

P24- 2564/L003v1

6 December 2024

Planning, Building Control and Regulatory Services
Pendle Borough Council
Market Street,
Nelson
BB9 7LJ

Submitted by email to planningpolicy@pendle.gov.uk

Dear Sir/Madam

**Pendle Local Plan Fourth Edition Publication Consultation
Submission on behalf of MCI Developments**

On behalf of our client, MCI Development (MCI), Pegasus Group has been instructed to review the Pendle Local Plan Fourth Edition (Plan) and submit these representations.

MCI Developments

MCI is part of national homebuilder Keepmoat Homes and has extensive experience and an established network of partners, offering a specialist one-stop solution for affordable housing. MCI deliver a diverse range of residential opportunities - ranging from small schemes to large mixed-use projects and are working on a number of opportunities within Pendle.

MCI is keen to work with Pendle Council (Pendle) to ensure it prepares a sound Local Plan that can proceed through its examination at pace and be taken forward to adoption in order to assist in the delivery of a wide range of residential opportunities. In light of this, MCI would have the following observations to make:

Background

Pendle will be aware that this Plan was partially developed following the release of the written ministerial statement (WMS) 'Building the homes we need'¹ from Angela Raynor on 30th July 2024. This sets out that we are in the middle of a housing crisis and there is an aim to build 15 million homes over the next five years. To do this, it mandates the use of standard method (subject to the transitional arrangements in the NPPF, which we come onto below), as well as increasing the share of genuinely affordable homes.

The WMS highlights the importance of every local authority having a development plan in place. It expects that plans at an advanced stage of preparation (Regulation 19), should continue to examination, unless there is a significant gap between the Plan and the new local housing need

¹[Written statements - Written questions, answers and statements - UK Parliament](#)

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figure, in which case the Government expects authorities to rework their plans to take account of the higher figure.

Within the Committee Report signing off the Local Plan for consultation² (Item 16), Officers made Members aware of the concerns of the Local Plan Steering Group around the use of 2021 Census data, as well as significant environment and topographical issues impeding growth (para 9), but then set out at para 11 how to progress to submission without considering the ‘significantly increased housing requirement’ as part of the new NPPF. The decision of the Council not to pause and review the Plan to reflect the WMS is noted, especially in light of the Committee decision to proceed allowing necessary changes to the Local Plan to be agreed as part of the Examination Process except for the housing number (our emphasis).

MCI note the position within the Committee Report on the Viability Assessment and the conclusions that affordable housing is not viable on market housing schemes, unless secured through grant funding (para 15). The clear expectation is that there is a need to amend Policy DM23. MCI also note the expectation that revisions will also be necessary to address evidence in the Level 2 Strategic Flood Risk Assessment (para 16) which was not available when the Plan was drafted. Despite this, the Committee resolved to release the Plan for consultation and to proceed with Submission.

Pendle will be aware of the September 2024 update to Local Plans Procedural Guidance³, setting out that *“the LPA should only submit a plan if they consider it to be sound and there will not be delays of over 6 months during the examination because significant changes or further evidence work are required”* (para 1.2).

It goes on to state at para 1.4 that *“There is no provision in the legislation which allows the LPA to replace all or part of the submitted plan with a revised plan during the examination. If the LPA wish to make changes to the plan following the Regulation 19 consultation and before submission and wish the changes to be considered as part of the submitted plan, they should prepare an addendum to the plan containing the proposed changes. The addendum, together with a sustainability appraisal [SA] and Habitats Regulation Assessment [HRA] of the proposed changes if they are significant, should be published for consultation, on the same basis as the Regulation 19 consultation, before the plan is submitted for examination (This is to ensure that the addendum has been subject to an equivalent process of consultation as the original published plan)”*.

In light of the viability and SFRA matters, which as confirmed in the Committee Report are still to be fully resolved, the Council should follow the Procedural Guidance and prepare the necessary addendum covering these elements for consultation before the Plan is submitted for its examination.

² [Agendas, reports and minutes | Pendle Borough Council](#)

³ [Procedure Guide for Local Plan Examinations - GOV.UK](#)

With this as context MCI would have the following comments on the Plan as drafted.

Pendle Local Plan Fourth Edition Publication Consultation

This section makes comments on the Publication Plan, largely following the format of the Plan as prepared:

Plan Period

The Council propose a plan period of 2021 to 2040. Para 122 of the NPPF is clear that Plans should cover a period of 15 years from the adoption of the Plan. Notwithstanding the issues in respect of the Plan as set out above, even if this Plan were to proceed at pace to submission and through its examination, the plan period will need to be extended until at least 2041, if not 2042.

SP0 6 – Towards Net Zero Carbon

Although MCI support the transition to lower carbon solutions, there are some concerns around the wording of this policy. The explicit statement of 'favourable support' for criteria 3 relating to design measures needs to be either a justified or evidenced or in the absence of this should be dropped from policy.

This is also the case with criteria 4 and 5 relating to energy standards and energy statements. This needs evidence to support their requirements, which is not available. The optional standards paper only covered access, space and water. It also needs to be considered in light of the clear issues around the viability of affordable homes.

Essentially, and in order to comply with the December 2023 WMS⁴, the Council should not set its own standards for development which may differ from the approach being taken by national Government.

Without the necessary evidence and the testing of the viability implications of this policy, noting that Pg 19 of the Viability Appraisal specifically excludes any net zero costs, but then pg 30 seems to identify an allowance per plot of £10,000 towards net zero, this policy should be deleted.

Policy DM01– Climate Change and Resilience

This policy needs clarification as to how the element needs to be addressed, such as is there a requirement to comply with all of the requirements in section 3 relating to design responses? In any case, some of the elements are not considered necessary, including the requirement to implement the optional technical standards for water efficiency; need to provide a water butt; electric vehicle charging points and community allotments.

There is a lack of evidence and justification as to the need for some elements and many other elements are covered by other legislation such as they are not considered a requirement for planning policies to control.

⁴ <https://questions-statements.parliament.uk/written-statements/detail/2023-12-13/HCWS123>

Policy DM02(a) – Flood Risk

The expectation in element 11 that finished floor levels should be the higher of a) average ground level of the site; b) adjacent road level to the building(s); c) estimated river or sea flood level for the site, needs to be removed.

Given the topography within Pendle, as is raised as a significant issue in the Officer Report supporting the Local Plan, there are concerns that setting requirements to be higher than any of these criteria will have significant implications for the ability for some sites to even comply with this Policy and for others the layout of sites. This will lead to inefficient layouts, not make the best use of land and is likely to have wider implications for elements of accessibility and ability to comply with M4 standards.

This element of the policy needs deleting and finished floor levels should be determined to ensure that developments are resilient to flood risk on a site-by-site basis and to reflect the latest Government guidance on this matter.

Policy DM04 – Biodiversity Net Gain

This expects developments to deliver 'at least a 10% net gain for biodiversity'. There is no need to replicate wider legislation in policy, which is covered by the Environment Act. If it is to be retained, then the expectation that developments exceed a 10% requirement should be deleted to ensure that the policy is consistent with Legislation and the PPG⁵.

Policy DM20 – Housing Supply and Delivery

This policy states that over the plan period (2021-2040) provision will be made to deliver a minimum of 2,812 net dwellings, equating to a net average of 148 dwellings per annum (dpa). The extension needed to the Local Plan period, as set out earlier, is relevant to the overall housing need figure.

The Housing and Economic Development Needs Assessment (HEDNA) (March 2023) confirms that the Standard Method at that time resulted in an annual housing need of 140 dwellings per annum (dpa). It also set out the exceptional circumstances to depart from this and concluded that this would support a figure above the Standard Method and recommended a housing figure in the region of 270dpa (para 1.4). The HEDNA also identified a potential jobs growth (2022-32) of just over 2,100, and made clear that this number of jobs was in excess of the number of jobs that could be potentially supported by the current Standard Method housing figure. It also highlighted that a higher level of housing delivery, for example the recommended 270 dpa recommended, would support an economic growth of 2,135 jobs and would create a better balance (para 1.47). It would also align with the employment land evidence setting out 13,200sqm of offices and the 79,100sqm of industrial and warehousing which is included in Policy DM40.

The HEDNA also identified an affordable housing need of 288dpa and confirmed that there will be a need for both social and affordable rented housing. This is relevant in respect of the viability

⁵ ID: 74-006-20240214

issues already accepted by the Council in seeking to deliver the affordable housing need in Pendle.

There is also a further housing evidence base in the form of a draft Housing Needs Review (May 2024), which confirms it should be read in conjunction with the HEDNA. This updates various components of the HEDNA and concludes at para 4.7 that 230dpa is the most appropriate housing target for Pendle. There does not appear to be a similar update in respect of affordable housing needs, so the latest evidence remains 288dpa.

The emerging SM figure is also relevant at this point, which identifies a local housing need in Pendle of 382dpa

The WMS is clear that for Plans at an advanced stage of preparation (Reg 19) where there is a significant gap (our emphasis) between the plan and the new local housing need figure the Government expects Authorities to rework their Plans to take account of the higher figure.

The difference between the Plan housing target of 148dpa is significant when compared to the emerging SM figure. Its less than 40% of its requirement. It is also significantly less than the Council's own evidence of 230dpa or 270dpa – it's between 64% and 55% of the recommended housing target figure.

Over the Plan period this will result in a shortfall of at least 1,230 homes, but as many as 3,510 homes, when compared to the Council's own evidence or the new SM housing figure respectively.

Proceeding with this Plan as prepared will result in a substantial shortfall in the overall number of homes required. This will also result in a significant under- delivery of affordable homes in Pendle over the plan period

The draft NPPF is clear within the transitional arrangements in Annex 1 that policies in the emerging Framework will apply for the purpose of preparing local plans from the publication date of the NPPF plus one month, unless one of three criteria apply.

Whilst the local plan has reached Regulation 19, it is;

- more than 200 dwellings below the published relevant LHN figure;
- it is highly likely that additional consultation is needed to resolve SFRA and viability issues, as set out above; and
- it is highly unlikely that a sound Plan can be submitted on or before the publication date [plus 1 month] of the NPPF, which is expected late December 2024.

None of the transitional criteria apply and given the decision of Members not to authorise any amendments in housing numbers, this Plan should not proceed as drafted.

What is also relevant from policy DM20 is section 5. This is seeking to maintain a 5- year housing land supply. This currently references the 2023 NPPF, but its likely that when the Local Plan is adopted the NPPF will have been updated. Looking at the draft version of the NPPF, this is explicit

in setting out that Council's will need to set out a suitable supply of homes. As such this element of policy is not necessary or required, or it should be moved into a section relating to monitoring.

Policy DM23 – Affordable Housing

It needs to be remembered that the HEDNA identified an annual need of 288dpa for both social and affordable rented housing. The requirement to deliver affordable homes is supported by MCI, but there are significant concerns about the viability of affordable housing delivery across Pendle.

The viability evidence appears to advocate a flat position of 10% requirement for all sites in all locations (para ES20 and Table 9.1), which does not appear to have been translated into policy.

Nevertheless looking further into the evidence, Section 8 covers a range of scenarios and confirms that for lower and medium market areas, there is no scenario in which any affordable housing can be viably accommodated without adjusting either the market values upwards or the build costs downwards on brownfield sites (para 8.15, 8.22) and lower value greenfield sites (8.36). There is marginal viability on medium value greenfield sites (para 8.37). Higher value brownfield and greenfield sites appear to be viable.

The NPPF⁶ is also clear that where major development involving the provision of housing is proposed, planning policies and decisions should expect at least 10% of the total number of homes to be available for affordable home ownership.

In order to achieve an NPPF compliant affordable housing there are a series of recommendation at para 9.9 of the viability appraisal and MCI would be happy to work with Pendle to deliver on some of those aims.

The other solution not identified, but should be considered is the identification and allocation additional sites in higher value areas to fully meet the evidenced or emerging SM housing needs and to maximise the delivery of affordable homes on sites which are viable. Another option may be the identification of specific sites solely for the delivery of affordable homes. Furthermore adding an additional criterion into Policy DM26 to support affordable housing in rural locations which addresses a clear and defined local need would also be recommended.

Policy DM41– Protected Employment Area

Policy DM41, which as currently worded, seeks to retain employment allocations as employment sites, subject to marketing or being retained as industrial/commercial training purposes.

MCI consider that the requirement to market sites continuously for 2 years is excessive, and a shorter period of marketing is acceptable. Typically, 12 months marketing undertaken correctly at

⁶ NPPF December 2023 Paragraph 66

suitable rental levels is sufficient to properly establish the market demand in any particular location. This has been accepted by Inspectors in respect of other recently adopted Local Plans⁷.

MCI are also aware that some protected employment area includes sites where there have been historic vacancies (identified in the 2004 employment land review) along with vacancies confirmed in the 2023 HEDNA. We are aware that some site owners have not been contacted about the sites in question, to understand why vacancies have remained over an extended period and the future potential of those sites. It appears that some sites have been largely 'rolled over' from their previous allocation.

The emerging position needs to be considered in light of the NPPF para 126;

Planning policies and decisions need to reflect changes in the demand for land. They should be informed by regular reviews of both the land allocated for development in plans, and of land availability. Where the local planning authority considers there to be no reasonable prospect of an application coming forward for the use allocated in a plan:

*a) it should, as part of plan updates, reallocate the land for a more deliverable use that can help to address identified needs (or, if appropriate, deallocate a site which is undeveloped); and
b) in the interim, prior to updating the plan, applications for alternative uses on the land should be supported, where the proposed use would contribute to meeting an unmet need for development in the area*

Given the issues with the supply of housing land, especially for affordable housing, more flexibility to allow the redevelopment of employment sites to address affordable housing needs should be considered.

Section 8 – Site allocations

MCI do not have any comments to make on specific sites but do expect that as the plan period will need extending an additional 2 years, further housing sites will need to be identified.

In addition to this, it is not expected that all sites will deliver as expected, so any proposed allocations not yet commenced on site will also need to be subject to a flexibility factor of 10%. This will also likely result in further housing sites needing to be identified.

Summary

MCI is keen to work with Pendle Council to ensure it prepares a sound Local Plan to assist in the delivery of a wide range of residential opportunities.

Pendle will be aware that this Plan was partially developed following the release of the written ministerial statement (WMS) 'Building the homes we need'⁸ from Angela Raynor on 30th July 2024.

⁷ [Blackburn- with- Darwen- Local- Plan- 2021-2037.pdf](#)

⁸ [Written statements - Written questions, answers and statements - UK Parliament](#)



This sets out that we are in the middle of a housing crisis and there is an aim to build 1.5 million homes over the next five years.

Pendle need to consider whether the Plan provides sufficient support for market and affordable housing across the Plan period and whether they should proceed with the Plan, as drafted, given the issues already acknowledged in terms of the SFRA and viability.

Nevertheless, if the plan proceeds, Pendle should be planning for higher housing numbers as supported by their own evidence and the need to comply with the transitional arrangements in the emerging NPPF.

Overall, we trust that the above is useful and look forward to working with Pendle to deliver a sound Local Plan.

If you need anything additional to assist or require clarification on any points above, please do not hesitate to be in contact on the details below.

Yours Faithfully



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