

Examination of the Leicester Local Plan 2020-2036

MATTERS, ISSUES AND QUESTIONS FOR THE EXAMINATION (MIQs)

Response from HBF, September 2024

Please note, these comments are in addition to our Regulation 19 comments, which we have not repeated here. We have referred to our Reg 19 comments where we have expanded our comments or provided additional comments, but only where we believe this is helpful.

We have not responded to all of the questions only those where we have further comments to make. Our original Reg 19 comments still stand.

MATTER 13 – NATURAL ENVIRONMENT

Issue 13: Has the Plan been positively prepared and is it justified, effective and consistent with national policy in respect of its policies and proposals for the natural environment in Leicester?

Policy NE01 - Protecting designated sites, legally protected and priority species, and priority habitats

429. Is Policy NE01 clearly written, such that it will provide an effective strategic framework to inform the preparation and determination of planning applications, with particular regard to a mitigation hierarchy?

No see response to Question 430 below

Policy NE02 - Biodiversity Gain.

430. Is it appropriate and justified by evidence for Policy NE02 to require an ‘at least’ 10% increase in biodiversity? Is there evidence to support a higher BNG percentage requirement, in order to provide a positive approach consistent with achieving the plan’s vision and sustainable development?

It is noted that mandatory BNG has come into force since Leicester City Local Plans Reg 19 consultation has concluded. It will be important for the Plan to fully reflect all the new legislation, national policy and guidance.

HBF has been involved in a significant amount of work, led by the Future Homes Hub, on BNG preparedness for some time, both feeding into the preparation of the Planning Practice guidance from DLUHC (now MHCLG) and the Draft DEFRA BNG Guidance, and providing ongoing feedback on problems and challenges around its implementation since its introduction.

HBF note that there is a raft of new information on BNG now available and it is important for the Plan to note that the PPG is clear that there is no need for individual Local Plans to repeat national BNG guidance.

It is the HBF’s opinion that the Council should not deviate from the Government’s requirement for 10% biodiversity net gain as set out in the Environment Act. The Plan should provide certainty for developers and a clear BNG policy with a fixed 10% figure, rather than the policy including the phrase “at least 10%” would help to provide this.

There are significant additional costs associated with biodiversity gain, which will need to be fully accounted for in the Council’s viability assessment. It is important that BNG does not prevent, delay or reduce housing delivery. Although the national policies requiring 10% BNG cannot be subject to site specific viability discussions, any policy requirements over 10% can be. Any policy seeking more than 10% BNG needs to reflect this position.

It is also important to note that for large and complex sites where the development is phased, the guidance is clear that the 10% must be delivered at the end of the development, and this may not result in 10% BNG on each phase. Additional advice on phased development has now been provided in the PPG.

HBF also suggest particular care is needed in terminology to ensure the BNG policy reflects the national policy and guidance. For example, on-site and off-site biodiversity is referred to as

units, and the statutory national credit system of last resort is referred to as credit. Similarly, it will be important to differentiate between the mitigation hierarchy, which seeks to avoid harm and then mitigate it in relation to protected habitats and the BNG hierarchy which prioritises on-site BNG delivery, then off-site units and finally allows for statutory credits. National BNG policy allows for all three of these options, and therefore the Plan should also reference statutory credits.

The costs of BNG must also be considered as part of the whole plan viability assessment and should be specified as a single specific item, not combined into a generic s106 costs item. There are significant additional costs associated with biodiversity net gain, which should be fully accounted for in the Council's viability assessment, some of which are unknown at this time. It is important that BNG does not prevent, delay or reduce housing delivery.

As this is an emerging policy area and the market for off-site provision, and statutory credits are not yet known, any figure used for BNG costs will need to be kept under review as BNG implementation progresses and a greater understanding of actual costs become available. The Whole Plan Viability Assessment should clearly set out how it considered the implications of mandatory BNG and how it was arrived at using the most up to date BNG costs information available.

HBF suggest that there will also be a need for this policy and supporting text to say more about Local Nature Recovery Strategies. As the LNRS emerges it will be important for this Local Plan to be kept under review and further public consultation on the interaction between the two documents and the Local Plan policy to reflect how the development of the LNRS may impact on planning, both policy making and at the decision-making time.

HBF would also encourage the Council to ensure the Local Plan fully considers the new BNG requirements in relation to site allocations. This is likely to require undertaking an assessment of the baseline to support the allocation to enable an understanding the BNG requirements for a site to be allocated and the impact this may have on viability and other policy requirements and considerations. It will be important to understand the BNG costs of mandatory BNG as this is non-negotiable and as such may impact on the viability of the site and its ability to deliver against other policy requirements such as affordable housing or other s106 asks.

HBF also notes that there seems to be significant potential for confusion around environmental hierarchy, and suggest particular care is needed to avoid any confusion between the well-established mitigation hierarchy and the new BNG hierarchy. There is need for the policy wording and/or supporting text to be clearer about the differentiation between the mitigation hierarchy (which seeks to avoid harm in the first place, then mitigate and only then compensate it in relation to protected habitats) and the BNG hierarchy (which prioritises on-site BNG delivery, then off-site units and finally allows for statutory credits). There seems to be significant potential for confusion between the two difference hierarchies. HBF therefore suggest that the Reg 19 Plan should do all it can to explain how the two hierarchies work in different ways and that they seek to achieve different aims. We would suggest the use of the term "BNG spatial hierarchy" may help with this issue.

Reference could also usefully be made within the Plan to the small sites metric. This is intended to be a less complex statutory metric that can be used to set out how 10% BNG will be secured on small sites. It can only be used for on-site BNG delivery. The national mandatory 10% BNG policy came in for small sites in April 2024.

The DEFRA and MHCLG guidance is clear that going beyond the mandatory 10% requires evidence and there is a need to show that this will not impact viability. No such evidence exists to support a higher figure in Leicester and as such the policy wording must be clear that the Council is seeking 10% BNG.