

**South Derbyshire  
District Council  
Part 1 Local Plan  
Review**

Regulation 19: Addendum:  
Proposed Modifications to South  
Derbyshire Local Plan Part 1  
Review Publication Version (2022-  
2041)

Prepared by Fisher German on behalf of David  
Wilson Homes East Midlands

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## Professional memberships and accreditations

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# 1. Introduction

- 1.1. These representations have been prepared on behalf of David Wilson Homes in respect of their land interests in South Derbyshire. David Wilson Homes are promoting two parcels of land, as set out below, at Hilton (Figure 1) and Findern (Figure 2).



- 1.2. David Wilson Homes are a respected national housebuilder, part of the Barratt Redrow group, one of the nation's most important housebuilders, who deliver high quality new residential development and who have a strong track record of delivery in the local area. David Wilson Homes are proud to have been awarded the Home Builders Federation (HBF) 5 Star Home Builder status for 17 consecutive years. This accolade demonstrates the quality of both our client's product and service; awarded only to housebuilders who receive a higher than 90% recommendation by their customers. David Wilson Homes remain the only major housebuilder to achieve this accolade over such an extended period of time.

## 2. Representations

### Legal compliance and transitional arrangements

- 2.1. South Derbyshire Council are undertaking a review of their Part 2 Local Plan. This is under transitional arrangements, as confirmed under the consultation webpage.
- 2.2. Paragraph 234 of the 2024 Framework (Annex 1) sets out that for the purpose of preparing local plans that “the policies in this version of the Framework will apply from 12 March 2025 other than where one or more of the following apply:
  - a) the plan has reached Regulation 19 (pre-submission stage) on or before 12 March 2025, and its draft housing requirement meets at least 80% of local housing need;
  - b) the plan has been submitted for examination under Regulation 22 [of the Town and Country Planning (Local Planning) (England) Regulations 2012] on or before 12 March 2025
  - c) the plan includes policies to deliver the level of housing and other development set out in a preceding local plan (such as a joint local plan containing strategic policies) adopted since 12 March 2020;
  - d) the local plan is for an area where there is an operative Spatial Development Strategy and the local plan has reached Regulation 19 (pre-submission stage) on or before 12 March 2025; or e. the plan deals only with minerals and/or waste matters and has reached Regulation 19 on or before 12 March 2025; or has been submitted for examination under Regulation 22 on or before 12 March 2025”.
- 2.3. The Council is advancing its Plan under criterion A, that it reached Regulation 19 stage before 12 March 2025. Criteria B-D are not applicable in South Derbyshire. If it became apparent therefore that criterion A no longer applied, then the Plan would no longer meet the transitional arrangements and the 2024 NPPF would be applicable.
- 2.4. The PPG provides guidance, albeit subjective, as to scenarios where multiple Regulation 19 consultations have been undertaken. It states; *“some local planning authorities may undertake more than one round of Regulation 19 consultation on a plan. Where this is the case, for the purposes of implementing Annex 1 of the Framework, a plan is normally to be taken as having reached the Regulation 19 stage at the date on which the first round of Regulation 19 consultation commenced. However, in some limited circumstances, a plan is to be taken as having reached Regulation 19 on the date that a subsequent round of consultation commenced. These limited circumstances could include instances such as when the content of an emerging plan **has changed significantly from the one presented at the initial Regulation 19 stage**”.*
- 2.5. It can be inferred therefore that while Council’s can undertake secondary Regulation 19 consultations, it is ultimately a subjective decision for the decision maker to determine whether the circumstances in each case justify the utilisation of the first or second consultation for the purposes of Annex 1. These circumstances include, but are not limited to, instances where the emerging plan has ‘changed significantly’ from the one presented at Regulation 19 stage. DWH have a number of concerns with the approach now adopted by South Derbyshire, as articulated below.

### Legal Compliance

- 2.6. Regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012 states *“before submitting a local plan to the Secretary of State under section 20 of the Act, the local planning authority must—
    - (a) make a copy of each of the proposed submission documents and a statement of the representations procedure available in accordance with regulation 35”.*
- 2.7. The Town and Country Planning (Local Planning) (England) Regulations 2012 Part 6 17 affirms that proposed submission documents include *“the local plan which the local planning authority propose to submit to the Secretary of State”.* The Plan the council wishes to submit to the Secretary of State clearly includes the

amendments proposed by the addendum. The Council concede this is a consultation under Regulation 19 of the Regulations.

- 2.8. Footnote 82 is relevant, as it states "Regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012. In this context "reached Regulation 19" refers to when Regulation 19 has been complied with (i.e. when the planning authority has made a copy of each of the proposed submission documents and a statement of the representations procedure available, and the statements required in Regulation 19(b) have been sent to consultation bodies).
- 2.9. This addendum must be a proposed submission document and thus should have been made available prior to 12 March 2025 to qualify for transitional arrangements.
- 2.10. Notwithstanding the statement of the PPG, it is clear that the Plan now being consulted upon has not met the provisions of Paragraph 234a of the Framework in that this consultation is demonstrably beyond the 12 March 2025, but contains submission documents that the Council will wish to rely upon. This is an area of legal uncertainty and could result in any adopted plan being subject to Judicial Review.

### Timescales

- 2.11. The transitional arrangements were introduced into the NPPF to enable Plans which were already well advanced at that stage to continue, to avoid abortive costs and in recognition that up to date plans were important. The transitional arrangements were done to support Plan making, however it is clear that the Government anticipated Plans to come forward under transitional arrangements quickly, as is clear in the Written Ministerial Statement which was published alongside the 2024 NPPF.
- 2.12. It is clear that the Government in publishing its guidance accepted there may be scenarios where it is appropriate to allow a second Regulation 19 consultation. The concern of the DWH is the period of time which has elapsed since the March 2025 deadline, which is clearly relevant to the planning decision as to whether it is appropriate to allow this Plan to continue under the Annex 1 transitional arrangements.
- 2.13. The NPPF was published in December 2024, allowing until March 2025 for Plans to qualify under the transitional arrangements of 234a. The 2024 Written Ministerial Statement states "*we will give local authorities an extra two months to progress their plans under the existing framework*". South Derbyshire have had essentially 16 additional months to get their Plan into place, when having regard for the 2 month extension allowed in the 2024 Framework and the subsequent 14 month period since the March 2025 deadline.
- 2.14. No clear reason has been articulated as to why such a significant delay has occurred, and when compared to other Local Authorities the approach adopted in South Derbyshire is severely out of kilter. The Greater Nottingham Strategic Plan commenced Regulation 19 Consultation on the 12 March 2025 and is commencing Examination hearing sessions next month. South Derbyshire have taken over a year to consider Regulation 19 responses and make amendments to the Plan, whilst other Local Authorities, including those nearby, have managed to get a Plan to examination.
- 2.15. East Devon advanced a second regulation 19 following the 12 March deadline, this commenced in November 2025, almost half a year before South Derbyshire, demonstrating quite how slow the Authority has been in publishing this addendum. In the absence of mitigating circumstances, such a delay, we would argue, is unacceptable particularly in the context of utilising transitional arrangements and ultimately has acted to frustrate plan making in this location.
- 2.16. Given a need for Plans to come forward under LURA, our view is it would be more appropriate for the Council to commence work Plan making under LURA and the 2025 NPPF rather than continue with a Plan that is already significantly behind schedule and will frustrate the delivery of a local planning framework which complies with LURA and the 2025 NPPF.
- 2.17. Given LURA aims for Plans to be adopted in around 30 months, and this Plan still likely has over a year to run until a reasonably likely adoption date, it would be far more expedient to commence Plan making under LURA in the short term to expedite the delivery of an up to date Local Plan. It would also allow better synergy

with the emerging Plan in Derby City which is also being undertaken with post 2024 Local Housing Need, and Amber Valley who have committed to immediate review, so there is consistency across the HMA.

### Has the Plan 'Changed significantly'?

- 2.18. The PPG sets out that whilst not exhaustive, an example where it may be inappropriate to allow a Regulation 19 consultation post the Annex 1 deadline, includes where the 'content of the Plan has changed significantly'. Changed significantly is admittedly vague and thus left to the decision maker to apply.
- 2.19. Whilst not directly relevant, in relation to Neighbourhood Planning, the PPG sets out wherein changes amount to material modifications, particularly where they would 'change the nature of the Plan'. This includes "involve allocating significant new sites for development".
- 2.20. This addendum, amongst other things, seeks to
- Amend and extend the Plan period;
  - Change the housing requirement;
  - Introduce a new strategic allocation for delivery within the Plan period;
  - Amend Policy Requirements for strategic allocations; and
  - Introduce significant elements and amendments to proposed policies.
- 2.21. It cannot be said that the above amounts to only incidental changes to the Plan, these are clearly fundamental changes to the Plan and key strategic policies that in essence mean it is a new Plan being consulted upon. The Main Modification document itself is over 60 pages long. In these circumstances the clear view of the DWH that the nature of these changes are substantial and amount to ongoing Plan making over a year past the March 2025 deadline. These changes are clearly not in keeping with the aims, spirit and purposes of the transitional arrangements. Significant changes have been made and thus this Plan is unable to progress under previous iterations of the Framework as set out by the PPG and Framework.
- 2.22. If the Council suggests the changes are not significant in nature, then it would also need to explain why non-significant changes took significant time to be published.

### Implications of allowing this Plan to continue

- 2.23. It is the clear view of the DWH whilst having regard for the PPG that although there are scenarios where it may be suitable to allow Plan's to continue, even where a second Regulation 19 is held following March 2025 deadline, they are not applicable in South Derbyshire. The Plan now proposed is significantly altered from that consulted upon last year as set out above. Allowing this Plan to continue now will take up significant Inspectorate and Officer time, for a Plan that will be substantially dated by the time it reaches adoption.
- 2.24. Importantly, this Plan does not propose significant new housing allocations, it predominantly repackages allocations which already exist in the adopted development plan, with the key exception being the proposed strategic allocations, though understandably the Plan does not rely on significant delivery on such sites in the short term. STRA 1 and 2 are not anticipated to deliver until 2030 (save for minor delivery on STRA2b which amounts to only 142 dwellings). For Brun Lane delivery is not anticipated until 37/38. Given the time to adopt this Plan versus creating a new Plan is only likely to be around a year different, the impact on housing delivery on these sites will be somewhat minimal. Thus it cannot be argued reasonably that failing to adopt this plan will have some catastrophic impact on housing delivery in the short term, because by the Plan's own admission there is only limited delivery coming forward through this Plan's allocations until deep in the 2030s at best. The existing supply, which makes up the lions share of anticipated delivery, particularly in the early to middle parts of the Plan period already have allocations and thus are not impacted in major terms by the delivery of this Plan.

2.25. Enabling this Plan to progress however will substantively delay 2025 NPPF and LURA plan making, meeting Derby City's unmet needs in full, and send a poor message to other Local Authorities who have worked at pace to deliver the ambitions of the Government.

### Conclusions

2.26. DWH concede that there may be scenarios where the PPG allows for a second Regulation 19 consultation post March 2025 whilst still complying with the Annex 1 transitional arrangements. However, it is not accepted that South Derbyshire have justified a need for changes so late after the transitional arrangement March 2025 deadline. Moreover, the changes proposed by this Plan must be considered significant, in which case the PPG does set out that where changes are substantial in nature then for the purposes of Annex 1 the date of the Regulation 19 should reflect the latter consultation, in this case May 2026, almost 14 months after the transitional arrangements deadline. As such, the transitional arrangements have not been met and the Plan cannot proceed as it must now reflect the 2024 (or more likely emerging 2025 Framework) under LURA provisions.

### Brun Lane, Mackworth FLG1

2.27. Whilst we have not made substantive comments on the main modifications due to our view that the Plan no longer meets the transitional arrangements and thus cannot proceed, DWH would remind the Council that the Brun Lane allocation in Amber Valley, for which this allocation relates, was deemed unsound by the Inspector as the landowners did not support the development of the site. It is therefore unclear given the clear findings of the Inspectorate in the Amber Valley examination why this addition has been made at this stage with delivery now anticipated in the Plan period which was not considered a reasonable proposition by that Inspector.