

**Bath and North East Somerset Council Response to
Inspector's Initial Matters, Issues and Questions
(EXAM 4)**

**Matter 5: Other District Wide Development
Management Policies**

06 June 2022

Questions 103 - 130

Response to Inspector's Initial Matters, Issues and Questions (EXAM 4)

Matter 5: Other District Wide Development Management Policies

Please note: Where the Council is proposing modifications to policies or reasoned justifications in the submitted plan these are detailed in the responses as follows:

- **Additional and new text** proposed in **Bold**, **Red** and underlined
- ~~Deleted text~~ proposed in **Red** and ~~strike through~~

(Submitted LPPU changes are shown in **Bold**, underlined and ~~strike through~~ all in **black** text)

Policy D8: Lighting

Q.103 Is the Policy justified in seeking that lighting must be designed to protect wildlife habitats following best practice as set out in current guidance including B&NES 2018 Waterspace Design Guidance and Bats and Lighting in the UK given that these documents do not form part of the development plan?

B&NES Response:

- 103.1 The LPPU will upon its adoption form part of the development plan for B&NES, and the other documents referred to in the Inspector's Question provide guidance on how Policy D8 should be applied when considering development proposals. It is agreed that documents such as the 'B&NES 2018 Waterspace Design Guidance' and 'Bats and Lighting in the UK' do not form part of the development plan. However, they contain best practice guidance on lighting design which is a material consideration to which appropriate weight should be given in decision-making.
- 103.2 It is not the intention, or the effect, of the Policy to seek to equate the aforementioned documents with the development plan and to thus afford them additional weight than they legitimately carry. The intention of the policy wording is to expressly ensure that these documents (or the best practice guidance set out within them) are applied in the correct manner, and to guide decision makers, applicants and the public to the guidance on how policy should be applied. It is a common approach within other Local Plans to do this through referring to relevant other guidance documents within development plan policies.

Policy NE3: Sites, Habitats and Species

Q.104 Is Policy NE3 consistent with national policy as set out in the NPPF in regards to the proposed requirements for biodiversity?

B&NES Response:

- 104.1 Policy NE3 sets out several measures to ensure development does not result in significant harm to biodiversity which are in line and consistent with the approach set out within the NPPF. This can be seen with the following:

- Point one of policy NE3 requires for the provision of adequate mitigation and, should harm to biodiversity occur and where avoidance of harm is not possible, compensation (consistent with NPPF paragraph 180a).
- Point two of policy NE3 outlines exceptional circumstances where development might be permitted should it adversely directly or indirectly affect nationally designated sites including SSSIs (consistent with NPPF paragraph NPPF 180b).
- Point four of policy NE3 requires for the protection and enhancement of irreplaceable habitats (consistent with NPPF paragraph NPPF 180c).
- Point five of policy NE3 highlights opportunities to improve biodiversity in and around developments for example securing measurable net gains for biodiversity to be managed in perpetuity (minimum of thirty years) (consistent with NPPF paragraph 174d, 179b and 180d).
- The policy also defines what a wholly exceptional reason might be for a public benefit which would clearly outweigh the loss or deterioration of a habitat. This definition is in line with the NPPF while also including an example which may be infrastructure projects.

104.2 The policy wording has been reviewed by Natural England who support the policy. Policy text relating to the protection of species (agreed with Natural England during preparation of the pre-submission draft plan) had been omitted in error but has been included within the Schedule of Errata (December 2021) (see also response to Q.105).

104.3 The measures and requirements outlined by the policy align with the NPPF Section 15. Conserving and enhancing the natural environment. The policy is consistent regarding proposed requirements for biodiversity.

Q.105 Are the changes to the policy as set out in the Schedule of Errata necessary for soundness? Policy NE3a Biodiversity Net Gain

B&NES Response:

105.1 Yes, the changes to the policy as set out in the Schedule of Errata (Dec 2021) to the draft Submission Plan (Pages 31-34, Policy NE3) are necessary to ensure soundness. The paragraph was erroneously omitted from the Submission Draft of the Plan.

Q.106 What are the implications of the Environment Act 2021 for the Policy?

B&NES Response:

106.1 The Council does not consider that there are implications for the policies of the LPPU with the passing of the Environment Act 2021.

- 106.2 The Amendments to Policy NE3 and new policy as relates to the 10% Biodiversity Net Gain (BNG) were drafted in liaison with Natural England and propose to require BNG in advance of the Environment Act transitional period in response to the Council's climate and ecological emergency declarations. It is proposed to include the approach to the implementation of BNG within [the draft Planning Obligations SPD](#) and BNG guidance note.
- 106.3 There are however opportunities within the LPPU to refer to the approved Environment Act 2021 and update text references (as minor or additional modifications).
- 106.4 As such the Council proposes that paragraph 267b. should be updated as follows:

267b. The Environment Act 2021 aims to improve air and water quality, tackle waste, improve biodiversity and make other environmental improvements. All new development will be required to deliver a 10% increase in biodiversity and this will become mandatory late 2023. Biodiversity Net Gain (BNG) is the achievement of measurable gains for biodiversity through new development and occurs when a development leaves biodiversity in a better state than before development. The Environment Bill proposes to introduce a 10% mandatory requirement for biodiversity net gain for certain development types, and will set out specific requirements, including use of different DEFRA metrics for major and minor schemes, and the requirement for long term habitat management plans for BNG habitats retained, created or enhanced.

We also note under paragraph 267d. there is a missing bracket before 'Policy NE5)' which is an error and will be corrected as a minor modification prior to adoption of the Plan.

Q.107 Is the Policy justified in not setting out a transition period for the implementation of the requirement for Biodiversity Net Gain?

B&NES Response:

- 107.1 Yes. In July 2020 the Council declared an Ecological Emergency in response to the escalating threat to wildlife and ecosystems. The declaration recognises the essential role nature plays in society and the economy and provides a statement of intent to protect our wildlife and habitats, enabling residents to benefit from a green, nature rich environment. Given the Ecological Emergency it is proposed to take this policy forward as a matter of urgency.
- 107.2 Biodiversity net gain (BNG) requirements are already being delivered through Planning within B&NES. As an example, a BNG quantitative assessment using the DEFRA 2.0 metric was undertaken for a Storage and Distribution Centre at Pixash Lane, Keynsham to demonstrate the proposed improvement in biodiversity by comparing the existing to the proposed habitats. Proposed measures to achieve a net gain for biodiversity have been secured via condition. The Council will be in a position to implement BNG at the adoption of the LPPU and are currently

preparing a BNG guidance note and consulting on [proposed amendments to the Planning Obligations SPD](#).

- 107.3 Furthermore, net gain is already a requirement as set out under paragraph 174 within the NPPF which provides *‘Planning policies and decisions should contribute to and enhance the natural and local environment by: ... d) minimising impacts on and providing net gains for biodiversity...’* Other Local Planning Authorities are securing biodiversity net gain, including Cornwall where the Chief Planning Officer’s Advice Note requires that *‘From 1st March 2020 all major developments must demonstrate at least a 10% Net Gain in Biodiversity.’*

Q.108 What is the justification for requiring biodiversity net gain from minor development, which may be exempted development by the Environment Act 2021?

B&NES Response:

- 108.1 The Environment Act 2021 will require BNG within major and minor development with some limited exemptions. As noted Paragraph 174 of NPPF already requires BNG and minor development is not exempted.
- 108.2 Proposed Policy NE3a in advance of the mandatory implementation of 10% BNG (Autumn 2023) proposes *‘For minor development, development will only be permitted where no net loss and appropriate net gain of biodiversity is secured...Opportunities to secure Biodiversity Net Gain on householder developments and exempted brownfield sites will be supported.’*

Policy NE5: Ecological Networks and Nature Recovery

Q.109 Is the representation of the Nature Recovery Networks as set out in Annex 1 a reflection of that shown on the Policies Map?

B&NES Response:

- 109.1 The Nature Recovery Network map as set out in Annex 1 is a reflection of that shown on the Policies Map. The layers on the Policy Map show the different nature recovery networks. On the Policies Map each habitat type forming part of the nature recovery network protected under Policy NE5 is shown separately. For the purposes of additional clarity the individual habitat layers could be grouped under a ‘Nature Recovery Network’ heading in the Policies Map at the time of adoption of the LPPU. The nature habitat layers will be shown as individual layers as it is useful for plan-users to be able to choose which habitat types to display.

Policy NE1: Development and green infrastructure

Q.110 Would the requirements for green infrastructure be effective, such as where it may not be possible to provide new connections between existing and/or new linear wildlife habitats?

B&NES Response:

110.1 Policy NE1: Development and Green Infrastructure within the adopted B&NES Placemaking Plan sets out under clause 2 that ‘Proposals for major development should also be accompanied by:’ and under b) ‘a GI “proposal” demonstrating how GI has been incorporated into the scheme in order to increase function and improve connectivity of GI assets including links to existing local and strategic networks.’ Through the submitted LPPU it is proposed to amend clause 2 b) so that it seeks the delivery of nature based solutions and that development provides ‘new connections between existing and/or new linear wildlife habitats’. New connections can be delivered through a number of means e.g. by stepping stones (rather than direct, physical connections), new habitats or buffers. As such the policy is considered to be effective in respect of green infrastructure requirements.

Policy GB2 Development in Green Belt Villages

Q.111 Policy GB2 states that new buildings in villages in the Green Belt will not be permitted unless it is limited to infilling and the proposal is located within the defined Infill Boundary. Is this consistent with paragraph 149 of the NPPF which lists specific exemptions where new buildings are not inappropriate in the Green Belt, or the judgement of the Court of Appeal in Julian Wood v The Secretary of State for Communities and Local Government, Gravesham Borough Council [2015] EWCA Civ 1519?

B&NES Response:

- 111.1 The NPPF outlines that the construction of new buildings, other than in connection with a limited number of specific exceptions, should be regarded as inappropriate in the Green Belt (paragraph 149). Exceptions to this include:
- a) limited infilling in villages (paragraph 149e) and
 - b) another is limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use which would not have a greater impact on openness than the existing development, or not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority (paragraph 149g).
- 111.2 The NPPF states that inappropriate development is harmful to the Green Belt and should not be approved except in very special circumstances.

111.3 There is no definition of ‘village’ or ‘limited infilling’ within the NPPF or PPG. In more general terms, the PPG states:

“The development plan is at the heart of the planning system with a requirement set in law that planning decisions must be taken in line with the development plan unless material considerations indicate otherwise. Plans set out a vision and a framework for the future development of the area, addressing needs and opportunities in relation to housing, the economy, community facilities and infrastructure – as well as a basis for conserving and enhancing the natural and historic environment, mitigating and adapting to climate change, and achieving well designed places.” Paragraph: 001 Reference ID: 61-001-20190315

“The policies map should illustrate geographically the policies in the plan and be reproduced from, or based on, an Ordnance Survey map.” Paragraph: 002 Reference ID: 61-002-20190315

111.4 In terms of the adopted Development Plan within B&NES;

1. Through Policy CP8, the general extent of the Green Belt is set out on the Core Strategy Key Diagram. The detailed boundaries and inset/excluded villages are defined on the Policies Map. The policy states that openness of the Green Belt will be protected from inappropriate development in accordance with national planning policy.
2. The Core Strategy defines ‘infilling’ as the filling of small gaps within existing development e.g. the building of one or two houses on a small vacant plot in an otherwise extensively built up frontage, the plot generally being surrounded on at least three sides by developed sites or roads.
3. Within villages washed over by the Green Belt Placemaking Plan Policy GB2 (Development in Green Belt Villages) allows residential development if it is limited to infill within the defined Housing Development Boundary (HDB).

111.5 This approach in the Core Strategy/Placemaking Plan is broadly considered to reflect the NPPF. However, the NPPF simply references ‘infill’ development as not being inappropriate development in the Green Belt and also refers to the redevelopment of previously developed land (as long as there is no greater impact on openness) or replacement of dwellings (as long they are not materially larger than the existing dwelling) as not being inappropriate development.

111.6 The Local Plan Partial Update (LPPU) options document set out two policy approach options relating to amending the approach to infill development within villages washed over by the Green Belt (Policy GB2). Note that Policy CP8 remains extant in its current form.

- Option 1. To amend the reference to and definition of HDBs so that it is clear they are infill boundaries. The infill boundaries will be shown on the policies map to give strong indication as to those parts of the village where development is capable of being considered infill in nature

- Option 2. Remove HDBs defined for Green Belt villages from the policies map. Policy would just refer to residential development being acceptable where limited to infill (or redevelopment of previously developed land or replacement dwellings), to be considered solely on an individual scheme basis.

111.7 Feedback received on these two policy options from the Regulation 18 consultation was in favour of the Council pursuing option 1. This was particularly the case from responses from parish councils, where it was considered that infill boundaries provide a strong starting point for assessment of what can be considered infill development and therefore, certainty for communities. It was considered that option 2 does not provide enough clarity and would lead to more uncertainty when determining applications.

111.8 Infill boundaries have been defined to encompass all parts of the village where there are opportunities for infill development and to exclude those areas where development would not be infill. As such the infill boundaries define the areas where infill development that meets the definition in the Core Strategy would be acceptable in principle, subject to other material considerations, in order to help to avoid dispute over whether particular sites are covered by infill policies and provide certainty as to where new buildings would be acceptable in Green Belt settlements.

111.9 This approach is consistent with a plan-led system, where through plan preparation (involving consultation and community engagement) a clear strategy and framework for determining planning applications should be established.

111.10 The Council considers that it is justified in its approach taken to the revised policy GB2. Within the NPPF there is no longer any specific reference to the need to define 'infill boundaries' or distinction made between residential and other developments in this context. Nevertheless, the Council considers defined infill boundaries to be appropriate in identifying where infill opportunities exist and whether a site lies within a village, for those villages washed over Green Belt.

111.11 The judgement of the Court of Appeal in *Julian Wood v The Secretary of State for Communities and Local Government, Gravesham Borough Council [2015] EWCA Civ 1519* concluded that in deciding whether a proposed development lies within a village and comprises limited infilling a village boundary defined on a Local Plan Policies Map is not necessarily determinative and that the decision-maker will determine such matters by considering the situation on the ground on a case by case basis.

111.12 It is important to highlight the difference between the Gravesham Local Plan (adopted in 1994 and reviewed in 2007) and the approach being taken through the LPPU. In the LPPU, B&NES has defined infill boundaries and not village boundaries as was the case in Gravesham, where there was also no definition of infill in relation to the Green Belt.

111.13 As set out above infill boundaries within the LPPU are defined to identify those parts of the village where infill opportunities exist, as well as to provide clarity on where they do not exist, through assessment of the situation on the ground (see also response to question 112 below). These boundaries exclude peripheral areas where development could not be infill as it would not be filling a small gap between existing development/buildings. These boundaries are therefore consistent with the principles established in the Court of Appeal judgement.

111.14 The decision-maker should determine the planning application in accordance with the Development Plan, unless material considerations indicate otherwise. Such material considerations would include, on a case by case basis, the situation on the ground. Therefore, the decision maker can, based on the situation on the ground, come to a judgement that a specific development proposal lies within the village and is infill in accordance with the definition set out in the adopted Core Strategy. As such the Council considers its approach to be consistent with the NPPF and a plan-led approach that seeks to provide certainty for communities, and does not prevent the decision-maker from applying the principles established through the Court of Appeal judgement. Infill boundaries provide greater clarity for applicants and local communities on how Green Belt policy in the NPPF is applied in B&NES, which is the purpose of the Plan-led system.

Q.112 What is the justification for the specific village boundaries as shown on the Policies Map?

B&NES Response:

112.1 The methodology devised for defining infill boundaries for the update to Policy GB2 covers both reviewing and redefining housing development boundaries (HDB's) to become infill boundaries, and the assessment of other Green Belt settlements in order to determine whether they constitute a village and whether an Infill Boundary would be suitable. The [Topic Paper \(CD-SD037\)](#) sets out the methodology and justification used in defining the infill boundaries, also set out below.

112.2 Villages within and washed over by the Green Belt with an existing HDB were identified. The boundaries were first reviewed against the existing criteria for defining HDBs ([CD-HOU005](#)) in order to take account of any changes in circumstances since they were last defined through the adopted Placemaking Plan and then second in terms of identifying and delineating infill opportunities (see below). The Placemaking Plan HDB criteria include:

- a) Tightly defined around housing, excluding non-housing uses on the edge of the settlement (e.g. Agricultural land) which is excluded from the definition of previously developed land)
- b) May be appropriate to define two or more separate boundaries – exclude small clusters of housing (less than 10 dwellings)
- c) Include existing housing commitments

- d) Include land within residential curtilages, except large gardens or other open areas which are visually detached from settlement
- e) Exclude playing fields or open space at settlement edge
- f) Exclude large gardens or other areas at the settlement edge where development or intensification would harm character
- g) Exclude developments which are visually detached from the settlement (including farm/agricultural buildings which relate more to the countryside)
- h) Exclude holiday accommodation or other housing permitted through farm diversification schemes
- i) Exclude significant employment sites at the settlement edge

112.3 Further to the above review, opportunities for infill development were then identified and assessed to ensure the boundaries delineate only those parts of the village where infill opportunities exist and exclude areas where development would not be infill.

112.4 The NPPF exception to inappropriate development is limited infilling in villages. Therefore, through the LPPU those settlements within the District that are considered to be a village was also reviewed i.e. not simply limited to those villages that have a defined HDB in the adopted Local Plan. In order to identify villages in the Green Belt that do not have an existing HDB in the adopted Local Plan and where an infill boundary might be suitable, heat mapping was used to initially identify clusters of residential housing which include 10 or more dwellings. These settlements were considered as 'candidate villages' for an infill boundary.

112.5 The next stage is to consider whether these housing clusters constitute a village and therefore, whether an infill boundary could be defined.

112.6 Within a recent planning appeal (APP/B3438/W/18/3211000) an Inspector considered what constituted a village, and the difference between a village and a hamlet, using the Oxford Dictionary definition. The inspector stated:

"The Oxford Dictionary defines a village as a group of houses and associated buildings, larger than a hamlet and smaller than a town, situated in a rural area. It defines a hamlet as a small settlement, generally one smaller than a village and strictly (in Britain) one without a Church"

112.7 The approach to defining a village as part of the update to Policy GB2 has therefore been informed by this appeal judgement. Each candidate village has been reviewed to identify whether an active place of worship is located within the settlement. If so, the settlement is considered to be a village and therefore an Infill Boundary is defined for it.

112.8 In addition to this an active village or parish hall has also been used as a determining factor when assessing whether the settlement constitutes a village. The settlement must therefore have an active place of worship, and/or an active village hall in order to be considered a village.

- 112.9 For those settlements meeting the above definition of villages an infill boundary has been defined using the approach set out above.
- 112.10 All proposed infill boundaries are tightly defined around the village edge to avoid village expansion, and to allow small scale development to come forward when meeting the definition of infill.
- 112.11 The infill boundaries proposed were subject to informal consultation with the relevant parish councils prior to the formal consultation and some minor amendments were made to in response to this informal discussion. Therefore, the defined infill boundaries have strong community support.

Policy H2: Houses in multiple occupation

Q.113 Is the Policy justified in seeking to control houses in multiple occupation (HMO) within areas of high concentration of HMO, and requiring exemptions from achieving an Energy Performance Certificate "C" rating where that can't be achieved, as defined in the Houses in Multiple Occupation SPD when that document does not form part of the development plan?

B&NES Response:

- 113.1 Adopted Placemaking Plan policy H2 (see page 148 of [CD- SD016](#)) controls the number of HMOs within an area by stating that if a proposal for the change of use to a HMO is located within an area of high concentration of existing HMOs (as defined in the HMO SPD), the proposal will not be supported. This approach was found sound at examination.
- 113.2 Updated LPPU policy H2 retains this approach, by stating that certain proposals will be refused if the site is located within an area with a high concentration of existing HMOs.
- 113.3 The LPPU forms the development plan for B&NES, and [the HMO SPD](#) provides additional guidance on how the policies in the development plan should be applied when considering development proposals. It is agreed that the HMO SPD does not form part of the development plan, however, it does carry significant weight in the planning balance as it represents clear and evidenced guidance on how the policies of the development plan should be applied. The HMO SPD has been through a consultation process and has been adopted by B&NES Council. It is therefore afforded significant weight in the planning balance by decision makers.
- 113.4 It is not the intention, or the effect, of the policy to seek to equate [the HMO SPD](#) with the development plan and to thus afford them additional weight than it already carries. The intention of the policy wording is to guide decision makers, applicants, and the public to the guidance on how policy should be applied.

113.5 The HMO SPD sets out the way in which applicants and decision makers should define an area of high concentration and provides guidance on calculating this. It is therefore considered to be justified to refer to the HMO SPD within policy H2 in this case.

113.6 With regards to the part of the policy which refers to the HMO SPD setting out the exemptions which apply in situations where an EPC Certificate 'C' rating cannot be achieved, it is considered that an amendment to the policy wording to transfer the list of exemptions from the HMO SPD into the wording of policy H2 itself would provide a clearer approach. As such the following amendments to the wording of H2 are proposed:

Policy H2

vi. The HMO property does not achieve an Energy Performance Certificate "C" rating (~~unless one or more of the exemptions set out in the HMO SPD applies~~), unless one or more of the following exemptions applies:

- a) The cost of making the cheapest recommended improvement would exceed £10,000 (including VAT).**
- b) Where all relevant energy efficiency improvements for the property have been made (or there are none that can be made) and the property remains below EPC C.**
- c) Where the proposed energy efficiency measures are not appropriate for the property due to potential negative impact on fabric or structure.**
- d) Where the minimum energy performance requirements would unacceptably alter the character or appearance of a heritage asset.**

Q.114 What is the justification for HMOs achieving an Energy Performance Certificate "C" rating? Policy H2A: Purpose built student accommodation

B&NES Response:

114.1 See response to question 77.

Q.115 Is the assessment of the accommodation needs for students undertaken for the Plan robust?

B&NES Response:

115.1 The approach and methodology set up through and used in the Core Strategy preparation have been followed. The SHMA that underpinned the Core Strategy housing targets acknowledged the complexity of the population growth in Bath due to its large student population. It states that *'the ONS projections utilise a national model and cannot consider local circumstances. For an area such as BANES with a complex population driven by its large student population it is appropriate to provide more detailed local projects with consider more localised considerations.'* As projecting university growth is complex due to it being influenced by many different factors, such as government policies and funding

arrangements, it is considered appropriate that the Council engage with both of the city's universities to help understand their expected future growth and associated student accommodation requirements and the impact of student growth on wider housing requirements. The assessment of need for student accommodation has been reviewed to inform the preparation of the Core Strategy, Placemaking Plan and the LPPU in a consistent manner. Therefore, the assessment of the accommodation needs for student undertaken for the Plan is considered robust.

- 115.2 Representations have been submitted by various parties, setting out alternative demand scenarios for student accommodation. These scenarios provide demand figures based on the assumption that there is an existing shortfall of PBSA bedspaces within Bath, evidenced by the number of students living in other forms of private rented accommodation such as Houses in Multiple Occupation (HMOs). These figures assume that an increase in PBSA bedspaces over the number required to meet the need of the Universities, will lead to a transfer of students currently living in HMOs across to PBSA developments, therefore freeing up HMOs for use by non-student occupiers.
- 115.3 The Council consider this to be an unrealistic assumption, due to the significant differences between the cost and type of living arrangements provided by HMOs and PBSA developments.
- 115.4 A cost analysis of PBSA developments and HMOs in Bath is provided at Core Document [CD-SD024](#). This shows that rental costs of both private PBSA developments, and off-campus university PBSA developments, are considerably more expensive than rental costs of HMOs.
- 115.5 The Council consider that only provision of certain types of PBSA, with similar price levels as renting a room in a HMO, could potentially begin to address the number of students living in HMOs in the city. It is not therefore realistic to make assumptions on demand based on the scenario that students currently living in HMOs will transfer over to PBSA developments, without any form of control in place to ensure that appropriate accommodation is provided.
- 115.6 As such, the demand assessment undertaken by the Council (set out in Core Document [CD-SD036](#)), based on growth projections from the Universities, is considered to be robust.

Q.116 Is the Plan positively prepared in terms of meeting the accommodation needs of students and would it be effective in meeting the identified housing need of students in the plan period?

B&NES Response:

- 116.1 As explained above, it is very complex to forecast student housing needs. Working closely with the universities allows the Council to understand their expected future growth and associated student accommodation needs. The Council also

closely monitors new development for purpose built student accommodation and HMOs. The assessment of the student accommodation requirements that informed the preparation of the LPPU is provided in the Topic Paper ([CD-SD036](#)). The LPPU policies, particularly revised Policies B5 and SB19, will facilitate meeting the identified needs for student accommodation. Therefore, it is considered that the Plan is positively prepared in terms of meeting the accommodation needs of students.

- 116.2 Sufficient purpose-built student accommodation bedspaces are provided within the Plan to meet the projected need of these students, as set out at page 7 of [CD-SD036](#).
- 116.3 A degree of flexibility is provided within policy H2A, so that educational establishments can enter into agreements with developers to provide PBSA off-campus, where additional demand over and above that planned for in growth projections is demonstrated.
- 116.4 As such, it is considered that the Plan would be effective in meeting the identified housing need of students in the plan period and is therefore positively prepared in accordance with paragraph 35 of the NPPF.

Q.117 What is the justification for the policy requirement that need for additional student accommodation of the type and in the location proposed, should be evidenced by a formal agreement between the developer and a relevant education provider for the supply of bed spaces created by the development, and would it be effective?

B&NES Response:

- 117.1 Policy H2A has been prepared based on evidenced demand for PBSA bedspaces, in response to the universities' growth projections. However, there may be currently unforeseen situations where demand arises for PBSA bedspaces outside of these growth projections.
- 117.2 For example, if an educational establishment other than one of the universities requires accommodation for their students, this would be considered additional demand.
- 117.3 The requirement provides flexibility to allow for provision of off-campus PBSA where additional demand is evidenced for the supply of bed spaces required, and provides a framework against which any proposals for additional accommodation could be considered.
- 117.4 As the requirement controls the type of PBSA development that is proposed, and ensures that it meets a specific demand from an educational establishment, there may be scope to begin to address the number of students living in HMOs in the city, through provision of specific accommodation controlled via a nomination agreement with a university, to provide specific accommodation for 2nd and 3rd year students, at a price level similar to that of a room in a HMO.

- 117.5 With regard to effectiveness, it is not uncommon for educational establishments to enter into formal agreements with developers at planning stage. In Bath, an example of a nomination agreement at planning stage effectively ensuring that accommodation will meet a specific need in the city is described in the Committee Report for application 17/04338/FUL relating to provision of 136no. PBSA bedspaces at Bath Cricket Club, North Parade. This confirmed that: *“The applicant has also advised that they have entered into a contract with the University of Bath to provide the accommodation to 2nd and 3rd year students and postgraduates only. This would ensure that the proposal does not simply facilitate the growth in 1st year admissions at the university which would subsequently put additional pressure on Bath's housing stock through an increased demand for HMOs accommodation as follow on accommodation for these students. This is a matter which can be secured by condition.”*
- 117.6 Various Local Planning Authorities across the country have also taken this approach, including Cambridge City Council and Nottingham City Council. The London Plan also sets out a requirement that the majority of bedrooms within a PBSA development are secured through a nomination agreement for occupation by students of one or more higher education provider.
- 117.7 The requirement is therefore considered to be justified and effective in providing a sufficient degree of both control and flexibility to the Council’s strategic approach to the location of PBSA, by providing opportunity for off-campus PBSA development where the known needs of specific educational establishments are being met, evidenced as part of the planning application for the development.

Q.118 What is meant by ‘the internal design, layout and size of accommodation and facilities are of an appropriate standard’ in criterion b)vi)?

B&NES Response:

- 118.1 The overall objective of Criterion b)vi is to provide decision-makers with the ability to consider the design, layout and size of student accommodation at application stage, in relation to both bedroom and ancillary facilities. No specific standards exist locally in relation to the design requirements of student accommodation. However, the Council consider it critical that student accommodation is well designed, providing appropriate internal and / or amenity space and facilities for the purposes of both living and studying.
- 118.2 Criterion b)vi allows the decision maker to use their planning judgement on a case by case basis to consider whether proposed accommodation is well designed to sufficiently meet the needs of its occupiers.
- 118.3 Such considerations are likely to relate to how functional, adaptable, and accessible spaces within the development are, whether there is sufficient space for furniture, activity and movement, whether the development comprises adequately sized rooms and convenient and efficient room layouts, whether the

accommodation provides for appropriate levels of amenity, such as consideration of privacy, outlook and natural light, and whether the development provides adequate facilities for use by occupiers.

118.4 The 'ANUK / Unipol Code of Standards for Larger Residential Developments for Student Accommodation Managed and Controlled by Educational Establishments', or 'the Code' (see [CD-HOU008](#)), establishes a set of management standards for residential developments managed and controlled by educational establishments and specifies appropriate controls to ensure that the needs of students are delivered effectively. Although these are mainly management related, there are references throughout to provision of appropriate facilities, such as:

- Bedrooms – All occupiers are provided with a bed, storage space for clothes and personal effects, curtains, blinds or other methods to provide adequate privacy and an area equipped for study purposes (paragraph 4.12).
- Kitchens – All occupiers are provided with appropriate kitchen or pantry facilities which have been designed and installed having due regard for safety, industry practice and any Local Authority guidelines (paragraph 4.14).
- Bathrooms - All en-suite facilities situated in occupants' rooms are properly compartmentalised, with adequate provision of natural or mechanical ventilation (paragraph 4.17).
- Laundry - All occupants are provided with appropriate facilities for the washing and drying of clothes either within their accommodation, a shared laundrette with an appropriate ratio of machines to students to prevent excessive waiting times, or other suitable arrangements (such as a collection and delivery system for the cleaning of clothes) have been made (paragraph 4.18).

Policy H7 – Housing accessibility

Q.119 Are the percentage requirements proposed for accessible housing provision for affordable and market housing justified?

B&NES Response:

119.1 Planning Practice Guidance sets out that '*local planning authorities should plan to create safe, accessible environments and promote inclusion and community cohesion. This includes building and their surrounding spaces. Local planning authorities should take account of evidence that demonstrates a clear need for housing for people with specific housing needs and plan to meet this need.*'
Paragraph:005 Reference ID: 56-005-20150327.

119.2 The overriding purpose of the B&NES Corporate Strategy 2020-2024 is to improve people's lives with principles focusing on prevention and preparing for the future.

119.3 The Bath Strategic Housing Market Assessment (SHMA) Volume II (March 2019) ([CD-HOU004](#)) sets out the evidence base to housing accessibility requirements within B&NES. The LPPU Viability Study ([CD-VIA001](#)) tested the housing accessibility standards as set out in the SHMA and concluded that the policy requirement could *'be absorbed with little impact on residual land values'*.

Q.120 Given the findings of the Bath HMA Strategic Housing Market Assessment: Volume II is the application of the Policy as proposed to student housing justified? Is the proposed amendment to the Policy as set out in the Schedule of Errata necessary for soundness?

B&NES Response:

120.1 The Council's Building Regulations Team has confirmed that M4(2) and M4(3) only apply where 'Building Regulations Approved Document M – Access to and use of buildings: Volume 1 – Dwellings' applies. There may be cases where a proposal for student accommodation is considered to be a dwelling, for example a House in Multiple Occupation, or accommodation for mature students with families. However, Approved Document M does not apply to general student accommodation, for example developments comprising blocks of purpose built student accommodation.

120.2 As such, the Schedule of Errata (Dec 2021) to the draft Submission Plan (Page 53, paragraph 387e) removes specific reference to student accommodation, and clarifies that 'For the purposes of this policy, residential development includes all forms of residential accommodation where building regulations under Approved Document M: Volume 1 (dwellings) apply.' The proposed amendment to text within the Schedule of Errata is necessary to ensure soundness.

Policy LCR6: New and replacement sports and recreational facilities

Q.121 What is the justification for the requirement for a management plan to be submitted with an application for a new artificial grass pitch?

B&NES Response:

121.1 The Council acknowledge the significant benefits of artificial grass pitches in supporting active lifestyles and well-being by allowing people to play and exercise longer especially in winter. However, there are some concerns regarding impact on people's health resulting from exposure to contaminated granular material and through the contamination of soil and water. Investigations are ongoing by the European Chemicals Agency (ECHA: [Website link](#)) to determine whether crumb infill poses a risk to the health of those using third generation sports pitches. Users are advised to follow the safety recommendations made by the ECHA.

121.2 Third Generation technology creates a safer and more realistic playing surface than previous synthetic turf pitches by including a layer of loose elastic performance infill, usually a granular rubber crumb from ground-up road tyres

(i.e. microplastic), to act as artificial soil between synthetic grass blades. This synthetic rubber is a microplastic and can leak from the edges of the pitch, get trodden off by players, and wash down changing room drains, ending up source of pollution to the environment resulting harm to ecosystems and wildlife. Synthetic pitches also have a serious problem at end of their 8-10-year life span contributing to plastic waste problems.

121.3 The NPPF states that planning policies and decisions should aim to avoid new and existing developments contributing to land contamination, soil degradation and water pollution. Policy PCS1 embodies the 'precautionary principle' toward the healthy functioning of environmental systems.

121.4 This precautionary approach is also proposed through the amended Policy LCR6 reflecting the Council declaration on climate and ecological emergency as well as the Council corporate priority to 'improve people's lives'.

Q.122 Policy ED1B: Change of use and redevelopment of office to residential use Is the requirement in part 1 relating to listed buildings consistent with national policy as set out in paragraphs 201 and 202 of the NPPF?

B&NES Response:

122.1 The policy makes clear that, subject to the GPDO, and exclusions set out, the principle of change of use of offices to residential is acceptable. The policy also indicates that the principle of change of use of listed buildings is also acceptable, linking to the NPPF and the significance of historic assets, and the Council's duty to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

122.2 While the Plan should be read as a whole, if the Inspector is minded, it is proposed to omit the text "provided there is no adverse impact on the significance of the listed building." and cross refer to policy HE1 for the avoidance of doubt, with wording such as "subject to the provisions of Policy HE1". The suggested amendments are below.

POLICY ED1B: CHANGE OF USE & REDEVELOPMENT OF B1 (A) OFFICE TO RESIDENTIAL USE

1. Change of use (i.e. conversion)

The conversion of office space (~~B1a~~) to residential C3 is normally permitted development, subject to the exceptions set out in the ~~GPDO~~ **GPDO**. (which includes listed buildings). The principle of change of use through conversion of listed buildings in office use to C3 residential use is also accepted, **subject to the provisions of Policy HE1. provided there is no adverse impact on the significance of the listed building.**

Policy ED2A: Strategic and other primary industrial estates

Q.123 What is the justification for continued retention of the identified areas as Strategic and Other Primary Industrial Sites?

B&NES Response:

- 123.1 The policy approach was discussed and justified through the Placemaking Plan and found sound at examination.
- 123.2 In national policy one of the three overarching objectives of achieving sustainable development is an economic objective, part of which is “to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth” (paragraph 8a).
- 123.3 Evidence “*Bath & North East Somerset Employment Growth and Employment Land Review*” has been undertaken by Hardisty Jones Associates March 2020 ([CD-ENV002](#)) into employment land requirements. Key points in the Conclusions and Recommendations relating to both office and industrial / warehousing space state:
- 123.4 Paragraph 9.0.10 “*Existing employment sites across B&NES were reviewed. All sites reviewed were performing well. On the basis of both the assessments and the challenges in delivering new employment floorspace in B&NES it is clearly evident that there is a need to retain and protect all existing employment areas wherever possible.*”
- 123.5 Paragraphs 9.0.17, 9.0.21 and 9.0.25 relating to industrial / warehousing supply refer to the Bath, Keynsham and Somer Valley areas respectively, and identifies that there is clear evidence of requirements in Bath, but lack of supply, and market opinion is that whilst Keynsham may be able to meet some of the unmet demand from Bath, there is a risk that economic activity will be lost to locations outside the district. In relation to the Somer Valley, while the transport links to this area are identified as a potential issue, there are policy priorities to ensure employment opportunities which has underpinned the creation of the Enterprise Zone and existing allocations.
- 123.6 The latest information in the Bath and North East Somerset Authority Monitoring Report March 2021 - Industrial Floorspace_(CD-EDV005) shows that overall there has been a net loss of 93,000sq m of industrial floorspace within the District which is significant in terms of the Core Strategy requirement. The table below shows that the losses in Bath are particularly severe and have already exceeded the managed contraction of floorspace for the entire plan period. In relation to Keynsham, the losses are also severe, however this situation could be resolved through delivery of land allocated in the Core Strategy.

Table 123-1 Industrial Space District Wide Completed (by area)

	Core Strategy Targets/Indicators	Gain	Loss	Balance
Bath	-40,000	+1,450	-48,836	-47,386
Keynsham	+8,300	+1,010	-36,405	-35,396
Somer Valley	-14,400	+5,386	-11,027	-5,641
Rural		+3,718	-9,290	-5,572
Total		+11,627	-104,658	-93,031

123.7 This demonstrates the need to protect the Strategic and Other Primary Industrial Sites from change of use to non industrial / warehousing uses.

Policy ED2B: Non-strategic industrial premises

Q.124 The protection of non-strategic industrial premises through Policy ED2B is proposed to be strengthened. What is the justification for this?

B&NES Response:

- 124.1 The LPPU supporting text explains that the existing policy was drafted based on the [2012 NPPF](#) which required that planning applications for change to residential use and any associated development from commercial buildings (currently in the B use classes) should normally be approved where there is an identified need for additional housing in the area, and provided that there are not strong economic reasons why such development would be inappropriate (paragraph 51).
- 124.2 The Strategic and Other Primary Industrial Estates were considered to be the most important concentrations of industrial land supply in the District and there were identified very strong economic reasons to retain them hence they were afforded the highest level of protection in the Plan. Un-named estates, smaller industrial clusters and standalone premises are subject to Policy ED2B which afforded a lesser degree of protection.
- 124.3 The Growth and Employment Land Review undertaken by Hardisty Jones Associates March 2020 [\[CD-EDV002\]](#) concludes based on the evidence of requirements there is a need to retain and protect all existing employment areas wherever possible.
- 124.4 The NPPF 2012 approach which indicated that planning authorities should normally approve the change of use of commercial (B class) to residential unless strong economic reasons exist (paragraph 51), was not carried forward into the NPPF 2021. The NPPF 2021 emphasises the priority for sustainable economic growth, and that planning policies should help create the conditions in which businesses can invest, expand and adapt. Space is required for ‘start up’ and ‘grow on’ space for local businesses in line with the council’s Economic Strategy and the NPPF.

124.5 The latest monitoring shows that overall there has been a net loss of 93,000sq m of industrial floorspace within the District which is significant in terms of the Core Strategy requirement. (Please see Q.123 response) Link to Annual Monitoring Report (CD-EDV005). This demonstrates the need to retain industrial premises from change of use to non industrial / warehousing uses.

Policy ST1: Promoting sustainable travel and healthy streets

Q.125 Is the Policy justified in seeking that transport proposals align with relevant area-specific transport strategies, plans, policy documents, local guidance and the current adopted Joint Local Transport Plan, and the B&NES Transport and Development SPD, when these documents do not form part of the development plan?

B&NES Response:

125.1 The LPPU forms the development plan for B&NES, and the other documents referred to in the Inspector's Question provide additional guidance on how the policies in the development plan should be applied when considering development proposals. It is agreed that documents such as the Transport and Developments Supplementary Planning Document (SPD) do not form part of the development plan, however, they do carry appropriate weight in decision-making as they represent clear and evidenced guidance on how the policies of the development plan should be applied. The amount of weight to be applied to such documents will be dependent upon the preparation process followed. For example, it is well established through Inspector's appeal decisions that SPDs which have followed the legislatively prescribed preparation process (including public consultation and SEA screening) and are formally adopted by the Council will carry significant weight in decision-making.

125.2 It is not the intention, or the effect, of the Policy to seek to equate the aforementioned documents with the development plan and to thus afford them additional weight than they legitimately carry. The intention of the Policy wording is to expressly ensure that these documents are applied in the correct manner, and to guide decision makers, applicants and the public to the guidance on how policy should be applied. It is a common approach within other Local Plans to do this through referring to relevant SPDs, Local Transport Plans, or other guidance documents within development plan policies.

Policy ST2: Sustainable transport routes

Q.126 What is the robust evidence for safeguarding of former railway land for sustainable transport purposes as per paragraph 106c of the NPPF?

B&NES Response:

126.1 The LPPU represents a partial update to the adopted Local Plan, which currently comprises the Core Strategy and Placemaking Plan (PMP). The PMP policy states

“Development which prejudices the use of former railway land for sustainable transport purposes as shown on the Policies Map will not be permitted.” The proposed addition in the LPPU is to explicitly include safeguarded land in this policy. It does not seek to safeguard additional land. B&NES agrees that any future safeguarding of additional land for sustainable transport purposes would need to be accompanied by robust evidence and this will, if appropriate, be progressed through preparation of a new Local Plan.

- 126.2 For clarity the Council would also like to draw the Inspector’s attention to a minor formatting error in the LPPU Schedule of Changes as submitted ([CD-SD001](#)).

Schedule of changes (as submitted)

POLICY ST2: SUSTAINABLE TRANSPORT ROUTES Development which prejudices the use of **safeguarded land** including former railway land for sustainable transport purposes as shown on the Policies Map will not be permitted.

Schedule of changes should have indicated policy change as set out below.

POLICY ST2: SUSTAINABLE TRANSPORT ROUTES Development which prejudices the use of **safeguarded land including** former railway land for sustainable transport purposes as shown on the Policies Map will not be permitted.

Policy ST2A: Active Travel Routes

Q.127 Is the Policy justified in seeking appropriate enhancements to active travel routes in line with guidance set out in the Transport and Development SPD, when this document is not part of the development plan?

B&NES Response:

- 127.1 The NPPF includes multiple requirements for plan making and assessing planning applications to ensure safe and suitable access, take opportunities to promote walking and cycling, and provide genuine choice in transport modes. This is embedded throughout section 9, paragraphs 104 to 113. The LPPU updates as a whole seeks to rebalance the approach to transport mitigation and access requirements towards sustainable modes, with active travel modes being at the top of the transport hierarchy. This is both appropriate and necessary as a strategic approach to transport. Therefore, the policy requirement for appropriate enhancements to active travel routes is justified.
- 127.2 Please see response to Q.125 for commentary on how the LPPU links with other documents referred to, including the Transport and Developments SPD.

Policy ST3: Transport Infrastructure

Q.128 Is the requirement in part 5 of the Policy that schemes which propose increases in traffic capacity will also be required to incorporate commensurate improvements to the sustainable transport network justified and consistent with national policy for planning conditions and obligations as set out in paragraphs 56 and 57 of the NPPF, and Regulation 122(2) of the Community Infrastructure Levy Regulations 2010?

B&NES Response:

- 128.1 The LPPU updates, as a whole, seek to rebalance the approach to transport mitigation and access requirements towards sustainable modes. This is both appropriate and necessary as a strategic approach to transport. The Plan needs to be read as a whole, particularly points 4 and 5 of ST3 which need to be read together. Transport impact is a function of person travel demand, not simply car travel demand. Point 4 establishes that the approach to mitigating transport impacts must seek to reduce car usage by mode shift to sustainable modes, prior to proposing traffic capacity enhancements.
- 128.2 Point 5 recognises that there may be instances in a district with a significant amount of rural communities, where traffic capacity solutions may be required to mitigate transport impacts. However, traffic capacity enhancements have the potential to increase the balance of transport opportunities towards private car use and away from sustainable modes, and/or create barriers to sustainable movement. Both of these effects could result in counter-productive mode shift towards private vehicle usage, i.e. contrary to point 4. The requirement to provide commensurate improvements to sustainable transport when increasing traffic capacity seeks to ensure that those potential effects are addressed at scheme design stage, and to secure the right balance in terms of sustainable transport mitigation. This sets the strategic approach to mitigation which must be complied with.
- 128.3 The form of sustainable transport provision will depend on the particular traffic capacity scheme. For example, new road schemes should include active travel provision, and appropriate levels of bus priority if necessary. In some instances, it may be that commensurate improvements to the sustainable transport network will be geographically separate from traffic capacity measures, for example an off-road cycle route which accommodates cycling between origin and destination, but as a more attractive option than on or alongside carriageway. The word “commensurate” has been specifically chosen to ensure that the scale of sustainable transport scheme is balanced in comparison with the scale of traffic capacity increase. The policy is specifically not prescriptive to allow scope for innovation and to reflect that the appropriate solution will vary by scheme.
- 128.4 NPPF Paragraph 56 requires that the use of planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all

other respects. NPPF Paragraph 57 sets out the planning obligations tests, in accordance with Regulation 122 (2) Community Infrastructure Levy (CIL) Regulations 2010 and states that planning obligations must only be sought where they are (a) necessary to make the development acceptable in planning terms; (b) directly related to the development; and (c) fairly and reasonably related in scale and kind to the development.

128.5 As set out above, the policy directs the balance of the mitigation required, once the need and scale are identified, rather than the overall amount of mitigation needed. It informs the choices to be made as to what the appropriate mitigation should be, which is within the gift of the LPA. Requiring planning obligations for schemes to incorporate commensurate improvements to the sustainable transport network where they meet the three legal tests is therefore consistent with the NPPF paragraph 56 and 57, and CIL Regulations 2010 Regulation 122(2). This reflects the Planning Obligations Supplementary Planning Document (SPD) 2005 (as amended) and Draft Planning Obligations SPD 2022 currently out for consultation (until 17 June 2022). NPPF Paragraph 56 relates to conditions.

Policy ST7 Transport requirements for managing development

Q.129 Is the Policy justified in seeking schemes to accord with the Transport and Development SPD, such as in respect of parking standards, when this document is not part of the development plan?

B&NES Response:

129.1 Please see response to Q.125 with regards to the principle of LPPU policies signposting to guidance, including the Transport and Developments SPD.

Q.130 Is the proposed setting of parking standards through the Transport and Development SPD rather than this Plan consistent with national policy as set out in the NPPF?

B&NES Response:

130.1 Paragraph 107 of the NPPF sets out items or issues that policies should take into account, "*IF setting local parking standards*" (author's emphasis). Paragraph 108 goes on to provide detail on instances when maximum parking standards can be set. The NPPF, or any other national policy, does not require Local Planning Authorities to set parking standards, and nor does it contain any requirement as to whether they should be included within the development plan, a SPD, or indeed any other instrument.

130.2 The principle of whether B&NES should set maximum parking standards (Paragraph 108, NPPF) has been established through the Placemaking Plan, and is therefore not addressed in this response. The Transport and Developments SPD provides detailed explanation on approach to parking standards, which meets the requirements of Paragraph 107 of the NPPF.

- 130.3 The LPPU does propose to remove parking standards from the development plan, and move it to a SPD. As demonstrated above, this does not conflict with national policy, but it is a strategic change in approach which warrants further comment. B&NES Council declared a Climate Emergency in March 2019, setting a clear corporate priority to achieve net zero by 2030. Transport policy is a key lever in achieving this. Transport is also a fast moving sector, with significant changes and trends occurring rapidly and often in manners difficult to forecast accurately. Major transport projects are being delivered across the West of England region, and further trends such as increases in shared ownership models, reductions in travel overall, changes in travel patterns, and changes in working practices, not least due to the Covid-19 pandemic, are significantly changing the way our transport network operates. We need to be agile to these changes, to ensure that policy and guidance (including parking standards) keeps pace with the transport sector and the accessibility of our network.
- 130.4 To improve our agility, the Council has taken the strategic decision to move parking standards to a SPD, which can be reviewed and updated more regularly, more expediently, and in a more targeted manner than the development plan itself. We recognise that this change also results in the parking standards being afforded less weight in the decision making process as they are no longer part of the development plan. However, the parking standards in an SPD will still carry significant weight in the planning balance as they are clear and evidenced guidance on how the policies of the development plan should be applied, and they have been through consultation and will be formally adopted by the Council (alongside and at the same time as adoption of the LPPU). It should also be noted that it is a common approach across the West of England and nationwide for parking standards to be included in a SPD, rather than the development plan, and thus this mechanism has been well established as being in accordance with national policy. The Council therefore considers that moving parking standards to a SPD is both consistent with national policy, and represents the optimal strategic choice to support our Climate Emergency declaration and progress towards Net Zero by 2030.