

## Appendix 2

# **Assessing Development Proposals in County Durham**

Council Policy Position Statement  
following receipt of the Interim Inspector's  
Report into Stage 1 of the Examination of  
the County Durham Plan

**10 June 2015**

**Planning Services  
Regeneration and Economic Development**



# **Assessing Development Proposals in County Durham**

## **Council Policy Position Statement following receipt of the Interim Inspector's Report into Stage 1 of the Examination of the County Durham Plan**

### **1.0 Context and Introduction**

- 1.1 This Position Statement seeks to provide for a consistent approach for handling development proposals in the light of the delay in adoption of the County Durham Plan (CDP) resulting from publication of the Inspector's Interim Report (see below) into Stage 1 of the Examination into the CDP. It is the intention that this Statement enables consistency in decision making for the benefit of Members, Officers, Developers and the public with reference to existing policy, the emerging CDP, emerging Neighbourhood Plans, and guidance from Central Government.
- 1.2 County Durham has a high quality built and natural environment, including a World Heritage Site and an Area of Outstanding Natural Beauty. Economically, the County includes a number of business success stories and continues to see growth, but it includes areas with high level of economic and social deprivation. The County Council is committed to supporting growth and at the same time addressing its economic and social problems whilst respecting the high quality built and natural environment. A key strategy of its approach centres upon the delivery of an ambitious Local Plan, the County Durham Plan (CDP)
- 1.3 The CDP has recently been the subject of an Examination in Public (EIP) into the Strategic parts of the Plan (Stage 1 of the EIP). On 18th February 2015 the Inspector published his report into Stage 1: "Interim Views on the Legal Compliance and soundness of the Submitted County Durham Plan". This report (hereafter referred to as the Interim Report) raises serious concerns regarding the key part of the CDP strategy around economic ambition and notably as a consequence of this, the intention to focus key development in and around Durham City. The Council has concerns on the basis in which the Inspector has framed his conclusions within the Interim Report and is working to determine the best way to proceed and get the CDP back on track to deliver the economic and social improvements that the County needs, retaining the ambition of the CDP.
- 1.4 The Council is concerned that the inevitable delay this situation will cause in the adoption of the CDP could undermine business confidence and attempts to improve the economic performance of the County, notably by delaying appropriate development and investment that may come forward in this period of uncertainty. Equally, the uncertainty could reduce the Council's ability to resist inappropriate development. The National Planning Policy Framework (NPPF) introduced the presumption in favour of sustainable development, stating that planning authorities should: "where the development plan is absent, silent, or relevant policies are out of date, grant permission unless: any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of this Framework taken as a whole, or specific policies in this Framework indicate development should be restricted".
- 1.5 Following publication of the Interim Report, the status of the emerging CDP has been diminished and the "saved" policies in our existing Local Plans are between 11 and 19 years old. Therefore the NPPF is the key material consideration for planning decisions. However, the Council's Sustainable Community Strategy and

the Regeneration Statement set out that we are committed to raising the economic performance of the County by looking to focus development on the key towns that can deliver the development we need to achieve growth.

- 1.6 Changes to plan making through the Localism Act have also introduced Neighbourhood Plans, which are now part of the Development Plan. Some 16 such plans<sup>1</sup> are in preparation across the County and development proposals will need to be considered in that context.
- 1.7 The Council is aware that the issue of student accommodation in Durham City is a major one for some residents within the centre of the City, notably issues relating to Purpose Built Student Accommodation (PBSA), for which there has and continues to be a number of major proposals currently, and Houses in Multiple Occupation for the student market. The Council considers Durham University to be a key institution in the City and County, with a continuing major role to play in an improved future for the County, but is also keen to address genuine concerns within the City in relation to achieving balanced communities and minimising the adverse impact (often unintentional) upon the residential amenity of the settled community by those in student accommodation. This matter is also address below.
- 1.8 The Council needs to consider all types of proposals being put to it in a way that reflects national guidance to deliver sustainable development now but that does not jeopardise the evolution of the County Durham Plan. The Government introduced the Planning Practice Guidance (PPG) in 2014, and this provides guidance in relation to “prematurity”, i.e. situations when a proposal could be refused on prematurity grounds as approval could prejudice the outcome of the plan-making process. This matter is considered in more detail in this paper.
- 1.9 The remainder of this Statement sets out the detail of how proposals will be considered in the context of national guidance and development plan policy, with Section 2.0 covering the majority of development proposals, Section 3.0 looking specifically at the matter of Student Accommodation and Section 4.0 summarising the approach.

### **Retaining Business Confidence in the County**

- 1.10 The Council is determined that the questioning of economic ambition in the Interim Report should not undermine business confidence at a time when the County is seeing a number of major investments coming forward, for example: Hitachi at Newton Aycliffe, Atom Bank at Aykley Heads, Millburngate House and Freemans Quay in Durham City and Bristol Laboratories at Peterlee. These developments show business confidence does exist and that high quality jobs can be attracted to the County.
- 1.11 Following a period of limited growth, the housing building industry is also active in key locations in the County. The pragmatic approach advocated in this Statement is intended to provide reassurance that the Council will strive to deliver appropriate development in the period of uncertainty surrounding the CDP and that investors should remain confident that investment will be supported.

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<sup>1</sup> Barnard Castle, Cassop-cum-Quarrington, Cotherstone, Coxhoe, Durham City, Eggleston, Ferryhill, Gainford & Langton, Great Aycliffe TC, Lanchester, Middridge, Sedgefield, Tow Law, West Auckland, Whorlton, Witton Gilbert.

## 2.0 Assessing Development Proposals

- 2.1 The delay in the completion of the CDP cannot prevent the Council considering planning applications that accord with saved Local plan policies or guidance in the NPPF. Under planning law the starting point for consideration of a proposal is the “development plan” (i.e. adopted Local Plans or adopted Neighbourhood Plans). In County Durham this comprises the saved policies of the former District Local Plans and the Mineral and the Waste Local Plans as no Neighbourhood Plans have been adopted as yet.
- 2.2 On the basis that we would deal favourably with development proposals that accord with NPPF compliant saved Local Plan policies, unless other material considerations weigh against them, the matters that we need to assess in considering development proposals, and that are dealt with in detail below, are:
- i) The status of the Adopted Local Plans in County Durham
  - ii) The status of the County Durham Plan
  - iii) The status of proposals in the Inspector’s Interim Report
  - iv) The Status of Neighbourhood Plans in County Durham
  - v) Sustainable Development
  - vi) Infrastructure requirements and planning obligations
  - vii) Appropriate scale of development
  - viii) How will the matter of Prematurity be addressed
  - ix) Five-year housing land supply

### ***i) The status of the Adopted Local Plans in County Durham***

- 2.3 The status of the saved Local Plan policies of the nine adopted Local Plans covering the County has been assessed for compliance with the NPPF and a similar exercise is underway to assess compliance with the PPG. Although the Plans range in age from 11 to 19 years, their policies are still the starting point for decision making if they comply with the NPPF and PPG. Schedules setting out a Council assessment of compliance for each saved Local Plan policy are available for reference. In cases when a Policy is not compliant then guidance in the NPPF or the PPG would become the primary material consideration in assessing a proposal.
- 2.4 ***Residential development on sites allocated for other uses in existing Local Plans*** - The most obvious scenario in this case would be residential proposals on existing employment allocations. In such cases reference will be made to the Employment Land Review (ELR) that has been prepared as part of the evidence base for the County Durham Plan. As such, any proposal for residential or other use (e.g. retail) on existing protected employment land will be assessed in the light of the ELR and guidance in the NPPF.

### ***ii) The status of the County Durham Plan***

- 2.5 The CDP was submitted for Examination in April 2014 and the current situation is described at 1.3 above. In the light of the Interim Report and after taking legal advice, the CDP remains an emerging and relevant document until such time that the Council takes a formal position in response to the Interim Report recommendations. The level of weight that can be ascribed to individual policies in the CDP varies depending on the comments upon that policy in the Interim Report. This approach accords with guidance at para. 216 of the NPPF. Weight to

be applied to CDP policies varies from “Limited” (when the Interim Report does not raise concern), “Very Limited” (when either DCC or the Inspector have recommended major change to the policy through the examination), or “None” (where the Interim Report find them unsound or recommends deletion or where policies proposed by the Inspector have not been subject to SA or public consultation). The Council has prepared a schedule that lists the weight that it considers can be applied to each policy in the CDP.

- 2.6 **CDP Green Belt Allocations** - The emerging County Durham Plan proposes green belt deletions to meet its objectives. The Interim Report finds this part of the CDP unsound. As such, it is highly unlikely that proposals that involve the development of green belt land will be viewed favourably in the light of this Statement. The Council’s Strategic Housing Land Availability Assessment (SHLAA) has, in the vast majority of cases, not considered green belt sites as suitable due to the national policy constraint and in the interest of transparency it would be inappropriate to consider such sites as acceptable now at this stage (unless they demonstrate very special circumstances) following receipt of the Interim Report.
- 2.7 **Non Green Belt Allocations in the CDP** – Although Stage 2 of the Examination of the CDP was intended to assess individual allocations in the CDP, although most are not mentioned specifically, the nature of the Interim Report has effectively undermined the proposed allocations in the CDP. Therefore very limited weight could be afforded to them when the Council is assessing proposals. As such proposals upon them will be assess against this statement and the NPPF which contains the presumption in favour of sustainable development. As the Council considered these sites to be appropriate allocations it follows that the Council considers them to be sustainable. It is therefore likely that they will be acceptable if they can overcome infrastructure requirements and detailed development management issues.

### ***iii) The status of proposals in the Interim Report***

- 2.8 The Interim Report itself, although affecting the status of the CDP, has no weight itself in decision making in relation to proposals within it. The Interim Report has no formal status in the plan making process and the Council has not taken a position upon its contents nor have the proposals within it being subject to public consultation. This is an important point to note in the context of suggestions made in the Interim Report, e.g. paragraph 65 lists a number of settlements in the Central Durham Delivery Area of the CDP that could make provision for housing that the CDP allocates to Durham City. Further suggestions for appropriate locations for development are also made for other parts of the County. None of these proposals have been subject to consultation or sustainability appraisal and the Council has not taken a position upon them so they carry no weight in decision making.

### ***iv) The Status of Neighbourhood Plans in County Durham***

- 2.9 As of March 2015 there are 16 Neighbourhood Plans at various stages of preparation across the County (see footnote 1). None are adopted but a couple (Witton Gilbert and Sedgfield) have reached a draft stage within which site allocations are being considered. Guidance in the PPG clarifies that prematurity would seldom be justified as a refusal reason unless a Plan had reached the stage when it had been submitted to the County Council and been subject to

consultation. In such cases if the Council was looking to resist a proposal it would be necessary to demonstrate how refusal would undermine the outcome of the plan-making process.

- 2.10 In cases when there is potential conflict with an emerging Neighbourhood Plan, the Council will seek to address any concerns when considering the proposal. In cases when a proposal is in conformity with an emerging Neighbourhood Plan but not the emerging CDP, the stage of Neighbourhood Plan preparation, sustainability of the site, prematurity in relation to the CDP, and the nature of representations to the site through the Neighbourhood Plan consultation process will be taken into account in reaching a decision.

#### **v) Sustainable Development**

- 2.11 One of the purposes of this Statement is to guide development proposals in the period until the way ahead for the CDP has been established. The NPPF (at para 14 - as summarised above in 1.4) makes clear that there is a presumption in favour of sustainable development. NPPF para 49 is clear that housing applications (likely to be the majority of proposals considered under this paper) should be considered in this context and that the lack of a five-year supply of deliverable housing sites renders policies for the supply of housing in saved plans out of date.
- 2.12 The matter of five-year supply is addressed below but what this NPPF guidance does not mean is that without a five-year supply, unsustainable sites should be approved. Recent Secretary of State decisions have clarified this matter, e.g. the recovered appeals by Muller Property Group in East Cheshire (Appeal refs: APP/R0660/A/13/2197532 and APP/R0660/A/13/2197529) have been refused as the Secretary of State considers “...*that the absence of a 5 year housing land supply does not mean that housing development should be permitted anywhere, but only where it amounts to sustainable development taking account of other issues*”. Similarly an Inspector’s decision regarding a Gladman proposal in Warwickshire (Ref: APP/J3720/A/14/2215276) dismisses the appeal despite a lack of five-year supply on grounds, including that “...The proposal would be at odds with NPPF para 7 which makes clear that “contributing to protecting and enhancing our natural , built and historic environment is an aspect of sustainable development”.
- 2.13 It must be made clear that the Council will not be looking to resist appropriate development that may be outside of the framework of relevant saved policies, provided they are NPPF compliant. Both of the appeals referred to above address the matter of “planning balance” which looks at the issue of sustainable development in the context of NPPF para 7, and the three dimensions of sustainable development: economic, social and environmental. It is these three matters that will be relevant when seeking to achieve the planning balance when assessing proposals.
- 2.14 The Council will assess how proposals achieve the planning balance in the context of the aims of the NPPF set out above, but could look favourably on proposals that offer benefits to meet the aims of the NPPF and the emerging County Durham Plan (see caveats below). There can be no “one size fits all” approach and sites will be considered on their individual merits, but this does give the opportunity to deliver high quality development in the period of uncertainty the Council now faces.

2.15 In considering the sustainability of a site, developers should look to Appendix 1 to this Paper, which sets out the sustainability objectives for assessing proposals. From the Council context, Policy 1 from the Submission Draft CDP will be used as a guide (N.B. This policy was not subject to substantive objections and was not mentioned in the Interim Report, as such it can be afforded limited weight in decision making).

***vi) Infrastructure requirements and planning obligations***

2.16 The Core planning principles set out in the NPPF require the delivery of sufficient community and cultural facilities and services to meet local needs. It would be unusual for developers to provide funds for infrastructure beyond that required by current planning policy in advance of the Council adopting its Community Infrastructure Levy Charging schedule.

2.17 The Council will therefore negotiate with developers on a site by site basis to agree Section 106 contributions where a requirement is defined in the Infrastructure Delivery Plan or by relevant teams in the Council (e.g. Education) to help to deliver the infrastructure improvements necessitated by the development. All such negotiations will be carried out in accordance with the three tests for Planning Obligations set out at paragraph 204 of the NPPF.

2.18 In relation to Local Plans and Infrastructure the PPG states that Council's need to pay "... careful attention to providing an adequate supply of land, identifying what infrastructure is required and how it can be funded and brought on stream at the appropriate time; and ensuring that the requirements of the plan as a whole will not prejudice the viability of development". The approach set out above at 2.17 would accord with the requirements of the PPG.

2.19 ***Affordable Housing*** - The current requirements for affordable provision are set out in the Council's evidence base and in particular the Strategic Housing Market Assessment 2013 and the Local Plan and CIL viability study 2014 and reiterated at Policy 31 in the submission CDP. These remain the starting point for negotiation under saved Local Plan policies. The Council will also consider individual site viability in any discussion of affordable housing. Delivery on site will be the preferred approach but off site contributions will be considered if appropriate on a site by site basis.

2.20 ***Recreational and open space needs*** - One of the Council's requirements for residential development is appropriate recreational and amenity space both on site and sometimes off site to meet the needs of the new residents of that scheme. The Council has an Open Space Needs Assessment (OSNA) that sets out provision levels in an area and the standards for what is required dependant on those existing level of facilities, which will be used in assessing housing proposals.

2.21 Whether a site is sustainable or not will not depend solely on infrastructure or meeting planning obligations, so it will not always follow that such contributions can make a site sustainable and therefore acceptable. The Council will however seek to be pragmatic in this period of uncertainty to help to deliver appropriate development.

***vii) Appropriate scale of development***

2.22 One of the matters that will be considered in assessing a proposal is whether the scale is appropriate for a settlement. A part of the evidence base for the CDP is the Settlement Study (Sept 2012), which has developed a hierarchy of towns and villages based upon the availability of facilities and services. This provides a useful indicator of the sustainability of a settlement and allows a degree of assessment of the suitability of a settlement to accommodate further development. In addition a proposal would be assessed against the current size of a settlement and although it is not proposed to use a rule of thumb maximum percentage increase to limit the scale of a proposal (as this could be considered to be introducing policy to this Statement), the current scale of a settlement and its position in the hierarchy will help to guide this matter.

**viii) How will the matter of Prematurity be addressed**

2.23 The PPG sets out that prematurity will seldom be justified as a reason to refuse an application unless a Plan has been submitted for examination and then only when the Council indicates clearly how the grant of permission would prejudice the outcome of the plan-making process. As the CDP has been submitted and the Council has yet to take a formal position in response to the Interim Report, at this stage prematurity can still be a material consideration. In assessing prematurity the Council will address the nature of a proposal to determine whether approval would undermine the plan making process.

2.24 As the CDP has been submitted and has been the subject of an examination of the Strategic matters within it, the Council is aware of the level of representations made to each policy and individual site allocations. In addressing the prematurity issue, the Council will also be guided by NPPF para 216 in relation to unresolved objections. In assessing objections made to sites through the CDP preparation process it will be important to assess whether they relate to straightforward development management issues that can be addressed through the planning application process and covered by condition or legal agreement, or if they are key matters of principle that do require the issue of prematurity to be taken into account.

**ix) Five-year housing land supply**

2.25 It is expected that residential schemes will be considered under this Statement. The Council's evidence to the CDP Examination indicated a 5.01 year supply. The Interim Report has raised concerns regarding Objectively Assessed Need (OAN) and suggests a lower figure. The 5-year position statement is in the process of being updated to capture housing completions and planning permissions issued up to 31st March 2015. It is therefore presumptuous to conclude either way on 5-year supply until the up to date statistics are analysed.

2.26 Even in the event that a 5-year supply of deliverable site cannot be demonstrated, recent appeal decisions determined by the Planning Inspectorate (PINS) and Secretary of State (SoS) have clarified that: "the absence of a 5-year housing land supply does not mean that housing development should be permitted anywhere, but only where it amounts to sustainable development taking account of other issues". This matter has been addressed earlier in this Statement in relation to appeals APP/R0660/A/13/2197532 and APP/R0660/A/13/2197529.

2.27 On the basis, however, that this Statement seeks to provide a positive platform to aid appropriate delivery, the Council would not use the existence of a five-year supply to resist appropriate proposals.

## **3.0 Student Accommodation**

### **Context**

- 3.1 The Council recognises the importance of Durham University to the County on a number of fronts, including its reputation as a world class university, research function, academic excellence and the benefits that it brings to the economy of the County and Durham City. At the same time, the scale of the student numbers in the City does create tensions with the local community, most notably through unintentional disturbance from students in Houses in Multiple Occupation (HMO's) but also as it can impact upon the balance of a residential community as the number of HMOs increase. In the last two years Durham City has, and continues to, experience an increase in the number of proposals for purpose build student accommodation (PBSA). This is a new phenomenon in the City as traditionally University Halls of Residence and HMOs have been the source of accommodation.

### **The County Durham Plan Context**

- 3.3 The Submission Draft Plan that was subjected to examination did not include a specific policy in relation to PBSA but Policy 32 referred to HMOs and Student Accommodation. This policy set out a proposed threshold in order to enable the consideration of concentrations of HMOs. It set out that change of use will not be permitted if more than 10% of the dwellings in a postcode area are already HMOs or student exempt properties. The Submission Draft Policy was subject to objection and subsequent debate at the EIP and as a result the Council proposed a 'Main Examination Hearing Change' and this introduces specific guidance on PBSA into Policy 32.
- 3.4 Policy 32 (including the proposed Main Examination Hearing Change) was explicitly found to be unsound by the Inspector's Interim Report and can therefore not be given any weight. The Inspector also sets out how Policy 32 could be amended. This again can hold no weight in decision making, as it has not been subject to consultation or sustainability appraisal.

### **Current policy context for assessing proposals**

- 3.5 In the absence of Policy 32 having any weight in decision making, the Council believes that there is still a policy framework which would allow careful consideration of any proposals for student accommodation whether HMOs or PBSA. The policies are either the saved policies from the City of Durham Local Plan (2004) (shown below) or the generic policies of the CDP that can retain limited weight following the Inspector's Interim Report including Policy 1 (Sustainable Development) and Policy 18 (Local Amenity).
- 3.6 The saved Policies from the 2004 Local Plan that are most relevant are listed below. It is not an exclusive list. There may be other appropriate policies depending on the nature of the individual application:

#### City of Durham Local Plan (2004) saved policies

- Durham City Centre Conservation Area (E6) – addresses design and scale of development issues.
- Historic Environment (E21) – addresses possible adverse impact of proposals on features of historic interest.

- Conservation Areas (E22) – seeking to avoid development or demolition that detracts from the conservation area.
- Listed Buildings (E23) – seeks to safeguard listed buildings and their settings.
- Multiple Occupation/Student Households (H9) – provides control over subdivision or conversion.
- The Character of Residential Areas (H13) – controls new development that could have significant adverse effect in residential areas.
- Residential Institutions and Student Halls of Residence (H16) – addresses new build or proposals for extensions, covering: location, form of development, impact on residential amenity, and concentration levels.

### **Addressing proposals in relation to the matter of prematurity**

- 3.8 In respect of student accommodation it is considered that a ‘prematurity’ argument would not apply to Policy 32. This is on the basis that the Inspector has noted that the Council’s approach is unsound, therefore on this basis it cannot be said that this policy in the Plan is emerging or at an advanced stage. In addition, as set out at paragraph 3.5, the Inspector’s direction as to an alternative policy has not been subject to consideration by the Council, consultation or sustainability appraisal and therefore cannot be considered to be at an advanced stage. It should also be noted that Policy 32 was prepared as criteria based development management policy for evaluating proposals and does not include any allocations for student accommodation. Therefore it would be difficult to argue that bringing one site forward is premature against another.

### **The issues of need in considering a proposal**

- 3.9 The issue of ‘need’ for PBSA was considered at the Examination and has been raised by objectors including the University in relation to recent planning applications. National planning policy and guidance does not explicitly set out need for PBSA as a material consideration in decision making. The introduction of PBSA is a new offer in the City which provides a choice of accommodation and the consequences upon traditional student accommodation remains to be determined.

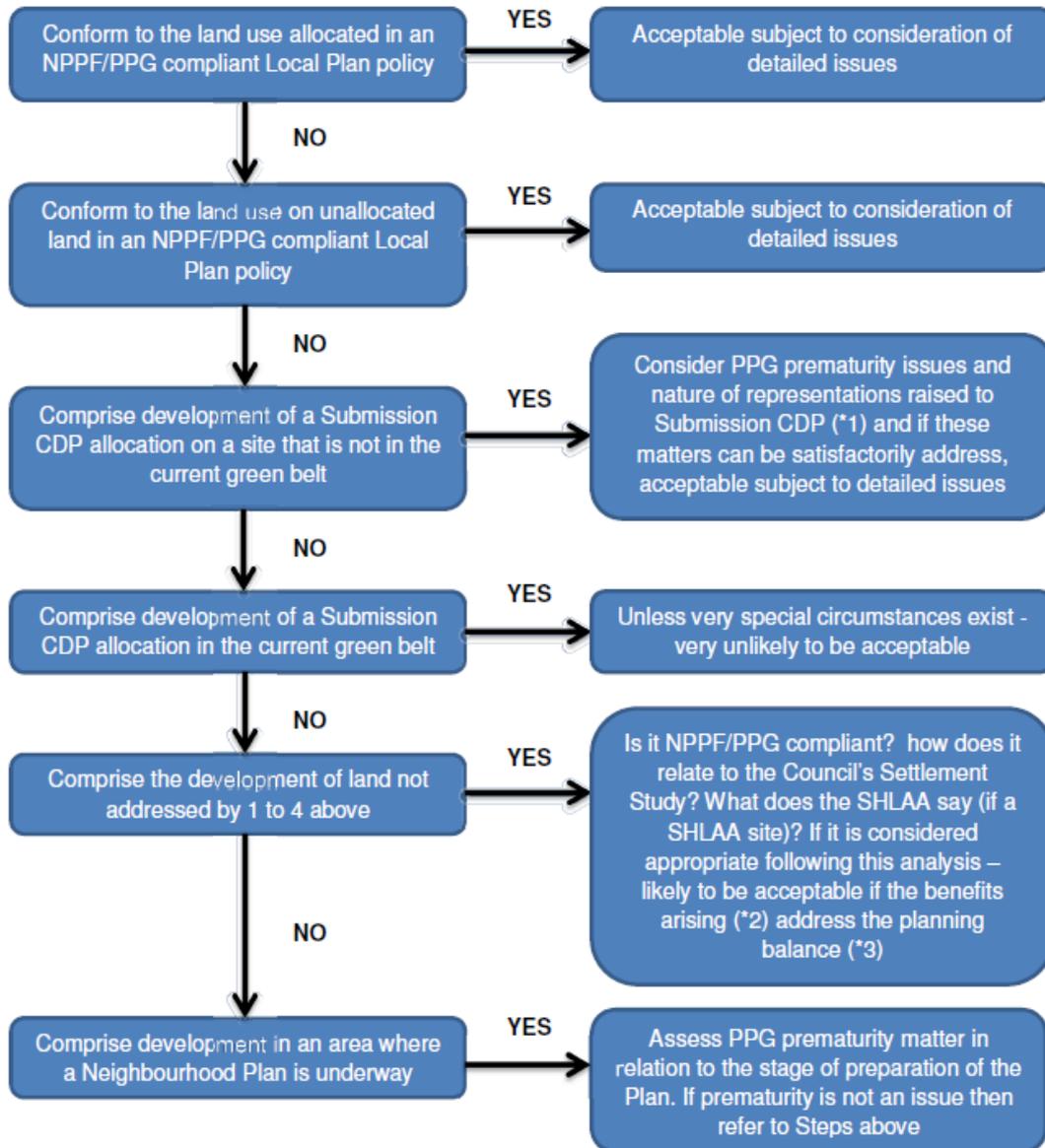
### **Conclusion on approach to addressing proposals**

- 3.11 In conclusion, the approach to both PBSA and the HMOs currently remains a matter covered by saved policies which provide the opportunity to consider concentration levels and impact upon amenity. The Council has information on concentration levels that can be used in addressing this matter.
- 3.12 However in light of discussions at the EIP and the Council’s proposed main modification to Policy 32 and the concerns of residents and others we will consider the need for an interim policy on student accommodation. The Council is also considering the need for an Article 4 Direction to control the change of use of residential properties to smaller HMOs (less than 6 residents).

## 4.0 Summary of Site Assessment guidelines

4.1 In assessing development proposals the following guidelines summarise the matters covered above and sets out assessment guidelines:

### ***Does the proposal:***



\*1: Whether they are matters of principle or can be satisfactorily dealt with through the development management process, e.g. issues around: highway, drainage, overlooking, alleged infrastructure deficiencies.

\*2: For the purposes of these assessments, any benefits arising from a proposal will be assessed to see if they can be considered material to the decision when assessing the planning balance of a scheme. It is not the intention to list here what such benefits might be but as set out in the introduction to this report, despite the delay in taking forward the CDP, the Council is committed to retaining business confidence across the County and will view positively and pragmatically development proposal wherever possible.

\*3: Planning Balance is addressed above at paras 2.13 – 2.14.

## **Appendix 1**

### **Sustainability Objectives for assessing proposals:**

#### **Cross cutting**

1. Reducing the need to travel, including distance to:
  - Public transport
  - Food Outlet
  - GP
  - Leisure
  - Schools
  - Open Space
2. Meeting the needs of rural areas
3. Addressing deprivation
4. Adaptation to climate change (including flooding)

#### **Social**

5. Health and wellbeing
6. Safe access to services and facilities

#### **Economic**

7. Local economic growth (impact upon town centres etc)

#### **Environmental**

8. Efficient use of land, buildings and infrastructure (brownfield land, re- use of buildings)
9. Protection and enhancement of landscape/townscape
10. Protection and enhancement of heritage
11. Protection and enhancement of biodiversity and geodiversity
12. Protection of water resources (impact on water bodies; capacity of sewerage treatment infrastructure)
13. Protection of soil resources (avoiding high quality agricultural land)
14. Impact upon air quality
15. Land remediation

There would then need to be a sustainability assessment of the design and construction of the development. This should include information such as:

1. Achievement of nationally described standards (e.g. BREEAM, lifetime homes, B4L12 etc)
2. Solar shading included
3. On-site GI, biodiversity, landscaping incorporation
4. Reduction of water consumption
5. Responsible sourcing of materials (green guide ratings)
6. Waste minimisation
7. Energy/Carbon minimisation (adherence to the energy hierarchy)
  - a. In-construction
  - b. In-use