infrastructure contributions are not formulaic in nature but site specific. The contribution that the developer will make to infrastructure, via a S106 obligation, should be the same regardless of whether it is obtained before the infrastructure is provided or afterwards as a retrospective payment. S106 negotiations of this nature are not normally subject to public examination but the use of an SPD does make the retrospective contributions process more open and provides an opportunity for public comment. The forward funded policy is intended to provide the means to enable the retrospective negotiations around S106 infrastructure obligation. The absence of such a policy is likely to reduce the council's willingness to

---

<sup>3</sup> PPG Paragraph: 004 Reference ID: 23b-004-20190901

forward fund future infrastructure projects where this introduces an unacceptable financial risk to the council.

20. If the Inspector is content that the principle of retrospectively negotiating S106 contributions to forward funded infrastructure is acceptable but is concerned at the use of an SPD as the mechanism for doing this, then the council would seek to assist the Inspector with an acceptable alternative wording through a Main Modification. It could simply be that the policy requires the council to identify the infrastructure schemes where forward funding contributions will be sought and that S106 contributions should be negotiated on a site by site basis with the developer in the normal way where CIL Regulation 122 applies. This could include site specific financial viability considerations if appropriate.

**Q106 Policy IN 2 of the LPS states that until a CIL Charging Schedule is in place, contributions from S106 agreements may be pooled to meet the costs of strategic infrastructure, subject to meeting legal tests, but once a CIL is in place S106 agreements will be used for site specific costs and affordable housing. Given that Cheshire East adopted a CIL Charging Schedule in February 2019, is Policy GEN 4 consistent with the LPS in now seeking to secure contributions to the forward funding of non-site specific infrastructure through S106 agreements?**

21. In preparing a new development plan document the council must also take account of the latest planning policy and practice advice. At the time the LPS was adopted, CIL regulations contained pooling restrictions that limited the amount of S106 agreements that could be used to contribute to a single piece of infrastructure. It also prevented the use of both S106 and CIL monies to pay for the same infrastructure. The September 2019 CIL amendments removed these restrictions and this is reflected in the current PPG on Planning Obligations (Paragraph: 006 Reference ID: 23b-006-20190901). Therefore, while SADPD Policy GEN 4 is not entirely consistent with LPS Policy IN 2 and will supersede it in this respect, the proposed approach is consistent with current guidance, soundly based and evidenced by up to date viability work.

## **Recovery of Planning Obligations Reduced on Viability Grounds (Policy GEN 7)**

**Q107 In the light of the guidance in the PPG<sup>4</sup>, is Policy GEN 7 justified and consistent with national policy in setting out the circumstances where viability review mechanisms may be appropriate, as well as the process for how and when viability will be reassessed over the lifetime of a development?**

22. Policy GEN 7 and its accompanying supporting information is clear that the “circumstances where viability review mechanisms may be appropriate” are every case where a planning obligation is reduced on viability grounds. The

---

<sup>4</sup> PPG Paragraph: 009 Reference ID: 10-009-20190509



“process for how and when viability will be reassessed over a lifetime of a development” is detailed in ¶3.36 of the supporting information.

23. The expectation in guidance is that policy compliance is achieved by all development over the lifetime of each development provided planning policies are up to date. This policy provides some flexibility for the council to, in effect, permit, as an exception, applications that don't fully conform with policy requirements where, on balance, it is considered that they provide wider community benefits even if there is uncertainty that policy compliance can be fully achieved over the lifetime of the project. The legal agreement will strengthen the council's ability to seek compliance where a new viability assessment indicates that greater policy compliance can be achieved than originally assumed.
24. ¶38 of the NPPF requires local planning authorities to approach decisions on proposed development in a positive and creative way i.e., they should seek to approve applications for sustainable development where possible. There may be exceptional circumstances where the local planning authority considers that a proposal provides net benefits to the community that outweigh the fact that not all policy obligations have been met on viability grounds. As ¶10 of the PPG on viability states: *“In plan making and decision making viability helps to strike a balance between the aspirations of developers and landowners, in terms of returns against risk, and the aims of the planning system to secure maximum benefits in the public interest through the granting of planning permission”* (Reference ID: 10-010-20180724). The council considers that this policy helps to best achieve that balance.
25. Therefore, the council considers that Policy GEN 7 is justified and consistent with national policy in setting out the circumstances where viability review mechanisms may be appropriate, as well as the process for how and when viability will be reassessed over the lifetime of a development.

## Viability of SADPD Policies as a Whole

**Q108 Does the evidence on viability<sup>5</sup> demonstrate whether the additional costs of policies proposed in the SADPD could be viably supported by as yet uncommitted development sites in the borough, in particular for residential development? Is there any substantive evidence to demonstrate that these additional policy costs would put at risk the delivery of the development requirements in the LPS or planned development in the SADPD?**

26. The Local Plan Site Allocations and Development Policies Viability Assessment [ED 52] replaced the 2019 viability assessment that supported the initial Publication Draft SADPD. Whilst the 2019 study was still in date, the Local Plan Site Allocations and Development Policies Viability Assessment [ED 52] was commissioned to inform the further development of the emerging SADPD. Specifically, it considered the representations received to the initial Publication Draft SADPD and alterations made to the SADPD since the 2019

---

<sup>5</sup> Local Plan Site Allocations and Development Policies Viability Assessment [ED52]

Viability Assessment. It also considered the options around increased environmental standards (in response to the council's declared Climate Change Emergency). Changes to national policy were also covered.

27. The Local Plan Site Allocations and Development Policies Viability Assessment [ED 52] was prepared in line with the requirements of the NPPF and Chapter 10 'Viability' of the PPG. It followed the Harman Guidance, and was completed under the RICS Guidance (objectively and transparently) and reflects the period of consultation carried out in 2019. It remains consistent with recent updates to the NPPF and PPG.
28. The Local Plan Site Allocations and Development Policies Viability Assessment [ED 52] is based on typologies that are representative of planned development. The Residual Value for each typology is calculated based on local values and costs and making an allowance for developer's return. The Residual Value is the maximum a developer can pay for a parcel of land and still make an adequate return. For a development type to be viable the Residual Value must exceed the value of the land before planning is granted (the Existing Use Value (EUV) by a sufficient margin, to induce the landowner to sell (the Benchmark Land Value (BLV)).
29. As set out in Chapter 8, the Local Plan Site Allocations and Development Policies Viability Assessment [ED 52] considered the individual (Tables 10.6 and 10.7) and the cumulative (Tables 10.8, 10.9 and 10.10) impacts of local and national policy requirements. Four price areas were used:

Value Areas	Price Areas
Low	Crewe, Middlewich
Medium	Macclesfield, Alsager, Congleton, Sandbach and Nantwich
High	Handforth
Prime	Knutsford, Poynton and Wilmslow. Alderley Edge, Mobberley and Prestbury

**Table 1: Price areas**

30. As confirmed by the council's day to day experience, the delivery of development in some areas of the borough, particularly those in Crewe, is challenging, however in other areas the housing market is vibrant. As noted in the conclusions set out in the Local Plan Site Allocations and Development Policies Viability Assessment [ED 52] (from ¶12.98), all types of residential and non-residential development are coming forward. The Local Plan Site Allocations and Development Policies Viability Assessment [ED 52] shows that the council can be confident that the sites in the emerging SADPD are deliverable when taking into account the full cumulative impact of the policies in the SADPD and the adopted LPS. Furthermore, the additional policies in the SADPD are unlikely to prejudice the allocations in the adopted LPS.
31. Higher environmental standards, including the future homes standard, were not included in the base appraisals but tested as options. The report found that there is scope to introduce higher environmental standards in the higher

value areas, however the scope is limited in the medium and lower value areas. Having said this, the additional policy requirements do not increase the proportion of development that are shown as being unviable, so a modest increase in environmental standards is unlikely to prejudice development and delivery of the Plan as a whole. The Local Plan Site Allocations and Development Policies Viability Assessment ([ED 52], ¶¶12.70 – 12.77) notes that should the council include a policy that seeks higher environmental standards, including that set out in policy ENV 7 ‘Climate Change’, criteria 2 on energy efficiency, then policy wording should be included to refer to the standards being applied, unless not viable or feasible. This is to recognise that flexibility may be needed, particularly in lower value areas. This wording has been reflected in policy ENV 7, criteria 2.

32. Whilst the non-residential uses are not viable, they are not rendered unviable by the cumulative impact of the council’s policies, rather by the general market conditions. Employment uses (both office and industrial) are coming forward.
33. The Local Plan Site Allocations and Development Policies Viability Assessment [ED 52] notes that there is uncertainty around the impact of Covid 19 and Brexit on the economy (¶¶12.9-12.10). At the time of the assessment, the general consensus was that the impact of lockdowns and wider disturbance to the economy could lead to a reduction in house prices. In fact, house prices have increased by over 10% over the last year or so. The report notes that it is important that the council monitors these changes, particularly with regard to build cost inflation, and if necessary, makes any required changes.