



01/05/2024

FAO Andrew Mead c/o Lee Armitage
Intelligent Plans and Examinations
3 Princes Street
Bath
BA1 1HL

Via email only to: lee.armitage@intelligentplans.co.uk

Dear Mr Mead,

Wyatt Homes comments on Sturminster Marshall Neighbourhood Plan group's response (dated 03.04.2024) to the examiner's questions (dated 18.03.2024)

Wyatt Homes welcome the progress being made on the Neighbourhood Plan (NP) and in particular the consideration being given to policy SMNP18. We note the recent correspondence between the Examiner, Sturminster Marshall Parish Council and Dorset Council on this matter. This letter sets out Wyatt Homes response to the statement by Sturminster Marshall Parish Council in response to the Examiners question on policy SMMN18 of the submission Neighbourhood Plan:

'Does SMPC have any comments about the regulation 16 responses from Dorset Council and from Wyatt Homes which seek to delete the policy?'

Text from Sturminster Marshall Parish Council's response is referred to *and quoted in blue text (as below)*. Wyatt Homes response is in black.

With reference to existing POS capacity as set out in Wyatt Homes's Regulation 16 response, we do not agree with all of the figures cited – for example, capacity at the school is not available for wider use. As part of the Regulation 16 consultation it is also noted that the Chairman of Sturminster Marshall Football Club has confirmed the need for additional space, this evidence was not available at the time the plan was submitted for examination.

The response from the Chairman of the football club expresses an aspiration to expand in the future if the village grows, but provides no evidence of the need for additional sports pitches. Evidence has not been provided to show that capacity of the school's playing pitches could not be made available outside of school hours; such arrangements are commonplace elsewhere.

Dorset Council's main concern regarding Policy SMNP18 is that it may not be deliverable given the intent of Wyatt Homes (who are promoting the site but are not the

1 Parkstone Road • Poole • Dorset BH15 2NN
Telephone: **01202 668266** • Facsimile **01202 584433**
Website: **www.wyathhomes.co.uk** • Email: **mail@wyathhomes.co.uk**

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landowner) and that the policy may be superseded in due course by the Dorset Council Local Plan if the decision is taken to allocate the site for housing. They note that Policy SM3 remains in place in the interim (but also concede that it is part of a Plan that is more than 5 years old, implying that it is therefore not up to date).

Wyatt Homes position is that historic Policy SM3 is out of date, it is a saved policy from a plan that is over 20 years old, is not supported by any evidence, and has no means of delivery.

It is also noted that, since the submissions were made by both Dorset Council and Wyatt Homes, the Council has announced its intent to 'restart' the Local Plan programme under the new style system. As such, the emerging policy SMTR2 has in effect been abandoned and it would not be appropriate to give any weight to it at this time. The Parish Council entirely accepts Dorset Council's point that any strategic decisions through the Local Plan may over-ride the Neighbourhood Plan policies, but any certainty on this is now pushed back until 2027.

The Draft Dorset Local Plan (LP) has not been withdrawn and policy STMR2, allocating Land at Station Road for housing, has not been abandoned. The Draft Dorset LP and its supporting evidence base remains a valid consideration which represents the most up to date policy position. We would draw attention to a recent legal opinion (March 2024) on the matter by Dorset Council themselves (presented in full at appendix 1), where they state in response to a planning appellant's argument that the draft LP has been abandoned, that:

'...this is not factually correct. No statement has been adopted or issued by the Council to the effect that the existing emerging local plan has been 'abandoned' as claimed in para 4.1. His stated view is based on a misinterpretation of the current position. The existing plan will continue to be taken forward under the new processes introduced by the LURA and the revised NPPF and the Dorset Council Local Plan will continue to be the 'emerging plan.'

Dorset Council go on to further clarify that:

'This signals a clear intent to ensure as much continuity as possible in the plan making process. Essentially, Dorset Council intends to take forward the same DPD, covering the same area dealing with the same issues. The Dorset Council Local Plan therefore remains the 'emerging plan'.

A clearer statement could not be made to demonstrate that the draft Dorset Local Plan has not been abandoned. Therefore, to meet basic NP basic condition E, the NP should be made in accordance with the emerging Local Plan, a material planning consideration.

As perhaps evident from the Consultation Statement, the Parish Council and community are sceptical that the current land promoters have any real commitment to deliver some much needed recreation provision on a site which was earmarked and fully expected to deliver such by the community, despite this being already enshrined in an adopted policy (and therefore material to the land value).

Wyatt Homes has a strong track record of delivering open space and recreation facilities as part of new developments, including the new Wimborne Town Football Club stadium and pitches,

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skate park, allotments, and SANG's. It is important to recognise that development is the catalyst for delivering such facilities.

Wyatt Homes has not always been the site promoter – and at the time of the Local Plan consultation in 2021 it was Grasscroft Homes and Property Ltd who responded to the Local Plan consultation – and their illustrative master plan (submitted as part of their representations included the retention of over 1.6ha as POS and green infrastructure.

It should be noted that potential future housing development in this location could provide a significant amount of public open space in the form of a SANG, which Wyatt Homes are committed to. Wyatt Homes are keen to deliver as much community benefit as possible via Dorset Springs' repurposing as a SANG. The SANG would provide a fantastic opportunity to open up previously private land to the community for recreational purposes; positive early discussions have taken place between Wyatt Homes, Dorset Council and Natural England about how we could deliver an attractive space and community benefit.

Whilst plans are currently only conceptual, there would be the opportunity to provide a landscaped area featuring circular walks and connections to the wider public right of way network as well as lakes offering the potential for wild swimming and biodiversity enhancement.

Perhaps an appropriate way forward would be to provide some indicative sizes as part of the policy or supporting text to more clearly explain the above. Whilst alternative sites (and financial contributions) could be considered for such provision, the Parish Council is reluctant to accept sites would be less visible and accessible to the local community, and would be very concerned for the default to become a financial contribution when no acceptable alternative site has been identified...

The policy could therefore be re-worded along the following lines:

The following sport and recreation needs of the community should be met within the area of land at Station Road that was identified in Saved Local Plan Policy SM3 and is shown in Figure 20:

- An area for allotments (requiring approximately 0.4ha)*
- A Multi Use Games Area (requiring approximately 0.07ha)*
- A skate park (requiring approximately 0.05ha)*
- Car parking to serve the above sports and recreation facilities.*

If the site is required for other forms of development, then alternative provision must be secured on a site / sites that are as well related to the local community and readily visible and accessible from one of the main routes through the village.

Wyatt Homes suggest that reference to figure 20 (historic allocation plan referred to in policy SMNP18) should be deleted from the plan altogether. If such facilities are to be delivered, they would need to come forward as part of a wider residential development.

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Revised Policy Wording

Wyatt Homes believes that Policy SMNP18 should be replaced by supporting text as set out below. This would meet the basic NP conditions and be more appropriate, whilst still seeking to work with the Neighbourhood Plan group and community aspirations.

Wyatt Homes suggested wording as supporting text in place of policy SMNP18:

There is an aspiration within the village to provide additional open space and recreation facilities on land to the south of Station Road. It is recognised that a historic 2002 saved Local Plan policy allocation (SM3) has not delivered the recreational facilities it sought to, and that the emerging Dorset Local Plan proposes residential development in this location. The future provision of recreational facilities in this broad location would be supported and would need to be delivered alongside a quantum of housing development and supporting infrastructure.

Should residential development come forward on Land at Station Road, the provision of recreational facilities, on and/or off-site, in a suitable and sustainable location, should be investigated and delivered in a proportionate way. Specific provision will be assessed and provided subject to demand for facilities at that point in time.

*Figure 20 and reference to the historic allocation plan should be deleted altogether from the Neighbourhood Plan.

Neighbourhood Plan – Basic conditions to be met

At present, the existing wording of NP policy SMNP18 is not in accordance with basic NP condition D - promoting sustainable development, because it contradicts the emerging LP and the evidence for housing need, rather than complementing the emerging LP housing allocation.

This point is further reinforced by basic NP test condition E, which states that *‘the Neighbourhood Plan must be in general conformity with the strategic policies contained in the development plan for the area or authority’*.

The Neighbourhood Plan should be prepared having regard to Planning Practice Guidance (PPG) set out below (our emphasis):

‘A draft neighbourhood plan or Order must be in general conformity with the strategic policies of the development plan in force if it is to meet the basic condition. Although a draft neighbourhood plan or Order is not tested against the policies in an emerging local plan the reasoning and evidence informing the local plan process is likely to be relevant to the consideration of the basic conditions against which a neighbourhood plan is tested.’

‘Where a neighbourhood plan is brought forward before an up-to-date local plan is in place the qualifying body and the local planning authority should discuss and aim to agree the relationship between policies in:

- *the emerging neighbourhood plan*
- *the emerging local plan (or spatial development strategy)*
- *the adopted development plan’*

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'The local planning authority should work with the qualifying body so that complementary neighbourhood and local plan policies are produced. It is important to minimise any conflicts between policies in the neighbourhood plan and those in the emerging local plan, including housing supply policies. This is because section 38(5) of the Planning and Compulsory Purchase Act 2004 requires that the conflict must be resolved in favour of the policy which is contained in the last document to become part of the development plan.'

Paragraph: 009 Reference ID: 41-009-20190509 Revision date: 09 05 2019 See previous version (Planning Practice Guidance, (PPG))

At present, the NP conflicts with the emerging Dorset LP allocation STMR2.

Lastly, as set out in all consultation responses to date, Wyatt Homes are keen to encourage a productive dialogue with Sturminster Marshall Parish Council and the Neighbourhood Plan group. Wyatt Homes would welcome the opportunity to work with the Parish Council and Dorset Council to identify opportunities for open space provision which are actually able to be delivered, such as SANG, play areas or recreational facilities i.e. a MUGA or skate park, where proven to be in demand, alongside a quantum of housing delivery. Wyatt Homes are open to exploring how such features could be provided on site, as part of the SANG at Dorset Springs, or as an off-site enhancement.

Please do not hesitate to contact me should you have any queries.

Yours faithfully,

Philip Saunders



Appendix 1: Dorset Council Legal Opinion on the status of the emerging Local Plan

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Appendix 1

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APP/D1265/W/23/3323727 & APP/D1265/W/23/3323728 Counsel opinion re new material planning consideration

Introduction

This response is given by Dorset Council in respect of an opinion given by Paul Cairnes KC on 12 March 2024 in relation to the above appeal cases. The Council has not seen the instructions given to Mr Cairnes.

Mr Cairnes asserts, at para 1(a), that Dorset Council's decision to adopt a revised LDS :

“means that the existing emerging Dorset Council Local Plan will never proceed to become part of the statutory development plan”.

He states at para 1(d), that the Council will be embarking:

“upon a new local plan process using the provisions of the LURA and the revised NPPF”

and (at para 1(f)) that the existing draft plan:

“will no longer be the emerging plan”.

On that basis it is argued, at para 1(g) that when considering housing development proposals following the publication of the new LDS, the Council:

“will be required to demonstrate a five-year supply of deliverable housing to avoid the application of the titled balance pursuant to paragraph 11 d) of the revised NPPF”

rather than the ‘four year’ requirement that currently exists (under the provisions of paras 77 and 226 of the new NPPF).

However, this is not factually correct. No statement has been adopted or issued by the Council to the effect that the existing emerging local plan has been ‘abandoned’ as claimed in para 4.1. His stated view is based on a misinterpretation of the current position. The existing plan will continue to be taken forward under the new processes introduced by the LURA and the revised NPPF and the Dorset Council Local Plan will continue to be the ‘emerging plan’.

The Local Development Scheme (LDS)

The preparation and maintenance of an LDS is a requirement of Section 15 of the Planning and Compulsory Purchase Act 2004 (as amended). Under Section 15, the LDS *“must specify*

—

(aa) the local development documents which are to be development plan documents;

(b) the subject matter and geographical area to which each development plan document is to relate; ...

(f) the timetable for the preparation and revision of the development plan documents”.

Dorset Council's October 2022 LDS states that:

"the main Development Plan Document (DPD) to be produced will be the Dorset Council Local Plan" and that it "will set out planning policies and propose allocations to meet the needs of the whole of the Dorset Council area."

The March 2024 LDS sets out the 'proposed development plan documents to be produced' in Section 3. This states that:

"the Dorset Council Local Plan will set out planning policies and propose allocations to meet needs across the whole of the Dorset Council area."

In effect, both versions of the LDS confirm that the Dorset Council Local Plan:

- is a development plan document (which retains the same name in both versions);
- will include planning policies and propose allocations to meet development needs; and
- will aim to meet the needs of the whole of the Dorset Council area.

In that respect the emerging Dorset Council Local Plan continues to satisfy the provisions of sub-paras (aa) and (b) of Section 15 of the Planning and Compulsory Purchase Act 2004 (as amended) in both versions of the document. In effect, it is still the same DPD being taken forward.

The key difference is that the timetable for the preparation and revision of the document has changed, reflecting the changes to plan-making that have been introduced by the LURA and the revised NPPF. However, the introduction of these new processes does not mean that a 'new plan' is being produced. In terms of Section 15 of the Planning and Compulsory Purchase Act 2004 (as amended) it remains the same DPD being taken forward.

A requirement of Section 15 of the Act is to 'prepare and maintain' (i.e. update) the LDS. A further imperative came from a written ministerial statement issued by Michael Gove, Secretary of State, on 19 December 2023, which stated:

"...I am issuing a direction to seven of the worst authorities in terms of plan-making, requiring them to publish a plan timetable within 12 weeks of the publication of the new NPPF – and should they fail, I will consider further intervention to ensure a plan is put in place. This does not mean I am not prepared to act elsewhere, and I expect all other authorities to make sure that they have an up-to-date plan timetable in place within the same timeframe, with a copy provided to my department." (our emphasis)

For the avoidance of doubt, Dorset Council is not one of the seven worst authorities, but as with all local planning authorities in the country, it was required by the SoS to update and publish its LDS (plan timetable) by the 12 March 2024.

Has the existing emerging local plan been 'abandoned'?

There is no basis for the assertion in the opinion that the existing emerging local plan has been 'abandoned', since it has not been withdrawn and there is no indication in the 2024 LDS that it is no longer being taken forward.

Section 22 of the Planning and Compulsory Purchase Act 2004 (as amended) states that a local planning authority may at any time before a local development document is adopted under Section 23 withdraw the document. Nothing in the 2024 LDS indicates that the

existing emerging local plan has been withdrawn. The Council have not passed a resolution withdrawing it.

Regulation 27 of the Town and Country Planning (Local Planning) (England) Regulations 2012 also require a local planning authority to publish a statement that a local plan has been withdrawn, as soon as is reasonably practicable after withdrawing it. No such statement has been published and there is no intention to publish such a statement.

There is also no indication in the 2024 LDS that the existing emerging local plan is no longer being taken forward. Both versions of the LDS make it clear that the Dorset-wide Gypsy, Traveller and Travelling Showpeople Site Allocations Joint Development Plan Document (DPD) will no longer be taken forward. No similar statement is made in relation to the Dorset Council Local Plan.

Section 1 of the 2024 LDS notes that changes to plan-making are being introduced in England. This states that “it would not be possible to proceed with the local plan under the current plan-making system given the proposed transitional arrangements”. The clear implication is that the Council will proceed with the local plan under the new system. This position is confirmed in Section 3, where it is stated that “the Dorset Local Plan will be a new-style local plan prepared under the proposed reforms to the plan-making system”. Crucially, the next paragraph in Section 3 states:

“Work commenced on the Dorset Council Local Plan at the point that Dorset Council was formed in 2019. A consultation on a draft of the plan was undertaken in January 2021. This information will be used to inform the new-style Dorset Council Local Plan.”

This signals a clear intent to ensure as much continuity as possible in the plan making process.

Essentially, Dorset Council intends to take forward the same DPD, covering the same area dealing with the same issues. The Dorset Council Local Plan therefore remains the ‘emerging plan’.

Appeal Decision: Appeal Ref: APP/K2420/W/23/3330774 Land off Desford Lane, Ratby, Leicestershire. LE6 0HF

The NPPF was reviewed in a recent appeal decision issued on 28 February 2024, where the Inspector found against the submissions of the LPA as to the status of the emerging plan. However, the situation in that appeal was completely different and whilst the case shows where Mr Cairnes’ opinion might have relevance, it also demonstrates why his opinion is not relevant to the position in Dorset. The following extracts indicate the differences:

56. In this case, the Council does have an emerging plan that has reached the Regulation 19 stage, and which does have a policies map showing housing allocations, albeit that map is incomplete because it does not show the geographical expression of other policies in the plan. However, the plan has not progressed to examination, and the Council has recently published a revised local development scheme⁸ which indicates that it intends to consider an alternative development strategy, extend the plan period to 2041 and carry out new Regulation 18 and 19 consultations before submission for examination by June 2025, with adoption expected in early 2026.

57. Although the present Regulation 19 plan has not been formally withdrawn, it is apparent that there is no intention to progress it in its current form. The purpose of

the revised requirement in the Framework is to recognise those authorities which are progressing with plan making. Since the current Regulation 19 plan has stalled, and a revised version is not envisaged to be adopted for at least two years, I consider that the provisions of paragraph 226 do not apply in this case. That position is accepted by both main parties, including the Council, which is not seeking to rely on the provisions of paragraph 226.

However, Dorset Council is not proposing an alternative development strategy, and has not stated that it is revising the Regulation 18 and Regulation 19 stage. Dorset will still use the same plan that it is progressing and will examine it against the new system. The Regulation 18 Vision, Strategy Policies, Consultation Responses, and evidence (which is ongoing) will still inform the Dorset Local Plan moving forward. Hinkley and Bosworth Council, however, clearly state in their revised LDS that the development strategy that they consulted on 70% urban/ 30% rural is not viable. Dorset have not made such declarations and is progressing the same plan.

Conclusion

In the view of the Council it would produce an absurd result if the emerging Local Plan were treated as “abandoned” or “no longer applicable” simply as a result of the LDS. The result would be to take planning decisions on numerous different developments on the assumption that there was no emerging local plan. This would fly in the face of reality and produce decisions which would be divorced from reality.

In certain areas of legal interpretation there is a requirement for decision makers to disregard real events. The most well known of these is perhaps the disregard of “spent” convictions. There are other areas in which for specific social or practical reasons events and circumstances have to be disregarded.

However, there is no indication in the NPPF that an emerging plan should be disregarded. To do this in the current circumstances would produce distorted outcomes.

Planning policy has to be interpreted in a reasonable and sensible manner, which would not be the case here, if the emerging local plan were disregarded.

The object of the new NPPF was to reward LPAs which had been assiduously preparing their local plans, but the advice given by Mr Cairnes would have the opposite effect to what was intended by the new policy and penalise Dorset for its proactive work on the local plan.