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Independent Examination Belfast City Council Local Development Plan: Plan Strategy

Dear Mr Sutherland

I have been instructed by the presiding Commissioners to write to you and advise that the initial assessment of the draft Plan Strategy (dPS), including the associated evidence base, has been completed. This has given rise to some issues that, both individually and cumulatively, may have implications for its soundness. Set out below are the issues raised by the Commissioners.

To assist the independent examination (IE), further information is sought in relation to the matters outlined in this letter. If any of the required information has already been set out in the Council's submitted documents, please refer to where it can be found rather than duplicate the evidence.

1.0 Legislative Compliance and Procedural Issues

1.1 There is a statutory requirement that the LDP is prepared in accordance with the timetable. The published timetable (BCC-LDP-Tt) sets out notes on the proposed process. In relation to the Publication of the Draft Plan Strategy these notes state:

- Published for viewing (4 weeks);
- An 8 week statutory public consultation period followed by an 8 week statutory consultation on counter representations;
- Publication of the Sustainability Appraisal (including Strategic Environmental Assessment) and Public Consultations report; and
- Publication of Equality Impact Assessment and Habitats Regulation Assessment where required.

It is unclear from the papers provided whether this process was carried out. Please provide a timeline and details of how this was done in accordance with the published timetable?

- 1.2 The published timetable stated that the soundness-based examination would take place in May 2019 – August 2020 and that the Plan Strategy would be adopted in late summer 2020. These aspects of the timetable are out of date. While timing of the IE is a matter for the Commission once we receive the papers, how does the Council intend to reconcile this timeline up to the point of submission for IE in accordance with the published timetable?
- 1.3 Given the provisions of Regulation 18 of The Planning (Local Development Plan) Regulations (Northern Ireland) 2015 [the Regulations] and the Council's conclusion in paragraph 2.2.3 of Document BCC-DPS-CRepRpt that the representations submitted on foot of advertisement of the representations in accordance with Regulation 17 thereof are not counter-representations as defined by the legislation, what consideration can be given to them as part of the IE?

2.0 Status of draft BMAP 2015

- 2.1 In Document BCC-DPS-TS17, paragraph 1.5, the Council states that: “ *existing zonings and designations contained in the draft Belfast Metropolitan Area Plan (BMAP) 2015... will continue to inform decision making until the LPP is adopted*”. It is the Commission's position in the context of development management that BMAP 2015 carries no weight because it was unlawfully adopted. Account has been taken of paragraphs 3.2.8 – 3.2.11 inclusive of the dPS and the Council's position on Transitional Plan Period Designations in BCC-DPS-TS17 whereby the draft Belfast Metropolitan Area Plan (dBMAP) referred to throughout is the version that the Court of Appeal declared to be unlawful. As dBMAP 2015 is not a local development plan as defined by Section 6 of The Planning Act (Northern Ireland) 2011, what statutory justification does the Council have for the reliance placed on that document and the policies and designations therein?
- 2.2 The Urban Capacity Study (UCS) [BCC-Evi-05] at page 17, para 3.2.2 assessed site suitability in the context of dBMAP 2015 rather than the statutory development plan. In this legal context, what reliance can be placed on this element of the UCS?
- 2.3 The UCS at Section 5.4, for comparator purposes, uses dBMAP 2015 as representing existing policy. As it is not the development plan as legally defined, what reliance can be given to this comparison exercise in assessing likely delivery of windfall housing?

3.0 Sustainability Appraisal

- 3.1 At paragraph 3.8.3 of the Sustainability Appraisal (SA) [page 67] the Council said that the lack of data on the capacity of the Waste Water Treatment (WWT) infrastructure means that it is not possible to fully assess the implications of the preferred growth scenario, particularly in relation to soil quality or water quality. In this evidential context, how has the significance of the likely environmental effects of the growth strategy been assessed?
- 3.2 In document BCC-DPS-ConRep-App D7 (para 5.8, page 5) the Council states that economic growth could be accommodated within the existing urban area within proximity to existing infrastructure. How can this statement be reconciled with the

Council's position on WWT infrastructure capacity set out in the SA (see preceding paragraph of this letter)?

- 3.3 Reference has been made in evidence to the Belfast Infrastructure Study. Copies thereof have not been made available to the Commission; please supply 3 hard copies and an electronic version. Was the final version of this Study published and made available for inspection in accordance with Regulation 15 of the Regulations? What consideration can be given to this Study as part of the IE?
- 3.4 The Council now appears to place reliance on the Belfast Infrastructure Study; does it intend for the SA to be revisited in light of this? (Document BCC-DPS-ConRep-App D7, Section 6). If this is considered unnecessary, please explain the Council's rationale for this conclusion.
- 3.5 In the Council's document BCC-DPS-ConRep-App D7 (page 6, Para 6.3) it says that where the Belfast Infrastructure Study identifies constraints in the city's infrastructure, there may be a need to phase the delivery of development to align with infrastructural investment. Without evidence of such constraints being available and factored into the SA, this raises the issue of whether the Council has acted consistently with the requirements of Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment (SEA Directive) and the Environmental Assessment of Plans & Programmes Regulations (Northern Ireland) 2004. If the Council considers that the SA process aligns with legislation in this respect, please set out its reasoning for this conclusion.

4.0 Growth Strategy

- 4.1 The NI Housing Growth Indicators 2016-based, published in September 2019, set out an estimated dwelling requirement of 7,400 for Belfast for the period 2016 – 2030. This is a marked reduction in the estimated total housing need for Belfast from that presented in the dPS. How do the projected figures and supporting information in the dPS sit with the suggested reduction in housing need for Belfast?
- 4.2 In respect of housing delivery rates through different market cycles, Document BCC-Evi-02 at page 85, para 6.63 states that: "*Further detailed review of the market reality of achieving a notable uplift in the supply of housing should be undertaken to build on this evaluation*". This is reiterated at page 92, para 7.23. No evidence has been provided that this review has taken place. If it did, please provide further details of the review's nature, scope and conclusions. If not, what implications does its absence have for the growth strategy?
- 4.3 Document BCC-Evi-03, page 86, para 6.69 states that the inter-linked issues of annual completion rates and employment growth "*will require further consideration as the wider policy approach is developed*". No evidence has been provided that this review has taken place. If it did, please provide further details of the review's nature, scope and conclusions. If not, what implications does its absence have for the growth strategy?
- 4.4 Document BCC-DPS-ConRep, page 95 – reference is made to commissioned work to assess the likely market impact of emerging housing policies on different areas of the city. If this work has been carried out, please advise on its scope, findings and conclusions/recommendations. If the matter is outstanding, how can the Council be satisfied that the housing policies will support its growth strategy?

- 4.5 In response to a representation concerning density requirements for major regeneration/masterplan sites, the Council replied (Document BCC-DPS-ConRep, page 117) that these would be dealt with by the Local Policies Plan (LPP) through the use of detailed Key Site Requirements (KSRs). Without any indication of how Policy HOU4 would be applied to those sites pending adoption of the LPP, their (re)development has the potential to be blighted. How can the policy be implemented and its aims achieved in the absence of KSRs and delivered within the context of the Plan Strategy?

5.0 Windfall Housing

- 5.1 Document BCC-Evi-02, page 16, Figure 2.11 – Does the potential yield per sector take into account potential windfall sites that could accommodate < 5 units? If so, please advise where this has been taken included in the Council’s evidence base?
- 5.2 Is the potential contribution of windfall housing realistic in light of the statement at para 2.72 of document BCC-Evi-02: “*A significant majority of the potential housing land supply is provided by unzoned windfall and opportunity sites*”? If it is considered to be so, what is the Council’s evidential basis for reaching this conclusion?

6.0 Affordable Housing

- 6.1 Document BCC-DPS-ConRep-Appendix D4, page 9, Recommendation 3 identifies two matters relating to social housing that need to be resolved: procurement issues; and the implications of allocation policies on the wider development that are beyond the influence of a private developer. Without such clarity at this stage in the LDP process and with attendant implications for viability, how does the Council consider that Policy HOU 5 is both effective and deliverable?
- 6.2 Document BCC-DPS-ConRep-Appendix D4, page 12, Recommendation 5 – Although referring to the adoption of UK housing delivery models, the statement that “*the market will require a period of transition to enable future land sales to reflect the new policy context*” is arguably applicable in respect of affordable housing as defined by the dPS. If this consideration has been taken into account in assessing the deliverability not only of Policy HOU5 but also Policy HOU1, where is this found in the Council’s evidence base? If not, please explain why the Council considers that it does not have the potential to fetter implementation of these policies and adversely impact on realising the growth strategy?
- 6.3 In responding to representations in respect of Policy HOU5 at document BCC-DPS-ConRep the Council refers to the possibility of Supplementary Planning Guidance (SPG) being prepared specifically addressing how the issue of viability will be considered as part of the planning process. In the absence of such guidance, there is the potential risk that developers/investors with sites that could accommodate more than 5 dwellings may bank their land pending certainty on this point. With this important issue outstanding, please explain why the Council considers this policy to be realistic and appropriate?

7.0 Infrastructure

- 7.1 Belfast Green and Blue Infrastructure Plan – has the final version been published? It is noted that this Plan is listed as SPG at Appendix E of the dPS. In addition to forwarding 3 hard copies and an electronic copy of it to the Commission, please provide evidence that the requirements of Section 6.1 of the Council’s Statement of Community Involvement have been observed in respect of it. What consideration can be given to this Plan as part of the IE?
- 7.2 Doc BCC-DPS-ConRep, page 329 in response to concerns about the capacity of the Belfast WWTW, the Council said that where infrastructure constraints are identified, there may be a need to phase the delivery of housing or employment so as to align with infrastructure investment. It advised that this will be considered in more detail as part of the LPP informed by the *“pending Belfast Infrastructure Study”*. This is echoed at pages 46 and 51. Account has also been taken of the statement at page 120 thereof with regard to monitoring. As the capacity of infrastructure is a strategic, rather than just a site-specific, matter how does the dPS growth strategy set out a coherent strategy from which its policies logically flow when it is not currently underpinned by evidence?
- 7.3 In response to questions (Document BCC-DPS-ConRep, page 330) about the proposed use of Section 76 Agreements to secure infrastructure improvements, the Council referred to the guidance outlined in its Developer Contributions Framework. Has the final version of this document been published? If so, in addition to providing the Commission with 3 hard copies and an electronic copy, was the final version published and made available for inspection in accordance with Regulation 15 of the Regulations? What consideration can be given to this Framework as part of the IE?
- 7.4 As the Council is not the statutory provider for the strategic infrastructure improvements required to deliver its growth strategy, please explain why it considers associated policy to be realistic and appropriate?
- 7.5 How can developers make informed decisions on the basis of the dPS when it: seemingly: does not identify required infrastructure improvements: there is no evidence of associated costing; and no indication of when deficiencies therein would be remedied?
- 7.6 Document BCC-DPS-ConRep, page 335 – the Council refers to assisting NI Water with its consideration of the implications for water & sewerage infrastructure and arrangements for on-going liaison on the issue. How does the Council consider this approach to be coherent and appropriate in respect of the growth strategy?
- 7.7 Document BCC-DPS-ConRep – In response to representation about policy ENV5 of the dPS, the Council refers to SPG on SuDs measures. Given acknowledged issues about deficiencies in existing associated infrastructure to cater for the planned scale of growth, how can the Council be satisfied that the growth strategy is realistic and appropriate when alleviation measures that the adoption of SuDs might provide have not been identified as part of the dPS?

8.0 Delivery

- 8.1 Concerns about the role of Section 76 Agreements have been raised in respect of water and sewerage infrastructure at paragraph 7.3 of this letter. However, the degree of reliance placed on them in delivering the growth strategy is also an issue that requires the Council’s further consideration.

- 8.2 Document BCC-DPS-ConRep, page 429 – in response to representations about the use of S76 Agreements for road improvements the Council advised that “*such detail will be addressed on a case by case basis as part of the development management process*”. This piecemeal, discretionary approach is seemingly at odds with its stated aim for the PS (para 1.2.2) as “*to provide a level of certainty on which to base key development decisions in the area*”. With regard to the more widespread references to the use of S76 Agreements throughout the dPS, how does the Council envisage that one-off legal agreements, to be negotiated on a case-by-case basis, would afford developers clarity, consistency and certainty in making investment decisions? If it is considered that this approach would not prejudice delivery and implementation of the growth strategy, please explain the Council’s reasons for such a conclusion.
- 8.3 Document BCC-DPS-ConRep-Appendix D4, page 18 refers to potential cost issues associated with the use of S76 Agreements and identifies the issue as “*a potential impediment to development*”. What account has been taken of this in considering whether Policies SP1, HOU1 and HOU5 of the dPS are realistic & appropriate?
- 8.4 Similarly, specific concerns about the role of SPG have already been raised. However, SPG is frequently mentioned in the dPS, listed at Appendix E thereof and numerous references to its role are referred to in the Council’s Document BCC-DPS-ConRep. As with Section 76 Agreements, how could potential developers make informed investment decisions on the basis of the Plan Strategy pending publication of the suite of SPG needing to be read alongside it? Does this approach prejudice delivery and implementation of the growth strategy?
- 8.5 Document BCC-DPS-ConRep-Appendix D4, page 19, Recommendation 7 & page 23, point 7 refer to the:
- possible need for greater latitude and flexibility within the City Centre in the short-term; and
 - use of viability testing as vital in the application of new policies.

What provision has been made for these considerations in respect of the implementation and monitoring of housing policies?

- 8.6 With regard to the City Centre, Document BCC-DPS-ConRep-Appendix D4, page 21 says that a public sector intervention in the form of a market stimulus may be required in developing a residential base therein. How is this taken account of in the dPS?

9.0 Cross-boundary issues

- 9.1 Document BCC-Evi-03, page 85, para 6.80 – The overview of the Metropolitan Area Spatial Working Group meetings at Vol 11, Appendix 10 does not indicate whether the required “*dialogue with other districts sharing strong labour-force relationships with the city to ensure that assumptions relating to job growth and housing provision don’t have wider implications*” has occurred. If it has, the outcome is not clear from the Council’s evidence including the associated implications it has for job growth and housing provision. Please confirm how the Council concludes that its dPS is not in conflict with DPDs of neighbouring Councils and that the requirements of paragraph 5.4.13 of Development Plan Practice Note 6: “*Soundness*” have been taken on board.
- 9.2 This question also applies to the statement in Document BCC-Evi-03, page 83, para 6.51 that reads: “*the cross-boundary implications of the scenarios, highlighting the possible wider consequences of planning for different levels of growth*”?

10.0 Proposed modifications

- 10.1 It is noted that publication of Development Plan Practice Note 10: “*Submitting Development Plan Documents for Independent Examination*” (DPPN 10) in January 2020 followed the submission of the dPS for IE. In Document BCC-DPS-ConRep, at Appendix 7, the Council sets out a series of “*Errors and suggested minor modifications*”. Both individually and cumulatively, some of the “*errors*” may amount to changes to policy and some of the proposed amendments seem to go beyond “*minor changes*” as described by DPPN 10. In light of the cautious approach advocated by paragraph 4.6 thereof, some may represent “*focussed changes*”.
- 10.2 The attached/enclosed table briefly records the Commissioners’ initial concerns. Whilst every proposed “correction” and change would be discussed at IE, not all have been included on this table. The Council’s response to each is not necessary at this stage; it is simply provided to give a flavour of the Commissioners’ preliminary thoughts on the issue. Rather, it would be helpful if the Council would engage with paragraphs 4.6 – 4.10 inclusive of DPPN 10 and give its advice on what implications, if any, they have for this element of the IE.

Next steps

Your response should be submitted to the Commission by **4pm on 31 July 2020**. Please provide 3 hard copies and an electronic version. Upon receipt, it will be published on the Commission’s web-site.

Having considered any further submission, an exploratory meeting may be called to invite the Council and relevant parties to give their views on these matters.

I will be in contact again in due course. If you have any questions about this correspondence, please contact me using the email address or telephone number at the top of this letter.

Yours faithfully



James Bickerstaff
Programme Officer

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