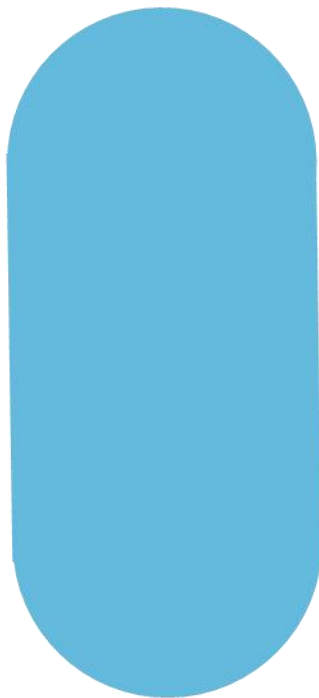


**Warwick District Council
Purpose Built Student Accommodation
Supplementary Planning Document
Consultation Draft January 2019**

**Consultation Response on behalf of
Gee Bee Investments Limited**





1. This response to the Consultation Draft Purpose Built Student Accommodation SPD is submitted on behalf of Gee Bee Investments Limited.
2. Gee Bee Investments Limited (GBI) are providers of purpose built student accommodation within Warwick District. They have the following concerns with the legality and approach of the draft PBSA SPD.

Appropriateness as Supplementary Planning Document

3. National planning policy states that supplementary planning documents can add further details within the Development Plan but are not part of the Development Plan (Glossary, NPPF). The content of the SPD goes well beyond the policies in the SPD and introduces wholly new policy to plug what the Council consider is a plan making gap.
4. Appended to this representation is legal advice prepared on behalf of GBI which explains why the draft PBSA SPD cannot lawfully be adopted in its current form. In effect, the SPD as drafted meets the criteria for a Development Plan Document (DPD), which should be subject to the rigours of independent examination in public.

General Approach to PBSA

5. Notwithstanding the inappropriateness of the SPD as outlined above, the application of the draft policy would mean no further PBSA is allowed within Zone 2a in the Wise Terrace area of Royal Leamington Spa. Adopting this policy approach would result in unnecessarily preventing an appropriate use for this area of the town centre.
6. The Wise Terrace area is precisely such a location where concentrations of purpose built student accommodation should be acceptable in principle (as per



Zone 1). It is not an established residential area within the town centre, but benefits from being highly accessible to public transport services to the University, the train station, and town centre shops and services, all of which can be reached whilst avoiding residential areas. A point recently made to the Council by the Inspector who allowed the appeal at Mercia Metals.

7. Furthermore, the development of Station House and 4a Wise Terrace are examples of where PBSA has contributed in a positive way to the townscape of Royal Leamington Spa and the Grand Union Canal. As higher density developments, in very sustainable locations, they have enhanced the local character of the area. This quality of design may not have been achieved if development were for other land uses, given the significant costs of redeveloping brownfield sites.
8. Policy H6 of the Local Plan recognises that concentrating student accommodation is acceptable on main thoroughfares, in mixed use areas, and in areas away from quiet residential streets where the settled community might be affected late at night by noise or disturbance. However, the draft PBSA SPD is at odds with this approach by seeking to impose limitations on concentrations in areas where such uses would be allowed by Policy H6, such as Wise Terrace.
9. Given the scale of need, and the limited land supply within Royal Leamington Spa where the demand is focussed, the Council should reconsider its policy approach and look to extend Zone 1 to cover other areas of the town centre where harm is not likely to be caused to residential amenity from such uses.

IN THE MATTER OF THE TOWN AND COUNTRY PLANNING ACT 1990

AND LAND AT 4A WISE TERRACE, ROYAL LEAMINGTON SPA, CV31 3AS

ADVICE

Introduction

1. I am instructed to advise Gee Bee Investments Limited. It is the Appellant in respect of Appeal Reference APP/T3725/C/18/3197880 (“the Appeal”) against the decision of Warwick District Council (“the Council”) to issue an enforcement notice (“the Notice”) relating to the use of land at 4a Wise Terrace, Royal Leamington Spa, CV31 3AS (“the Site”).
2. The appeal is listed for hearing in March of this year, and one of the issues in the appeal is likely to be whether the development at the Site is a House in Multiple Occupation (“HMO”) or purpose built student accommodation (“PBSA”). If it is the latter (and it is not the role of this Opinion to determine this issue), one of the matters the inspector hearing the appeal will have to consider is what weight (if any) he or she should give to a draft document entitled “Purpose Built Student Accommodation” dated January 2019. This document purports to be a draft Supplementary Planning Document (“the Draft SPD”) that is to be the subject of public consultation. If it is adopted prior to the inspector’s final determination of the Appeal, and the inspector determines that the development at the Site constitutes PBSA, the SPD will attract full weight as a relevant, adopted SPD.
3. I am asked to advise whether the Council can lawfully adopt the Draft SPD as SPD, or whether the document is in fact a Development Plan Document (“DPD”) that can only be adopted through the normal development plan review process (which, of course, entails a much more rigorous process, including a plan examination by an independent inspector).

4. For the reasons fully detailed below, I have no doubt that the Draft SPD is in substance a DPD, and should the Council adopt it utilising the process reserved for adopting SPDs its decision to do so will be quashed by the High Court on application being made for such relief by the Appellant or any other party with sufficient locus.

The Development Plan

5. The statutory development plan consists of the Warwick District Local Plan 2011-2029 (2017) ("the Local Plan") and several Neighbourhood Plans.
6. Policy H6 of the Local Plan provides:

H6 Houses in Multiple Occupation and Student Accommodation

Planning permission will only be granted for Houses in Multiple Occupation, including student accommodation, where:

- a) the proportion of dwelling units in multiple occupation (including the proposal) within a 100 metre radius of the application site does not exceed 10% of total dwelling units;*
- b) the application site is within 400 metres walking distance of a bus stop;*
- c) the proposal does not result in a non-HMO dwelling being sandwiched between 2 HMO's;*
- d) the proposal does not lead to a continuous frontage of 3 or more HMOs; and*
- e) adequate provision is made for the storage of refuse containers whereby –*
 - the containers are not visible from an area accessible by the general public, and*
 - the containers can be moved to the collection point along an external route only*

Exceptions to a) may be made where the application site is located:

- i. on the campus of the University of Warwick or Warwickshire College or;*
- ii. on a main thorough fare in a mixed use area where the proposal would not lead to an increase in activity along nearby residential streets (for example, by way of pedestrian movements between the application site and the town centre or car parking)*

Exceptions to e) may be made if alternative arrangements for the storage and movement of containers are agreed in writing by the Council's Contract Services section.

Explanation

- 4.60 National planning policy includes the aim to “always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings”. Further, planning should “enhance and improve the places in which people live their lives”. National planning policy also supports the need to make places better for people. This includes “safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion”.
- 4.61 The recent increase in the number of Houses in Multiple Occupation (HMO’s) in Royal Leamington Spa has led to a fall in the standards of amenity experienced by residents in parts of the town where HMO’s have concentrated. This is largely a result of:
- a relatively large proportion of young, single people with student lifestyles which conflict with the lifestyles of more settled residents; and
 - a relatively large proportion of privately rented accommodation, with short term tenancies, which often leads to a lower standard of upkeep of property and the loss of a sense of belonging within the community.
- 4.62 About 81% of HMOs in the District comprise of accommodation for students, most of whom attend the University of Warwick in Coventry. The areas around central and south Royal Leamington Spa have the greatest concentrations of HMOs. These areas are popular with students and young people because the town centre provides a good range of facilities for young people and a thriving evening economy. In addition, the housing stock lends itself well to the provision of shared houses and flats. However, one of the main problems for more settled residents living in these areas is the anti-social behaviour in the streets in the early hours of the morning as young people return from the pubs and clubs, often on mid-week mornings. Other issues include noise from neighbouring properties, poor attendance to waste storage, increased burglaries, increased street parking, and poor property maintenance. The University and the Council work together to resolve these issues, but the Council is firmly of the view that restricting further concentrations of HMOs will help prevent a worsening of the situation.
- 4.63 In response to concerns by residents the Council agreed an Article 4 Direction in April 2012 the purpose of which was to remove permitted development rights, in Royal Leamington Spa only, for a change of use from a single dwelling to a small HMO (uses class C4). The need for planning permission would enable the Council to control further concentrations of small HMOs since nearly 81% of HMOs in the District comprised shared houses (use class C4).
- 4.64 The purpose of this policy is to control the location of new HMOs in order to prevent these uses from either exacerbating existing concentrations or leading to new concentrations. Additional HMOs can impact on local amenity where they lead to concentrations at either the neighbourhood level or in very localised situations. The policy aims to prevent concentrations at both levels by ensuring that within a 100 metre radius of the proposal not more than 10% of dwellings are HMOs

and also, at a more localised level, by preventing the “sandwiching” of a non-HMO between 2 HMOs or a continuous frontage of 3 or more HMOs. It is not the intention of the policy to restrict further growth in HMOs. The Council recognises the importance of HMOs and the private rented sector generally in the housing stock but seeks to ensure that the amenity of more settled residents is not compromised. The policy also aims to ensure that there is satisfactory provision for the storage of waste, since a house occupied as an HMO generates more waste than a family or couple. In addition, the policy also aims to ensure that new HMOs are within reasonable walking distance of a bus stop because access to public transport is essential for most University of Warwick students due to the restrictive parking arrangements on campus.

4.65 The policy makes exceptions to the application of the 100 metre radius test to allow for HMOs or student accommodation in areas which would not impact on existing residential areas. Since one of the main problems is anti-social behaviour and noise on routes home from the town centre, these criteria are intended to allow HMOs in locations where residential areas would not be affected. Main thorough fares will normally be defined as A and B roads and mixed use areas are defined as areas with a predominance of non - residential uses.

4.66 The Council supports the provision of student accommodation on the University campus which falls within Warwick District. The number of full-time University students increased by 29% in the five years up to 2011/12. A large proportion of this increase has been in international students who are more likely to prefer purpose -built accommodation. Approximately 225 flats for students, along with some flats for staff and visitors, received planning permission in 2009 as part of the University's Master Plan. Of these, 59 have been completed and the remainder are expected to be built in the first phase of the plan period. An additional 4,440 sq. m. of existing student accommodation is the subject of an application for redevelopment & replacement. The Local Plan allows for further expansion of the University within Warwick District and this is likely to include further accommodation for students.

Genesis of the Draft SPD

7. On 31 May 2018 the Council published an Executive Report (“the first Executive Report”) titled “*Student Housing Strategy*” in which it adopted the following Policy Statement (all emphasis added):

“Warwick District Council welcomes all students to our District and recognises the important social and economic benefits that they bring. The Council also understands that having a large student population can place stress on the settled community and has an impact upon housing demand. Our goal is to support local people while positively integrating the student population among local communities, and encouraging students to remain in the area for employment after graduation as permanent long-term residents.”

8. The Executive Report continues:

“Our aims are:

...

- To encourage the provision of purpose-built student accommodation of an appropriate type and quality in sustainable locations thereby encouraging students to move from HMO style accommodation.*

...

3 Reasons for the Recommendation:

...

- Warwick District remains an attractive place to live for many students and the Council should seek to benefit from any increase in student numbers. Based on recent trends in where University of Warwick students live, available forecasts for student numbers, and estimates of student housing supply, there is the need for available student housing in Warwick District to increase by 120 beds per year over the next three years (360 beds in total).*
- Meeting this increased student housing demand in the private rented sector via HMOs risks increasing the pressure on everyone in the community, including students. Alternative approaches should instead be actively promoted and include:*
- Encouraging the University of Warwick to increase housing provision directly on campus;
Supporting the provision of purpose-built student accommodation to cater for the additional student housing demand and to reduce the extent of the use of HMOs for student accommodation. Relying on the purpose-built sector is not without risk but it can help accommodate more students and reduce the pressures if planned for appropriately.*

...

3.9 As regards influencing future provision the next steps would be:

- Preparing a Student Housing Supplementary Planning Document (SPD) setting out our planning policies towards the design and location of purpose-built student accommodation; and
*Working with the University of Warwick to promote further on-campus provision and a more dispersed distribution of the student population across Warwick District to enable the district to positively integrate the student and settled populations.**
- The Planning Policy team has already undertaken some preparatory work on the SPD and can utilise the findings of the research from phase one which will help this piece of work to move forward efficiently. Once a draft SPD has been prepared it will be brought to Executive for approval to then go out for public consultation. “*

9. In January 2019 the Council published an Executive Report (“the second Executive Report”) titled “*Supplementary Planning Documents (SPDs) – Requests to Consult*”.

10. The second Executive Report stated (all emphasis added):

"2 RECOMMENDATIONS

2.1 That Executive notes the content of the attached documents (Appendices 1-3) and approves them for a six-week public consultation, in accordance with the Council's adopted Statement of Community Involvement (SCI).

2.2 That Executive note that following the public consultation a final version of each of the SPDs will be brought before them and if they are approved they will subsequently be a material consideration in the determination of planning applications.

3 REASONS FOR THE RECOMMENDATIONS

3.9 Purpose Build Student Accommodation (PBSA)

3.10 Leamington Spa is home to 5782 students, principally in Houses of Multiple Occupancy (HMOs) in the south of Leamington. The benefits of students to the local economy, and to the district as a whole, have recently been acknowledged by Executive in the Student Strategy.

3.11 However, concerns are raised by local residents regarding the negative impact of a concentration of HMOs, and an Article 4 Direction is in place in Leamington to prevent HMOs coming forward without specific planning permission. Further, Policy H6 of the Local Plan (Houses in Multiple Occupation and Student Accommodation) sets out the criteria for assessing such applications. Policy H6 does not explicitly refer to PBSAs.

3.12 In response to these issues, and in order to accommodate the planned growth in the size of the University of Warwick, it is the position of the Council that more PBSA should be encouraged in order to alleviate the pressures on HMOs to the point where some are returned to mainstream housing. The PBSA SPD sets out the criteria where PBSAs can come forward to help deliver this aspiration, whilst also ensuring that any current concentration issues are not exacerbated.

3.13 The SPD is the result of collaborative work with the Housing Strategy team who have been leading on the Student Strategy work. Furthermore, there have been several cross-party member briefings that have helped shape the SPD.

7 ALTERNATIVE OPTIONS CONSIDERED

7.3 The Executive could decide not to pursue publication of a Purpose Built Student Accommodation SPD. However, this would not provide officers with a suitable policy basis for determining relevant applications and lose the opportunity to proactively plan for the provision of PBSAs

8. BACKGROUND

8.7 Purpose Built Student Accommodation

8.8 The SPD sets out why there is a need for this document and how there are pressures on certain areas of the district as a result of the current and forecast increases in student numbers in terms of housing provision.

8.9 With a further 1414 bedspaces for students needed within the district until 2029 the SPD sets out how, whilst wishing to acknowledge the benefits

of having students in the area, both socially and economically, we need to ensure a sustainable balance in the local community.

8.10 The SPD policies aim to achieve this by advising the most acceptable locations for PBSA and setting out what is expected by way of design and management for each new proposal to allow planning officers to make informed decisions on applications for both new build and conversions, without detriment to the amenity of other local residents."

The Draft SPD

11. The NPPF defines Supplementary Planning Documents as:

"Supplementary planning documents: Documents which add further detail to the policies in the development plan. They can be used to provide further guidance for development on specific sites, or on particular issues, such as design. Supplementary planning documents are capable of being a material consideration in planning decisions but are not part of the development plan."

12. The Draft SPD provides:

(Page 1) *"The aim of the provision of Purpose Built Student Accommodation (PBSA) and the SPD is to:*

- *Provide a high quality and safe environment conducive to student life with easy access by public transport, walking and cycling to places of study and other facilities*
- *To welcome students to the district and recognise their contribution to the local economy and the richness of its communities*
- *To encourage students to participate in local events and activities and to continue to live and work in the district once their period of study is over*
- *To reduce the negative effect that concentrating the student population can have on other residents, in some parts of south Leamington in particular*
- *To reduce the pressure on shared accommodation*1 in family homes resulting in a return of those properties to the housing market or for rental to those other than students*
- *To improve relationships within existing communities between residents and the student population and encourage integration.*

This document does not seek to allocate specific sites for the development of PBSA but provides the criteria by which sites will be assessed when planning applications are received for consideration and is an extension of policy H6 of the Warwick District Local Plan (hereinafter referred to as the local plan).

(Page 7 under heading "Policy H6") Clearly this policy was not meant to apply specifically to PBSA and therefore this document seeks to influence the location and quality of PBSAs whilst supporting Local Plan policy H6 ...

(Page 9) Meeting this increased student housing demand in the private rented sector via HMOs risks increasing the pressure on everyone in the community, including students. Additionally, it remains to be seen whether there is sufficient demand from landlords given national tax changes and other considerations limiting demand for new purchases. Recent evidence from the BBC suggests that 'buy to let' is no longer considered to be the investment it once was and for this reason, fewer landlords will increase their portfolios in this market. While the University of Warwick is encouraged to increase housing provision on campus, the purpose-built sector is ideally placed to cater for the additional student housing demand. "Relying on the purpose-built sector is not without risk but it can help accommodate more students and reduce the pressures if planned for appropriately." (Residential Analysts report Student Housing Need in Warwick District, 2018).

Coventry University student numbers are set to decline in Warwick district as there are many new PBSA schemes in the city which will be more attractive to those students based there. No additional provision is therefore forecast for this district and no additional bedspace requirements have therefore been added to the need.

Similarly, Warwickshire College students are largely already locally based and those that aren't, are almost entirely accommodated on campus. No resulting additional need has been identified therefore and no additional provision made.

13. In relation to Policy H6 the Draft SPD provides at page 13:

"Clearly this policy was not meant to apply specifically to PBSA and therefore this document seeks to influence the location and quality of PBSAs whilst supporting Local Plan policy H6 to address issues around existing concentrations of student accommodation in parts of the district."

14. The Draft SPD outlines its Student Housing Strategy at page 15:

Student Housing Strategy

In May 2018 the Council's Executive agreed a Student Housing Strategy. This strategy set out to assess and respond to the issues raised in south Leamington about the impact of student numbers and the transient nature of the population in concentrated areas.

The strategy's policy statement is:

"Warwick District Council welcomes all students to our District and recognises the important social and economic benefits that they bring. The Council also understands that having a large student population can place stress on the settled community and has an impact upon housing demand. Our goal is to support local people while positively integrating the student population among local communities, and encouraging students to remain in the area for employment after graduation as permanent long-term residents."

The aims of the strategy are:

- *"To attract students to live in the district, during and after their studies, throughout the academic year.*

- To encourage the provision of purpose-built student accommodation of an appropriate type and quality in sustainable locations thereby encouraging students to move from HMO style accommodation.
- *To ensure that the necessary support services are in place for the whole community to ensure community cohesion and integration across all the generations."*

*In concluding, the report stated that one of the next steps would include:
"Preparing a Student Housing Supplementary Planning Document (SPD) setting out our planning policies towards the design and location of purpose-built student accommodation"*

This document fulfils this requirement and sits alongside and supports the Warwick District Local Plan policies and the Student Housing Strategy.

15. The Draft SPD outlines its policies at page 25:

"The Policies

Purpose built student accommodation (PBSA) is defined as a development, normally in the form of a single block of residential accommodation used by students in full time education at the university and colleges in the area. The accommodation can comprise a mix of cluster flats, a communal lounge and bathroom and studio flats, a single room of accommodation containing bed space, living space and en-suite facilities. The accommodation often includes communal common, gyms/games rooms and laundry rooms

NB: for the purposes of this document and policies PBSA guidance will also include all non HMO conversions which provide student accommodation in a format consistent with the above definition. Also, although the usual model for PBSA's is to provide self-catering accommodation, this document and policy will also apply to catered student accommodation.

PBSA1

Location

Support will be for accommodation to be provided on campus as the preferred location wherever proposals comply with other local plan policies,, however, the provision of PBSA elsewhere in Warwick district will be supported if the following criteria are met:

1. *The proposal does not result in an excessive concentration of PBSA student accommodation in one locality. Developments will need to demonstrate that they do not exceed acceptable impact levels, which will vary dependent on their location (see the table below)
The development is within one of the following locations, thereby ensuring it is easily accessible to the university/college facilities by sustainable travel modes, public transport (including dedicated bus services), cycling and walking.*

- a) *On or adjacent to a higher education campus*
- b) *Within a town centre as defined by the Local Plan policy maps; or*

- c) *On a thoroughfare*1 within 400m of a bus stop*

**1 A thoroughfare is normally defined as A or B roads (para 4.65 of the Local Plan for further explanation)*

- d) Where an AOI covers several Zones, the original zone criteria will be applied across the AOI, with the exception of any part of an AOI that is in Zone 1, where Zone 1 rules will apply. The concentration of student accommodation with the AOI must then be assessed;
- e) The number of individual dwellings should be calculated with the AOI excluding the proposed and any other PBSA developments
- f) Any existing PBSA's within the AOI should be calculated as follows: each kitchen in an existing PBSA will be equivalent to a new dwelling. The number of these PBSA 'dwelling equivalents' already present within the AOI should be calculated
- g) A proposal for a new PBSA will be considered not to have caused excessive concentration of student accommodation in one locality where the figure for PBSA 'equivalent dwellings' including those in the proposal do not exceed:
- In Zone 1 no concentration limit
 - In Zone 2B no more than 25% of the total number of dwellings (calculation to include proposal)
 - In Zone 3 no more than 10% of the total number of dwellings. Applications outside of the above Zones will not be supported (calculation to include proposal)

2. Proposals should demonstrate that they would not lead to an unacceptable increase in on-street parking in the surrounding area. Parking (including disabled spaces) should be provided on site where applicable and additionally for servicing and emergency vehicles, in accordance with the standards set out in table 2 of this SPD. Electric recharging points will be provided in line with the Council's adopted Parking Standards for residential property serving both electric vehicles and electric powered cycles. A transport assessment will accompany planning applications to include details of public transport adequacy to deal with the number of students expected in each development. Zone maps are attached at Appendix 3.

PBSA2

Design and Management

3. The ground floor of new PBSA will be expected to maintain an active frontage providing a mixed use development overall. This may be for employment, retail or leisure uses for example, or for common/games rooms/gyms where retail may not be local plan policy compliant but must be appropriate for the location and compliant to the other policies of the local plan
4. The layout, design and facilities provided within the development are of a high standard and meet identified student needs including adequate laundry provision, disabled access and facilities, communal space and social learning facilities and with secure and adequate refuse and cycle storage facilities. Planning applications should include appropriate CGIs/sections/street-scene drawings to demonstrate that the design is appropriate in its context.
5. Appropriate management plans are submitted ensuring that a positive and safe living environment is created for students and to minimise the potential

negative impacts on the local community such that there will be no unacceptable impact upon residential amenity in the surrounding area through issues such as increased noise, excessive on street parking and disturbance. This should include details of the management of car parking spaces and how students' drop-off/pick-up will be managed at the beginning and end of terms.

6. A mix of sizes of available rooms and flats/houses, should be provided for a wide range of demand across various sectors, but at least to meet the minimum standard for rooms as outlined in the University of Warwick documents 'Information for Developers' and 'Standard Requirements'.

7. The design of Purpose Built Student Accommodation should respond to the character of the area. Furthermore, it should demonstrate how the design ensures it can be adaptable to alternative uses. A planning statement demonstrating character analysis and illustrating future potential reuse is to be included with any planning application for PBSA

8. The development complies with all other requirements set out in the policies of the adopted Warwick District Local Plan 2011-2029 and any 'made' Neighbourhood Plan which relates to the specific area in which the proposal is located

9. External amenity space will be provided in line with the guidance published in the Council's adopted Open Space SPD.

Explanation for the above criteria

Criterion 1

It is important to ensure that at least the current need is met locally and exceeded where evidence shows that the demand for student accommodation is likely to increase for the foreseeable future and to encourage students out of HMOs. This is to ensure that more pressure is not put onto other types of rented accommodation, particularly HMO's, where there is a need for families and others who wish to rent rooms and are prevented due to lack of supply. The aim of providing PBSA is to divert most of the student population into this type of accommodation and ease the pressure elsewhere. It is recognised that there will always be students who wish to live in HMO's, but the numbers can be reduced if provision is made in PBSA, particularly for overseas students, whose numbers are growing with the success, investment and popularity of the local universities and colleges.

Sustainable locations need to be identified to enable proper provision of PBSA's that won't have a negative effect on the local community who currently feel that there is a high concentration of students in their area which affects their lives in an adverse manner. While it is important to ensure that students are able to access their place of study along public transport routes or allow easy access by cycling or walking, there are other factors that also need to be considered. Locating PBSA away from traditional residential areas where noise disturbance and refuse issues are exacerbated will also need to be taken into account when considering the suitability of a location and a balance has to be reached.

Criterion 2

This SPD sets out parking standards for PBSA as they are not included in the council's current adopted parking standards. They are based on the experience of other local authorities and the standards (see benchmarking exercise in Appendix 2) that they have decided and on the fact that the universities do not encourage students to have cars either at their place of study or temporary home. There is a need for some disabled parking however and parking for those dropping off and collecting students at the beginning and end of term. There also needs to be space for waste collection vehicles, emergency services and delivery/maintenance vehicles on site together with appropriate manoeuvring space.

The experience in areas of high concentrations of HMO's is a perceived increase in on street parking. Some parking on site is therefore necessary to ensure that on street parking is kept at an acceptable level, particularly where accommodation is located further away from bus routes. Additionally, there may be on site staff to manage the building and a parking space is required to serve their need. In order to encourage the use of cycles to access study and other facilities, a method of secure storage is also required at a rate set out in table 2.

It may be acceptable to make car parking areas more attractive by demarcation without black-top and white lined spaces. This can be discussed with development management officers in advance of submission of a planning application for such a scheme.

*The parking standards for PBSA are given in table 2 below
Secure cycle parking should be located within buildings or near to entrances/exits of the premises.*

Criterion 3

This is to ensure that not only do PBSA buildings provide accommodation for students, but also other uses which will secure an active frontage reducing the perception of a 'ghost town' when students are not in residence. This approach can also contribute to the integration of students into the community.

Criterion 4

This criterion is necessary to ensure that PBSA includes all the facilities needed to ensure that students are provided with good quality designed accommodation that is conducive to study and to social interaction whilst also providing day to day living facilities in line with the universities 'Student Accommodation Code'.

UK universities and colleges are inclusive places that welcome disabled and non- disabled students. They are legally required not to discriminate against disabled students. Both private and university accommodation must adhere to the Equality Act 2010 and be fully accessible and may require bespoke furniture, such as height adjustable beds and types of mattresses, ergonomic chairs and bathroom requirements.

Externally, it is important that building design reflects any historical references locally and is built to a high standard and being sympathetic to the locality in form, massing, height and the use of

materials. This is of particular concern in conservation areas and alongside the river and canals.

External amenity areas should use appropriate lighting schemes to improve the appearance of the scheme but also ensure that external lighting is designed so as not to cause nuisance to neighbouring uses.

Criterion 5

An appropriate management plan will include the requirement for students to sign up to a 'Student Code of Conduct' either with the university or the provider of such accommodation. It will also include details of the facilities and arrangement for the storage and disposal

of waste and recycling materials; details of the proposed management of the building

and how staff can be accessed in case of problems with the accommodation, with details

of any on site staff; a proposed cleaning and maintenance regime; access and egress arrangements via a security system; control of car parking and access to secure cycle storage facilities; arrangements for arrival and departure at the beginning and end of term and arrangements for community liaison through university staff and/or the local community.

Criterion 6

Peer group friendships are forged in the first undergraduate year at university and groups of students then wish to share suitable accommodation in years 2 and 3. To ensure that these groups of up to 12 sharing, can remain together, a variety of configurations of rooms should be provided within PBSA flats/houses.

Criterion 7

For the foreseeable future and certainly during the life of the current local plan (2011-2029), student population figures look set to increase year on year. PBSA is particularly popular amongst overseas students; the fastest growing sector of the student community.

However, should student numbers stabilise or even decline in future years, e.g. through the unknown consequences of Brexit for example, there may come a time when not all PBSA is required for student use.

In order to future proof these buildings, it is important to ensure that, in the design process, the potential future conversion to other uses is taken into account. Modular and timber framed buildings for example cannot be changed internally once erected and this would result in the need for unsustainable demolition and replacement. To ensure that buildings can be reused, internal partitioning must

be moveable/removable and ceiling heights should be similar to those in domestic houses to allow a change of use to other residential or commercial uses. External materials should be of high quality and built to last. To ensure that these issues have been considered and factored into the scheme, a planning statement should be included with any planning application for a PBSA proposal together with a plan demonstrating how the building's use could be changed in future.

Criterion 8

The Local Plan is the policy document for Warwick District. All developments are governed by these policies and any review or replacement of the document will also apply. Any 'made' Neighbourhood Plan applicable to the area in which the PBSA is proposed should also be consulted for design guidance and relevant policies. This SPD is a document that supports the Local Plan and has been prepared in conformity with it. Developers of PBSA are advised that these documents should inform their design. Planning applications and all such proposals will be assessed against the criteria and policies in all relevant documents.

Criterion 9

It is necessary to provide not only a pleasant landscaped area as the setting for new or converted buildings, but also to allow for a social space externally where people can sit and relax. It also allows for soft landscaping which can provide trees for screening and the provision of shady areas during warmer months.

16. The Draft SPD then addresses the location of PBSA:

Locating PBSA in the district

There will always be a preference for student accommodation to be located on the relevant campus.

There are obviously certain parts of the district that have proven especially popular with students when looking for accommodation off campus; central and south Leamington Spa in particular. This does not mean however, that these are necessarily the areas of choice for students and are more likely to be indicative of a location away from the University campus but with good transport links and cheaper rental accommodation in older housing stock, more suited to conversion. It is however these very houses that the council wishes to see freed up for occupation by those other than students or returned to the housing market. These are the houses most likely to be purchased by first time buyers wishing to invest in a property and make home improvements to increase the value and living standards.

Several options have been considered in exploring the best locations for PBSA:

- 1. In the Town Centres of Leamington Spa, Kenilworth, Warwick and to a lesser extent, Whitnash.*
- 2. Along the transport corridor to the university.*
- 3. Close to the university and within easy walking and cycling distance*
- 4. Elsewhere in the district*

Taking each of these in turn,

1. *Town Centres are already crowded places, but they are also where the majority of the facilities and services are located. The advantages of Leamington Spa and Kenilworth town centres are that they are also along the main bus route to the university. Warwick is popular to a lesser extent as the transport services are not so regular and Whitnash is not as close to the relevant bus services.*

2. ***Along the transport corridor/at transport hubs***

Universities do not want or encourage their students to bring their cars onto the campus where parking is limited or not available other than in car parks with a high associated cost. This however, does not prevent students from bringing their cars with them from home and leaving them parked near their accommodation in the local area, predominantly on street, until required either to go home or further afield for leisure pursuits. Very regular and well used bus services operate along the route from Leamington Spa to the university and include services U1, U2, U12, 11, 11U, 12X, 60, 43 and the 'hopper' service 18, 18A and 12X. Stops include Coventry railway station, University Hospital, Warwick Hospital, Coventry City Centre, Cannon Park shops and Ricoh Arena. Several services enter the campus and follow a circuitous route which serves individual parts of the university complex. It is therefore logical to provide PBSA along this route, although there are parts of the transport corridor that are less suitable as they are in the green belt or isolated from other services.

Rail services are also good and with a new station being opened recently in Kenilworth, this could add to the attractiveness of living in this area for those students attending Coventry University in particular, or even travelling further afield to Birmingham.

It may be possible to extend the public transport offer if suitable sites can be found given the influence that the university has with regard to bus routes.

3. ***Close to the University of Warwick***

This approach may well be the most popular amongst local residents, particularly those who are aggrieved by the number of students living in their area. On the other hand, it is that isolation that leads to a less harmonious integration between the student population and long term local residents.

There may be private landowners with previously developed land in the green belt who are interested in providing land for this use. If a suitable, sustainable location can be found that is capable of providing sufficient footprint in terms of existing non-residential buildings to allow for conversion or redevelopment, this could be considered. This land would need to be located within easy reach of the university.

Unfortunately, such a location is unlikely to be popular with those students looking for second and third year undergraduate accommodation since it does not provide the facilities and

entertainment that a town centre does, nor does it provide that break with the restrictions and conformity of campus living so desired by students after their first year in halls of residence. If such a location is likely to be unpopular with students, it stands to reason that a developer of such accommodation is unlikely to wish to provide it in that area.

4 Elsewhere in the district

Having considered specific options in the previous three scenarios, the remainder of the district also needs to be considered.

A considerable area, particularly in the north of district and therefore close to the university, is within the Warwickshire Green Belt. Approaching 80% of the district is covered by green belt within which development can only take place where 'very special circumstances' can be demonstrated. The NPPF at para.88 states "When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations."

This very much restricts consideration of other parts of the district and allocating residential land for the Local Plan has demonstrated that it is not only difficult to find sufficient land but it is also difficult, even through the Local Plan process, to amend the green belt boundary to accommodate new uses. It is therefore those pockets of land which can be described as 'previously developed' sites that offer the best opportunities. These may include agricultural buildings for example which could be replaced with a building of the same footprint to accommodate this use.

Land outside the green belt remains expensive and under considerable pressure for other residential uses and will again be considered as part of the review of the local plan which is due to commence shortly. This pressure may result in little coming forward for PBSA unless part of a bigger, mixed use scheme.

The Legal Framework

The statutory scheme

17. Section 70 of the Town and Country Planning Act 1990 ("the TCPA") provides:

Determination of applications: general considerations.

"(1) Where an application is made to a local planning authority for planning permission –

- (a) subject to sections 91 and 92, they may grant planning permission, either unconditionally or subject to such conditions as they think fit; or*
- (b) they may refuse planning permission*

- (2) In dealing with such an application the authority shall have regard to –*
 - (a) the provisions of the development plan, so far as material to the application,*
 - (b) any local finance considerations, so far as material to the application, and*
 - (c) any other material considerations.”*

18. Section 15 of the Planning and Compulsory Purchase Act 2004 (“the PCPA”) provides:

- “(1) The local planning authority must prepare and maintain a scheme to be known as their local development scheme.*
- (2) The scheme must specify–*
 - (aa) the local development documents which are to be development plan documents;*
 - ...”*

19. Section 17 of the 2004 Act provides:

- “(3) The local planning authority's local development documents must (taken as a whole) set out the authority's policies (however expressed) relating to the development and use of land in their area.*
- ...*
- (7) Regulations under this section may prescribe –*
 - (za) which descriptions of documents are, or if prepared are, to be prepared as local development documents;*
 - (a) which descriptions of local development documents are development plan documents;*
 - (b) the form and content of the local development documents;*
 - (c) the time at which any step in the preparation of any such document must be taken.*
- ...*
- (8) A document is a local development document only in so far as it or any part of it –*
 - (a) is adopted by resolution of the local planning authority as a local development document;*
 - (b) is approved by the Secretary of State under section 21 or 27.”*

20. Section 37 of the PCPA provides:

- “ ...*
- (2) Local development document must be construed in accordance with section 17 and section 18(3);*

(3) A development plan document is a local development document which is specified as a development plan document in the local development scheme."

...

21. Section 38 of the PCPA provides:

"(3) For the purposes of any other area in England the development plan is–

...

(b) the development plan documents (taken as a whole) which have been adopted or approved in relation to that area

...

(6) If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."

22. Regulation 5 of the Town and Country Planning (Local Planning) (England)

Regulations 2012 ("the Regulations") provides:

"5. – Local development documents

(1) For the purposes of section 17(7)(za) of the Act the documents which are to be prepared as local development documents are –

(a) any document prepared by a local planning authority individually or in cooperation with one or more other local planning authorities, which contains statements regarding one or more of the following –

(i) the development and use of land which the local planning authority wish to encourage during any specified period;

(ii) the allocation of sites for a particular type of development or use;

(iii) any environmental, social, design and economic objectives which are relevant to the attainment of the development and use of land mentioned in paragraph (i); and

(iv) development management and site allocation policies, which are intended to guide the determination of applications for planning permission;

(b) where a document mentioned in sub-paragraph (a) contains policies applying to sites or areas by reference to an Ordnance Survey map, any map which accompanies that document and which shows how the adopted policies map would be amended by the document, if it were adopted.

(2) For the purposes of section 17(7)(za) of the Act the documents which, if prepared, are to be prepared as local development documents are –

(a) any document which –

(i) relates only to part of the area of the local planning authority;

(ii) identifies that area as an area of significant change or special conservation; and

(iii) contains the local planning authority's policies in relation to the area; and

(b) any other document which includes a site allocation policy.”

23. Regulation 6 provides:

“6. Local plans

Any document of the description referred to in regulation 5(1)(a)(i), (ii) or (iv) or 5(2)(a) or (b) is a local plan.”

24. This is a matter of law and a document which falls within that description is nonetheless a local plan and must have been through the appropriate procedure for the production and examination of local plans whether or not it is labelled as such by the planning authority: see *R. (Wakil (t/a Orya Textiles)) v Hammersmith and Fulham LBC (No. 1) [2012] J.P.L. 1334* and *West Kensington Estate Tenants and Residents Association v Hammersmith & Fulham LBC [2013] EWHC 2834 (Admin)*.

25. Regulation 2 (“Interpretation”) provides:

(1) In these Regulations –

...

“local plan” means any document of the description referred to in regulation 5(1)(a)(i), (ii) or (iv) or 5(2)(a) or (b), and for the purposes of section 17(7)(a) of the Act these documents are prescribed as development plan documents;

...

“site allocation policy” means a policy which allocates a site for a particular use or development;

“supplementary planning document” means any document of a description referred to in regulation 5 (except an adopted policies map or a statement of community involvement) which is not a local plan;

26. The production of SPD is subjected to its own procedure under Part 5 of the Regulations (Regulations 11–16). The procedure for local plan production and examination is set out at Part 6 of the Regulations, (Regulations 17-31).

Policy Guidance

27. The NPPF Annex 2, Glossary, defines Supplementary Planning Documents in the following way:

“Documents which add further detail to the policies in the development plan. They can be used to provide further guidance for development on specific sites, or on particular issues, such as design. Supplementary planning documents are capable of being a material consideration in planning decisions but are not part of the development plan.”

Case law

28. The leading case on the distinction between DPDs and SPDs is *R. (on the application of Skipton Properties Ltd) v Craven DC* [2017] EWHC 534 (Admin) (upheld in *William Davis Ltd v Charnwood BC* [2017] EWHC 3006 (Admin)) in which Jay J neatly condenses the statutory scheme at [15]-[23]:

“15) The Planning and Compulsory Purchase Act 2004 (“PCPA 2004”) differentiates between “development plan documents” (“DPDs”) and “local development documents” (“LDDs”). The scheme of the PCPA 2004 is that DPDs are a sub-set of LDDs. The latter comprises all the local planning authority's policies relating to the development and use of land in its area (section 17(3)), but these do not acquire that status until adopted as such (section 17(8)). By section 38(3)(b) , “the development plan consists of the DPDs (taken as a whole) which have been adopted or approved in relation to the area in question”. The effect of section 38(6) is that applications for planning permission must be “made in accordance with the [development] plan unless material considerations indicate otherwise”.

16 The PCPA 2004 does not provide the touchstone for discriminating between DPDs and LDDs. The applicable criteria are determined by secondary legislation. Section 17(7) provides:

“Regulations under this section may prescribe –
(za) which descriptions of documents are, or if prepared are, to be prepared as LDDs;
(a) which descriptions of LDDs are DPDs;
(b) the form and content of the LDDs;
(c) the time at which any step in the preparation of any such document must be taken.”

Even so, I do not overlook section 37(3) which defines a DPD as a “[LDD] which is specified as a [DPD] in the local development scheme”. An issue arises as to whether a document which may fall within the prescribed description of an LDD (but is not prescribed as a DPD within regulations made under section 17(7)(a)) may still be treated by a local planning authority as a DPD.

17 Under the PCPA 2004 , DPDs must be subject to independent examination by the Secretary of State (section 20). LDDs are not so subject. The combined effect of section 17(3) of the PCPA 2004 and section 70(2)(c) of the Town and Country Planning Act 1990 (“the 1990 Act”) is that LDDs are (if they are not also DPDs) material considerations in the determination of planning applications, although they do not carry the weight of the statutory development plan (c.f. section 38(6)).

18 Regulation 2 of the 2012 Regulations defines “local plan” as “any document of the description referred to in regulation 5(1)(a)(i), (ii) or (iv) or 5(2)(a) or (b) , and for the purposes of section 17(7)(a) of the Act these documents are prescribed as DPDs” (see also regulation 6). Further, “supplementary plan document” (“SPD”) means “any document of a description referred to in regulation 5 (except an adopted policies map or a statement of community involvement) which is not a local plan”.

19. By reg.5:

“Local Development Documents

(1) For the purposes of section 17(7)(a) of the Act the documents which are to be prepared as [LDDs] are –

(a) any document prepared by a local planning authority individually or in co-operation with one or more local planning authorities which contains statements regarding one or more of the following –

(i) the development and use of land which the local planning authority wish to encourage during any specified period;

(ii) the allocation of sites for a particular development or use;

(iii) any environmental, social design and economic objectives which are relevant to the attainment of the development and use of land mentioned in paragraph (i); and

(iv) development management and site allocation policies, which are intended to guide the determination of applications for planning permission.

...

(2) For the purposes of section 17(7)(za) of the Act the documents which, if prepared, are to be prepared as local development documents are –

(a) any document which –

...

(iii) contains the local planning authority's policies in relation to the area; ..."

20 Thus, the effect of regulations 2 and 6 is that the local plan (and, therefore, the development plan) comprises documents of the description referred to in regulation 5(1)(a)(i), (ii) or (iv), or 5(2)(a) or (b). Documents which fall within the description referred to in regulation 5(1)(a)(iii) or (1)(b) cannot be DPDs.

21 SPDs are subject to regulations 12 and 13 of the 2012 Regulations, and specific public consultation requirements. DPDs are subject to the different consultation requirements of regulation 18 .

22 SPDs, which are not a creature of the PCPA 2004, are defined negatively (see regulation 2(1)) as regulation 5 documents which do not form part of the local plan, i.e. are not DPDs. By the decision of this court in *R (RWE Npower Renewables Ltd) v Milton Keynes Borough Council* [2013] EWHC 751 (Admin) (Mr John Howell QC sitting as a DHCJ), not all documents which are not DPDs are SPDs. As I have said, SPDs are only those documents which fall within regulation 5(1)(a)(iii) or (1)(b) of the 2012 Regulations. Documents which are neither DPDs nor fall within any of the provisions of regulation 5(1) are capable of being LDDs but – in order to differentiate them from DPDs and SPDs – are “residual LDDs”. At paragraphs 57-59 of this judgment in *RWE*, Mr Howell QC made clear that it is not the location of a document within the prescribed categories which is critical; what matters is that the document fulfils the separate criteria of section 17(3) and (8) of the 2004 Act.

23 Thus, there are three discrete categories, namely:

- (1) DPDs: these are LDDs which fall within regulation 5(1)(a)(i), (ii) or (iv). They must be prepared and adopted as a DPD (as per the requirements of Part 6 of the 2012 Regulations). They must be subject to public consultation (regulation 18) and independent examination by the Secretary of State (section 20 of the PCPA 2004). As I have said (see paragraph 16 above), an issue potentially arises as to whether a document which does not fall within these regulatory provisions may nonetheless be a DPD because a local planning authority chooses to adopt it as such.
- (2) SPDs: these are LDDs which are not DPDs and which fall within either regulation 5(1)(a)(iii) or (1)(b). They must be prepared and adopted as SPDs (as per the requirements of Part 5 of the 2012 Regulations). SPDs do not require independent examination but they do require public consultation (regulations 12 and 13).
- (3) Residual LDDs: these are LDDs which are neither DPDs or SPDs. They must satisfy the criteria of section 17(3) and (8) of the PCPA 2004, and must be adopted as LDDs (as per (2) above). There are no public consultation and independent examination requirements: see paragraphs 44-46 of the decision of this Court on *R (Miller Homes) v Leeds City Council* [2014] EWHC 82 (Admin). At paragraph 17 above, I said that LDDs are material considerations in planning applications although they do not have the status

of DPDs. I consider that the same logic should hold that LDDs which are SPDs carry greater weight in such applications than do residual LDDs."

29. Jay J engages with the interpretation of Regulation 5 and the cases of *R. (on the application of RWE Npower Renewables Ltd) v Milton Keynes BC* [2013] EWHC 751 (Admin) and *R. (on the application of Miller Homes) v Leeds CC* [2014] EWHC 82 (Admin) at [69]-[94]:

"69) Regulation 5(1)(a) has been addressed in two decisions of this court.

70) In RWE, the challenge was to the Defendant's "Wind Turbines Supplementary Planning Document and Emerging Policy" ("Wind SPD"). RWE's main arguments were that this document was not an SPD, but a DPD; and that it conflicted with Milton Keynes' adopted DPD.

71) The following paragraphs in Mr Howell QC's judgment are relevant to Issue 1: (1) A putative LDD which does not fall within the descriptions of documents referred to in regulation 5 may still be an LDD, because of the combined effect of section 17(3) and (8) of the 2004 Act. These are the "residual LDDs" discussed at paragraph 22 above (paragraphs 59-60).

(2) By contrast, the class of possible DPDs is limited to those prescribed in regulation 5 (paragraphs 193-197).

(3) "what all [LDDs] ... contain are "policies" relating to the use and development of land. What regulation 5(1)(a) is thus concerned with are statements that contain policies, which are described in sub-paragraphs (i) to (iv)" (paragraph 67).

(4) In order to ascertain whether a document encourages the development and use of land, regard must be had to the type of statements a document contains, not on what the effect of such statements may be in practice (paragraph 70).

(5) The Wind SPD was not a DPD within regulation 5(1)(a)(i) because, on the facts of that case, any statements of encouragement merely repeated the statements in Milton Keynes' adopted DPD (paragraph 69).

(6) The Wind SPD was not a DPD within regulation 5(1)(a)(iv) because the new parts of the Emerging Policy were all connected with a particular form of development that Milton Keynes' adopted DPD already sought to encourage, namely proposals to develop wind turbines; they were not connected with regulating the development or use of land generally (paragraph 76). Specifically (at paragraph 75):

"In my judgment the difference, between (a) documents containing statements regarding matters referred to in sub-paragraphs (i) to (iii) of regulation 5(1)(a) of the 2012 Regulations and (b) a document containing statements regarding a development management policy which is intended to guide the determination of applications for planning permission, is that the former are all connected with particular developments or uses of land which a local planning authority is promoting whereas the latter is concerned with regulating the development or use of land generally."

Mr Howell QC's reason for this conclusion was that any different construction of regulation 5(1)(a)(iv) would render (i), (ii) and (iii) effectively otiose (paragraph 74).

(7) Mr Howell QC endorsed what was common ground before him, namely that the "and" in regulation 5(1)(a)(iv) should be read disjunctively – "were it otherwise a document containing a simple development control policy ... could not form part of the local plan for the purpose of the 2012 Regulations and become part of the development plan" (paragraph 72).

72) In Miller, the challenge was to an interim policy which constituted a departure from Leeds City Council's adopted Policy N34, which served to safeguard some non-Green Belt land. Miller contended that the interim policy was a DPD, alternatively an SPD, relying on all the various categories in regulation 5(1)(a) and (2)(b) .

73) The following paragraphs in Stewart J's judgment are relevant to Issue 1:

(1) "regarding" (in the stem of regulation 5(1)(a)) signifies a relatively loose relationship between the "document" and the matters contained in (i)-(iv) (paragraph 23).

(2) The Interim Policy did not encourage the development and use of land. Specifically (at paragraph 26):

"... The court must look at the substance as to whether the LPA wishes to encourage the development and use of land; the court must also have regard to the subjective element in the verb 'wish'. There will be situations where an LPA wishes to encourage the development and use of land, for example to regenerate an area. The Interim Policy is very different. It sets out criteria which are an attempt by the LPA to comply with the NPPF. These criteria encourage and discourage development, albeit that the overall net effect is to release further land. Nor does the fact that there is reference in subparagraph (v)(a) of the Interim Policy to regeneration change the character of the document as a whole."

(3) The Interim Policy did not fall within regulation 5(1)(a)(iv) because Policy N34 was not a development management policy: it was a safeguarding policy, rather than a policy which regulated the development or use of land. Thus, statements in the Interim Policy were not regulating a development management policy (paragraphs 36-37).

(4) It was unnecessary to decide whether the "and" in regulation 5(1)(a)(iv) was conjunctive or disjunctive. Even if disjunctive, Miller's case could not succeed (paragraph 38).

(5) It was common ground that Policy N34 was not restricted to a particular land use (paragraph 36). By implication, therefore, Stewart J was proceeding on the basis of Mr Howell QC's distinction between particular and general policies.

(6) "The material word [in regulation 5(1)(a)(iv)] is "regulating". Regulating land may include a number of features for example density of housing, housing mix etc." (paragraph 37). I agree with Mr Bedford that this was obiter.

74) Having set out relevant authority on this topic, I begin with a number of observations of a general nature.

75) First, if the document at issue contains statements which fall within any of (i), (ii) or (iv) of regulation 5(1)(a) , it is a DPD. This is so even if it contains statements

which, taken individually, would constitute it an SPD or a residual LDD. This conclusion flows from the wording “one or more of the following”, notwithstanding the conjunction “and” between (iii) and (iv).

76) Secondly, I agree with Stewart J that “regarding” imports a material nexus between the statements and the matters listed in (i)-(iv). Stewart J referred to “document” rather than to “statements”, but this makes no difference. There is no material distinction between “regarding” and other similar adjectival terms such as “relating to”, “in respect of” etc.

77) Thirdly, I agree with Mr Howell QC that there may be a degree of overlap between one or more of the (i)-(iv) categories, although (as I have already said) a document which must be a DPD (because it falls within any of (i), (ii) and/or (iv)) cannot simultaneously be an SPD. This last conclusion may well flow as a matter of language from the true construction of regulation 5(1)(a)(iii), but it certainly flows from the straightforward application of regulations 2(1) and 6 .

78) Fourthly, it would have been preferable had regulation 5(1)(a)(iii) followed (iv) rather than preceded it. However, the sequence does not alter the sense of the provision as a whole. Nor do I think that much turns on the relative order of (i) and (iv).

79) Fifthly, I note the view of Mr Howell QC that regulation 5(1)(a) pertains to statements which contain policies. This reflects section 17(3) of the 2004 Act – LDDs must set out the local planning authority's policies relating to the development and use of land in its area. I would add that section 17(5) makes clear, as must be obvious, that an LDD may also contain statements and information, although any conflict between these and policies must be resolved in favour of the latter. **Regulation 5(1)(a) fixes on “statements” and not on policies.** However, in my judgment, the noun “statements” can include “policies” as a matter of ordinary language, and any LDD properly so called must contain policies. It follows that any document falling within (i)-(iv) must contain statements which constitute policies and may contain other statements, of a subordinate or explanatory nature, which are not policies.

80) Sixthly, the difference in wording between regulation 5(1)(a)(i) and (iv) featured in the argument in Miller but not on my understanding in the argument in RWE. For the purposes of (i), the statements regarding the development and use of land etc. are the policies, or at the very least include the policies. On a strict reading of (iv), the statements at issue are “regarding ... development management and site management policies”. In other words, the statements are not the policies: they pertain to policies which exist in some other place. I will need to examine whether this strict reading is correct.

81) Seventhly, given that we are in the realm of policy, “however expressed”, it seems to me that by definition we are dealing with statements of a general nature. A statement which can only apply to a single case cannot be a policy. To my mind, the difference between a policy which applies to particular types of development and one which applies to all developments is one of degree not of kind. The distinction which Mr Howell QC drew in RWE (see paragraph 75 of his judgment, and paragraph 69(6) above) is nowhere to be found in the language of the regulation, save to the limited and specific extent that regulation 5(1)(a)(ii) uses the adjective “particular”. Looking at regulation 5(1)(a)(i) , I think that this could not be a clearer case of a

policy of general application (“development and use of land”), subject only to the qualification of the development being that which the authority wishes to encourage.

82) Eighthly, regulation 5(1)(a) must be viewed against the overall backdrop of the 2004 Act introducing a “plan-led” system. Local planning authorities owe statutory duties to keep their local development schemes and their LDDs under review: see, for example, section 17(6) of the 2004 Act.

83) Does the NAHC 2016 fall within regulation 5(1)(a)(i) ? Mr Bedford draws a distinction between affordable housing and residential development. On his approach, affordable housing is a concept which is adjunctive to that which is “development” within these regulations or the 2004 Act; and, moreover, the NAHC 2016 predicates a pre-existing wish or intention to carry out residential development. I would agree that if the focus were just on the epithet “affordable”, there might be some force in the point that it is possible to decouple the NAHC 2016 from the scope of regulation 5(1)(a)(i), which is concerned only with “development”.

...

90) I mentioned in argument that there may be force in the point that the NAHC 2016 sets out social and economic objectives relating to residential development, and that this might lend support to the contention that the more natural habitat for an affordable housing policy is regulation 5(1)(a)(iii) rather than (i). On reflection, however, there is no force in this point. There is nothing to prevent a local planning authority including all its affordable housing policies in one DPD. Elements of these policies may relate to social and economic objectives. However, these elements do not notionally remove the policy from (i) and locate it within (iii). The purpose of regulation 5(1)(a)(iii) is to make clear that a local planning authority may introduce policies which are supplementary to a DPD subject only to these policies fulfilling the regulatory criteria. The Defendant has made clear that it may introduce an SPD, supplementary to its new local plan, which sets out additional guidance in relation to affordable housing.

91) In any event, on the particular facts of this case it is clear that the NAHC 2016 could not be an SPD even if I am wrong about it being a DPD. This is because there is nothing in the saved policies of the 1999 Local Plan to which the NAHC is supplementary, despite Mr Jones' attempts to persuade me otherwise. This is hardly surprising, because the whole point of the NAHC 2016 is to fill a gap; it cannot logically supplement a black hole. That it fills a gap is, of course, one of the reasons I have already identified in support of the analysis that the NAHC 2016 is a DPD.

92) In my judgment, the correct analysis is that the NAHC 2016 contains statements in the nature of policies which pertain to the development and use of land which the Defendant wishes to encourage, pending its adoption of a new local plan which will include an affordable housing policy. The development and use of land is either “residential development including affordable housing” or “affordable housing”. It is an interim policy in the nature of a DPD. It should have been consulted on; an SEA should have been carried out; it should have been submitted to the Secretary of State for independent examination.

93) Strictly speaking, it is unnecessary for me to address regulation 5(1)(a)(iv) . However, in deference to the full argument I heard on this provision, I should set out my conclusions as follows:

(1) *despite the textual difficulties which arise (see paragraph 78 above), and notwithstanding the analysis in Miller (which addressed the claimant's formulation of its case), I cannot accept that it is necessary to identify a development management policy which is separate from the statements at issue. As I have already pointed out, the whole purpose of regulation 5 is to define LDDs qua policies, by reference to statements which amount to or include policies. A sensible, purposive construction of regulation 5(1)(a)(iv) leads to the clear conclusion that the NAHC 2016 could fall within (iv) if it contains development management policies (subject to the below).*

(2) *I would construe the “and” in regulation 5(1)(a)(iv) disjunctively. This is in line with regulation 5(1)(a)(iii) (see the first “and”, before “economic”) and the overall purpose of the provision. As Mr Howell QC has rightly observed, a conjunctive construction would lead to absurdity. It would have been better had the draftsman broken down (iv) into two paragraphs (“development management policies which ...”; “site allocation policies which ...”) but the upshot is the same.*

(3) *I agree with Mr Howell QC, for the reasons he has given, that it is possible to have LDDs which are outside regulation 5 but that it is impossible to have DPDs which are outside the regulation. This is another reason for supporting a disjunctive construction.*

(4) *I disagree with Mr Howell QC that regulation 5(1)(a)(i) and (iii) applies to particular developments or uses of land, whereas (iv) is general (see paragraph 79 above).*

(5) *The real question which therefore arises is whether the NAHC 2016 contains development management policies which guide or regulate applications for planning permission. It may be seen that the issue here is not the same as it was in relation to regulation 5(1)(a)(i) because there is no need to find any encouragement; this provision is neutral.*

(6) *I would hold that the NAHC 2016 clearly contains statements, in the form of development management policies, which regulate applications for planning permission. I therefore agree with Stewart J's obiter observations at paragraph 37 of Miller.*

94 *There is force in Mr Bedford's objection that a disjunctive reading of regulation 5(1)(a)(iv) leaves little or no space for (ii) and site allocation policies, given the definition of the latter in regulation 2(1). However, this is an anomaly which, with respect, is the fault of the draftsman; it cannot affect the correct approach to regulation 5(1)(a)(iv). There is more limited force in paragraph 74 of the judgment of Mr Howell QC in RWWE, but I would make the same point. Regulation 5(1)(a)(i) and (iv) do not precisely overlap (see paragraph 93(5) above); (iii) is in any event separate because it only applies in relation to statements of policy objectives which are supplemental to a specific DPD. Further, anomalies pop up, like the heads of Hydra, however these regulations are construed. These, amongst others, are good reasons why the 2012 Regulations should be revised.”*

ANALYSIS

30. If the Draft SPD meets one of the following descriptions, the Council cannot lawfully adopt it as an SPD and can only adopt it as a DPD after submitting it to the Secretary of State for independent examination:

- (1) A document prepared by a local planning authority which contains statements regarding the development and use of land which the local planning authority wish to encourage during any specified period.
- (2) A document prepared by a local planning authority which contains statements regarding the allocation of sites for a particular type of development or use.
- (3) A document prepared by a local planning authority which contains statements regarding development management and site allocation policies, which are intended to guide the determination of applications for planning permission.

31. Only if the Draft SPD meets one of the following descriptions (and none of the descriptions above) can the Council can lawfully adopt it as an SPD:

- (4) A document prepared by a local planning authority which contains statements regarding any environmental, social, design and economic objectives which are relevant to the attainment of the development and use of land [which the local planning authority wish to encourage during any specified period].
- (5) A document prepared by a local planning authority which contains policies applying to sites or areas by reference to an Ordnance Survey map, any map which accompanies that document and which shows how the adopted policies map would be amended by the document, if it were adopted.

Does the Draft SPD contain statements regarding the development and use of land which the Council wish to encourage during any specified period (reg.5(1)(a)(i))?

32. The Draft SPD aims to encourage the provision of PBSA, as clearly demonstrated by Policy PBSA1 which states that the provision of PBSA will be supported if on campus or elsewhere if certain criteria are met. In the planning context, to “support” a particular type of development is to “encourage” it.

33. It cannot reasonably be argued that the Draft SPD evades Regulation 5(1)(a) because its policies only aim to channel PBSA to certain locations and do not aim to

encourage the total amount of PBSA. Criterion 1 explains PBSA1 by referring to the importance of meeting the likely increase in demand for student accommodation. In any event, relocation policies are still caught by Regulation 5(1)(a) because logically they must encourage development in particular locations even if they discourage development elsewhere.

34. Encouragement of PBSA is found not only in the explicit policies of the Draft SPD but also in the section titled "Student Housing Strategy" on page 15, which provides that one aim of the strategy is

"To encourage the provision of purpose-built student accommodation of an appropriate type and quality in sustainable locations thereby encouraging students to move from HMO style accommodation."

35. *Skipton* [79] is authority for the proposition that the statements caught by Regulation 5(1)(a) need not be policies themselves. The inclusion of this statement is sufficient for the Draft SPD to be caught by Regulation 5(1)(a)(i) regardless of how prominent a role the statement has in the Draft SPD. In any event, the Draft SPD endorses the statement by stating underneath the Student Housing Strategy section:

"This document fulfils this requirement and supports the Warwick District Local Plan policies and the Student Housing Strategy."

36. *Skipton* [73] upholds the judgment in *Miller* that in determining whether a document is a DPD, "the court must look at the substance as to whether the LPA wishes to encourage the development and use of land; the court must also have regard to the subjective element in the verb 'wish'." The Council has made no secret of its wish to encourage PBSA in this case.

37. It is clear that the Draft SPD is caught by Regulation 5(1)(a)(i) and can only be adopted by the Council as a DPD.

Does the Draft SPD contain statements regarding the allocation of sites for a particular type of development or use (reg.5(1)(a)(ii))?

38. In *Houghton and Wyton Parish Council v Huntingdonshire District Council* [2013] EWHC 1476, Charles George QC considered the meaning of “allocation” in determining whether a document was a DPD under the predecessor to the Regulations at [35]-[36]:

“The question is simple, though the answer much less so. Is the Framework “a policy which allocates a site for a particular use or development” (Regulation 2)? If so, this allocation can only be done in a DPD, and the Framework is ultra vires.

“The normal meaning of “allocate” is to place, locate or apportion: but in the context of Regulation 2 I take the statutory phrase to mean the same as “provides that a particular use or development should take place on a piece of land”. Under these statutory provisions, the purpose (and consequence) of allocating a site for development is that its development should proceed (subject to detailed design), not merely that it could appropriately do so.”

39. The Draft SPD aims to increase the provision of PBSA throughout Warwick District but it is also specific in that it clearly indicates that such development *should* take place on campus. Policy PBSA1 clearly states that support will be given for accommodation to be provided on campus as the preferred location and that provision of PBSA “*adjacent to a higher education campus*” will also be supported.

40. The statement at page 5 of the Draft SPD that “*this document does not seek to allocate specific sites for the development of PBSA but provides the criteria by which sites will be assessed when planning applications are received for consideration...*” does not prevent the Draft from satisfying Regulation 5(1)(a)(ii) in substance.

41. The Draft SPD does not explicitly allocate sites but *Miller* [23] as upheld by *Skipton* [73] is authority for the proposition that “*regarding*” (in the stem of regulation 5(1)(a)) signifies a relatively loose relationship between the “document” and the matters contained in (i)-(iv)”. The Draft SPD can still satisfy Regulation 5(1)(a)(ii) on the basis of indication alone.

Does the Draft SPD contain statements regarding development management and site allocation policies, which are intended to guide the determination of applications for planning permission (reg.5(1)(a)(iv))?

42. The clearest statements regarding development management in the Draft SPD are found in the criteria of Policy PBSA2 (“Design and Management”). These statements explicitly refer to the management of PSBA and are obviously intended to guide the determination of planning applications since that is the overarching purpose of the Draft SPD.

Does the Draft SPD in truth supplement a policy in the Development Plan?

43. In order for a SPD to be an SPD, it must (as the title suggests) supplement a policy in the development plan. As the references in the First Executive Report (see p.5 above, at para.3.9 of the internal text), the second Executive Report (see p.6 above, internal text para. 7.3) and in the Draft SPD itself (page 7 above, the quotation taken from p.7 of the Draft SPD) all demonstrate, the very purpose of the Draft SPD is to fill an acknowledged lacuna in the development plan, namely the lack of any policy addressing PBSA. The comments of Jay J in *Skipton* [91] (above at p.26) could hardly be more apposite: the existence of a gap in the development plan, and the fact that the Draft PBSA would plug this gap, demonstrate (simultaneously) why the draft SPD is (a) not supplementary to anything and (b) a DPD. The same point can be made (or supported) by observing that the criteria sought to be established by the draft SPD for consideration of PBSA applications are materially different to the criteria set out in H6 for HMOs. The criteria now proposed to govern PBSA cannot be said to supplement or support H6 because they are deliberately different criteria, designed to apply to development which is defined so as to distinguish it from HMOs.

Conclusion

44. It is clear that the Draft SPD is an LDD that falls within Regulation 5(1)(a)(i), (ii) or (iv). The Council can therefore only lawfully adopt the Draft SPD by submitting it to the Secretary of State for independent examination and adopting it as a DPD.

45. Should those instructing require further advice then please do not hesitate to contact me in Chambers.

SATNAM CHOONGH

No5 Chambers

22 January 2019

IN THE MATTER OF THE TOWN AND COUNTRY PLANNING ACT 1990

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