

**Our ref: JBB8800.C7279**

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Dear Sir or Madam,

## **Birmingham Development Management DPD Pre-Submission (Regulation 19) Consultation: February 2020**

RPS Consulting Services Ltd ('RPS') wishes to submit representations to Birmingham City Council ('the Council') in respect to the above consultation process on behalf of Taylor Wimpey UK Ltd ('the Client').

The Development Management in Birmingham Document ('DMBD') is intended to provide up to date development management policies for the purpose of determining planning applications. The DMBD contains sixteen policies arranged in themes reflecting the adopted Birmingham Development Plan ('BDP'). When adopted, the DMBD will replace the policies of the Saved 2005 Birmingham Unitary Development Plan. The DMBD must be prepared in accordance with the provisions set out in the National Planning Policy Framework (NPPF) as well as meet other relevant legal and procedural tests. A fundamental aspect of plan-making, as stated in the NPPF (at paragraph 31), requires all policies to be '*...underpinned by relevant and up to date evidence which should be adequate, proportionate and focussed tightly on supporting and justifying the policies concerned...*'. In this regard, the Council must therefore ensure that every policy the DMBD, is informed by a credible evidence base, particularly where policy 'standards' are to be applied in decision-taking.

Having reviewed the content of the published DMBD, and the supporting evidence base issued alongside it, RPS has a number of points to raise regarding two policies in particular, namely; Policy DM10 (Standards for Residential Development); and Policy DM15 (Parking and Servicing). We address each in turn.

### **Policy DM10 – Standards for Residential Development**

#### Nationally Described Space Standards (criterion 1)

This policy sets out a number of criteria to be applied to residential developments brought forward within the city, including the setting of 'minimum' standards for accessibility and internal space within properties. The main driver of the policy is to ensure all future development meets occupiers' needs in terms of the size and layout of internal and external spaces.

Criterion (1) of Policy DM10 states that, '*... All residential development will be required to meet the minimum Nationally Described Space Standards...*'. The nationally described space standard (NDSS) replaces the previous space standards used by local authorities. The NDSS is not a building regulation and remains solely within the planning system as a new form of technical planning standard. This standard deals with internal space within new dwellings and is applicable across all tenures. It sets out requirements for the

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Gross Internal (floor) Area (or GIfA) of new dwellings at a defined level of occupancy as well as floor areas and dimensions for key parts of the home, notably bedrooms, storage and floor to ceiling height, and applied on the basis of 'minimum' floor area.

The Council are therefore proposing to apply the NDSS to 'all' residential development once it comes into force as part of the DMBD, once it is adopted. The process by which such standards can be incorporated into development plan policies must accord with national policy, notably the National Planning Policy Framework (NPPF) 2019, and specifically paragraph 127f & footnote 46 therein. The footnote states that, "...policies may also make use of the [NDSS] where the need for an internal space standard can be justified...". The National Planning Practice Guidance<sup>1</sup> (PPG) also sets out that "...where a need for internal space standards is identified, Local Planning Authority (LPA) should provide justification for requiring internal space policies. LPA should take account of the following areas need, viability and timing...". It is therefore clearly an important requirement that any Council that is seeking to adopt space standards must ensure be justified on the basis of robust evidence.

Amongst the key tests that the Council must address in accordance with national policy and guidance, with respects to space standards, is 'need' and 'viability' (as well as timing). The evidence base relied upon in this regard by the Council is set out in two supporting documents; DMBD *Standards for Residential Development in Birmingham Topic Paper* (October 2019); and, DMBD *Financial Viability Assessment* prepared for BCC by BNP Paribas (November 2019).

In terms of need, RPS cannot find any justification within the supporting topic paper for the adoption of the NDSS in Birmingham. The paper sets out a commentary at paragraph 6.27 to 6.37. The basis of the Council's case appears to draw on an appraisal of residential development schemes that received planning permission between July 2016 and June 2019, some 3,489 dwellings on 54 sites in total. The key finding of this analysis (at paragraph 6.34) is that out of all the dwellings 24% were found to fall below the standard by more than 10%. This equates to around 3 in 4 dwellings either meeting, being very close to meeting, to NDSS standard. On this basis, RPS would suggest that this indicates a good rate of success and that the current policy approach, assumed to be through site-by-site negotiations with applicants, is broadly effective without the need for additional policy criteria. The paper (also at para 6.34) suggests that some sites may not be achieving the standard, '...due to a lack of policy in relation to space standards...'. The Council's own evidence would suggest this not to be the case, as all development proposals must be approved in accordance with the development plan or where other material considerations suggest otherwise<sup>2</sup>.

Consequently, there does not appear to be any systemic crisis or failure in the pursuit of the objective to deliver homes in line with the NDSS under current planning framework in Birmingham.

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<sup>1</sup> PPG Reference ID: 56-020-20150327

<sup>2</sup> In line with section 38(6) of the Planning and Compulsory Purchase Act (2004)

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Without any locally-specific data as evidence of need for the NDSS, the Council also relies on information taken from the Housing Standards Review (at paragraph 6.35) in relation to the 'social benefits' of the standards. However, these are not specific to Birmingham and so RPS does not consider this to provide credible evidence for the standards to be adopted here. In addition, it is noted that a reference is made to a recent planning appeal case, but this is related to a conversion rather than new build scheme. Again, RPS does not consider this to provide robust evidence in support of the adoption of the NDSS in Birmingham.

In terms of viability, the Council's approach is set out in the topic paper (paragraph 6.38 to 6.47) with reference to the Financial Viability Assessment (BNP Paribas) 2019 Report ('FVAR'). The topic paper (at paragraph 6.39) states that viability assessment testing has been based on the use of 'standard house/flat sizes' derived from the NDSS. The floorspace assumptions for each dwelling have then been applied to 35 'site typologies' with the results of the viability assessment presented in Chapter 4 of the FVAR. On the basis of the analysis in the FVAR the Council claim that all the minimum standards would not undermine the viability of residential development.

RPS notes that only six 'standard' house and flat dwelling sizes have been applied in the FVAR (as shown in Table 5 and 6 of the topic paper) however there are sixteen minimum floor areas identified in the NDSS, broken down by bed space and persons per dwelling. It is not made clear anywhere in the topic paper (or the FVAR) why only six space standards are appropriate as an input to the FVAR. Furthermore, the standards that have been employed in the FVAR do not represent the minimum floor areas for each bedroom size under the NDSS. For example, for three-bedroomed properties the FVAR applies 93sqm, whereas the minimum under the NDSS is 84sqm. Similarly, for four-bedroomed properties the FVAR applies 106sqm, whereas the minimum under the NDSS is 97sqm. Again, there is explanation as to why the minimum floor areas under each bedroom size is not applied in the viability assessment. Clearly, higher floorspace assumptions are likely to have a (positive) impact on viability but that is not the purpose of viability assessment in this instance, which is to test the viability of the 'minimum' floor areas in the NDSS.

Appendix 2 of the FVAR (Site Details) presents a spreadsheet showing the various inputs under each site typology, with reference to dwelling numbers per site (ranging from a 828 down to a single flat); density (low: medium: high); and dwelling type (house; flats). By way of example to illustrate the point above, the first site typology relates to a single house development assumed to be 93sqm, rather than the 84 sqm minimum under the NDSS. Appendix 2 also sets out the total gross internal floor area assumed under each site typology. Therefore it is possible to consider the average dwelling size assumed in the FVAR (for houses and apartments) against the minimum requirements under the NDSS. An initial analysis of the assumptions suggests that all the site typologies based on floor spaces exceed the minimum NDSS standards. For houses, the average dwelling size is fairly uniform across the typologies, ranging between 92 and 101sqm. For apartments, the range is slightly wider, with assumptions based on average floor areas between 71 and 84sqms. Whilst it is acknowledged that some dwelling sizes could be set at the minimum within the overall site, these averages are higher than the minimum assumptions in the NDSS, and significantly so for apartments.

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Based on the foregoing analysis, RPS suggests that the evidence base underpinning Policy DM10 (1) has not adequately assessed the viability implications of the minimum NDSS standards for each dwelling by bedroom size, and has not explained the selection of the six standards used in the assessment. In summary, therefore, RPS does not consider the evidence to be sufficiently robust to justify the adoption of the NDSS in Birmingham. RPS suggests that the FVAR is revisited so that it properly tests the minimum GfAs in the NDSS before any firm conclusions on viability can be drawn.

In conclusion, RPS does not consider that the policy seeking 'all' residential development to comply with the Nationally Described Space Standards has been sufficiently evidenced in Birmingham. Accordingly, the reference to 'all' should be removed and that the policy wording should be amended to be less prescriptive in light of the lack of clear evidence presented.

### Accessibility Standards - Part M4(2) (criterion 2)

RPS notes that the Council has proposed a modification to this criterion following the preferred options consultation. This means the criterion now relates to all residential developments comprising 15 dwellings or more should seek to provide at least 30% of dwellings as accessible and adaptable homes in accordance with Building Regulation Part M4 (2) unless demonstrated to be financially unviable.

Nonetheless, the inclusion of a requirement to provide dwellings in accordance with Part M4(2) in whatever form or proportion still needs to be justified, as stated in the NPPF (paragraph 127, footnote 46),

*"...Planning policies for housing should make use of the Government's optional technical standards for accessible and adaptable housing, where this would address an identified need for such properties [RPS emphasis]..."*

The evidential basis for such a requirement is therefore related to the need for specific properties in Birmingham. In this regard, neither national policy nor practice guidance prescribes any methodology to undertake such a task. In terms of the evidence of need provided by the Council, this is set out in Chapter 6 of the Standards for Residential Development Topic Paper (at paragraphs 6.1 to 6.22). The Council draws on a range of strategies and related data sources, including population projections and a Joint Strategic Needs Assessment, in an attempt to justify their approach. The Council's justification for a specific policy requirement is set out at paragraph 6.26 of the paper, which states that,

*"...The [above] evidence suggests that there will be a larger elderly population who will be living longer and are likely to live with disabilities in their later years..."*

RPS acknowledges the evidence that indicates the population of Birmingham is likely to 'age' in the future, and that as people age longer their care needs are likely to become more significant for them and their well-being. However, this is an issue that affects the whole country and is not an issue specific to Birmingham. Indeed, other parts of the UK are likely to be impacted by the 'ageing' of the population to a far greater extent. Nonetheless, national policy does not prescribe measures at the local level to address what is an issue in all parts of the country.

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Furthermore, the Council's evidence relating to disabilities and wheelchair provision is drawn from evidence set out at Table 2 and in paragraph 6.17 and 6.18 of the topic paper. RPS notes that Table 2 refers to the prevalence of people whose day-to-day activities are limited, based on Census data. The figures indicate that the proportions of those people who are classed as being 'limited a lot' in their day-to-day activities is marginally better amongst Birmingham residents (81.6%) compared to the country as a whole (82.4%). Similarly, the information on applications for adaptations to the home (at paragraph 6.17) suggest a very small proportion were related specifically to wheelchair access. Furthermore, these figures are taken from the housing register, which only covers those people living in, or seeking, affordable housing.

RPS suggests that the data and other supporting information provides a useful insight into the need for specialist accommodation in Birmingham, but does not provide any credible evidence for the need for specific properties, as required by national policy. What evidence is provided relates to those in need of affordable housing through the housing register, but does not provide an evidential basis for a requirement to be applied to all dwellings provided as part of qualifying developments.

In terms of viability evidence to support the criterion, the topic paper (at paragraph 6.24) refers to specific additional costings that have been applied to each dwelling and tested in the FVAR. These are £521 for each house and £921 for each apartment. Whilst there may be a rationale for why these figures are appropriate, this is not explained in either the topic paper or the FVAR. Furthermore, consistent with our comments on the use of floor areas in relation to space standards, it is not clear how these additional costs have been considered in the context of the minimum floor areas which the Council will be seeking on all future residential developments. This is important in ensuring that the new standards can viably deliver both minimum floor areas and the additional requirement for accessibility. This is a clear requirement of national policy (at paragraph 34), which requires all policies to be prepared in such a way as to not undermine the deliverability of the plan.

On this basis, criterion (2) should be reworded to remove the intention to apply this policy to 30% of all dwellings, as there is insufficient evidence to support this. RPS suggests that an alternative approach could be to consider applying the 30% specifically to the affordable housing component of qualifying schemes, where evidence does suggest a need might exist.

### **Policy DM15 – Parking and Servicing**

It is critical that all policies, including any policy that seeks to manage the local transport network, is consistent with national policy and is fully justified on the basis of evidence<sup>3</sup>. Furthermore, in ensuring that such policies can be considered effective, they must be clearly written and unambiguous so it is evident how a decision maker should react to development proposals<sup>4</sup>. In the last respect, policies should be able to 'stand on their own' and be sufficiently detailed enough to be applied in the determination of planning

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<sup>3</sup> NPPF 2019, para 31 and 35(d)

<sup>4</sup> NPPF 2019, para 16d

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applications without the need for, or reliance on, other criteria or guidelines set out in separate documents. In particular, they should be applicable and enforceable without the need for any supplementary planning guidance or detailed advice elsewhere.

On this basis, RPS has significant concerns with the approach being taken by the Council with regards to the adoption of an updated policy for parking provision through the DMBD, and particularly the status being conferred to supplementary planning documents (or SPDs) on proposed parking standards in the City.

National policy<sup>5</sup> clearly defines the scope and nature of SPDs in the planning process as providing '*further detail to the policies in the development plan*' (in this case the Birmingham Development Plan, and the DMBD once adopted) but, most significantly, '*[SPDs] are not part of the development plan*'. The PPG repeats this definition, but adds '*they cannot introduce new planning policies into the development plan*' (Paragraph: 008 Reference ID: 61-008-20190315). It is known that the Council is consulting on a new Parking SPD (which concludes on 28th February 2020), which will replace the existing Car Parking Guidelines SPD (2012) and elements of the Birmingham Parking Policy (2010). The revised Parking SPD proposes a raft of updated parking standards for particular uses (for cars, motorcycles, and bicycles), with variations in the standards depending on location across three 'zones' in the City, along with more generic policies on provision of electric vehicle charging points and car clubs. The standards, with regards to residential development, would maintain the current approach which sets maximum standards on the provision of allocated spaces on all new development in the City, but would introduce new minimum standards for unallocated spaces in suburban/primarily residential areas.

However, Policy DM15 (criterion 2) specifically states that the car parking requirements, including the updated parking standards and provision of electric vehicle charging points ('EVCPs') will be carried forward in the new Parking SPD. The policy (criterion 3) also states that parking layout and design should adhere to the 'principles of relevant SPDs'. If this approach were to be adopted by the Council, this would confer statutory development plan status to a non-statutory document (an SPD) that is not part of the development plan which had not been subjected to the same process of preparation, consultation and scrutiny as a statutory plan. RPS considers that this would wholly conflict with the purpose and status of SPDs as defined in national policy and guidance. As highlighted above, where an SPD is being prepared it should only be used to provide more detailed advice and guidance on the policies in the development plan and not be used as an opportunity to introduce new policy criteria or requirements in particular new parking standards, as is being attempted here. The approach being taken forward is therefore contrary to national policy and is therefore not soundly-based.

The Council may try to argue that their approach is consistent with the current Parking SPD which already identifies parking standards that are currently being applied across the City in determining planning applications. However, the existing Parking SPD, adopted in 2012, was progressed under a very different local and national policy framework that pre-dated the NPPF (which only came into force in 2012). Similarly,

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<sup>5</sup> Glossary of Terms

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that SPD was also prepared on the basis that the original Birmingham Unitary Development Plan ('BUDP'), adopted in 2005, was not considered to be a suitable vehicle for such detailed standards. However, it is now the Council's intention to adopt a new Development Management DPD (the subject of this consultation) which can bridge the gap between the strategic policies of the Birmingham Development Plan (which superseded the BUDP) and more detailed guidance more appropriately included in an SPD. On this basis, it is entirely logical and reasonable for the DMBD to clearly set out the new parking standards, with additional detail guidance set out as part of the new Parking SPD that can support the implementation of the DMBD. This would ensure that the Parking SPD meets the test of scope and purpose, as well as ensuring that the DMBD is sufficiently detailed in terms of the standards being set. At present, however, the BMBD is not being progressed in accordance with national policy.

As a result of the Council's reliance on the Parking SPD as the principal basis for applying the parking standards as proposed, Policy DM15 makes no specific reference at all to those standards. This raises further marks as to the legitimacy of the Council approach and the status being given to the Parking SPD.

Furthermore, the Council intends to apply both maximum and minimum standards on new residential development in suburban locations, despite the concerted move away from the use of standards at the national level since the adoption of the current Parking SPD. Previous national policy (set out in PPG13 and later PPS4) had supported the use of maximum standards for non-residential development and minimum standards for disabled parking. However, it has been the case since 2012 that national policy (now set out at paragraphs 102-111) does not now advocate the use of local parking standards, either minima or maxima. Specifically, in line with national policy (paragraph 105) any such standards that are to be pursued need to take into account five factors; based on accessibility; type, mix and use of development; availability and opportunity for public transport; and need for EVCPs, and that '*clear and compelling justification that they are necessary for managing the local road network*' is required to support the use of maximum standards. In this context, it is not clearly explained in the DMBD what the clear and compelling justification is for the necessity to specify the standards as proposed, in particular seeking to restrict parking provision in suburban/primarily residential parts of the City. It is likely that these parts of the city will continue to be relatively less well provided for in terms of public transport provision compared to city centre locations, and so demand for appropriate levels of provision to meet the needs of residents in these areas will not lessen.

On this basis, RPS does not support the use of prescriptive and restrictive parking standards as is being suggested, especially in suburban locations where car ownership and usage will remain a necessity for many people in order to be able to access services and employment opportunities. This reality isn't being given sufficient recognition in the DMBD or the Parking SPD, with limited evidence presented to justify the approach being taken.

Whilst not part of this specific consultation, RPS also notes that there is a considerable amount of other commentary in the draft Parking SPD that we consider to represents 'policy wording'. This is particularly in relation to stipulations on cycle parking and EVCPs. For example, requirements relating to cycle parking (on page 31 of the Parking SPD) include a proposal that all new residential properties are required to provide appropriate cycle storage. Despite there being no clarification on what 'appropriate' actually means in this

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context, RPS suggests that this is tantamount to policy criteria and, as such, should be removed from the Parking SPD and incorporated into the DBMD.

More significantly, the Parking SPD (at page 32) also stipulates that all new developments must, as a minimum, meet the draft Department of Transport technical guidance requirements for Electric Vehicle charging (or subsequent legislation as agreed following public consultation). Pursuant to this, the Parking SPD proposes that every new residential building with an associated car parking space must have at least one EVCP. However, the Government's preferred option is to introduce a new functional requirement under Schedule 1 to the Building Regulations, which is expected to come into force in the first half of 2020. The inclusion of EVCP requirements within the Building Regulations will introduce a standardised, consistent approach to EVCP in new buildings across the country. On this basis, RPS does not support any policy criteria that seeks to pre-determine or anticipate other legislation that may or may not be brought forward. Furthermore, there can often be a considerable time delay between voting on a piece of legislation and bringing into force that legislation via statutory instruments. Consequently, given that legislation is not yet been approved or enacted at this time, RPS suggests deletion of any requirement inked to the emerging legislation or draft technical guidance on EVCPs.

In conclusion, it is clear from the foregoing analysis that Policy DM10 and DM15 are not soundly-based as currently drafted. Furthermore, RPS raises significant concerns regarding the approach being taken by the Council in retaining the parking standards within an SPD, rather than incorporating them into a development plan in accordance with national policy and guidance. The Council is now proposes a separate DPD for development management policies, and it is entirely consistent with national policy and the preparation of plans for parking standards to be included within the DMBD.

Yours sincerely,



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