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Document: BMSDC Supplementary Planning Documents
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Title: Representations to the BMSDC Housing &
Biodiversity and Trees SPDs

Client: Taylor Wimpey UK Ltd.

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Executive Summary

These representations have been prepared by James Bailey Planning Ltd. with contributions from Housing Expectations Ltd. and James Blake Associates (JBA) on behalf of Taylor Wimpey UK Ltd. (TW). The comments within these representations are provided in relation to both the Housing and Biodiversity and Trees Supplementary Planning Documents, in response to the current Babergh and Mid Suffolk District Council's (BMSDC) public consultation.

As set out within the National Planning Practice Guidance, the role of Supplementary Planning Documents (SPD) is to build upon and provide more detailed advice and guidance on policies within adopted Local Plans. However, they cannot, and should not, look to introduce new policies.

Our comments within these representations focus upon specific elements within the Housing and Biodiversity Section to suggest that they provide additional burdens which are outside of the scope of an SPD and lack the clarity required to fulfil an SPD's intended purpose. Recommendations and suggestions on how the SPDs can provide greater clarity and usability is also included within these representations.

To summarise, the comments in relation to each SPD pertain to the following:

Housing SPD

The open market housing mix set out within this SPD has been based upon an out-dated Strategic Housing Market Assessment (SHMA) and it should allow for greater flexibility to agree open market housing mix on a case-by-case basis.

Additional evidence should be compiled in the form of waiting lists to determine affordable housing need for intermediate tenures, as they are important affordable products where the 'need' is not usually fully identified within SHMA's.

There is need and demand for Discounted Market Sale housing, as evidenced within these representations.

Standard requirements for the phasing of affordable housing delivery are too prescriptive, as there are a range of factors to be considered in building out and delivering a site. These phasing requirements are likely to cause delays to the delivery of a site, and should be considered on case-by-case basis.

Biodiversity and Trees SPD

The document states that: *"the Councils would encourage applicants to deliver at least 20% BNG where possible"*. There is, however, no guidance provided within this document to explain how this is to be "encouraged" in practice.

The use of terminology such as: *"justification to expect more"* and *"granting of permission may be withheld..."* provides strong rhetoric towards enforcing a net gain over and above the national minimum requirement of 10%. This goes beyond the scope of what an SPD should achieve. However, should the Council wish to seek a 20% net gain this must be developed via a Local Plan policy, justified through appropriate evidence which much include an assessment of the impacts of viability.



The SPD in its current form raises a number of questions in terms of how biodiversity net gain is to be implemented in Babergh and Mid Suffolk. Therefore, the SPD requires amendments and additional clarity to ensure that it fulfils the purpose of an SPD and is consistent with adopted national and local policy.

Perhaps more importantly, the Councils should seek to identify: spatial nature strategies; nature recovery networks; wildlife rich habitats; and wider ecological networks. These should be developed working in partnership with groups such as the Wildlife Trust for habitat management, enhancement, restoration, or creation and pursuing opportunities for a district wide strategy for delivering BNG. These strategies are absent and would go a very long way in justifying and evidencing the need for raising the national minimum requirement for BNG locally, which the Councils are clearly trying to achieve in this SPD.

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1. Introduction

1.1 These representations have been collated by James Bailey Planning Ltd. on behalf of Taylor Wimpey UK Ltd, and provide comments in relation to the following Supplementary Planning Documents:

- Housing; and
- Biodiversity & Trees.

1.2 The representations have focused upon the areas of the SPD's where the Council have stated that "*views are particularly welcomed*", and where they are of relevance to Taylor Wimpey.

1.3 These representations have been contributed to the following parties:

- Housing Expectations Ltd. – who are an affordable housing consultancy and assist both developers and Councils in all aspects of affordable housing.
- James Blake Associates (JBA) – who provide professional services in landscape, ecology, biodiversity and tree matters.

2. Housing Supplementary Planning Document

Introduction

- 2.1 These representations have focused upon the areas of the Housing SPD where the Council have stated that *“views are particularly welcomed”*, and where they are of relevance to Taylor Wimpey. These are as follows:
- Section 2.1 – Strategic Policy 01 (SP01) – Housing Needs.
 - Section 2.2 – Strategic Policy 02 (SP02) - Affordable Housing.
 - Section 3 – In relation to Affordable Housing Needs and Tenures.
 - Section 4 – Affordable Housing Delivery.
 - Section 5 – Affordable Housing Design.
 - Section 7 – Planning Obligation Heads of Terms.
- 2.2 As a general starting observation, from a reader’s perspective it is considered that the Housing SPD is not particularly user friendly. There are a number of inconsistencies in terms of formatting, language, and the placement of certain topics within the document which make it difficult to navigate and find the relevant section. Given the wide range of potential users, consideration should be given to improving the ‘usability’ of the document.

Section 2.1 – Strategic Policy 01 (SP01) – Housing Needs

Approach to Open Market Mix

- 2.1 Paragraph 2.1.6 sets out that the district-wide requirement is the starting point for determining the mix of open-market units on a given scheme, and that this has been informed by the Ipswich Strategic Housing Market Assessment (2017 with a partial update in 2019).
- 2.2 Taylor Wimpey acknowledges that there has to be a starting point to the mix required, however this document is now 7 years old (since the full set of data was published) and could therefore be considered out of date. It would be timely to provide an update to the SHMA, particularly in light of the forthcoming Part 2 of the Local Plan.
- 2.3 Paragraph 2.1.15 set out a range of examples where deviations from housing needs might be allowed for to determine the open market housing mix of a proposal. It is appreciated that the Council’s role is to provide for housing need and the associated evidence behind this will be the starting point. However, an element of flexibility needs to remain to ensure that each site can be assessed on a case-by-case basis, subject to site constraints, and the very changeable housing market.
- 2.4 Paragraph 2.1.13 states that *“Floorplans will be assessed to ensure that homes are not built with a surplus of rooms which can be used as bedrooms”*. The paragraph goes on to suggest that if a room (which is proposed to be an office/study) meets the usable requirements under the Nationally Described Space Standard (NDSS) for a bedroom then it will be considered as such.
- 2.5 This therefore suggests that if a developer proposes to provide an office/study then it should be smaller than the minimum requirements for a bedroom under NDSS. With health and well-being in mind, it could be extremely detrimental to work in a room that is not large enough to accommodate a single bed, just so that it cannot be considered as a ‘bedroom’.

- 2.6 Should the Council feel it necessary to provide guidance in terms of what should and shouldn't be considered an office/study, Taylor Wimpey suggest that paragraph 2.1.13 should be amended to set out that floor plans should ensure that a designated office/study should be located on the ground floor to deter it from becoming a bedroom. However, it should also be recognised that as living spaces become more open plan, home working is shifting to be within these open plan spaces. Taylor Wimpey's product range includes areas within open plan space which provides 'working cubbies' i.e. cupboard space for a pull-out desk or similar that homeowners can work at. Encouraging a room to be small so that it would be considered as an office rather than a bedroom does not seem conducive to encouraging a healthy and flexible lifestyle.

Section 2.2 – Strategic Policy 02 (SP02) - Affordable Housing

- 2.7 Paragraph 2.2.9 sets out that the Council's current preferred tenures to be secured are affordable rent and shared ownership, which the SHMA has identified as being the most needed tenures in the Districts.
- 2.8 Notwithstanding the comments above that the SHMA is somewhat dated, in addition to this Taylor Wimpey would welcome further evidence of need, particularly in relation to intermediate tenures, such as shared ownership and discount market housing. A waiting list for these tenures would be useful for the Council to compile as Taylor Wimpey understand, through insight from Housing Expectations Ltd. that these intermediate products are needed and demanded. However, this is often not fully identified within the SHMA. A Council waiting list would provide clear evidence of need.
- 2.9 Paragraph 2.2.24 sets out that the Councils will expect to see affordable housing well integrated into development such that: *"affordable homes are distributed throughout a site, with the distribution proportionate to the size of the scheme. As a guide, we would normally expect to see no more than 15 affordable homes in one group."*
- 2.10 Paragraph 2.2.26 sets out an example of Pepper Potting, showing the affordable tenures split into small clusters throughout the development. Taylor Wimpey appreciates the Council's intention in terms of ensuring a socially cohesive development, however Registered Providers who manage the affordable housing must ensure that they can be managed effectively. Clusters of up to 15 are acceptable, however if the Council insists that these must comprise a mix of tenures within these clusters, this would not be acceptable to a number of Registered Providers as it would not be conducive to effective management. Has the Council engaged with Registered Providers on this matter?

Section 3 – Affordable Housing Needs and Tenures

- 2.11 It is appreciated that the introduction of First Homes is covered by the transitional arrangements and that the appropriate mechanism for implementing this is through a policy within the Local Plan. Taylor Wimpey welcomes the reference to developing a policy in relation to First Homes, in order to deliver these within Babergh and Mid Suffolk in line with the Government's requirements.
- 2.12 Paragraph 3.3.6 onwards sets out the Council's approach to Discount Market Sale as an affordable housing tenure. It is noted that paragraph 3.3.6 states that: *"The SHMA sets out that the demand for this tenure is unproven, and it is assessed as being less affordable than entry level market rent properties"*.

- 2.13 In response to the above statement, Taylor Wimpey East Anglia Sales Team, has evidence to counter this, as demand is clearly proven. Discount Market Sale represents an important part of what Taylor Wimpey deliver across the districts of Babergh and Mid Suffolk. When compared to an equivalent home on the same site, the benefit of a 20% discount affects the speed at which such homes can be sold from an average of 13 weeks to just 4 weeks for a Discount Market Sale. This discount is essential and importantly cannot be confused with simply reducing the asking price as this affects the valuation of the property.
- 2.14 Taylor Wimpey are therefore surprised to see that paragraph 3.3.6 goes on to state that... *“As such it will not normally be sought through planning obligations to fulfil affordable housing need”*.
- 2.15 This tenure is genuinely a more affordable option for people that do not qualify for affordable housing, but may struggle with the price of an open market dwelling. Taylor Wimpey consider that this tenure therefore does have a role to play in fulfilling housing need, and should be considered as such.

Section 4 – Affordable Housing Delivery

Section 4.3 Phasing

- 2.16 It is understood within paragraph 4.3.2 that the Council are prescribing the trigger points for the provision of the affordable housing, these are referred to as ‘basic requirements’. These being that 50% of the affordable homes should be constructed; made ready for occupation; and transferred to an affordable housing provider, in advance of the occupation of 50% of the open market units. Also, that 100% of the affordable homes should be constructed; made ready for occupation; and transferred to an affordable housing provider, in advance of 80% of the open market units.
- 2.17 While 4.3.3 does acknowledge that there may be some flexibility on smaller schemes, it should also be recognised that this could present real challenges to larger schemes.
- 2.18 Following consultation with Housing Expectations Ltd, it is clear that it is not always within the landowners/developer’s power to ensure that the transfer to a Registered Provider takes place by a certain time. Deals can sometimes fall through, and therefore stalling construction on site due to the lack of a Registered Provider is neither within the Council’s or the developer’s interests. It should made clear that the requirement is for the affordable homes to be ‘made ready for transfer and marketed’ rather than fully transferred, as this will unnecessarily slow down site delivery.
- 2.19 The delivery of a site on a plot-by-plot basis, or ‘build route’, has to be planned to take into consideration a range of factors, one of which is health and safety. Introducing a universal trigger requirement to delivery of affordable homes is likely to have the opposite effect than the Council’s intention, which is for a timely delivery of housing. The standardised percentage delivery has the potential to slow down the overall site delivery.
- 2.20 Notwithstanding the comments above, Taylor Wimpey considers that standardising basic requirements such as these trigger points are not helpful and need to be agreed on a case-by-case basis as part of the Section 106 agreement, as has been the common practice to date. Taylor Wimpey fully appreciates the intentions of the Council to ensure that timely delivery of

affordable housing, which Taylor Wimpey commit to within all of their schemes, however overly prescriptive basic requirements are not an effective mechanism to achieve this.

- 2.21 Paragraph 4.6.7 alludes to the fact that sometimes affordable homes may need to be transferred and managed by an 'Approved Provider'. Based upon insight from Housing Expectations Ltd, it is understood that particularly in the current climate, many Registered Providers do not have the financial capacity to acquire the units themselves. The current wording of this document very much discourages 'Approved Providers', stating that transfer to these should only happen in 'exceptional circumstances.' The SPD should encourage a more flexible approach to using 'Approved Providers', as they can be important to the delivery of affordable housing.

Section 5 – Affordable Housing Design

- 2.22 This section is titled 'Affordable Housing Design', however the opening paragraph states that: *"These general principles apply to affordable housing just as they do to all other forms of residential development"*.
- 2.23 This section therefore generates an element of confusion in terms of whether there are any principles within this section which relate to affordable housing only. Given this section is providing greater information in relation to LP24, it would perhaps sit better within the Design SPD, which we understand is forthcoming.
- 2.24 Taylor Wimpey are surprised by the requirement set out within paragraph 5.1.6 which requires units of four or more bedrooms to have a downstairs shower room in addition to a main bathroom. Taylor Wimpey are unsure why there is relevance between the size of the dwelling and the requirement for a shower room on the ground floor. Requirements for accessible homes are covered within M4 of the Building Regulations.
- 2.25 Taylor Wimpey consider that this is an unnecessary requirement for all four bed homes.

Section 7 – Planning Obligations Heads of Terms

- 2.26 Taylor Wimpey supports the idea that all parties should endeavour to agree the affordable housing heads of terms prior to a recommendation of approval.
- 2.27 This requires both the Council and the developer to agree matters in a timely manner to ensure that there is not an unnecessary delay to the planning application determination. However, there should be reassurances from the Council that once a resolution to approve has been made, the legal process towards signing the Section 106 will be quicker because heads of terms have already been agreed.
- 2.28 It is understood that this section only focuses upon agreeing affordable housing requirements prior receiving a recommendation of approval. Will the same apply for all other Section 106 contributions?

3 Biodiversity and Trees Supplementary Planning Document

Introduction

- 3.1 On behalf of Taylor Wimpey, the Biodiversity & Trees SPD has been reviewed. The introductory section to the SPD states that *“the Councils would particularly welcome views on the following matters”*:
- The overall scope and content of the SPD.
 - Section 4 on the approach to biodiversity net gain.
 - Section 5 on the approach to what the Councils expect in developments.
 - Section 5.2 Pre-application Stage.
 - Section 5.6 Habitat Regulations Assessment.
 - Section 5.10 The approach to trees in development.
- 3.2 The below report has looked to follow these headings and in addition to the points identified above, Section 3 on Designated Areas and Section 6 on what is required for an application submission, have also been commented on below.

The Overall Scope and Content of the SPD

- 3.3 Taylor Wimpey welcomes the introduction of Supplementary Guidance on Biodiversity & Trees, and are supportive of the concept of an SPD, especially due to the importance associated with Biodiversity Net Gain (BNG). This is a fairly new policy and one that has only recently become part of planning legislation. As such Taylor Wimpey feel that it is helpful to have a guidance document that sets out how the Council are expecting BNG to be implemented, processed, and assessed.
- 3.4 The Planning Practice Guidance (PPG) States that *“Supplementary planning documents (SPDs) should build upon and provide more detailed advice or guidance on policies in an adopted local plan. As they do not form part of the development plan, they cannot introduce new planning policies into the development plan. They are however a material consideration in decision-making. They should not add unnecessarily to the financial burdens on development”*. (Paragraph: 008 Reference ID: 61-008-20190315).
- 3.5 Although the introduction of a Biodiversity & Trees SPD is supported in theory, an in-depth review of the document suggests that it does not appear to be consistent with the description and purpose of an SPD, as set out in the PPG (above).
- 3.6 Taylor Wimpey recognises what the Council is trying to achieve, by way of additional supplementary guidance to support the recently adopted Joint Local Plan (JLP). However, in our opinion, the current iteration of the SPD does not offer clear advice and guidance, but rather raises a number of additional questions creating ambiguity and confusion as well as seeking to go beyond existing national and local policy. As with the Housing SPD, the structure of the report is also not ‘reader friendly’.
- 3.7 Taylor Wimpey would also like to see the insertion of additional subjects that need further guidance from the Council. For example, it should be noted that ‘material’ enhancements such as bird and bat boxes, and hibernaculum do not count towards the 10% BNG requirement, but will contribute to the overall site enhancements.

- 3.8 In general, there needs to be more clarification and explanation with this document. There is an assumption that a lot of the technical information within the SPD will be understood, which may lead to misinterpretation of the guidance. It would also be helpful to have a glossary of certain terms, and perhaps links to other useful further reading and documents.
- 3.9 The Councils should have an approach in place for those sites that cannot find 10% onsite, in terms of offsetting land (prior to buying BNG credits from the government). For example, Wokingham Borough Council have set up their own 'BNG bank' with local landowners.
- 3.10 Perhaps more importantly, the Councils should identify: spatial nature strategies; nature recovery networks; wildlife rich habitats; and wider ecological networks. These should be developed working in partnership with groups such as the Wildlife Trust for habitat management, enhancement, restoration, or creation and pursuing opportunities for a district wide strategy for delivering BNG. These strategies are absent and would go a very long way in justifying and evidence the need for raising the national minimum requirement for BNG locally.

Comments re Section 3 – Designated Areas

- 3.11 Through consultation with James Blake Associates (JBA), it is considered that the way in which the natural environment is designated and categorised into protected areas such as Special Protection Areas (SPAs), Special Areas of Conservations (SACs), and Ramsar Sites, are understood to be acceptable and complaint with Site Designation and RAMS legislation.

Section 4 – Biodiversity Mitigation Hierarchy and Biodiversity Net Gain

- 3.12 Paragraphs 4.11 - 4.16 sets out the Biodiversity Mitigation Hierarchy. Our understanding of this section is that it would tie into the 10% BNG as mitigation/compensation that is required to ensure that the lost habitats/species are 'replaced' somehow. However, this would not provide any enhancements, until more habitat is provided, and the site is not considered to be 'enhanced' until after the appropriate mitigation/compensation is provided. In general, Taylor Wimpey believe that this section is not very well explained and unless you're in the ecology profession (or similar), you probably wouldn't realise that the text is suggesting this. It would be helpful for this guidance to explain the difference between mitigation/compensation, and then enhancement.
- 3.13 Paragraph 4.14 states that *"the Councils would encourage applications to deliver at least 20% BNG where possible"*.
- 3.14 Paragraph 4.19 states that *"Most developments must demonstrate a minimum 10% measurable net gain for biodiversity, in line with the requirements of the Environment Act 2021 and Joint Local Plan policy. However, the Councils believe there is a justification to expect more than this, where possible"*.
- 3.15 How are the Council's "encouraging" 20%? The SPD is silent on this.
- 3.16 'Encouragement' should be a positive. Presumably, anything above the minimum requirement of 10% must be viewed as a planning and public benefit. Therefore, how will the relevant weighting associated with public benefits be distributed consistently in decision making? Does over 10% BNG attribute more positive weighting? Is 15% - 20% attributed significant weighting? and over 20%, greater weight? Understanding the Council's approach for going above and beyond the 10% minimum requirement for BNG in the decision-making process would go a long

way in “*encouraging*” developers to do more, especially if all other policies (highways, heritage and landscape etc.) have been complied with. The ‘encouragement’ to developers needs to be fully explained.

- 3.17 Similarly, there is no justification with the SPD in terms of how the figure of 20% was arrived at; an exact percentage should not be stated unless there is evidence to underpin this.
- 3.18 If the Council are to attribute positive weighting and public benefits to elements of an application that go above the BNG minimum requirement, this should be included and set out clearly in the SPD.
- 3.19 The Planning Authority Service (PAS) has dedicated a lot of resource to this on their [website](#). PAS are clear that if an uplift beyond the minimum requirement is going to be written into a policy it must be “*backed up by appropriate evidence, including that the approach taken will be viable*”. Other Councils have provided significant evidence to support an ‘encouraged’ approach into either a Local Plan policy or an SPD. Evidence includes detailed strategy documents such as conservation strategies; nature networks; river and stream strategies; priority species strategies; tree and habitat strategies; and many more. However, BMSDC do not have any of these strategies in place. There has been some very early progress on a Tree Strategy and Green Infrastructure Strategy, but these are long way off becoming adopted documents for the Council.
- 3.20 The other Councils that are listed on PAS website as having policy or an SPD that encourages an uplift beyond the 10% minimum, do simply that - encourage. Even in the presence of significant local evidence (which BMSDC do not have) they do not increase the minimum requirement.
- 3.21 The use of the word ‘expect’ in paragraph 4.19 is therefore considered to go beyond the policy requirement of both the JLP Policy LP16 and the Environment Act (2021). If you ‘expect’ something there is a belief that it is your right to have that thing, or that there is a duty for a developer to provide it. Currently, both the JLP and the Environment Act (2021) ‘expect’ a minimum of 10% BNG. Therefore, using this SPD to ‘expect’ more than this, goes beyond the policy requirement, particularly with the lack of evidence from BMSDC to support this.
- 3.22 At the time of writing, there are only four Local Planning Authorities that require more than 10% BNG. These are Greater Cambridge, Worthing, Guildford and Maidstone. This required a significant amount of evidence from the relevant Council to justify the subsequent policy ensuring that it met the legal tests during a Local Plan examination. As set out in the PPG paragraph referenced above, an SPD should not introduce new policy. The ‘expectation’ of delivering more than 10% BNG goes beyond what the Local and National policy require without going through the same level of justification and examination that an adopted Local Plan policy would need go through. Taylor Wimpey consider that this is not legal and must be amended within the SPD.
- 3.23 Therefore, rather than an ‘expectation’ to deliver more than 10% with and encouragement to go to 20%, there should simply be an “*encouragement*” to deliver above the minimum requirement. This should be supported by evidence, and the SPD should be a guidance document that confirms how the Council will encourage developers to do so, through additional positive weighting in the decision-making process. Therefore, it is important to amend the document and introduce wording within the SPD along the lines of:

‘As the Council consider the increase and enhancement of biodiversity habitats to be so important to how developments are experienced and the long-term future of biodiversity,

additional positive weighting will be given to those applications that can evidence and deliver above the National and JLP requirement of a minimum of 10% BNG. The higher the BNG percentage, the greater the positive weight will be attributed to it in the decision-making process, subject to other material considerations being satisfied. This will encourage developers to do more in our District’

Or, to quote the Greater Cambridge Biodiversity Net Gain SPD (2022), which is backed by significant evidence:

“The Councils encourage the achievement of further Biodiversity Net Gain by development proposals. This aspiration is supported by the recently formulated Doubling Nature Vision, adopted by South Cambridgeshire District Council (Feb 2021). This vision reflects the growing awareness of biodiversity loss and increasing concerns to protect the natural environment, habitats and species. The vision seeks a 20% level of Biodiversity Net Gain above predevelopment baseline conditions. Whilst this Supplementary Planning Document does not set this as a figure or target, this aspiration may have further support with future amendments to the Environment Act 2021.”

3.24 However, any amendments to the wording will still need to be robustly evidence, not just from an environmental perspective, but also a viability perspective.

3.25 Paragraph 4.22 comes under the subheading **“Delivering BNG Off-Site”** and in full states:

“The Councils require all applications subject to BNG requirements to conform to this guidance so we can achieve consistency of information on which to carry out decision-making. It should be noted that the granting of permission may be withheld for several reasons including:

- *inadequate information is submitted about how the applicant plans to deliver a 10% BNG;*
- *better BNG outcomes are achievable however, a developer is not willing to engage in making changes to the application, for instance not following the mitigation hierarchy; and*
- *if (even after making the necessary changes to the design following the mitigation hierarchy) biodiversity net gain is not achievable through the proposals on site and the applicant is unwilling to accept necessary pre commencement conditions relating to biodiversity or sign a legal agreement for Biodiversity Offsetting.”*

3.26 Firstly, it is unclear as to whether the ‘withholding of a permission’ specifically relates to applications that are looking to deliver off-site BNG only, as it comes under this heading. Presumably this isn’t the case as the paragraph is worded in a way that relates to all applications not just those that are dealing with off-site BNG provision. If this is the case, then this should come under a different section within the SPD to prevent confusion.

3.27 Taylor Wimpey understands and accepts that the granting of permission may be withheld if inadequate information on how the applicant will deliver 10% BNG is submitted. There is a minimum requirement to deliver 10% BNG therefore providing adequate information and detail on how this has been calculated and delivered, is fair and reasonable. However, it would be helpful to expand on what it is that the Council are expecting, particularly as there is likely to be a difference in detail depending on whether an application is in Full, Outline or a Reserved Matters application. This information would be helpful to add into a guidance document, not just a validation list.

- 3.28 In relation to the second bullet point, if an application is to be 'withheld' because the Councils consider that a better BNG outcome is achievable, how will the Councils demonstrate that this betterment is achievable? Will this be raised at pre-application stage? What information will the Council be assessing to establish that a greater uplift could be achieved?
- 3.29 Additionally, what does 'granting of permission may be withheld' actual mean? Does this mean an application would sit in abeyance? Will it be prevented from going to a Planning Committee? Will this lead an appeal for non-determination? Will the application be refused outright? Is 'withholding' an application lawful? Can the Council reasonably refuse an application that provides the minimum 10% requirement based on an SPD that sets the bar higher than policy (mindful of the PPG paragraph cited above)? The meaning and intention of the wording 'withheld' should be made explicitly clear, as it currently creates ambiguity and uncertainty and could be read as a threat.
- 3.30 Additionally, what is meant by the wording "*is not willing to engage*"? Is this a phone call, a meeting, a chat, or something in writing? This paragraph is written in a way that a developer could "*engage*" but not necessarily implement any changes.
- 3.31 In its current form, paragraph 4.22 is not justified, reasonable or clear, creating ambiguity and confusion.
- 3.32 Furthermore, the combination of the wording "encourage", "expect" and "withheld" within the context of this SPD, may lead to a planning dichotomy whereby sites become unviable. If we take the scenario of a hypothetical site that is in a sustainable location and delivers policy compliant affordable housing, drainage, and open space, along with the minimum 10% BNG, what is it that the Council are expecting to reduce, to cater for the additional space needed to deliver beyond (in the eyes of the Council) the minimal BNG requirement? Presumably, in this scenario the Council are expecting to reduce the number of open markets units. If so, this will of course have a negative impact on the number of affordable homes that a site will need to deliver and going further than that, if the additional BNG, beyond the minimum requirement, results in viability problems for a developer, then the affordable housing numbers may be reduced even further. Surely in this scenario it would not be possible to "*expect*" above 10% and therefore unreasonable to "*withhold*" and application.
- 3.33 Presumably, this hypothetical example is the scenario whereby the "*where possible*" wording is triggered in both paragraphs 4.14 and 4.19? If so, the Councils should be transparent as currently it is not understood what is meant by "*where possible*".
- 3.34 There is clear confusion for the reader. Does the potential for a site to go beyond the minimum BNG requirement trump the affordable housing requirement in the Housing SPD? Presumably not, because affordable housing is already established and evidenced through the Local Plan Policy, specifically SP02. However, there is a clear "*expectation*" within the Biodiversity SPD, which is not supported by sufficient evidence.
- 3.35 It is not clear why the Council's believe that BNG should be over and above the national requirement, within the rural districts of Babergh and Mid Suffolk; this should be clearly justified based on local evidence and district needs, to understand why an increased percentage is required.

- 3.36 Other LPAs, such as Mansfield District Council have recently adopted a Biodiversity Net Gain SPD (November 2023). BNG SPD 1: Minimum Net Gain states:
- a) *Impacts to Biodiversity caused through development (Net Gains and Net Losses) should be measurable.*
 - b) *In accordance with National Legislation, development proposals will be supported where they demonstrate a minimum of 10% Biodiversity net gain.*
 - c) *Developers will be ‘encouraged’ to provide more than 10% Biodiversity net gain where this is feasible and viable. A target of 20% Biodiversity Net gain is encouraged.*
- 3.37 The wording used here, is more appropriate for an SPD. The consistent use of the word ‘encourage’, is considered to be clear with no ambiguity, when compared to conflicting use of ‘encourage’ and ‘expect’ in the BMSDC’s SPD.
- 3.38 Moving on, paragraph 4.25 sets out a hierarchy of delivering off-site BNG, prioritising from 1 as the preference to 4 as the last resort.
- 1. *“Within the District (either in Babergh or Mid Suffolk) in which the development is proposed.*
 - 2. *Within either District.*
 - 3. *Within the wider Suffolk Local Nature Recovery Strategy Area.*
 - 4. *Within a neighbouring Local Nature Recovery Strategy Area.”*
- 3.39 Within the BNG assessment of the Environment Act there are only three location options. These are: compensation inside the same LPA boundary as development; compensation outside the LPA boundary but in neighbouring LPAs; and compensation outside the LPAs and neighbouring LPA’s boundaries. Therefore, we consider the hierarchy set out in paragraph 4.25, is similar to that in the Environment Act (2021).
- 3.40 However, there is concern from Taylor Wimpey that this hierarchical approach to BNG provision may lead to disproportionate weight being attributed towards on-site mitigation. This in turn may prejudice development on sustainable sites that need to provide off-site mitigation particularly if there continues to be an ‘expectation’ to go above the minimum requirement.
- 3.41 However, some sites will find it difficult to achieve BNG over 10% on site (with material enhancements such as bird and bat boxes not being counted towards BNG), and the Councils should be more amenable to a hybrid approach of ‘on and off site’ BNG. This should be included in the SPD.
- 3.42 The requirement set out in paragraph 4.26 states that *“applicants relying on delivery of off-site BNG will be required to demonstrate they have used reasonable endeavours to secure that gain in the most sequentially preferable location as set out in the above hierarchy, before moving onto the next most preferable location. Ecological justification, including submission of supporting evidence, will be required to demonstrate where provision of BNG is not practicable in accordance with the above hierarchy.”*
- 3.43 Viability is something highly likely to be impacted as a result of the guidance set out in this SPD.

- 3.44 Viability at plan making stage is usually ‘high level’ and requires a number of assumptions, such as the costs of delivering policy requirements and abnormal build costs over the course of the plan period.
- 3.45 It is considered that introduction of a higher BNG baseline requirement could significantly prejudice development viability, specifically the delivery of housing, CIL, Section 106 Agreements, offsite BNG justification reports, and other key policy objectives. This is one of the many reasons why the level of weight attributed to BNG provision over 10% must be confirmed.

Section 5 – What the Councils expect in developments

Section 5.2 Pre-application stage

- 3.46 Taylor Wimpey are surprised that despite the SPD comprising 64 pages, and setting out unjust BNG targets, BNG provision on / off site through the hierarchy, and validation requirements, the section of the document on the pre-application process contains just 3 paragraphs.
- 3.47 This section therefore contains very limited information, and should include a far more comprehensive explanation of the how the pre-application process will be used in order to accommodate the practical impacts of the new guidance and BNG legislation. This is something that Taylor Wimpey were expecting to see.
- 3.48 Paragraph 5.2.1 states that the guidance set out in the SPD *“frontloads the process and avoids risks of delays and additional costs on submission, by providing the developers and their agents with clarity in the scope of information that will be expected”*.
- 3.49 However, other than a brief reference in paragraph 5.2.3 to seeking advice from Natural England’s Discretionary Advice Service, no indication of how early ecology and BNG evidence will be assessed by the Council as part of the pre-application service section has been offered in the SPD. For example, will the pre-app process enable the following questions to be answered:
- Will the Council offer a pre-app ‘bolt-on’ so that base line calculations can be assessed and agreed?
 - Will the Council confirm on a site-by-site basis what the expected BNG uplift will be beyond the policy requirements of 10%, in line with the ‘where possible’?
 - Currently, statutory consultation comments on Ecology are delayed during a formal planning application. Can the Council provide assurances that the expectations of front loading BNG through a pre-application will not adversely impact the Statutory Consultation process during a formal planning application. i.e. Is there enough resource within the Council’s Ecology Team?
- 3.50 In order for the guidance to be embraced by applicants and to be consistent with the pre-application process, it is considered that the pre-app service offered should include the input of an ecologist at a minimum, or ideally, the creation of a standalone ecology / BNG pre-application advice service, in the same way that a standalone heritage advice can be sought.
- 3.51 Given the importance clearly being placed on BNG, the pre-application service should be improved to cater for the necessity to front load the relevant evidence for BNG, particularly if applications are to be *“withheld”* when they lack adequate information.

Section 5.6 Habitat Regulations Assessment

- 3.52 Taylor Wimpey consider this section to be consistent with policy and legislations, and uses 'standard wording' that one would expect to see. However it would be beneficial if a shadow or example assessment could be included within the appendices.

Section 5.10 Trees in Development

- 3.53 Paragraph 5.10.2 states that the Councils' Design SPD, which will set out the design for new streets and how sufficient space will be required for tree planting, is to be "produced" later in 2024.
- 3.54 Paragraph 5.10.15 refers to a Tree Planting Strategy which is also currently being prepared by the Council. This will assess canopy areas across the districts, and identify the benefits the trees provide to local biodiversity. The strategy will also identify and define 'suitable areas for tree planting'.
- 3.55 Repeated references are made throughout the SPD, to additional SPDs and Strategies, including being "*read in conjunction with a Wellbeing and Health SPD*", in which further guidance is going to be provided. However, as it is not known what these additional SPDs will say, it is difficult to make a full and comprehensive opinion in relation to their impact on this particular SPD. We therefore recommend that the SPD is not adopted until the wider suite of SPD documents are made available for scrutiny, especially if they are so interrelated.
- 3.56 A full understanding and context of the Section 5.10 cannot be gained until the documents referred to are published, as the guidance contained within the documents is unknown at this time.
- 3.57 A consultation of a document which relies significantly on additional documents which are not yet available to the public, is not considered to be appropriate, or capable of producing representative feedback on the SPDs currently out for consultation, notably Biodiversity & Trees.
- 3.58 It is considered that as this section relies so significantly on information still being prepared, it should be removed or redacted as to only contain 'independent' guidance on Trees in Development.
- 3.59 In its current form, this section of the SPD is inadequate to allow for a full and meaningful consultation.

Section 6 – What you need to submit with your planning application.

- 3.60 This single sentence section is unnecessary, and can be covered in a simple reference to the Local Validation Requirements in a previous section of the SPD.



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