
Representations to Bradford Metropolitan District Council's Core Strategy Development Plan Document (Publication Draft)

On Behalf of Persimmon Homes (West Yorkshire) Ltd

March 2014

**Representations to Bradford Metropolitan District Council's
Core Strategy Development Plan Document (Publication Draft)**

On Behalf of Persimmon Homes (West Yorkshire) Ltd

Status:	1 st Draft	2 nd Draft	3 rd Draft	FINAL
Issue/Rev:	P1	P2	P3	P3a
Date:	21/03/2014	25/03/2014	27/03/2014	31/03/2014
Prepared by:	CM	CM	CM	CM
Checked by:	JH	JH	JH	JH

Barton Willmore LLP

Leeds

LS1

Ref: 23489/A5/P3a/CM

Date: March 2014

COPYRIGHT

The contents of this document must not be copied or reproduced in whole or in part without the written consent of Barton Willmore LLP.

All Barton Willmore stationery is produced using recycled or FSC paper and vegetable oil based inks.

Contents

Page

1.0	Introduction	1
2.0	Comments on the Soundness of the Core Strategy	2
3.0	Conclusions	14

Appendices

A.	Review of Habitats Regulation Assessment
----	--

1.0 Introduction

- 1.1 Barton Willmore is instructed by Persimmon Homes (West Yorkshire) Ltd (hereafter referred to as the 'Client') to submit representations to the publication draft of Bradford Metropolitan District Council's Core Strategy Development Plan Document ("CSDPD") which is currently subject to public consultation until 31st March 2014.
- 1.2 As one of the main house builders within West Yorkshire, our Client represents a key stakeholder and is keen to invest in the District. As such, our Client has a keen interest in the development of Bradford and its wider District through the plan-making process and therefore welcomes the opportunity to respond to the publication draft of the CSDPD. To demonstrate the breadth and nature of our Client's involvement in Bradford and its District we provide below a list of their interests:

Strategic Interests

- Mentson
- Keighley
- Cottingley
- Nab Wood
- Heaton
- Daisy Hill
- Ben Rhydding

Sites Under Construction

- Rooley Avenue (Rooley Park) – 110 units
- Old Road, Thornton (Sunningdale Park) – 64 units
- Blossom Meadows, Buttershaw – 92 units

Applications Under Consideration

- Cote Farm, Thackley – planning application for circa 250 units

- 1.6 These representations set out a number of issues in relation to the CSDPD that our Client believes should be addressed in seeking to achieve a sound document in advance of the examination by an independent Planning Inspector. The representations refer to the National Planning Policy Framework ("the Framework") tests of soundness at paragraph 182; most

notably that the policies contained in the CSDPD are justified, effective, consistent with national planning policy (contained within the Framework) and positively prepared. Reference is also made, where relevant to the recently published National Planning Practice Guidance ("PPG") which provides further explanation to the policies within the Framework.

- 1.5 In addition to these representations our Client has also provided input into the representations prepared by the Home Builders Federation ("HBF") and a local consortium of developers ('the Consortium'). The comments contained in these representations should be read in conjunction with the HBF and the Consortium's submissions.

2.0 Comments on the Soundness of the Core Strategy

Overview of the Core Strategy Development Plan Document

- 2.1 Whilst our Client recognises the need to have an up to date development plan in place in order to help attract investment and to stimulate house building within the District, it is also important that the policies within CSDPD need to be sufficiently robust, comprehensive and sound.
- 2.2 Our Client's primary concern is the way in which many of the CSDPD's policies (including, but not limited to, Policies SC5, SC7, HO1, HO2, HO3, HO4, HO5, HO6, HO7, HO8, HO9, EN6) can only be effectively implemented once other allocating/detailed development plan documents have been adopted by the Council. These detailed/allocating development plan documents appear some way off adoption.
- 2.3 It is our Client's considered view that in the absence these additional allocating/detailed development plan documents, the CSDPD on its own can do little to help promote growth in Bradford and its District and given the requirement for the Council to undertake a 15 year plan, it is unlikely that these important development plan documents will be adopted to cover a sufficient period of time.
- 2.4 The unacceptable delay in bringing forward these detailed/allocating development plan documents to help implement the policies of the CSDPD will hinder much needed homes and investment within Bradford and the wider District. On this basis the CSDPD as a whole could be regarded as **unsound** on the basis that the CSDPD policies on their own are ineffective and inconsistent with national planning policy which promotes the idea of promoting and not delaying growth.
- 2.5 The Council and the Inspector will no doubt be aware of the example of Sheffield where the Council successfully adopted a Core Strategy in 2009 and since this time have been unable to adopt any allocating documents. This is generally seen as the primary contributing factor in Sheffield significantly under delivering in terms of housing (and not being able to demonstrate a 5 year supply of deliverable housing sites). In the case of Bradford there is a real danger that a similar situation will arise which will be damaging to the District in terms of investment and growth.
- 2.6 Instead the Council should focus on bringing forward a Local Plan in its entirety which includes CSDPD policies as well as allocations and detailed site policies. This would provide

developers and the Council with a greater degree of certainty regarding how Bradford and its District will grow over the plan period.

2.7 Nevertheless irrespective of this our Client provides comments concerning the CSDPD and the soundness of the policies contained within the document. In particular our Client has concerns relating to:

- The Council's reasoning and justification for the distribution of dwellings across the District; in particular in relation to Airedale and Wharfedale; and
- The phasing and release of housing sites within the Core Strategy document.

2.8 In addition to this our Client also has a number of comments concerning other elements of the Core Strategy that are covered by the representations made by the HBF and the Consortium but nevertheless for completeness are reiterated here.

Distribution of Housing

2.9 Our Client has provided separate comments as part of the Consortium regarding the overall numbers of dwellings proposed to be delivered throughout the plan period (Policy HO1) and these should be read in conjunction with the comments below. Our Client also reserves the right to comment further on the overall housing requirements at the forthcoming examination. The distribution of the number of dwellings proposed is outlined in a subsequent policy (Policy HO3).

2.10 The approach in **Policy HO3** is to provide a broad indication of the distribution of dwellings within Bradford's District with further details to be provided in subsequent allocating/detailed development plan documents.

2.11 Within the CSDPD the Council have observed the requirement within each settlement based on expected population changes over the plan period, using 2011-based census and GIS software. The Council have then adjusted these figures to take into account various factors. These include:

- Land supply (principally the evidence provided in the Strategic Housing Land Availability Assessment ('SHLAA'));
- Growth Study;
- HRA and South Pennine Moors Birds and Habitats Surveys;
- Flood Risk; and

- Other factors (including maximising previously developed land/minimising Green Belt release/delivering affordable housing).

- 2.12 The effect of this is outlined in tables HO3 - HO7 of the CSDPD where overall there is a noticeable boost in housing numbers in areas such as Bradford City Centre, Shipley and Canal Road Corridor, South East Bradford and Keighley. This appears to be at the expense of settlements such as Ilkley, areas of Bradford outside of the south east and many of the Local Service Centres where housing is proposed to be constrained to a level below the identified need based on population.
- 2.13 Whilst our Client does not object in principle to the need to provide a broad range of distribution to various settlements within the Bradford and its District, it believes the Council's methodology and approach to the distribution of housing in Policy HO3 is flawed and **unsound**.
- 2.14 As outlined in paragraphs 2.2 and 2.3 above, the difficulty in distributing housing in this manner is that it is reliant to a large degree on future detailed/allocating development plan documents. As many of these documents are yet to exist, even in draft form, it is questionable how robust this policy is and without having gone through the process of testing allocations at examinations it is difficult to see how such a policy can be fully justified.
- 2.15 Indeed using the Council's latest SHLAA update May 2013 (which is best data available outside of any draft allocations) shows that for south east Bradford in particular there is insufficient capacity to accommodate the required dwellings over the plan period (5,318 dwellings in comparison to the Council's target of 6,000 dwellings), as well as a heavy reliance on sites where notable constraints are to be found. This emphasises that accurately establishing distribution is difficult to achieve without knowing the details of allocations and so consequently the Council cannot fully justify their approach to Policy HO3.
- 2.16 It appears that in coming to their proposed distribution of dwellings across the District, the Council has placed a strong emphasis on the Growth Study that has been produced to examine areas in and around settlements that are subject to constraints. This however appears to largely ignore important factors such as viability considerations. Our Client considers that without proper thought to viability it will be difficult for the Council to undertake their desired distribution of housing given many lower value areas of the District and certain previously developed sites will not be able to be delivered in the current market.

This in turn this will unduly affect the Council's ability to achieve its overall housing target. As a result of this it is our Client's view that on this basis the policy will be ineffective.

- 2.17 In assessing constraints the Growth Study also examines the impact of Special Protection Areas ('SPA') and Special Areas of Conservation ('SAC') in relation to settlements in the District. The approach taken and outlined in the Council's Habitats Regulation Assessment is to utilise a 2.5km buffer zone around the SAC/SPA boundary and for this to feed into and inform Policy HO3 and is also outlined in **Policy SC8**. This has then led to a reduction in housing to key settlements such as Ilkley and Menston and constraining development in areas such as north Keighley.
- 2.18 Whilst our Client agrees that there is a requirement to ensure key areas of wildlife are given the necessary protection, we believe methodology which relates to the 2.5km buffer zone is fundamentally flawed in its approach. Our Client has instructed ecologists Baker Consultants and solicitors Freeth Cartwright to review the approach to the SPAs/SACs from both a scientific and legal perspective. Their specific comments are found in **Appendix A** of these representations.
- 2.19 In summary the review highlights serious legal and scientific flaws in the preparation and application of the Appropriate Assessments which have been used to underpin Policies HO3 and SC8.
- 2.20 As a result of the flaws identified in the review it is concluded that there been lack of consideration of reasonable alternatives to the current approach outlined in Policies HO3 and SC8 (which is required by the Framework) and that the unduly restrictive nature of the policies as currently worded go further than is necessary, to secure protection of the relevant European sites and so will not meet the soundness test as they are currently unjustified and result in Policies HO3 and SC8 not being positively prepared.
- 2.21 We reserve the right to expand further on these points during the examination.

Required Changes to Policy HO3 and Policy SC8

- 2.22 To ensure that Policy HO3 is sound, it is imperative that the Council revisit its methodology to better take into account the viability of development within certain areas of the District. If it is the case that the Council continue with the current distribution it is vital that flexibility is built into the plan to ensure other areas can accommodate any under-delivery from the more viability compromised areas.

2.23 The Council also need to ensure a better balance is struck between meeting the identified future needs for housing in Wharfedale and Airedale and adequately protecting the SPAs and SACs that fall within the District boundaries. As it currently stands this balance is not achieved and the imposition of such a wider buffer zone is both scientifically and legally flawed making both Policy HO3 and Policy SC8 unsound. To remedy this the Council need to re-examine the evidence which underpins these policies and seek the amend their approach as outlined in **Appendix A** of this document.

Phasing and Release of Housing Sites

2.24 The Council's approach to phasing and releasing of housing sites across the district is contained within **Policy HO4** of the CSDPD. It proposes the release land for housing development in two phases; one covering 8 years of the plan (2015 – 2023) (on the basis that the Core Strategy is adopted by 2015) and the other covering the remaining 7 years of the plan (up to 2030). It is intended that whilst the phasing of the release of land will need to be consistent with Policy HO3 of the CSDPD, it will also depend on a number of future site allocating development plan documents coming forward which will provide further detail.

2.25 Nevertheless, for the time being, Appendix 6 of the CSDPD provides a housing trajectory which broadly splits the delivery in the following way:

- 2015/16 – 2022/23 = 18,300 dwellings
- 2023/24 – 2029/30 = 25,000 dwellings

2.26 The justification for this approach for the Council is that a phased approach to housing is necessary to ensure a sustainable pattern of development and that the correct infrastructure is in place to support the housing.

2.27 It is our Client's view that the notion of phasing the release of housing sites is **unsound** and on this basis objects to Policy HO4. The Council will no doubt be aware that in the case of Leeds' Core Strategy that the Inspector rejected a similar phasing arrangement and in his Main Modifications has advised Leeds City Council to move away from a policy which restricts house building earlier on in the plan period.

2.28 The Framework is clear in Paragraph 47 that it is the local planning authority's role to 'boost significantly' the supply of housing and subsequently the Framework does not support the phased release of housing land. This would indicate *prima facie* that the Council's approach

is inconsistent with national planning policy and that Policy HO4 has not been prepared positively and is ineffective in light of Paragraph 47's overall approach.

- 2.29 Whilst Paragraph 47 also states that the Council should provide their own housing trajectory and housing implementation strategy (which the Council have duly undertaken) the nature of the current implementation strategy is unnecessarily constraining housing delivery earlier on in the plan period by allowing an average of 2,288 dwellings per annum from 2015/16 to 2022/23 and then 'ramping up' house building later on in the plan period to an annual average of 3,571 dwellings from 2023/24 – 2029/30.
- 2.30 Contrary to the justification that the Council have sought which mentions the need to create a sustainable pattern of development (paragraph 5.3.65 of the CSDPD), it is considered by our Client that constraining the release of housing sites earlier on in the plan period will in itself lead to unsustainable patterns of development in that it will inevitably lead to imbalanced local housing markets and commuting as a result of constrained supply.
- 2.31 The Council also seek to justify constraining the release of housing sites to allow infrastructure to come forward to support development, however with the inevitable introduction of the Community Infrastructure Levy (CIL) and the continuing use of S106 contributions (be it individual or pooled contributions) it should be possible to deliver the necessary infrastructure *alongside* the delivery of any housing development without the need to constrain housing delivery.
- 2.32 The need to provide a 5 year supply of housing land as highlighted in paragraph 47 is indeed important and it explicitly referenced by the Council in paragraph 5.3.70 of the CSDPD to support Policy HO4. It is noted however within the Council's own evidence base (namely the 2013 SHLAA update) that the Council currently does not have a 5 year housing land supply and in fact has a supply closer to 2.3 years (as a best case scenario) with a notable shortfall in dwellings which has accumulated over recent years.
- 2.33 To overcome this significant shortfall and given the confirmation in the PPG that any backlog should be addressed in the first five years, it is clear that the Council should be seeking viable sites much earlier in the plan to provide delivery and address its current shortfall. Phasing of sites in the way that the Council propose will not achieve such results (in fact it will simply exacerbate the situation); particularly as the Council are seeking to promote sites in regeneration areas and on previously developed land which are likely to have viability issues.

Required Changes to Policy HO4

- 2.34 To enable Policy HO4 to be sound, the Council need to remove the requirement to phase development over the plan period and to allow dwellings to come forward in a way which reflects the principles of paragraph 47 of the Framework.

Other Issues

- 2.35 In addition to the primary points of concern noted above our Client also raises a number of issues in relation to other elements of the CSDPD. These have been outlined within the HBF representations but our Client would like to reiterate these points below.

Duty to Cooperate

- 2.36 Our Client's view is that the Council currently have not shown that they have undertaken their legal Duty to Cooperate which is outlined in the Framework and explained further in the PPG.
- 2.37 The Council's 'Background Paper 1: Overview' provides some explanation of work that has been undertaken with neighbouring authorities, although this document is at best vague. Paragraph 3.5 in particular alludes to the fact that certain policies/strategies from the now revoked Regional Spatial Strategy ("RSS") will be maintained, although it does not mention which areas specifically. Appendix 1 of the Background Paper also provides information on how issues 'beyond the plan area' (within the wider Leeds City Region) will be addressed. This however misses important areas of consideration such as Green Belt and housing needs across the Leeds City Region as a whole.
- 2.38 This is wholly unsatisfactory; the Framework and PPG clearly require the Council to show how it has cooperated with other local authorities to devise a positive planning strategy that will enable development requirements to be met which cannot be wholly met by certain individual members of the consistent local authorities. No such detail has been provided in this instance and given that the Council have set a housing requirement target that is lower than the former RSS target, it is particularly important that the Council provides evidence that this target has been agreed as appropriate with adjacent authorities and how this requirement reflects those decisions and the plans of other authorities.
- 2.39 The situation in neighbouring Kirklees District should be particularly noted given that it too forms part of the Leeds City Region and was at the forefront in developing the common

methodology for capturing 'beyond the plan area' impacts within the Leeds City Region, yet still failed to convince their Planning Inspector that they had complied with the Duty to Cooperate.

- 2.40 To remedy this the Council need to provide further evidence that it has complied with the Duty to Cooperate. We note that in paragraph 3.11 of the Background Paper a separate paper will be produced on the Duty to Cooperate following the submission of the Core Strategy. The Council however will be aware that the Duty to Cooperate cannot be satisfied after submission and therefore any information relating to the Core Strategy can only be reliant upon actions already undertaken.

Housing Requirements

- 2.41 Detailed comments concerning the District's housing requirements are found in the Consortium's representations, which should be read in conjunction with this submission. We provide a summary of the Consortium's main points below.
- 2.42 Within the CSDPD, **Policy HO1** proposes an overall average figure of 2,200 dwellings per annum plus addressing the backlog of 7,687 dwellings that has occurred since 2004. It also takes into account the re-occupation of 3,000 empty homes within the District (and deducts these from the overall housing requirement) meaning a total net housing requirement of 42,100 dwellings over the plan period.
- 2.43 The overall approach of 2,200 dwellings per annum does not appear to be linked to any specific demographic projection, the Strategic Housing Market Assessment (SHMA) or any modelled housing scenarios (as required by the PPG in paragraph 15-20). Instead it appears to be a midway point between two modelled economic scenarios of the 2008-based and 2011-based sub national household projections. On this basis alone the housing requirement is **unsound** as it cannot be justified. This is further exacerbated by the use of 'trend' and 'fixed' headship rates when considering housing growth scenarios post-2021, resulting in a lower level of household growth than might be realistically expected. This again, is unjustified and will lead to an ineffective policy.
- 2.44 Policy EC2 of the CSDPD highlights that the Council's target is to create 2,897 jobs per annum, however the housing target propose would only support 1,600 jobs per annum. This would indicate that the housing numbers proposed would be insufficient to meet the Council's current economic aspirations and that the only way that the current proposed housing target and jobs target can be reconciled is to assume that unemployment within the

District falls dramatically. While this approach is laudable it is entirely unrealistic and cannot be justified.

- 2.45 The Consortium's analysis also highlights a number of arithmetical errors regarding the application of vacancy rates to convert households into dwellings, which would increase the requirement still further. This fact coupled with a net affordable need of 769 dwellings per annum, which is identified in the SHMA (and which cannot be met with an overall requirement of 2,200 dwellings per annum) shows the flaws in the Council's approach and that a higher overall housing figure is required.
- 2.46 On the basis that the Framework seeks that local planning authorities need to 'boost significantly' the supply of housing land (paragraph 47) and to 'plan positively' (paragraph 14), it is our Client's view that to make Policy HO1 sound the Council need to re-examine housing requirements so they realistically can take into account the economic aspirations outlined in Policy EC2. This will require the Council to provide dwellings over and above the 2,200 dwellings per annum figure outlined in the CSDPD to a figure closer to 2,500 dwellings per annum.

Green Belt

- 2.47 Whilst our Client supports the need for the Council to review the Green Belt to accommodate future development needs, it is concerned that **Policy SC7** only intends to undertake a selective review of the Green Belt and that this should be undertaken at the point when an Allocations development plan document has been adopted. Our Client believes this approach to Green Belt is ultimately **unsound**.
- 2.48 Our Client has significant concerns that such an important matter is being delegated to a future document which is to be adopted at an unspecified date. As the CSDPD outlines that there is a need to examine changes to the Green Belt, it should be the case that at the very least, the CSDPD needs to identify those broad areas where Green Belt could be released. Currently the key diagram identifies 'indicative areas', this however provides no real certainty or clarity.
- 2.49 On this basis Policy SC7 can be regarded as ineffective. Indeed the failure of the CSDPD to provide areas of future Green Belt release means that the Council will continue to under-deliver on housing and create uncertainty for the development industry. This will hinder the Council's ability to boost its housing supply as required by the Framework.

- 2.50 Given the challenges for development within Bradford and the requirement to ensure development of viable sites are brought forward, our Client believes the review of the Green Belt needs to be strategic in nature. As a result of this the Council should be taking a holistic view by doing a wider (rather than selective Green Belt review). The Council will no doubt be aware that the Main Modifications to Leeds Core Strategy suggested by their Inspector indicates a selective review to be inappropriate. The Inspector's modifications require the Council to undertake a more thorough review and remove the word 'selective' from the plan.
- 2.51 It is therefore our Client's view that to ensure the approach to Green Belt is effective, areas of release need to be identified in the CSDPD and that the approach should not be selective.

Previously Developed Land

- 2.52 **Policy SC5** states that the Council should prioritise use of the previously developed land. This policy as worded is **unsound** as it is inconsistent with national planning policy contained within the Framework. The Framework instead seeks 'encourage' the use of previously developed land (paragraph 17) which our Client believes should be used instead of the word 'prioritise'.
- 2.53 The approach to previously developed land is also contained in **Policy HO6**. This sets a target for the development of brownfield sites of 50%. Whilst the Framework allows local planning authorities to set such targets, the Council's own evidence (*Local Plan Viability Assessment*) identifies viability issues across much of Bradford and its wider District. The danger is that such a brownfield target will simply exacerbate existing viability issues and will perpetuate the current undersupply of dwellings against current and future housing requirements. The recently published PPG provides further guidance of brownfield land by stating:

"Local Plan policies should reflect the desirability of re-using brownfield land, and the fact that brownfield land is often more expensive to develop. Where the cost of land is a major barrier, landowners should be engaged in considering options to secure the successful development of sites. Particular consideration should also be given to Local Plan policies on planning obligations, design, density and infrastructure investment, as well as in setting the Community Infrastructure Levy, to promote the viability of brownfield sites across the local area. Provided sites are likely to deliver a competitive return for willing landowners and willing developers authorities should seek to select sites that meet the range of their policy objectives, having regard to any risks to the delivery of their plan."

- 2.54 Our Client's view is that the Council needs to provide evidence that delivering houses against this target is viable. Failure to do this makes this policy **unsound** as it cannot be fully justified. Indeed the implications are great as failure to reach this target would inevitably lead to a situation where the Council cannot demonstrate a 5 Year Housing Land Supply and therefore leaving their housing policies out of date (paragraph 49 of the Framework).
- 2.55 To ensure that the Council's approach to previously developed land is sound it is considered that the brownfield target needs to be revisited and that the Council need to ensure the wording of policies are entirely consistent with the Framework and PPG.

Affordable Housing

- 2.56 Whilst our Client supports the notion of different affordable housing contributions in different areas of the District outlined in **Policy HO11**, we note from studying the Council's Local Plan Viability Assessment that the current proposals for affordable housing render developments in all areas apart highest value market areas as unviable even in the event of a significant pick-up in the market. On this basis the policy is **unsound** as it will be unjustified based on the Council's own evidence.
- 2.57 This situation deteriorates further when the cumulative impact of the CSDPD's policies are taken into account with the *Local Plan Viability Assessment* stating:

"The cumulative impact of the proposed policy standards shows that even in the more viable parts of the District, the impact could be to compromise / undermine the delivery of development."

- 2.58 This further reinforces that the policy as drafted is unsound. Whilst the policy allows for negotiation on the amount of affordable housing to be provided on a case by case basis (in relation to viability), as it currently stands, this would require the majority of schemes to go through this process which will further delay the delivery of much needed housing in Bradford.
- 2.59 To address this the Council should seek to reduce affordable housing levels to align with their viability assessment and to introduce further flexibility to allow for the payment of commuted sums towards affordable housing in the event that an on-site contribution is not appropriate.

Housing Density

- 2.60 **Policy HO5** seeks a minimum density of 30dph across all sites. It is unclear whether such a requirement relates to net or gross site areas. Given other requirements within the plan, such as open space and Policy DS3 it is important that any requirement should relate solely to the net developable area. Whilst paragraph 47 of the Framework permits the Council to set out its approach to housing density to reflect local circumstances our Client has not seen any substantive evidence to support the Council's position. On this basis the policy is **unsound** as it cannot be justified.
- 2.61 It should also be noted that the policy requirements may create conflict with other policies particularly Policy HO8, which seeks larger homes and need for accessible homes both of which need larger floor areas and therefore will reduce densities, and Policy DS3 which seeks development to be within the context of its urban character.

Housing Quality

- 2.62 Whilst our Client does not dispute the need to provide for quality homes over the plan period, there are concerns regarding the wording of **Policy HO9**.
- 2.63 Part A of the policy requires developers to submit Building for Life ('BfL') Assessments with planning applications over 10 dwellings. Whilst our Client already strives to meet the 12 standards of BfL, we believe it is overly onerous to require developments to formally submit such assessments as they will simply create additional costs and burdens. As the evidence required to justify the mandatory requirement for such an assessment has not been made we believe this element of the policy is **unsound** as it is unjustified. To make this part of the policy sound the Council should withdraw or make optional the requirement for such an assessment.
- 2.64 Part B of the policy requires that developments conform to Code for Sustainable Homes (CfSH) Level 4 and achieve zero carbon homes by 2016. Given that the Government through their Standards Review are withdrawing the CfSH and are making zero carbon homes a building regulations requirement, then there is no need for this element of the policy and to include it would be **unsound** because it is unjustified. We therefore seek Part B's removal.
- 2.65 Part C of the policy requires accessible homes adaptable to changing needs over the occupants' lifetime. Paragraph 5.3.140 interprets this as Lifetime Homes standards. Whilst our Client is supportive of accessible homes and many developers already conform to such

standards, the policy should seek to encourage rather than require a specific standard. The Lifetime homes website quotes additional costs per dwelling for implementing the standards to be in a range from £545 to £1615 per dwelling. This is not an insignificant figure when it is considered that much of the plan area is unviable or marginal even with no additional burdens placed upon it. In addition, due to the fact that Lifetime Homes generally require a larger footprint but do not provide additional revenue, the costs on site of providing Lifetime Homes are often multiplied. This issue does not appear to have been considered within the viability study. On this basis Part C of the policy is **unsound** given that it is not justified against the evidence base provided by the Council. As such Part C should be adapted to ensure that such standards are optional/aspirational and not mandatory.

- 2.66 Part E of the policy outlines space standards for houses within the District. This part of the policy is **unsound** as it is unjustified; especially as Government has signalled the introduction of national space standards. There is little evidence to support this locally based standard and indeed its introduction will be to detriment of house building in the area as the requirement to build larger homes will mean more expensive homes which will price individuals and families out of mainstream housing. The Council in fact note within its Housing Background Paper (Paper 2) that these standards may indeed not be feasible or viable. It is therefore queried how the Council can justify the inclusion of such standards and as such our Client seeks their removal.

3.0 Conclusions

- 3.1 Whilst our Client supports the need for Bradford to produce an adopted development plan, our concern is that the CSDPD as currently drafted is unsound as many of the policies rely on future development plan documents to come forward in order that policies can be implemented. Many of these policies are vital to the future strategy of the District such as Green Belt and distribution of housing. As a result of this our Client believes the CSDPD itself can be regarded as unsound as its policies are ineffective.
- 3.2 Irrespective of this our Client's primary concerns are regarding the Council's approach to the distribution of housing (Policy HO3 and Policy SC8) and the phasing of housing development (Policy HO4) both of which we believe are unsound and will be detrimental to the Council being able to delivery enough housing in the right places over the plan period and will create unbalanced and unsustainable housing markets. In both instances we provided suggested amendments in order to make these policies sound.
- 3.3 In addition to this we highlight further concerns regarding several other key areas in the CSDPD that we believe are unsound/flawed including:
- Duty of Cooperate;
 - Housing Requirements (Policy HO1);
 - Green Belt (Policy SC7);
 - Previously developed land (Policy SC5 and Policy HO6);
 - Affordable Housing (Policy HO11);
 - Housing Density (Policy HO5); and
 - Housing Quality (Policy HO9).
- 3.4 These are also covered in the HBF representations and we reiterate many of these points in these representations with suggestions on how to make these areas sound and robust.
- 3.5 We trust that our Clients comments will be duly considered and that we are able to discuss these further at the subsequent Core Strategy examination.

Appendix A

Review of City of Bradford District Core Strategy Habitats Regulations Assessments

By

██████████ Baker BSc (Hons) MIEEM

(legal review by ██████████ Simpson)

28 March 2014

Project data

Client	Bradford CS Consortium
Reference	Bradford Core Strategy
Report title	HRA Review
File reference	475_001_rep_final.doc
Team leader	[REDACTED] Baker
Contact details	[REDACTED]

Revision tracking

	Name	Position	Date
Author	[REDACTED] Baker	Managing Director	28 March 2014
Reviewed	[REDACTED] Simpson	Freeth Cartwright LLP	27 March 2014
Revised	[REDACTED] Baker	Managing Director	31 March 2014

Baker Consultants Ltd.

[REDACTED]

Matlock

[REDACTED] DE4 [REDACTED]

[REDACTED]

Contents

Summary	1
1 Introduction	6
Background	6
The Habitat Regulations Assessments of Development Plan Documents	7
2 Review of HRA	10
Appropriate Assessment May 2013 (October 2011)	10
Appropriate Assessment of February 2014	11
Methodology	12
Typical Species	13
Identification of Impact Pathways	16
Avoiding Impacts and or Mitigating Impact	18
Sustainability Appraisal	19
3 Approach Going Forward	20

Summary

1. The City of Bradford District Council has recently released the publication draft of its Core Strategy Development Plan Document (February 2014) ("**Core Strategy PD**") together with an associated Appropriate Assessment report ("**AA 2014**"). The Core Strategy PD is also accompanied by a further earlier AA report which is dated May 2013 (but 'back dated' to October 2011) ("**AA 2013**").
2. The AA 2013 and AA 2014 have been reviewed and have been found wanting, both scientifically and legally. Significant legal and scientific flaws have been identified in the methodology employed by the authors meaning that the AA 2013 and AA 2014 cannot be relied upon. As such proposed policies in the Core Strategy PD which have been informed by the AA 2013 and/or AA 2014 are also unreliable and cannot be justified. The key findings of the review are summarised below.
3. The Core Strategy Further Engagement Draft ("**Core Strategy FED**") (October 2011) refers to an appropriate assessment which had already been undertaken as at that date (see para 1.27). This assessment has not been published. Instead only the later AA 2013 and AA 2014 have been published. This 2011 appropriate assessment must be provided.
4. No evidence of the screening assessment of the Core Strategy, as is required in accordance with regulation 102 of the Conservation of Habitats and Species Regulations 2010 ("**2010 Regulations**"), has been published in support of the AA 2013, AA 2014 and the Core Strategy PD. There is reference in the AA 2013 and AA 2014 to a screening assessment by "Environ, 2012" but this has not been provided. This must be provided. The AA 2013 (para 9.1.1) also refers to a screening assessment dated "March 2010". This must also be provided.
5. The screening assessment referred to in AA 2013 and AA 2014, "Environ, 2012", is described as being a screening assessment of both the draft Core Strategy and the draft Waste Strategy together. This is not appropriate. There must be single screening report dealing with the Core Strategy as is required by regulation 102 of the 2010 Regulations.
6. Following well established principles under caselaw, the screening report must take into account the Core Strategy as a whole including any necessary avoidance/mitigation measures including any necessary safeguarding/qualifying policy wording. It would appear that this has not been the approach here. The assessment in this case (reflected in AA 2013 and AA 2014) has proceeded on the basis that the Core Strategy has failed the screening test in regulation 102 of the 2010 Regulations (although as noted above the screening assessment has not been provided) and that an appropriate assessment is therefore required. However it is in fact highly unlikely that an appropriate assessment is required since the correct approach to screening is to assess likely

impacts and then to take account any proposed avoidance/mitigation measures (including any necessary safeguarding /qualifying policy wording), as part of the screening process, to address those impacts. Indeed it is noted that the 2011 version of the Core Strategy commented at para 1.27 that “The Core Strategy has been subject to an initial Appropriate Assessment (AA) as required under European and Domestic regulations. The assessment concluded that there were unlikely to be any significant effects upon the South Pennine Moor SPA/Special Area of Conservation (SAC) sites. Sufficient safeguards are in place, in the form of over-arching policies to ensure that the Core Strategy would not have a significant effect on the integrity of these sites.” The key wording here is “The assessment concluded that there were unlikely to be any significant effects upon the South Pennine Moor SPA/Special Area of Conservation (SAC) sites”. This is the wording of the screening test under regulation 102 of the 2010 Regulations. It is clear therefore that in 2011, taking into account the safeguarding policies (as screening requires), the screening test was in fact met and no appropriate assessment was therefore required.

7. The assessment in AA 2013 and AA 2104 has erred in law by confounding the status of a mobile typical species of a qualifying Annex I natural habitat of a Special Area of Conservation (“SAC”) with the status of a mobile qualifying feature of a European site. The AA 2013 and AA 2014 proceed on the basis that mobile typical species are to be regarded and treated in the same way as mobile qualifying features. This is incorrect. As such the AAs have erred by taking into account potential impacts on the habitats of typical species located outside the boundary of the SAC which contains the Annex I natural habitat type to which the typical species are stated to relate. In addition the basis for the typical species chosen by the authors for analysis in AA 2013 and AA 2014 is insufficiently supported and not accepted. As such the AAs have incorrectly extended the scope of the assessment beyond that envisaged or required by regulation 102 of the 2010 Regulations or by the Habitats Directive.
8. The avoidance/mitigation measures proposed in the Core Strategy PD (in particular proposed Policies SC8 and HO3) have not been informed by any suitable or adequate assessment of impacts in AA 2013 or AA 2014 and are instead justified on the basis of a deficient assessment:
 - 8.1 The AA 2013 acknowledges throughout the document in relation to a number of the impact pathways identified that its conclusions are uncertain and are based on either insufficient or no evidence relevant to the South and North Pennines. Even in relation to the impact pathways where this is not expressly acknowledged it is clear that this is the case. The AA 2013 (para 9.4.1) itself notes that data gaps including bird surveys, habitat surveys and visitor surveys needed to be filled. The AA 2013 also acknowledges that the recommendations it makes for avoiding or mitigating impacts are “interim recommendations” (see heading on page 93) and “preliminary ideas for avoiding adverse effects on the integrity of European sites” (para 9.3.1). Where the AA 2013 report discusses “Adjusting the rate, scale and spatial distribution of

development” (para 8.3) it concludes that (para 8.3.1) “We are concerned that the overall level of housing being proposed within Bradford district is such that adverse effects on the SAC/SPA may not be capable of being avoided or mitigated” and “reducing the scale of housing allocations, particularly for settlements wholly or substantially within 2.5km of the SAC/SPA, is therefore likely to be necessary to satisfy the requirements of the Habitats Regulations”. AA 2013’s recommendations are therefore, by its own admission, insufficiently evidenced and are merely preliminary.

8.2 Further data was then collected in 2013 and referred to in the revised AA 2014: visitor surveys, breeding bird surveys and surveys of moorland fringe habitats. One would therefore expect the AA 2014 to review fully the AA 2013 based on the 2013 data obtained so as to re-assess the likely impacts on the relevant European sites; to conclude whether a significant effect on the European sites would be likely; to identify the nature and scale of any avoidance/mitigation measures needed to address any such likely impacts; and finally to present this clearly in the AA 2014. One would then expect the Core Strategy PD to contain policies reflecting the avoidance/mitigation measures which are evidenced through that process as being needed to address, in appropriate nature and scale, the specific identified impacts.

8.3 However this, regrettably, has not been the approach. The AA 2014 does not, in the case of many of the impact pathways, draw any conclusion as to the likelihood of significant impacts (or indeed adverse effects) on the European sites. The AA 2014 explains (section 6.3) that the Core Strategy PD is based on the AA 2013’s recommendations (which were, as already explained merely “preliminary ideas” or “interim recommendations” in the absence of sufficient evidence), whilst taking into account the data from 2013. The Core Strategy PD has therefore simply run with the recommendations in the AA 2013 (even though they were “preliminary ideas” only), apparently tweaking them a little to reflect the data collected in 2013. There has, therefore, been no process of stepping back to assess whether the “preliminary ideas” made in AA 2013 are in fact necessary or appropriate in the light of further information obtained; or indeed whether (in the light of that information) there might be another approach which would retain flexibility as to the provision of housing development at this stage of the development plan process but nevertheless secure the necessary protection of the European sites.

8.4 In this way an assessment, which has been acknowledged even by its authors to be deficient and unreliable (the AA 2013), has come to dictate the extremely restrictive housing policy now found in Policies SC8 and HO3 of the Core Strategy PD without any adequate justification or indeed consideration of other potential approaches. The scale and nature of the reduction in numbers of housing / redistribution of housing which the Core Strategy PD states is needed is not evidenced by the assessment undertaken.

8.5 In relation to other possible approaches, we note that, in relation to atmospheric pollution, the AA 2014 recommends more detailed testing and traffic modelling during the pre-allocations testing stage which will precede development of the Allocations DPD (para 5.5.12). A similar approach could be adopted by the Core Strategy PD in relation to housing numbers and distribution. Following a proper assessment which must address the deficiencies identified in this report, a policy could be written to identify further information and data that is needed to make a reliable assessment of impacts of housing numbers/distribution on the European sites and to require that information and data to be obtained and to dictate the approach in the Allocations DPD.

9. Despite the additional data collected in 2013, the data and information on which the AA 2013 and AA 2014 are based are in any event wholly insufficient to make an assessment of impacts of the Core Strategy on the relevant European sites in this case. The following data/information have not been considered at all:
- Likely change population and demographics arising as a consequence of the Core Strategy and how that might translate into increased visitor numbers;
 - The ability of the moors to accommodate visitor pressure; and
 - The nature of the potential impacts specific to upland moors.
10. As it stands the AA 2014 concludes that there is no certainty as to the absence of adverse effects on the integrity of the relevant European sites. As such the Core Strategy cannot lawfully be adopted without compliance with regulations 103 and 105 of the 2010 Regulations. No information as to how the requirements of regulations 103 and 105 could be met has been provided. It is highly unlikely that these requirements could be met in this case.
11. AA 2013 and AA 2014 have not incorporated any 'in combination' assessment which is a requirement of regulation 102.
12. As part of the review a reassessment of the proposed avoidance / mitigation measures to ensure protection of the European sites must be undertaken. Such measures must be demonstrated to be necessary, proportionate and effective to address the likely evidenced impacts identified. The review must present the various options in terms of policy wording which might be available for incorporation into the Core Strategy so as to ensure the necessary protection of the European sites. The policies set out in SC8 and HO3 are unduly restrictive and it is unlikely that the nature and scale of the restrictions imposed are required to allow the requirements of regulation 102 to be met. Consideration should be given to adoption of a policy which secures protection of the European sites through the imposition of requirements as regards further data collection, which is the approach adopted by the authors in relation to atmospheric pollution (para 5.5.12 A 2014). In accordance with the "soundness test" (para 182 National Planning Policy Framework) the Core Strategy should adopt

the most appropriate strategy when considered against the reasonable alternatives and deliver sustainable development consistent with national policy. Unduly restrictive policies, which go further than is necessary in the context of a core strategy which is a high level document to secure protection of the relevant European sites, will not meet the soundness test.

13. The Strategic Appraisal (SA) of the Core Strategy, which has been submitted alongside the Publication Draft, refers to the flawed HRA and therefore cannot be relied upon in this respect.

1 Introduction

Background

14. The City of Bradford District Council has recently released the publication draft of its Core Strategy Development Plan Document (February 2014) ("**Core Strategy PD**") together with an associated Appropriate Assessment report¹ ("**AA 2014**"). The Core Strategy PD is also accompanied by a further earlier AA report which is dated May 2013 but is curiously 'back dated' to October 2011² ("**AA 2013**").
15. Following the publication of the Core Strategy PD and the AA 2013 and AA 2014 Baker Consultants Ltd and Freeth Cartwright LLP were approached by a consortium of interested parties (Commercial Estates Group, Persimmon Homes, Barratt Homes & David Wilson Homes, Redrow Homes Ltd) to provide a review of the two AAs and to assess the efficacy of the methods employed and whether or not the conclusions reached are justified, proportionate, necessary and consistent with the relevant legal framework.
16. This review has been principally the work of Baker Consultant's managing director Andrew Baker and Penny Simpson of Freeth Cartwright LLP.
17. Andrew has considerable expertise in nature conservation law and has published widely on the subject including (along with Brown Jacobson Solicitors) the 2nd Edition of 'A Manual of Nature Conservation Law' edited by Michael Fry. Through his involvement in Nature Conservation Working Group of the UK Environmental Law Association (UKELA) Andrew has been actively involved in the development of Nature Conservation Law and planning policy that affects ecological issues. Andrew has considerable expertise of the practical application of this area of law and teaches on European and domestic nature conservation law and its associated guidance and policy. He has had close involvement in a number of cases in particular ones that involve the protection of lowland heaths such a Thames Basin Heaths and Dorset Heaths. In his earlier career as a field botanist Andrew worked for the Peak District National Park Authority and English Nature on upland heaths including the South Pennine Moors and he is therefore very familiar with these habitats and the pressures facing them.
18. Penny Simpson is an environmental lawyer and a partner at Freeth Cartwright LLP. She has over 14 years of experience in advising on nature conservation law, principally relating to the Habitats and

¹ Habitats Regulations Assessment for the City of Bradford District Core Strategy. Appropriate Assessment Report for the Publication Draft Document (February 2014) February 2014.

² Habitats Regulations Assessment for the City of Bradford District Core Strategy. Appropriate Assessment Report for the Further Engagement Draft Document (October 2011) May 2013.

Birds Directives. In her practice at Freeth Cartwright LLP she advises a wide range of public and private sector clients on these issues. She has very recently stepped down as chairperson of the Nature Conservation Working Group of the UKELA, having held that position for approximately 5 years. As well as her provision of day to day legal services to her clients on natural environment issues she is retained by many organisations to provide professional training on the Habitats and Birds Directives to environmental professionals. She has published widely on these issues including in the Journal of Planning and Environmental Law and has also been quoted by the Sunday Times newspaper for her Habitats and Birds Directive expertise.

19. The following report contains a critique of the two AAs that have accompanied the iterations of the Core Strategy to date. Much of the work is concentrated on the AA 2014 of the Core Strategy PD however the AA 2013 has also been reviewed as the AA 2014 references the AA 2013.

The Habitat Regulations Assessments of Development Plan Documents

20. Habitat Regulation Assessments (“**HRAs**”), as required under Article 6(3)-(4) of the Habitats Directive (92/43/EEC), must be undertaken in relation to both “plans” and “projects”. In relation to “land use plans” the provisions of Article 6(3)-(4) Habitats Directive have been implemented in England by regulations 102, 103 and 105 of the Conservation of Habitats and Species Regulations 2010 (“**2010 Regulations**”). The Bradford Core Strategy is a land use plan and “it is the most important development plan document contained within the Local Plan. This is because it sets the strategy and framework within which all subsequent development plan documents are formulated” (para 1.5 of the Core Strategy PD). The purpose of a HRA of a core strategy is therefore to ensure that a later plan or project brought into effect under the core strategy, which is likely to have a significant effect on a European site (i.e. which fails the HRA screening test) and which will or may have an adverse effect on the integrity of a European site, as understood at the Core Strategy stage, cannot in the future be approved consistently with the core strategy.
21. The degree of detail available at the core strategy stage, when no more detailed plan or project has as yet come forward, will inevitably be limited. Therefore the appropriate manner in which to conduct an HRA of a core strategy is (i) to provide an assessment to the extent possible (bearing in mind the high level nature of the core strategy) of the impact of the plan on the qualifying features of the relevant European sites based on appropriate and relevant data and information; (ii) where necessary identify appropriate and proportionate avoidance and / or mitigation measures which reflect and address in nature and scale the negative impacts from the core strategy on the European sites which have been identified as being problematic; and (iii) providing qualifying policy wording within the core strategy to reflect those necessary avoidance / mitigation measures. The qualifying policy wording will thereby prevent a future plan or project proposal going forward unless there is

certainty as regards an absence of negative effects on the relevant European sites. In this way a core strategy represents a conditional, not irrevocable, commitment to future proposals.

22. The 2010 Regulations adopt a staged approach to HRA as is required under Article 6(3)-(4) of the Habitats Directive. This is set out, in relation to land use plans, in regulation 102, 103 and 105 of the 2010 Regulations.

102. Assessment of implications for European sites and European offshore marine sites

(1) *Where a land use plan –*

(a) *is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and*

(b) *is not directly connected with or necessary to the management of the site,*

the plan-making authority for that plan must, before the plan is given effect, make an appropriate assessment of the implications for the site in view of that site's conservation objectives.

.....

(4) *In the light of the conclusions of the assessment, and subject to regulation 103 (considerations of overriding public interest), the plan-making authority or, in the case of a regional strategy, the Secretary of State must give effect to the land use plan only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be).*

.....

103. Considerations of overriding public interest

(1) *If the plan-making authority are satisfied that, there being no alternative solutions, the land use plan must be given effect for imperative reasons of overriding public interest (which, subject to paragraph (3), may be of a social or economic nature), they may give effect to the land use plan notwithstanding a negative assessment of the implications for the European site or the European offshore marine site (as the case may be).*

.....

105. Compensatory measures

Where in accordance with regulation 103 (considerations of overriding public interest) a land use plan is given effect notwithstanding a negative assessment of the implications for a European site or a European offshore marine site, the appropriate authority must secure that any necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 is protected.

23. It can be seen that the first stage is the test to be applied by the plan making authority to decide whether an appropriate assessment is required. This is known as the "screening" or the "likely significant effect" test. If the plan making authority concludes that the land use plan is not likely to

have a significant effect on the relevant European site alone or in combination with other plans or projects, the HRA is complete and the plan may be given effect.

24. It is important to recognise that the land use plan as a whole, including any necessary avoidance and / or mitigation measures envisaged within it (ie measures to avoid impacts on the relevant European site), must be the subject of the "screening test" in accordance with the judgment handed down in *Hart District Council v The Secretary of State for Communities and Local Government* [2008] EWHC 1204 (Admin).
25. Therefore where a screening assessment of a land use plan indicates that there are any aspects of the plan which would be likely to have a significant effect on a European site either alone or in combination with other plans or projects, the screening process should proceed iteratively to consider the incorporation of avoidance / mitigation measures tailored to address the offending impacts. This should include any qualifying policy wording, as referred to in paragraph 20 above. The land use plan should then be re-screened by the plan-making authority and a conclusion reached as to whether, taking into account the tailored avoidance / mitigation measures including policy wording, the land use plan is likely to have a significant effect on the relevant European site, alone or in combination with other plans or projects. This re-screening process may occur a number of times.
26. If a land use plan fails the screening test then an 'appropriate assessment' must be made by the plan making authority, following which regulation 102 requires the plan making authority to ascertain whether or not there will be no adverse effect on the integrity of the relevant European site. If the plan making authority ascertains, following its appropriate assessment, that the plan will not adversely affect the relevant European site then the plan may be given effect. If it does not so conclude then the provisions of regulations 103 and 105 apply. Only if the requirements of regulations 103 and 105 are met could the plan then lawfully be given effect.

2 Review of HRA

27. Bradford City Council has produced two AAs of its draft Core Strategy as set out above. These two documents are very similar however the AA 2014 has been modified to reflect a number of surveys that were carried out following the publication of the AA 2013. As such this review concentrates on the AA 2014. The AA 2013 document however sets out a number of recommendations have been referred to in the 2014 AA and therefore it is necessary to review these recommendations.
28. The Core Strategy Further Engagement Draft ("**Core Strategy FED**") (October 2011) refers to an appropriate assessment which had already been undertaken as at that date (see para 1.27). This assessment has not been published. Instead only the later AA 2013 and AA 2014 have been published. This 2011 appropriate assessment must be provided.

Appropriate Assessment May 2013 (October 2011)

29. The AA 2013 appears to have followed a previous joint screening assessment of the draft Core Strategy and draft Waste Management Plan (Environ 2012) as referred to in paragraph E1.3 of AA 2013. This document however cannot be found on the Council's website and there therefore appears to be no public record of the screening assessment. The failure to publish the screening assessment is a concern and it must be provided. The AA 2013 (para 9.1.1) also refers to a screening assessment dated "March 2010". This must also be provided if different to the Environ 2012 screening assessment.
30. As noted in the paragraph 23 above, caselaw has shown that the plan making authority is required, when screening, to take the entire plan into account including avoidance or mitigation measures. Given this, it is at present far from clear as to why the Core Strategy PD has been determined to have failed the screening test. In addition the screening test must be applied in relation to each land use plan and it is not acceptable that the screening assessment referred to appears to have dealt with two plans together.
31. The majority of the AA 2013 is reproduced in the later AA 2014 and therefore is not reviewed in detail here.
32. However it is important to note that the AA 2013 acknowledges throughout the document in relation to a number of the impact pathways identified that its conclusions are uncertain and are based on either insufficient or no evidence relevant to the South and North Pennines. Even in relation to the impact pathways where this is not expressly acknowledged it is clear that this is the case. The AA 2013 (para 9.4.1) itself notes that data gaps including bird surveys, habitat surveys and visitor surveys needed to be filled.

33. The AA 2013 also acknowledges that the recommendations it makes for avoiding / mitigating impacts (eg reductions of housing allocation within 2.5km of the relevant Special Areas of Conservation (SACs) / Special Protection Areas (SPAs) and other related measures) are merely “interim recommendations” (see heading on page 93) and “preliminary ideas for avoiding adverse effects on the integrity of European sites” (para 9.3.1). Where the AA 2013 report discusses “Adjusting the rate, scale and spatial distribution of development” (para 8.3) it concludes that (para 8.3.1) “We are concerned that the overall level of housing being proposed within Bradford district is such that adverse effects on the SAC/SPA may not be capable of being avoided or mitigated” and “reducing the scale of housing allocations, particularly for settlements wholly or substantially within 2.5km of the SAC/SPA, is therefore likely to be necessary to satisfy the requirements of the Habitats Regulations”.
34. AA 2013’s recommendations are therefore, by its own admission, insufficiently evidenced and are merely preliminary. It is also unclear whether these recommendations are those of the competent authority or merely the views of the consultants who produced the AA.
35. This will be reviewed in more detail later in this document.

Appropriate Assessment of February 2014

36. The AA 2013 was updated by the AA 2014. The AA 2014, while very similar to the former document, is informed by 3 additional pieces of work.
 - Surveys of visitor activity within the SACs/SPAs;
 - Breeding bird surveys within 2.5km of the SACs/SPAs; and
 - Survey of moorland fringe habitats.
37. The AA 2014 however (rather than carrying out a full review of the potential impacts on the relevant European sites based upon the further data collected; providing a view as to likely impacts in view of that information; and recommending appropriate (proportionate and necessary) avoidance / mitigation measures to address those specific likely impacts) simply takes as read new Policy SC8 and HO3 and in that way carries over the “interim” / “preliminary idea” recommendations of AA 2013 without question.
38. In this way an assessment, which has been acknowledged even by its authors to be deficient due to inadequate data (the AA 2013), has come to dictate the extremely restrictive housing policy now found in Policy SC8 and HO3 of the Core Strategy PD without any adequate justification or indeed consideration of other potential approaches.

39. This flawed approach is explored in more detail below.

Methodology

40. The failure to publish the screening assessment associated with the AA 2014 is (as explained above) a continuing failure in this HRA process.
41. Section 2.1 AA 2014 sets out the guidance that has been followed in compiling the AA 2014 (this guidance was also referred to in AA 2013 (section 2.1)).
42. Paragraph 2.1.2 includes an excerpt from the EC (2000a) guidance on the use of the Precautionary Principle. It is important to note that the guidance recommends that the Precautionary Principle be triggered where “a preliminary scientific evaluation shows that there are reasonable grounds for concern that an activity might lead to damaging effects”. The EC guidance 2000a provides further guidance on what a *preliminary scientific evaluation* should include.

The implementation of an approach based on the precautionary principle should start with a scientific evaluation, as complete as possible, and where possible, identifying at each stage the degree of scientific uncertainty.

43. In addition, in the case of *R (Boggis) and another v Natural England* [2009] EWCA Civ 1061, Sullivan J stated that for a risk to exist which may then lead to failure of the HRA screening test there must be “credible evidence” that there is a “real, rather than a hypothetical, risk”.
44. In this AA 2014 insufficient scientific evaluation, particularly in relation to the recreational and other direct impacts alleged to present a threat to the SACs and SPAs from nearby housing development has been carried out or provided to allow reliance on the precautionary principle or to satisfy the view of Sullivan J. Specifically insufficient scientific evaluation has been carried out or provided to evidence the scale and nature of the reduction in numbers of housing / redistribution of housing which the Core Strategy PD states is needed as a consequence of the HRA.
45. The method adopted in the AA 2014 is further flawed. The AA 2014 concludes (para 8.3.1) that it is not possible to demonstrate with certainty that the Core Strategy PD will not lead to adverse effects on the integrity of the relevant European sites. On this basis the Core Strategy PD may only be adopted / given effect if the requirements of regulations 103 and 105 of the 2010 Regulations are first met. The AA 2014 provides no comment on these requirements or how they might, if at all, be satisfied in this case. These requirements are difficult to meet and it is highly doubtful that they could ever be met in this case. Therefore on the basis of the AA 2014 one concludes that the Core Strategy PD, as assessed under the AA 2014, has very little prospect of lawfully being adopted.

46. Having acknowledged the absence of certainty over the Core Strategy PD's impact on the integrity of the relevant European sites, paragraph 8.3.1 then states that "the Core Strategy establishes a reasonable and pragmatic approach to reducing the risk of adverse effects (including by redistributing development and providing for alternative recreational sites) and mitigating residual impacts (through access and habitat management) to demonstrate that adverse effects are capable of being avoided and / or mitigated. Further work is needed during preparation of the Allocations DPD to ensure that.....". However further work on the Allocations DPD has no relevance if the AA 2014 is unable to conclude (as is the case) that the Core Strategy PD will have no adverse effect on the integrity of the relevant European sites.

Typical Species

47. The approach adopted by the AA 2013 and AA 2014 has erred in law in relation to assessing impacts on the SACs, specifically with regard to "typical species". This error is perpetuated by the Core Strategy PD which is based in part, and incorrectly, on the conclusions reached in the AA 2014 as regards typical species (see e.g. paras 3.115, 5.4.36 Core Strategy PD).
48. First, the list of typical species is effectively a random selection of species made by the authors of the AA 2014 (based on the references at para 3.7.2 of the AA 2014), which is not accepted.
49. Secondly, the AA 2014 considers, as relevant to the HRA, impacts on mobile "typical species" outside the boundary of the SACs. This is incorrect. This approach fails to recognise the important difference between a qualifying feature of a European site and the typical species of an Annex I natural habitat for which a SAC is designated. SACs are designated under Articles 3 and 4 of the Habitats Directive for one or more of the natural habitat types listed in Annex I and species of animal or plant listed in Annex II of the Habitats Directive. These are the qualifying features of the SAC. The focus of a HRA is on the European site's qualifying features. The authors of the AA 2013 and AA 2014 have erred in giving mobile "typical species" of an Annex I natural habitat the same status and treatment as a mobile qualifying species. The use by mobile qualifying features (eg a specific identified population of a qualifying bird species for which a SPA is classified; or a specific identified population of a qualifying animal species for which a SAC is designated) of habitat outside the relevant SPA or SAC is relevant to a HRA because those birds or animals themselves (and indeed a specific population of them) are the qualifying feature. By contrast the "typical species" of a SAC's natural habitat is not an identified specific population of a named species. They are instead an assortment of species which are directly associated with / functioning as part of the qualifying natural habitat within the boundary of the SAC. Typical species are therefore only relevant to a HRA to the extent that they function with the qualifying natural habitat within the SAC for which the SAC is designated. As such impacts on typical species are only relevant to a HRA if they are associated with impacts on the qualifying natural habitat for which the SAC is designated. An impact outside the SAC boundary on species which happen to be typical of the SAC's qualifying natural habitat

does not amount to an impact on the *structure or function of the qualifying natural habitat* within the SAC. This is clear from:

- 5.2.1 Article 6(3) Habitats Directive: Under Article 6(3) a HRA must be made “in view of” the conservation objectives of the European site. The conservation objectives set by Natural England (“NE”) in the case of the South Pennines and North Pennines SACs are available on NE’s website. Note that the key objective is: “With regard to the natural habitats and / or species for which the site has been designated (the Qualifying Features listed below):....”Avoid deterioration of the qualifying natural habitats and the habitats of the qualifying species, and the significant disturbance of those qualifying species, ensuring the integrity of the site [see below] is maintained and the site makes a full contribution to achieving favourable conservation status of each of the qualifying features”. “Integrity of the site” is defined in OPDM Circular 06/2005: “The integrity of a site is the coherence of its ecological structure and function, across its whole area, that enables it to sustain the habitat, complex of habitats and / or the levels of populations of the species for which it was classified”. The five maintenance and restoration objectives included in NE’s conservation objective document also all relate to the qualifying natural habitats and the qualifying species. For example the document includes objectives to maintain or restore the “populations of the qualifying species” and the “distribution of the qualifying species within the site”. There is reference to “typical species” within the objective to maintain or restore “the structure and function (including typical species) of qualifying natural habitats”. This is therefore an objective to maintain or restore the function of the natural habitats within the SAC boundary, of which the typical species are a part. The typical species are only relevant to the extent that they function with the qualifying natural habitat for which the SAC is designated. Impacts on typical species are only relevant to the extent that they are associated with impacts on the natural habitat of the SAC. In further support of this it is important to note that the conservation objective document does not require (as it does for qualifying species) maintenance or restoration of “populations of typical species” or of the “distribution of typical species within the site”. The approach adopted by the authors incorrectly proceeds as if such requirements did exist.
- The quote provided from the European Commission’s MN 2000 guidance in para 3.7.1 of the AA 2014 does not support the authors’ approach. It shows that the structure and function of the natural habitat within the SAC is the key issue, of which the typical species form part. The typical species are not to be considered distinct from that natural habitat:

“Habitat deterioration occurs in a site when:

the area covered by the habitat in the site is reduced or

the specific structure or functions [ie of that habitat] necessary for the long term maintenance or the good conservation status of the typical species which are associated with the habitat are reduced in comparison to their initial status”.

- The authors’ approach is inconsistent with their own stated approach at para 3.1.2 AA 2014 “...Adverse effects may also occur via impacts to mobile species occurring outside of a designated site but which are qualifying features of the site” (Table 3.1 of the AA 2014 lists those qualifying features, which (correctly) do not include any typical species).

50. Even to the extent that NE’s conservation objective documents do make typical species relevant to a HRA (i.e. as noted above, when the typical species is impacted in conjunction with impacts on the natural habitat within the SAC boundary) there is no identified population level (e.g. numbers of pairs or percentage of the UK population) of any specific typical species which must be maintained or restored (contrast the position with qualifying species – see eg para 3.2.3 – 3.2.4 and 3.3.2 - 3.3.3 of AA 2014). Therefore even if the authors were to limit, in the assessment, their consideration of typical species (as they should) to the impacts on those species through impacts on the natural habitat within the SAC boundary, an adverse impact or risk of an adverse impact measured through the typical species would be very difficult to judge.

51. The AA 2014, by assessing potential impacts on ‘typical species’ (which are not qualifying features) outside the SAC boundary, has incorrectly extended to scope of the assessment beyond that which is envisaged and required by the Habitats Directive. Consequently too great an emphasis has been given the value of habitat outside the boundary of the European sites (see below). As noted above it is however acknowledged that habitat used outside the South and North Pennine SPAs by mobile qualifying species of the SPAs are relevant to the HRA.

52. The illogicality of this approach is fully demonstrated in paragraph 7.4.1 of the AA 2014 which considers the impact of the Core Strategy PD upon the North Pennine Moors SAC. The paragraph includes the following text.

‘Development that significantly impinges, either directly or indirectly, on in-bye fields used by typical species of the Annex 1 habitats of the SAC could have an adverse effect on the conservation status of these species, and hence the habitat for which the SAC has been selected.’

53. The author has constructed an argument that impacts manifest upon typical species (Twite and Curlew in this case) from outside the SAC will somehow affect the SAC habitat that supports them. This is clearly not the case as there is no mechanism by which this might occur. While the populations of these birds may be affected by changes to the SAC’s qualifying habitat within the boundary of the SAC, the converse is not true.

Identification of Impact Pathways

54. Section 5 of the AA 2014 sets out to identify the pathways by which the Core Strategy PD may have an adverse impact upon the relevant European sites.

Loss of supporting habitat

55. A key part of the assessment relates to the potential loss of supporting habitat outside the European site boundaries that may result in adverse effects upon the qualifying bird species of the SPAs. However this assessment also considers bird species that are considered by the authors to be “typical” of the qualifying natural habitats of the SACs and, for the reasons given above, this is therefore not considered to be relevant.
56. Of the qualifying birds species of the SPAs, only Curlew were recorded on the Strategic Housing Land Availability Assessment (SHLAA) sites that were surveyed (Table 5.3 page 47 AA 2014). Curlew is a qualifying species only for the North Pennines Moors SPA (this species is not included in the South Pennines Moors SPA designation) and yet the AA 2014 concludes that there is no adverse effect upon the integrity of the North Pennines SPA (paragraph 7.6.13)

Recreational impacts

57. A considerable part of the AA 2014 focuses on the potential impact on the relevant European sites of recreational activities arising from various policies within the Core Strategy PD. It would appear that the majority of the assessment is based upon the author’s experience and knowledge of southern lowland heaths such as Thames Basin Heaths and Dorset Heaths. Much of the assessment is based upon data gathered from these areas.
58. The lowland heaths of southern England are however not only very different habitats but are also subject to very different recreational pressures.
59. The difference in the scale between the lowland and upland European sites, for example, raises questions as to how relevant data, regarding the lowland heather sites, are to the uplands. The Thames Basin Heaths SPA is a dispersed, archipelago European site of just over 8,200 Ha whereas the North Pennine Moors is over 147,000 Ha (see Table 1 below) i.e. more than 18 times the size.
60. Lowland heaths are subject to very different recreational pressures as the nature of the habitat has allowed visitors to create new path across the site over the dry sandy soils. The northern upland moors are mainly based on peat deposits that are wet and not easily negotiated away from paths.

Recreational pressure in the upland moors is therefore generally confined to well used paths that are maintained. The density of paths through the moors is also much lower on the northern upland heaths than lowland heaths.

61. These factors mean that the level of visitor penetration into the South Pennine and North Pennine European sites is likely to be very small compared to its total area.
62. As stated in paragraph 5.7.3 of the AA 2014 there is no evidence that the current level of recreation is having a negative impact upon the European sites and therefore no evidence of an effect that would warrant the use of the Precautionary Principle or satisfy the view of Sullivan J as above.

Table 1 Comparative areas of heathland sites.

European site	Area Ha
Thames Basin Heaths SPA	8,274.72
Dorset Heathlands SPA	8,168.79
Dorset Heaths SAC	5,730.73
North Pennine Moors SPA	147,248.41
North Pennine Moors SAC	103,109.42
South Pennine Moors SPA	66,207.01
South Pennine Moors SAC	64,983.13

Source JNCC

63. Data that has been gathered on the upland moors quoted in the AA 2014 e.g. Finney et al 2005 (para 5.7.17) refers to data collected from the Pennine Way which is one of the busiest routes on the Moors. While the data showed a disturbance effect in 400m strip either side of the path it does not demonstrate and overall impact on reproductive performance of Golden Plover. There is no assessment in the AA 2014 of how these disturbance effects may result in an adverse effect upon the integrity of the SPA i.e. would the population of birds, across the entire site, be limited by such recreational pressure. It is highly unlikely, given the scale of the upland moors, that such localised effects would result in an impact at the population scale.

Effects of dogs, Trampling and Erosion, Urban edge effects, Fires, Cat predation, and Urbanised Avifana

64. All of the above impact pathways are cited in the AA 2014 however nowhere in the document is there any assessment of whether these impacts have an adverse effect upon integrity of the European sites. As with the previous sections much of the research cited is from studies of lowland heaths and therefore not comparable. Many of the statements are unsupported by any scientific evidence or reference to published literature. No attempt is made to assess how the proposed SHLAA sites will affect the overall population levels in the area and what level of additional pressure they will generate.

Avoiding Impacts and or Mitigating Impact

65. The Core Strategy PD imposes a redistribution of, and reduction in, housing development on the basis of a need identified in the AA 2014 (see HO3 and paras 5.3.53, 5.3.59, 5.3.62, 5.3.63, of the Core Strategy PD). The redistribution / reduction is also summarised in Table 1.1 of the AA 2014. The Core Strategy PD also incorporates Policy SC8 "Protecting South Pennine Moors and their zone of influence".
66. The need for housing redistribution / reduction appears to be based on an assumption that it (together with alternative recreational sites and mitigation of residual impacts (see E5.1 of AA2014)) is necessary to safeguard the European sites. But this is not adequately evidenced or justified in the AA 2014. For example, nowhere in the AA is there any consideration of how the new housing relates to projected population change in the area.
67. The logic presented as between the AA 2013 / AA 2014 and the Core Strategy PD is entirely circular. The AA 2013 suggests as a "preliminary idea" (based on the authors' acknowledged absence of sufficient data) the need to reduce / redistribute development (para 8.3.1 to 8.3.5). These "preliminary idea" recommendations were made before the survey data was available. The AA 2014 is then based on the Core Strategy PD reductions / redistributions in policies H03 and SC8 but the Core Strategy PD is expressed to be based on the AA 2014! . So nowhere in the AA 2014 or elsewhere is there an explanation or justification presented of the extent and nature of the reduction / redistribution imposed by the Core Strategy PD in policies HO3 or SC8.
68. Rather than referring back to the "preliminary idea" of requiring a reduction / redistribution of housing as presented in the AA 2013, the AA 2014 should have made a re-assessment of impacts upon the relevant European sites in the light of the further evidence (and indeed other evidence which to date is missing from the analysis), concluded whether significant effects on the European sites were likely, then reassessed in the AA 2014 the need for the avoidance and / or mitigation measures previously assumed to have been necessary, and presented proportionate avoidance / mitigation measures necessary to address the specific likely impacts identified. The Core Strategy should then have reflected this analysis.
69. The highly restrictive (for housing) avoidance / mitigation measures presented in the AA 2014 (ie Policy SC8 together with the reduction in housing numbers / redistribution of housing in HO3) are not adequately justified by evidence presented in the AA. There is no evidence that they are proportionate or necessary. For example the restriction of housing numbers within 2.5km of the SPA is not based on any evidence of a demonstrable affect upon the European sites' integrity. In paragraph 6.3.3 AA 2014 it is stated that "Within 2.5km zone new development must avoid direct or indirect impact on supporting habitats". As discussed above the SHLAA sites support only 1 species

for which one of the SPAs (the North Pennine SPA) were designated (Curlew) and the AA 2014 concludes that there is no adverse effect upon the integrity of the North Pennine SPA. The scientific evidence does not justify the proposed restriction.

Sustainability Appraisal

70. The Bradford Core Strategy Publication Draft has been the subject of a Sustainability Appraisal (SA) which incorporates the requirements of a Strategic Environmental Assessment Directive 2001/42/EC. The SA report³ relies on the flawed HRA and reproduces the errors that have been highlighted above. The SA report cannot therefore be relied upon in respect to the assessment of impacts upon the European sites.

³ Sustainability Appraisal of the Bradford Core Strategy Publication Draft. Sustainability Appraisal Report. AMEC February 2014

3 Approach Going Forward

71. For the reasons set out above the AA 2013 produced for the Core Strategy FED and the AA 2014 produced for the Core Strategy PD are flawed both from a legal/procedural point of view and scientifically. As such the severe restrictions imposed on housing in the Core Strategy PD (in Policy SC8 and through HO3) are also unjustified.
72. As set out above the approach adopted by the authors of the AA 2014 and 2013, rather than being an objective assessment of scientific evidence, relies too heavily on assumed risks which are not evidenced in relation to the circumstances of these European sites in these areas.
73. The assessment undertaken to date must be reviewed, addressing all the deficiencies highlighted in this report above.
74. As part of the review a reassessment of the proposed avoidance / mitigation measures to ensure protection of the European sites must be undertaken. Such measures must be demonstrated to be necessary, proportionate and effective to address the likely evidenced impacts identified. The review must present the various options in terms of policy wording which might be available for incorporation into the Core Strategy so as to ensure the necessary protection of the European sites.
75. The policies set out in SC8 and HO3 are unduly restrictive and it is unlikely that the nature and scale of the restrictions imposed are required to allow the requirements of regulation 102 to be met. Consideration should be given to adoption of a policy which secures protection of the European sites through the imposition of requirements as regards further data collection, which is the approach adopted by the authors in relation to atmospheric pollution (para 5.5.12 A 2014). In accordance with the "soundness test" (para 182 National Planning Policy Framework) the Core Strategy should adopt the most appropriate strategy when considered against the reasonable alternatives and deliver sustainable development consistent with national policy. Unduly restrictive policies which go further than is necessary, in the context of a core strategy which is a high level document, to secure protection of the relevant European sites will not meet the soundness test.
76. The present Core Strategy PD policies SC8 and HO3 cannot be justified by reference to the AA 2013 and AA 2014 and as such cannot be retained.
77. As explained above, given the high level nature of, and lack of detail in, the Core Strategy it is likely to be necessary for the Core Strategy to contain within it a policy akin to the present Policy. This will provide the necessary protection to ensure that any impacts that are unforeseen at the Core Strategy stage are addressed later. However the present wording of Policy EN2 is not legally

compliant as it fails to reflect the provisions of Article 6(4) Habitats Directive as implemented by regulations 103 and 105 of the 2010 Regulations.

Policy EN2: Biodiversity and Geodiversity

North and South Pennine Moors

A. Any development that would be likely to have a significant effect on a European Site either alone or in combination with other plans or projects will be subject to assessment under the Habitat Regulations at project application stage. If it cannot be ascertained that there will be no adverse effects on site integrity then the project will have to be refused.



baker *consultants*