

## LPP2 EXAMINATION TOPICS

12th July 2016 hearing. Comments by John Hayter, resident of Bishops Waltham

Respondent 408914723

### Matter 1:

#### ***Is the Plan Sound?***

Defined by NPPF182 *Positively prepared and justified*

#### **i) Is the Plan supported and justified by clear and robust evidence?**

##### **A. Overall Housing Need (OAN) and Supply**

- LPP1 has 12,500 including SDNP, LPP2 excludes SDNP
- LPP1 evidence is 2011 Housing Technical Paper (HTP 2011) based on 2008 ONS trends (HTP 4.3) and 2010 SHMA (HTP 4.13)
- LPP1 evidence is for 11,000 under "Government projections scenario" . (HTP 2011 Table 4.2)
- LPP2 evidence is for 10,900 excluding 1,100 SDNP (HTP 2011 Table 4.6)
- "Government Projections Scenario" is for the dwellings and population trends of the Winchester District. The growth areas at W. Waterlooville and Whiteley are provided in addition under Duty to Cooperate to boost the economy in the PUSH area.
- LPP2 2.5 provides for 2,600 at W. Waterlooville and 3,300 at Whiteley, total 5,900.
- LPP1 Inspector provided an extra 1,600 (12,500 -10,900) in setting requirement of 12,500. The required extra provision is thus 4,300 (5,900 - 1,600) raising the 12,500 to a requirement of 16,800 and a 34% increase.
- ***Evidence for LPP2 effectively spreads the 4,300 shortfall in provision across the whole district including the growth areas. This under provision breaches the Duty to Cooperate under which it was provided and LPP2 would not then be legally compliant.***
- ***Allocating the whole of the 4,300 shortfall in the non-growth area avoids breach of Duty to Cooperate. This requires 65%  $[4,300/(12,500-5,900) \times 100]$  increase in LPP2 allocations elsewhere.***
- ***In any event Reg 8(2) requires that "A local plan or a supplementary planning document must contain a reasoned justification of the policies contained in it." The justification is for 10,900 OAN but the policies are for 12,500. Relying on 2008/2010 evidence does not constitute "reasoned justification".***
- ***Concurrent NPPF breaches are considered at (iii) below.***

##### **Case Law**

- LPP2 1.7 refers to "The development requirements set by Local Plan Part 1, particularly for housing, remain relevant and this Plan does not seek to review them

or to update the Strategic Housing Market Assessment, Housing Technical Paper or other evidence that led to their development." The "High Court judgement" (Zurich case) is cited in justification of this position.

- Housing Paper OD15 considers at length various High Court but no Appeal Court cases. The paper totally fails to consider PAS "Plan-making case-law" and in particular *R (Hunston Properties Ltd) v SSCLG and St Albans City and District Council [2013]*. The Court of Appeal squashed a decision by an Inspector on a planning application where the Housing OAN was based on the 2008 East of England plan. OD15 does not consider this superior court judgement despite it being directly relevant to the LPP1 situation.
- The Zurich case depended on satisfying affordable housing need which is not one of the factors relied on above.
- OD15 also totally fails to consider the need if LPP2 is to be found legally compliant and sound of satisfying Reg8(2) and NPPF's 158 and 47, nor the option to use Reg8(5) procedure to amend LPP1 as part of the LPP2 process.

## B. Affordable Housing (AH) Need and Supply

- LPP1 7.19 states *It is a priority of this Plan to maximise the provision of affordable housing.* In fact it is an absolute requirement of the Plan as a whole.
- LPP1 CP3 requires 40% affordable *unless this would render the proposal economically unviable.*
- NPPF47 requires the FULL objectively assessed needs for market AND affordable housing to be met.
- *Affordable housing includes social rented, affordable rented and intermediate housing, provided to specified eligible households whose needs are not met by the market.* (DCLG Dec 2015).
- AMR 2015 Table 27 shows 82 AH completions 2014/15 but no previous history nor number required to meet LPP1 housing policies.
- **The AMR breaches Reg 34 2.5 bullet 3** to "*Specify the number of net additional dwellings (including affordable dwellings) during the report period and since the policy began*" by not giving any previous history from which to determine the going rate.
  
- AMR Table 17 gives 5 year housing supply requirements of about 3,500, about 700 pa of which only 11.7% AH.
- 19 of these were at W. Waterlooville and 63 elsewhere. The housing supply is split 5,900:(12,500-5900): 6,600. The corresponding annual completions (20 years) are 295 and 330 giving 5.8% AH provision at Waterlooville and 19% elsewhere.
- Over the previous 3 years AH completions have been 2012/13 68, 2013/14 149, 2014/15 82 (large sites only) an average of about 100pa with no upward trend and thus a rate of only 14% pa.
- Hence **no clear and robust evidence of AH delivery** for this reason also.
- Corresponding DCLG national data shows large fall in social rented replaced by larger rise in affordable rented. Thus possible AMR is not using correct AH definition.

### C. Meeting all of LPP1 Requirements

- The requirement to meet LPP1 DS1 overall housing as well as CP3 viable AH housing means that in practice the AH requirement is fixed at 40% of DS1 volumes. The site policies then have to be formulated in terms of development density and mix of house types, tenures, sizes and the special needs of NPPF159 to derive a housing OAN taking account of all of these. DS1 numbers will then be met and there is no criteria preventing exceeding.
  - Similarly the 5 year supply is not deliverable unless it includes viable 40% AH.
  - Neither LPP1 nor LPP2 define clear by being possible-to-monitor policies for climate change, carbon footprint, renewable energy generation, development densities etc.making AMR monitoring impossible.
  - Accordingly Matter 1 (i) and Matter 1 (ii) are not met
  - PPG para 029 Ref ID:2a-029-20140306 states "*An increase in the total housing figures included in the local plan should be considered where it will help deliver the required number of affordable homes.*"
- 
- LPP1 requirements include the WDLPR 2006 saved policies
  - Not all are incorporated into LPP2 (eg S1, S2, S4)

### ii) Will it satisfactorily and sustainably deliver the new development needed over the plan period to implement the objectives and requirements of Local Plan Part1?

#### A Affordable Housing

- This will not be delivered nor will any delivery be sustainable for reasons at Matter 1 (i) above.

### iii) Are any policies or proposals inconsistent with national policies in the NPPF and, if so, is there a local justification supported by robust and credible evidence?

***All general and location specific policies are considered against this question at later sessions. Highlights of the inconsistent policies and reasons are given below.***

As considered at (i) above :

***- Failure to use adequate, up-to-date and relevant evidence is breach of NPPF158. Not planning to meet the full, objectively assessed needs for market and affordable housing and lack of 5 year housing supply are breaches of NPPF47 which under NPPF182 renders LPP2 unsound.***

- **NPPF 174** requires that cumulatively local standards including SPD's should not put affordable housing and other policies at serious risk and evidence has to be provided to this effect. This has not been done.

- There are currently 32 Village Design Statements (VDS) designated as SPD's none of which include **NPPF 158** 40% AH, **NPPF 96** to minimise carbon footprint by layout and **NPPF 97** renewable energy generation and **NPPF 29** reducing non-sustainable travel and **NPPF 159** providing a mix of housing types, tenures and sizes and for those with special needs such as extra care in the home with a density that makes all of this provision viable. These requirements should be in Plan policies. Site and local needs differ widely requiring differing solutions in VDS.

#### **A. Policies for Carbon Footprint and Climate Change mainly missing.**

- **NPPF 9** identifies 5 "positive improvements" that constitute sustainable development. **NPPF 18 to 149** give 13 ways in which sustainable development should be delivered. There is no overriding objective and policy to ensure that the end result is that, despite the increase in population, the district's carbon footprint is not increased, resilience to climate change is increased and heritage and natural assets are conserved.

DM14 (Local Distinctiveness) controls character, DM15 (Site Design Criteria) at (vii) only calls for "*utilising the principles of energy efficient design*" but only "*as far as is compatible with the character of the area*".

- ***DM15 (vii) is the only settlement wide LPP2 policy that in any way meets the NPPF 94 requirement to mitigate as well as adapt to climate change.***

- ***DM14 and DM15 taken together make maximising energy efficiency always subservient to conserving or enhancing the character of development contrary to NPPF93. The supporting text makes no reference to energy efficient design and no standard is defined for meeting the criterion thus making it impossible to determine planning applications in accordance with the development plan.***

- WIN1 (iv) *encourages* sustainable transport options and (v) a *contribution* towards reducing carbon emissions but sets no approve/refuse standard.

- In order to improve energy efficiency throughout the plan period the standard should be at least as good as the average energy efficiency of all similar developments in the last few years. This is readily available from the Energy Performance Certificates (EPC's) required for Building Control. This would require the EPC to be submitted as part of the planning application.

- DM16 (site Development Principles) at (iii) *includes adequate provision for surface water drainage and sewage disposal . **The requirement of NPPF94 to mitigate as well as adapt to climate change impacts on water supply is not met.*** To ensure this all the rainwater falling on the whole site has to soak into the ground, not into a drainage system or the surface water drainage system has to connect to a water supply plant. Site contours need to ensure this and landscape planting (DM14) has to be climate change resilient with contours to retain rainfall..

## B. Reducing Carbon Footprint by Housing Density

- LPP1 Policies set the housing sub-district requirements broadly proportional to the existing population and number of dwellings. Maximising the district's sustainability was not a factor and is thus an LPP2 requirement.

- In the following Winchester is used as the example but similar issues arise in all settlements.

- Winchester Town is the only major settlement with an intra-town bus and long distance coach service, inter settlement bus hub, commuter railway station and park and ride facilities. It also has the greatest range of employment salaries and skills and retail, leisure and sports facilities. The major way the district's travel carbon footprint can be reduced is to locate the majority of development where this existing infrastructure contributes most by being used by the sustainably largest possible number of residents. Housing density should thus be high particularly near the town centre hub and intra-town bus routes and taper off further away.

**- NPPF 47 requires setting out a local approach to housing density. This has not been done for new housing development or arising from change of use for any whole or part of any of the settlements.**

- Winchester suffers from a very high level of in-commuting generating a high carbon footprint to the park and rides and excessive atmospheric contamination of the streets by commuters and shoppers using town centre parking. The retail and leisure sector depends on high numbers of low paid who cannot afford Winchester accommodation and are forced to live in areas outside where prices are cheaper, typically 8 or more miles away ruling out cycling for most, and may only have an hourly bus service. Providing high density market and affordable dwellings for these in and near the centre reduces the carbon footprint of travel and by increasing the number of centre residents increases the local shopping and evening viability and vitality.

- High density of development requires multiple stories that potentially conflict with CA and "character" requirements. Reduction of carbon footprint is significantly dependent on generating solar energy. **WIN3 Views and Roofscape effectively**

**rules out more than about 3 storey development and all solar energy collection contrary to NPPF94.**

Technology of renewable energy development including efficiency, price and appearance is very fast moving. Policies must encourage and not effectively exclude innovation.

- WIN 3 gives equal weight to iconic views of the built heritage and surrounding hills from street level frequented by tourists and thus vital to the economy as it does to views from upper floors seen almost entirely by residents and employees and views of the whole city from St Giles and St Catherine's hills. **There is a strong case for preserving the street level iconic views despite adverse carbon footprint/climate change impacts. There is little or no justification for doing so on a wider scale.**

- NPPF does not seek protection of any views in any way and thus does not provide for any NPPF 12 trade-off against tangible sustainability requirements.

### **C. Reducing Carbon Footprint by Reducing Out-Commuting.**

- Many households have 2 or more members with different skills in employment resulting in high carbon footprint and traffic congested out-commuting. Because of the range of skills there is limited scope for reducing this by local employment provision even in Winchester. The problem is severe because the southern part of the district is relatively strong on science and engineering due to the MoD, marine industry and the nationally recognised strengths of Portsmouth and Southampton Universities in these fields and the northern part service, local government and law oriented.

LPP1 WIN3 designates Bushfield Camp as an *employment opportunity* area. LPP2 2,4 refers to it as a requirement of LPP2 WIN1 but it is omitted. However it is only considered as an *employment opportunity* because at present there is not sufficient justification for allocating in the countryside. **The rationale for Bushfield Camp ignores the immediate requirement to reduce carbon footprint by reducing out-commuting from Winchester Town.**

**- There is no district wide policy to reduce out-commuting carbon footprint from every settlement.**

- This can be achieved by providing on the edge of every larger settlement a parking area on a park-and-ride or major inter-settlement bus route. This would enable onward travel by sustainable transport, a collection point for car sharing that for many could be reached by bus, walking or cycling, a transport hub for locating housing and employment and park and ride to the local town centre.

- Maximising the use of such infrastructure, and hence the viability of frequent bus services, can only be achieved by provision of bus-only and / or bus leap-frog lanes and a district wide car sharing booking system. Use of car sharing can then be a requirement of development travel plans everywhere.

### C. Carbon Footprint Reducing Development outside settlement boundaries

- Countryside policies tend to favour small scale housing and agriculture related employment in locations where it has historically been provided. Provision of solar and wind farms and bio-mass generation that would reduce the district's carbon footprint then have to be justified as exceptions to this policy. The studies supporting LPP1 showed negligible progress in this provision. **A policy and site allocations should be provided to enable renewable energy generation in the countryside.**

### D. Town Centre Expansion

**NPPF23 requires to set out policies for the management and growth of centres over the plan period. There are no policies for growth and no allocations of appropriate edge of centre sites for main town centre uses.**

- This requirement applies to all settlements that should have defined town centres and primary shopping areas and needs must be *met in full and are not compromised by limited site availability.*

- DM6 Town, District and Local Centres **defines town centres in terms of uses that attract large numbers of people. This is not a NPPF23 criteria which instead requires a wide range of uses including eg office and residential that will not attract large numbers of people.**

- **Correspondingly DM7 and DM8 only protects retail (A1 Use Class) instead of the range of uses.**

### E. Conservation Areas

- LPP1 CP20 *Heritage and Landscape Character* calls for the preparation of *Conservation Area Appraisals and Management Plans and/or other strategies* but sets no criteria to which they should conform. AMR 2015 8.50 puts the number of these at 13.5% (5) of the 37 CA's and none are in the evidence base.

- **LPP2 DM26 Development in Conservation Areas sets out its own criteria for development without any consideration of LPP1 CP20 requirements even if they were available, takes an ad hoc instead of a managed approach and fails to conform to NPPF 126 and 132 to conserve them in a manner appropriate to their significance by not considering what the assets are and treating every characteristic as of equal significance.**

-

**iv) Has the plan been the subject of suitably comprehensive and satisfactory sustainability appraisal [SA] strategic environmental assessment [SEA] and habitats regulations assessment (HRA)?**

- SA/SEA at 0.23 states that it is based on housing OAN of 12,500 dwellings. Reg 8(2) requires that "A local plan or a supplementary planning document must contain a reasoned justification of the policies contained in it." The justification is for 10,900 OAN, the policies are for 12,500 and the Reg8(2) compliant OAN is 16,800.
- ***LPP2 contravenes Reg 8(2) and thus not legally compliant***
- ***The SE/SEA is not for the housing OAN required by legislation***
- ***The 4,300 shortfall is shared across the whole of LPP2 including the PUSH growth areas. There is thus also a breach of the Duty to Cooperate***