

**West Dorset, Weymouth & Portland
Local Plan Examination Statement
- Matter 1 Procedural Matters and
Legal Compliance including Duty
to Cooperate and Sustainability
Appraisal**

Examination ID Ref: 261 – Sherborne
Castle Estates

November 2014

Turley

1. Matter 1 – Procedural Matters and Legal Compliance including Duty to Cooperate and Sustainability Appraisal

1.1 - Have the Councils met the Duty to Cooperate or are there any outstanding issues?

- 1.1 Our client Sherborne Castle Estates (SCE) notes that the Councils intended to undertake further discussions with neighbouring authorities and other stakeholders as part of the Duty to Cooperate following the suspension of the Examination. This is evidenced in the Inspector's letter to the Councils following the exploratory meeting in dated 3rd February 2014, which highlighted an expectation that this would need to be undertaken in order to satisfy the legislative requirements of the Duty to Cooperate.
- 1.2 However, no evidence has been presented by the Councils during or following the consultation on Further Proposed Modifications (June 2014) whether any discussions with neighbouring authorities have taken place and, if they did, any outcomes.
- 1.3 This is surprising given the updated housing evidence that identifies the housing requirement should be increased to at least 775 dwellings per annum. Whilst this is welcomed it is clear that the updated evidence relates only to establishing an objectively assessed housing need for West Dorset and Weymouth & Portland and does not look at the role these areas should play in assisting with meeting unmet needs from adjoining authorities.
- 1.4 As highlighted in our Further Proposed Modifications representations, the Councils appear also to have had no regard to the situation in East Devon where that plan is currently suspended and the Inspector specifically highlighted the opportunity to work with West Dorset in preparing evidence, which does not appear to have been taken despite the updated work by Peter Brett Associates.
- 1.5 We also note the Councils' recent decision to merge with North Dorset District Council, which in the future will add a further dimension to strategic planning across the three authority areas. Given that the merger with North Dorset would have been known about for some time, the issues with how any unmet needs from that area could be addressed in the West Dorset and Weymouth & Portland Local Plan should have looked at in far greater detail. As it is, the proposed increased housing target, whilst welcomed, does not appear to have been influenced in any great degree by constructive dialogue with neighbouring authorities meaning the Local Plan still will have little impact on helping to address needs from elsewhere (that clearly exist in the case of East Devon).
- 1.6 On the basis that these discussions seemingly have not taken place, or alternatively at least not made publically available, our client considers that there remain outstanding issues and the Councils have not responded to the Inspector's previous concerns in respect of the duty to cooperate.

1.2 - Has the Local Plan emerged from an open and transparent process that demonstrates how and why it was selected, in consultation with the public and other stakeholder?

- 1.7 In short no. The plan has evolved significantly since the original Pre-Submission Draft Plan was published in June 2012. Since this time the housing requirements have changed, the strategy gone from single requirements for each local authority to a joint requirement, allocations deleted, land supply position fluctuating and the plan period reduced.
- 1.8 The plan making process appears to have been a series of reactions to continued identification of flaws with the recent amendments contained in the Further Proposed Modifications plan being the latest manipulation of the strategy to deal with the need to plan for a far higher housing requirement, yet without considering the merits of reinstating allocations previously deleted as part of the various earlier changes.
- 1.9 This approach clearly fails the positively prepared test of soundness as at no point has it sought to meet objectively assessed development needs in a strategic, objective and transparent way.
- 1.10 The plan also fails the justified test of soundness as it clearly is not the most appropriate strategy when assessed against reasonable alternatives, such as in the case of our client's interests, the reinstatement of the extended SHER 1 Barton Farm allocation that was originally endorsed by the Council as being a key strategic site to meet needs both in Sherborne and the wider District area.

1.3 - Is the work undertaken on Sustainability Appraisal comprehensive and compliant with legislative requirements?

- 1.11 We refer the Inspector to our Further Proposed Modifications representations which clearly highlighted that the additional Sustainability Appraisal (SA) is flawed and not compliant with the legislative requirements.
- 1.12 In particular, our representations highlighted concerns with the Councils' consideration of reasonable alternatives. Fundamentally, the Councils, whilst acknowledging that they would need to allocate further land if they retained the plan period to 20 years, did not assess the sustainability credentials of this option.
- 1.13 This option was instead dismissed before the additional SA work was undertaken as the Councils openly acknowledge it would have required the reinstatement of sites such as the extended SHER 1 Barton Farm as housing allocations to meet housing needs to 2031.
- 1.14 However, maintaining a plan period to 2031 across both administrative areas in line with the updated evidence base as well as consideration of the impacts of reinstating sites such as the extended SHER1 Baron Farm to help deliver the increased requirement was clearly reasonable alternative that should have been tested in the additional SA work.

- 1.15 Further, it is also evident that at no point in the SA process did the Councils ever properly consider the sustainability impact of reducing the extended SHER1 allocation at Barton Farm once the decision had been made to delete it following consultation on the original Pre-Submission Draft Plan.
- 1.16 The extended SHER1 site was subject to SA (CD/SA1) to inform the original Pre-Submission Plan (June 2012). The SA of the extended allocation highlighted that the full site performs well in sustainability terms. It is evident that no unresolvable sustainability issues were identified that were sufficient to withhold the allocation of the extended Barton Farm site. Indeed, the SA at that point was used by the Councils to confirm the suitability of the site as a key strategic allocation.
- 1.17 However, once the decision was taken by the Councils to reduce Barton Farm to the 2006 Local Plan allocation following public consultation on the original Pre-submission Local Plan, the subsequent SAs (CD/SA3 and CD/SA4) at no point considered the reasonable alternative of retaining the full site area compared with the relative merits of reducing it.
- 1.18 The SA process in CD/SA3 and CD/SA4 simply assessed the sustainability credentials of the reduced SHER1 Barton Farm area, which as expected did not perform as well as the extended area in terms of meeting housing needs. Therefore, it is evident that the decision to reduce the SHER1 Barton Farm allocation was not informed by an objective SA process to set out the implications on meeting housing needs of doing so.
- 1.19 On this basis, the SA process has not been comprehensive nor is it compliant with the legislative requirements of SEA/SA in respect of SHER1.

1.4 - Is the plan period consistent with legislative / regulatory requirements?

- 1.20 Our client strongly objects to the plan period across the two areas being reduced from 20 years to 17 years (from 2031 to 2028).
- 1.21 As documented further in our Further Proposed Modifications representations, it is clear that the sole reason for reducing the plan period is to avoid having to reinstate sites (such as the extended SHER 1 Barton Farm site) that are perceived as locally sensitive rather than objectionable on planning grounds. This is evidenced by the numerous references in Council documents relating to the Further Proposed Modifications that confirm that more land would need to be allocated if the plan period is retained to 2031 and in the context of the increased housing requirement.
- 1.22 Paragraph 47 of the NPPF requires local planning authorities to boost significantly the supply of housing and use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in the Framework, including identifying key sites which are critical to the delivery of the housing strategy over the plan period.
- 1.23 In respect of Plan-Making, Paragraph 157 requires Local Plans, crucially, to:

“plan positively for the development and infrastructure required in the area to meet the objectives, principles and policies of this Framework; and

“be drawn up over an appropriate time scale, preferably a 15-year time horizon, take account of longer term requirements, and be kept up to date;”

- 1.24 In terms of evidence, paragraph 158 of the NPPF requires local planning authorities to use a proportionate and up-to-date evidence base to inform housing strategies for their area and paragraph 125 requires LPAs to produce a SHMA to assess their full housing needs over the plan period.
- 1.25 The NPPF is therefore unequivocal that Local Plans should be drawn up over a 15 year time frame, be based on up-to-date evidence and seek to identify key sites critical to the delivery of the housing strategy.
- 1.26 In terms of the Councils' evidence base, the Peter Brett Associates report (**CD Ref: SUS10**) clearly identifies that the full, objectively assessed needs for market and affordable housing as being 775 homes per annum, or 15,500 homes in total to 2031. As set out further in our Matter 3 statement, we highlight that this should be the minimum figure and the evidence suggests the housing requirement should be higher.
- 1.27 Despite this the Councils, whilst accepting of PBA's evidence and the need to plan for at least 775 homes per annum to 2031, only propose a strategy to meet it up to 2028. Given the time taken to date, assuming the plan is adopted in 2015, the plan will only provide a planning framework for 13 years from adoption. This is in direct conflict with the NPPF's requirement for Local Plans to be drawn up over an appropriate timescale, preferably a 15-year time period.
- 1.28 It is clear that there is no reasonable planning justification or logic for the plan period to be reduced arbitrarily to 2028 just so the Councils can avoid having to reinstate sites such as the extended allocation of Barton Farm. This is evidenced in the West Dorset Policy Scrutiny Committee Report 9th June 2014, which states at paragraph 5.27:

“Finally, we need to consider whether to continue with the existing supply or make additional allocations. As explained in 5.18 above the national requirement is that there is ten years' worth of supply following adoption, but ideally there should be fifteen years' worth. A longer supply would give us greater flexibility, for example if some sites are not delivered in the expected timescales and would allow us greater time in which to review the plan to provide further sites. But if we were to meet the new higher requirements up to 2030 or 2031, we would need a significant amount of land allocated enough to accommodate around 1,617 dwellings. This would require public consultation over a tight timescale, on issues likely to be extremely controversial. A number of sites have been subject to consultation previously and subsequently taken out of the plan, and the majority of these would all need to be brought back into the plan if the requirements to 2031 were to be met. This will need to be addressed in the next review of the plan, but at the late stage we are now in this plan's preparation, and with time constraints, it is suggested that progressing the plan with thirteen years' supply post adoption, and relying on the existing supply, would be a potentially sound and more achievable approach.”

- 1.29 It is worth also referring to the Inspector's initial response letter dated 13 December 2013 at paragraph 2.2 on the plan as submitted as follows:

"2.2 I do not consider having in effect, two end dates for a joint plan could be regarded as sound especially when the National Planning Policy Framework (NPPF) expects local plans to be comprehensive documents meeting identified needs for the plan period (para. 159). It is reasonable to review a plan, in whole or part, in response to changing circumstances (para. 153) but the intention is for local plans to provide a realistic strategy at the outset. Accepting there is a deficiency in housing sites to begin with is difficult to equate with the concept of positive and effective planning."

- 1.30 Since this clear advice, the housing requirement has been increased yet the overall plan period reduced. No new allocations are proposed other than increased reliance on SHLAA sites, which in our view highlights that the deficiency in housing sites has not been resolved, and likely exacerbated with the increase in requirement.
- 1.31 The Councils' only solution to this issue appears to be an early review, which the Inspector has already highlighted, is not appropriate to remedy the deficiencies in the plan that exist now. In short, the Councils cannot claim that restricting the strategic level Local Plan to 13 years (contrary to the NPPF) to avoid rectifying the clear deficiencies in housing sites will result in a plan that cannot be found to meet the NPPF tests of soundness.
- 1.32 On this basis, the decision to reduce the plan period to a maximum of 13 years from adoption simply to avoid having to consider the reinstatement of sites such as the extended SHER1 Barton Farm area clearly does not meet the positively prepared test of soundness (as the Councils have not sought to prepare the plan on a strategy to meet objectively assessed development requirements, which the evidence base quantifies to 2031) or justified test of soundness (as there is a clear reasonable alternative that has not been considered in terms of retaining the plan period to 2031).
- 1.33 In addition, we refer the Inspector to paragraph 39 of the Lichfield Local Plan Inspector's report (**Appendix 1**). In that case, the Inspector recommended that plan period to be extended and housing requirement amended accordingly to ensure that the plan could provide a strategy for the NPPF's advised 15 year period. We request that the same approach should apply here.
- 1.34 We also refer the Inspector to East Devon Inspector's Report (**Appendix 2**) where the issue of the plan period, in that case only 12 years, was also discussed. The East Devon Inspector clearly raises concerns with a 12 year plan period at paragraph 9 of his decision letter: *"However, I consider that this approach offers less certainty and a longer plan period would give developers, landowners and you greater confidence in the long term delivery of the Growth Point. Further, it leaves less time to deliver and react to changes that may threaten delivery in the rest of the District."* The East Devon Inspector duly recommended that the plan period reflect the evidence base, which in that case extended to 2031 as is this case here.

1.5 - Has the Local Plan been prepared in accordance with all other statutory procedures and regulations?

- 1.35 As identified in our responses to questions 1.1 to 1.4 we do not consider that the Councils have presented sufficient evidence to demonstrate that they have fulfilled the statutory requirements for the Duty to Cooperate. We also contend that the Sustainability Appraisal process is flawed and does not meet the statutory procedures.
- 1.36 We also would like to add a general comment about the Councils' process to date. We have significant concerns on the decision making process throughout which appears to be reactionary and not based upon objective assessment of planning issues or the intention to positively prepare a Local Plan that will meet objectively assessed development needs over a reasonable and NPPF compliant plan period.
- 1.37 For example, the various decisions that resulted in the Further Proposed Modifications were made by the Councils without having seen the full revised evidence base or a robust Sustainability Appraisal that looked at all reasonable alternatives. This information was only released publicly after the consultation had begun and considerable time after the Councils had made the decisions to proceed with matters such as how to plan positively for an increased housing requirement.
- 1.38 The Further Proposed Modifications consultation itself was also only focused on amendments to Chapter 3 rather than the whole plan as advised by the Inspector. Given that the Further Proposed Modifications resulted in an increase in the housing requirement, we would have expected this to have been considered in terms of whether the whole plan as originally submitted remains appropriate to facilitate the need for more housing. It is evident by the Councils needing to reduce the plan period to avoid allocating more land that the strategy when considered as a whole has not been positively prepared nor is the most appropriate against the evidence base and reasonable alternatives.
- 1.39 In summary, we maintain that the plan as drafted, despite Further Proposed Modifications, is unsound as it does not meet the positively prepared, justified or effective tests.
- 1.40 In order to make the plan sound, the plan period should be maintained to 2031 in order to establish a 15 year strategy from the point of adoption and the extended SHER1 Barton Farm reinstated for allocation in order to assist with providing sufficient land supply over the plan period.

Appendix 1: Lichfield Local Plan Inspector's Report

Appendix 2: East Devon Local Plan Inspector's Report

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