

## Part B – Please use a separate sheet for each representation

Name or Organisation:

Robert Hitchins Ltd

3. To which part of the Local Plan does this representation relate?

Paragraph  Policy  Policies Map

4. Do you consider the Local Plan is :

4.(1) Legally compliant	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
4.(2) Sound	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
4 (3) Complies with the Duty to co-operate	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>

Please tick as appropriate

5. Please give details of why you consider the Local Plan is not legally compliant or is unsound or fails to comply with the duty to co-operate. Please be as precise as possible.

If you wish to support the legal compliance or soundness of the Local Plan or its compliance with the duty to co-operate, please also use this box to set out your comments.

**NB: To be read in conjunction with Attachment A (a review of the Local Plan Viability Assessment Working Draft May 2021)**

1.1 There is no basis for imposing an obligation on applicants for self / custom build plots within national policy or the underlying legislation. The NPPF clarifies that:

*“Under section 1 of the Self Build and Custom Housebuilding Act 2015, local authorities are required to keep a register of those seeking to acquire serviced plots in the area for*

*their own self-build and custom house building. They are also subject to duties under sections 2 and 2A of the Act to have regard to this and to give enough suitable development permissions to meet the identified demand.”*

(footnote 26, page 17, NPPF)

1.2 There is no basis in the legislation or within national policy for imposing an obligation on applicants (of any size site) to hive off a section of their site to be sold as self-build plots – it is the Council’s responsibility, not that of a land owner or developer, to ensure that sufficient permissions are given to meet demand.

1.3 In other words, the legislation is not worded in such a way that it empowers local authorities to place restrictions on the use of land to deliver self-build units. The wording enables local authorities to permit the use of suitable land for this purpose, as opposed to restricting it to be used for this purpose.

1.4 The NPPG further supports this interpretation:

*Relevant authorities should consider how local planning policies may address identified requirements for self and custom housebuilding to ensure enough serviced plots with suitable permission come forward (for example, as a number of units required as part of certain allocated sites, or on certain types of site).*

*More widely, relevant authorities can play a key role in brokering and facilitating relationships to help bring suitable land forward. This could include:*

- *supporting Neighbourhood Planning groups where they choose to include self-build and custom build housing policies in their plans;*
- *effective joint working across service delivery areas and with local delivery partners including Housing Associations, Arms Length Management Organisations and housing developers;*
- *using their own land (if available and suitable) for self-build and custom housebuilding and marketing it to those on the register;*
- *working with Homes England to unlock land and sites in wider public ownership to deliver self-build and custom build housing;*

- *when engaging with developers and landowners who own sites that are suitable for housing, and encouraging them to consider self-build and custom housebuilding, and facilitating access to those on the register where the landowner is interested.*
- *working with local partners, such as Housing Associations and third sector groups, to custom build affordable housing for veterans and other groups in acute housing need.”*

(Paragraph: 025 Reference ID: 57-025-20210508, 08 February 2021)

- 1.5 The NPPG also advises that having ‘a duty as regards registers’ can be demonstrated in (but not limited to) the following ways:

*“Local housing authorities will need to consider the evidence of demand for self-build and custom housebuilding from the registers when carrying out their housing functions. This includes preparing their local housing strategies, delivery of affordable housing, supporting community-led housing and in developing plans for new housing on land owned by the local housing authority. Authorities are encouraged to work closely with local delivery partners to ensure that self-build and custom housebuilding is an integral part of their housing delivery strategy.”*

*“Relevant authorities should consider the evidence of demand for self-build and custom housebuilding in their area from the register when developing plans to dispose of land within their ownership. This can be particularly valuable in ensuring sufficient sites come forward for self-build and custom housebuilding.”*

*“When developing plans to regenerate their area, relevant authorities should consider the demand for self-build and custom housebuilding. Self-build and custom housebuilding can help to deliver regeneration on suitable brownfield sites, underutilised land and other public sector land.”*

(Paragraph: 014 Reference ID: 57-014-20210508, 08 February 2021)

- 1.6 Whilst local authorities can develop policies in Plans for self-build and custom housebuilding, there is nothing in national guidance, national policy or in the legislation to suggest that such policies should place the obligation on landowners or developers to deliver self-build / custom-build plots on privately owned land; even the reference to

provision as part of 'certain allocated sites' and 'certain types of site' there is no specific requirement stating that this relates to private land allocated for general housebuilding. Read in the wider context of the legislation, the NPPF and the other references to publicly owned land there is no clear intention to impose this on those developing privately owned land. The wording in the NPPG specifically refers to 'encouraging' landowners if they are 'interested'. However, it is specifically stated in the NPPG that local authorities should make their own land available for this use. On this basis policy wording could encourage, but not require the provision of such plots within new development.

1.7 Further support for this interpretation is provided within the recently published 'Self and Custom Build Action Plan' (24 April 2021 – "SCBAP"). This includes a section on 'Access to Land' and this refers to £75 million of Government funding made available via the Brownfield Land Release Fund of which £25 million has been allocated to local authorities to enable serviced plots to be brought forwards for self and custom build on public sector land. The deadline for applications is 02 June 2021 – is this something the Council has applied for given they consider the need for self and custom build plots is so large that they need to impose it on the development of privately owned land?

1.8 Also under the Access to Land section the SCBAP refers to the existing legislation and states that this will be reviewed, but, despite the references to the Government wanting to 'scale up' the delivery of such plots there is no commentary suggesting that this review will require developments on private land to contribute plots for self and custom-build.

1.9 Through the Planning for the Future consultation ("PAF") published by the Government in August 2020 reference was made to allowing:

*"...local planning authorities to identify sub-areas in their Growth areas for self and custom-build homes, so that more people can build their own homes."*

(top of page 16, PAF)

A similar statement is made in paragraph 2.10 of the PAF. There is no reference to a proposal to require developments on private land to contribute plots for self and custom-build.

1.10 Notwithstanding that there is no policy or legislative basis for imposing this obligation through Plan policy, where a planning obligation is imposed it will have to accord with the CIL Regulation 122 and the NPPF paragraph 56 tests. Therefore, if local authorities

seek to place a restriction on the use of land to set it aside for self-build plots through the means of a planning obligation then this will have to be demonstrated to be necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development. If a need for the type of plots that would be available (i.e. based on size location and context) on a proposed development is not demonstrated then the tests cannot be met.

1.11 Clear evidence supporting the need to include this as a policy requirement is not provided by the Council. Simply referring to a waiting list of households on the self- / custom-build register, whilst relevant to the Council in determining their own obligation to permit a specific number of such plot applications, will not be sufficient to pass the tests applicable to the imposition of planning obligations or to justify the inclusion of policies to impose such planning obligations.

1.12 Simply referring to the crude register data will fail to reflect the net demand specifically for plots on strategic development sites having regard to i) the location and context preferences of the applicants, ii) the existing availability / supply of such plots within the local authority area, and that the local authorities efforts to establish provision on publicly owned land (including through attempts to secure Government funding where this has been made available) have been exhausted.

1.13 Furthermore, the point of the self-build initiative is to increase housing supply – seeking such units on strategic sites will simply swap one housebuilder dwelling for another self-build dwelling (albeit the latter will have less certainty of delivery) and will result in no increase in overall housing provision.

1.14 The LHNA20 includes a section on ‘People wishing to Build their Own Homes’ (pages 104 - 106). However, the LHNA20 simply sets out the numbers of households on the Self-Build Registers in the local authorities in Gloucestershire, but provides no additional evidence to justify the inclusion of a policy requiring a proportion of self / custom build plots.

1.15 The LHNA20 Figure 67 suggests a cumulative total of 170 households have registered on the self-build register in Stroud District. However, the majority of these registered in 2016/17 with the registrations falling significantly after this date (to 2 households in 2017/18 and, provisionally, to 8 households in 2018/19) coinciding with the introduction of registration charges. The LHNA20 does not identify how many of these households

have a local connection or are individuals / small groups as opposed to commercial developers using the registration system.

1.16 It is unclear whether any of the applicants have already resolved their requirement or decided not to pursue a self-build option (i.e. the local authority thereby having been absolved of their responsibility to provide a permission to meet that applicant's demand) through any kind of review of the register.

1.17 The information within the LHNA20 provides only headline numbers, with apparently no additional information sought from applicants on the location and context in which they want a plot. Whilst headline level of information may be sufficient for the Council to determine their overall numerical obligations in terms of the numbers of such permissions they should grant, it is not sufficient to demonstrate that a supply of such plots can legitimately be sought through planning obligations / the introduction of Plan policy. There is no indication of a demand from these applicants to obtain a plot within part of a larger development or that there is a net need once any supply of existing plots matching applicant preferences has been deducted.

1.18 It is not identified within the information provided in the LHNA20 how many applications for self-build dwellings have been made and refused by the Council. The criteria upon which any such successful applications have been assessed to be self-build or custom build applications is also not explained – an appeal decision (reference 3214498) clarifies that s106 Agreements containing provisions to ensure proposed dwellings meet the legal definitions of self-build / custom build enable such proposals to be identified as a compliant supply source.

1.19 Falling short of the number of permissions required to address demand on the register is not a robust justification for the imposition of blanket policy requirements for such plots to be provided from privately owned housing sites – the 'duty to grant planning permission' imposed by the Self-build and Custom Housebuilding Act 2015 (as amended by the Housing and Planning Act 2016) lies with local authorities; not with landowners.

1.20 In an appeal decision in respect of a self-build application refused by a Leicestershire local authority the Inspector stated:

*"I accept that the NPPG on Self-Build and Custom Housebuilding states that relevant authorities could include policies in their local plans for self and custom housebuilding,*

*but this is not a requirement. It also states that relevant authorities could seek to meet demand by engaging with landowners who own sites that are suitable for housing. The only requirement is that the Council has a duty to grant planning permission for enough suitable serviced plots of land to meet the demand for self-build and custom housebuilding in their area.”*

(Appeal reference APP/G2435/W/18/3214451 & APP/G2435/Q/18/3214498, paragraph 27, 25 June 2019, emphasis added)

1.21 This supports that national guidance does not include a requirement for self-build plots to be imposed through Plan policy or upon landowners – the duty is placed upon the local authority alone.

1.22 The NPPG provides further information on self and custom build and sets out that:

*“Assessment of local housing need as a whole should be conducted using the standard method in national planning guidance. Within this context, the size, type and tenure of housing needed for different groups should be assessed including people wishing to self-build or custom-build their own homes.*

*Local planning authorities should use the demand data from the registers in their area, supported as necessary by additional data from secondary sources (as outlined in the housing and economic development needs guidance), to understand and consider future need for this type of housing in their area. Secondary sources can include data from building plot search websites, enquiries for building plots recorded by local estate agents and surveys of local residents. Demand assessment tools can also be utilised.*

*Plan-makers will need to make reasonable assumptions using the data on their register to avoid double-counting households.”*

(Paragraph: 011 Reference ID: 57-011-20210208, NPPG)

1.23 An assessment of potential publicly owned land that could be used to provide self-build plots is not presented in the LHNA20. Indeed, there is no clear evidence of the Council having considered other reasonable approaches to delivery in line with those suggested by the NPPG. In the absence of this the Council appears to be seeking to place the burden of its duty to enable permissions for delivery of sufficient self-build plots onto house-

builders without looking sufficiently at alternative approaches in line with national guidance.

1.24 In this regard a look at the Council's Brownfield Register (December 2020 being the latest on the website) suggests that there are 10 publicly owned brownfield sites yet to obtain planning permission yielding a total of 7.25 hectares (across a range of sites sized 0.8ha to 3.86ha). The latter site is the Brimscombe Port site which the Council are seeking to develop in conjunction with Government funding (£2m obtained in 2015) and a developer partner – the brief suggests that:

*“More than 150 new zero carbon houses and flats, with 30% affordable, which includes one, two and three bedroom homes. Some will have their own canal moorings.”*

<https://www.stroud.gov.uk/environment/brimscombe-port/brimscombe-port-popular-brief-a-summary-of-the-proposal-for-brimscombe-port>

There is no reference to self- or custom-build options for the site despite that Brownfield publicly owned land is identified in the Government's SBCAP as a potential source of land for such housing.

1.25 The LHNA20 does not justify the inclusion or retention of policy wording requiring a proportion of self / custom build plots – all that any policy should state is that the provision will be 'encouraged' otherwise the whole policy should be deleted.

1.26 This latter reflects the conclusion of the examining Inspector to Broxtowe Borough Council's Local Plan where the local authority had similarly not presented evidence to justify the inclusion of a self-build policy (Inspector's report for Broxtowe Borough Council Part 2 Local Plan, paragraph 158, 7 October 2019). In a post hearing advice note the examining Inspector stated:

*“I have noted the Council's proposed post hearing revision to Part 8 of the Policy. This removes the 5% requirement for custom and self-build homes on schemes of 20 dwellings or more; the requirement to be based instead on meeting an existing demand indicated by the Register. I am not satisfied however, that based on the available evidence including the lack of permissions for custom build/self-build homes in the Borough, that there is*



sufficient demand for such provision. The requirement is therefore unjustified.  
I suggest that Part 8 of the policy be deleted."

(Broxtowe Local Plan Part 2, Examining Inspector Post Hearing Advice Note, paragraph 16, March 2019)

As such, it was insufficient for the wording to be altered to remove a target percentage (in the absence of sufficient evidence to set one) and to be replaced by provision based on the register as and when a site application proposal was being considered.

1.27 In addition to the above concerns, the wording of Policy HC3 also lacks clarity in terms of how the policy is to be applied in practice contrary to paragraph 16 of the NPPF - 'a minimum of' suggests any amount exceeding '2%' could be sought by the Council.

1.28 There is no indication of what happens if the proportion of plots required by the Council fail to sell; can they be built out and sold by the developer and if so at what point? Who will carry the cost of any marketing activities (there is nothing in national policy suggesting that the marketing of such dwellings is the responsibility of housing development applicants, particularly when it is the Council who is able to charge fees to maintain the register for such plots). The policy wording should include flexibility for such matters to be agreed between the applicant and the Council.

1.29 There are also significant design concerns; the policy wording refers to self-build units being 'individually designed', 'bespoke' and employing 'innovative approaches'. It is unclear how this will be achievable without unravelling the detailed work that will already have been undertaken to establish (and agree with local authority planners) design parameters for strategic developments. 'Bespoke' homes could, by their nature, be out of context and may be counter to wider site design objectives – the policy wording does not identify how this will be avoided.

1.30 There is no robust consideration within the WDLPVA (see Section 5 of Attachment A) of the potential impacts of seeking self-build / custom build contribution from Strategic Sites allocated in the Plan (not only in terms of plot sale values but also in terms of marketing, masterplanning, timing and any other specific delivery costs).

1.31 It is impossible to have an understanding of the economic viability or practical impacts of an open ended proposition such as 'a minimum of 2%' and the proposal has not been robustly viability tested or thought through in terms of the mechanisms that would be

used to secure it. Not only is there no justification in national planning policy for this policy requirement, the wording results in a lack of certainty for those seeking to bring strategic land forwards for development as a full understanding of likely policy cost burdens and masterplanning impacts will not be possible.

1.32 The last paragraph in Policy HC3 needs to be amended i) to reflect that any provision on Strategic Allocations will be subject to agreement as opposed to imposition, and ii) as it implies that it will be possible to integrate serviced custom and self-build plots within the 'wider scheme'. Given safety concerns surrounding working building sites, and the need to successfully market general market housing sales at an efficient rate it is highly likely to be extremely impractical to seek to disperse such plots within the wider development.

(Continue on a separate sheet /expand box if necessary)

6. Please set out the modification(s) you consider necessary to make the Local Plan legally compliant and sound, in respect of any legal compliance or soundness matters you have identified at 5 above. (Please note that non-compliance with the duty to co-operate is incapable of modification at examination). You will need to say why each modification will make the Local Plan legally compliant or sound. It will be helpful if you are able to put forward your suggested revised wording of any policy or text. Please be as precise as possible.

i) **The wording of Delivery Policy HC3 should either be deleted in its entirety or be amended as follows to make it clear the Council will not impose a requirement for plots upon development proposals:**

***“The Council supports the provision of self-build and custom-build dwellings within settlement development limits subject to satisfying all relevant policy criteria. In addition, at strategic sites allocated within this Local Plan and in addition to the affordable housing component, ~~a minimum of 2% of the dwellings shall be provided~~ as the Council will encourage development proposals which provide plots suitable for self- or custom-build in order to meet Government aspirations to increase self build developments, subject to appropriate demand being identified. In determining the nature and scale of any provision, the Council will have regard to site-specific circumstances and local demand.***

***All self build and custom build schemes will:***

1. *be individually designed and bespoke to that household, employing innovative approaches throughout that cater for changing lifetime needs*
2. *provide appropriate linkages to infrastructure and day to day facilities*
3. *Include a design framework, submitted with the full or reserved matters planning application for the wider site, to inform detailed design of the individual units, where more than one self-build unit is proposed*
4. *satisfy the detailed criteria defined for meeting housing need at settlements.*

***At Allocated Strategic sites, where it is agreed that an element of self- or custom-build plots will be provided development briefs will set out how the self-build plots will be delivered ~~and integrated into the wider scheme.~~***

(Continue on a separate sheet /expand box if necessary)

***Please note*** In your representation you should provide succinctly all the evidence and supporting information necessary to support your representation and your suggested modification(s). You should not assume that you will have a further opportunity to make submissions.

***After this stage, further submissions may only be made if invited by the Inspector, based on the matters and issues he or she identifies for examination.***

7. If your representation is seeking a modification to the plan, do you consider it necessary to participate in examination hearing session(s)?

**No**, I do not wish to participate in hearing session(s)

**Yes**, I wish to participate in hearing session(s)


Please note that while this will provide an initial indication of your wish to participate in hearing session(s), you may be asked at a later point to confirm your request to participate.

8. If you wish to participate in the hearing session(s), please outline why you consider this to be necessary:

To provide further explanation as necessary of the concerns raised above.

**Please note** the Inspector will determine the most appropriate procedure to adopt to hear those who have indicated that they wish to participate in hearing session(s). You may be asked to confirm your wish to participate when the Inspector has identified the matters and issues for examination.

9. Signature:

A rectangular box containing a solid black rectangle, which is a redaction of the signature.

Date:

20.07.2021