



West Somerset Local Plan to 2032 (WSLP 2032) Proposed Modifications Representations on behalf of The Crown Estate (Representor ID 18), 15th July 2016

Response to Main Modifications (MM1-MM29) & Additional Modifications (AM1-AM19)

Summary

1.1.1 The Plan, incorporating proposed modifications, still unnecessarily constrains the supply of land for market and affordable housing and so conflicts with the NPPF, being not 'positively prepared' and restricting the ability to 'boost significantly' the supply of housing for the following reasons.

- ▶ The lack of a 5-year housing land supply: this is still not addressed in **MM1-MM29**. The Council quotes 5.86 years in Appendix C to the proposed modifications, however supply reduces to just 4.8 years at most when excluding 'early release' sites from the calculation. These early release sites have no planning status and are in conflict with adopted (Policy SP/5) and emerging local plan policy (Policy OC1). They cannot therefore be considered suitable or deliverable under NPPF footnote 11 and so should be removed from the calculation. 5-year supply cannot therefore be demonstrated in conflict with NPPF para. 47.
- ▶ Flawed approach to strategic site allocations and SA/SEA: **MM1-MM29** do not overcome the risk of relying on large strategic sites where the Council's viability evidence states that affordable housing delivery will be compromised despite being *the* critical issue facing the plan area¹. **MM5** shows that 80% of the overall housing need is for affordable housing.

As set out in our previous representations, the SA/SEA shows that the current strategy will deliver just a 'limited amount' of affordable housing² given its reliance on large strategic sites, with the risks to affordable housing delivery on strategic sites identified in EB4.

This is contrary to Para. 18 of the SA/SEA Planning Practice Guidance³ (PPG) and para. 152 of the NPPF by failing to test proper alternatives which could more positively address affordability issues (e.g. the allocation of a number of 'non-strategic' sites across the district). Para. 18 of the PPG is also clear that the SA/SEA should identify "*any likely significant adverse effects and measures envisaged to prevent, reduce and, as fully as possible, offset them.*" The significant adverse effects and measures to mitigate issues of affordability go wholly unaddressed in the SA/SEA process and are not considered in the selection of the preferred strategy. There is therefore a fundamental conflict with SA/SEA guidance and the NPPF.

¹ Page 24, EB4: "*The findings in Tables 4.2a and 4.2b also show that viability is compromised for the larger development scenario of 250 dwelling units and thus provision for affordable housing would need to be lowered to ensure such strategic housing sites enter the development pipeline in the Local Plan period. Viability becomes marginal and negative for the larger size development scenarios due to the longer development time and extra finance costs incurred due to compounding.*" (emphasis added).

² SD15 (SA Report), page A6, row 5a.

³ Paragraph: 018 Reference ID: 11-018-20140306.

- ▶ Unjustified approach to early release sites: The early release process is not effective or justified as it seeks to divorce these sites from the plan-making process (by not allocating them) but then seeks to rely on them to enable the plan to be found sound to help demonstrate 5-year supply (an incorrect approach as set out on page 1).

There are also wider issues with the selection of early release sites, discussed at length during the examination hearings, including a compromised SHLAA Panel with clear conflicts of interest, discredited SA process and no proper assessment of alternatives (it being the opinions of the SHLAA Panel / Council Members rather than SA and evidence). By not allocating these sites it appears that the Council is simply avoiding the necessary scrutiny including public consultation that would otherwise be necessary to inform their selection.

The benefit of identifying further sites through allocations is to provide confidence and certainty for developers, encouraging them to invest in the area by providing a choice and range of sites. Early release sites do not provide any of this certainty or confidence, only the Council's tentative commitment that they would be treated favourably at planning committee (an approach which is clearly questionable and open to challenge).

Additional site allocations are clearly need to enable a sound Plan, and one which is positively prepared, can boost the supply of housing and demonstrates a deliverable and developable land supply.

- ▶ Arbitrarily constraining growth in draft Policy SC1 and supporting text: the definitions provided in **MM3** are still in conflict with the NPPF being unjustified (para. 182) and not consistent with boosting the supply of housing (para. 47).
- ▶ Constraining future phases at Dunster Marsh: the effect of Plan is to constrain further phases of development at Dunster Marsh (SHLAA ref. DUM8) for no apparent planning reasons, in a sustainable and accessible location close to Minehead owned by a landowner committed to delivery. This is evidenced by the 54 homes (including 11 affordable units) which is already underway, working with local developer Strongvox Homes. To restrict further development at Dunster Marsh is unjustified given how critical delivery of market and affordable homes is for the plan area. The scope of modifications under **MM1-MM29** therefore needs to be expanded to include additional site allocations, including land at DUM8.

1.1.2 Any commitment to an early review does not address these fundamental matters of soundness, since this would still rely on the adoption of a plan whereby the Council cannot demonstrate a 5-year housing land supply. The plan would be rendered instantly out-of-date at the point of adoption under para. 49 of the NPPF.

1.1.3 The Plan therefore needs to be withdrawn and comprehensively reviewed to provide a spatial strategy and site allocations which provide deliverable and developable sites in accordance with NPPF para. 47 and enables the critical affordability issues facing the district to be addressed.

Further justification

1.1.4 The Inspector made clear in a letter to West Somerset Council (the Council) that:

“There is a clear consensus that the Plan as submitted is not sound for various reasons.”

(ED62 / para. 2).

1.1.5 However, it is clear that the proposed modifications do not address the various reasons discussed at length during the hearings, not least those fundamental conflicts with the various housing policies in the NPPF. The Plan, as modified, still fails to sufficiently address affordable housing needs and the need to allocate additional sites for development (to provide a 5-year supply of deliverable housing sites and developable sites for years 6-10 and 11-15).

1.1.6 By limiting the scope of the proposed modifications to simply changing policy wording and supporting text the fundamental matters of soundness affecting the Plan have not been addressed. Essentially, the underlying spatial strategy remains unchanged from the submitted version of the Plan. This strategy, which could exacerbate critical affordability issues by an overreliance on

strategic sites (viability challenges limiting affordable levels) combined with the lack of a deliverable and developable supply of sites overall conflicts with the NPPF.

- 1.1.7 Within the context of just minimal changes to the Plan it appears that the Council is presenting two solutions to the Inspector to help provide reassurance that the Plan can be found sound. However, both of these solutions are flawed, unsound and are in conflict with national policy.
1. Early release of sites to demonstrate 5-year land supply: On the basis of delivering 175 dwellings across 6 early release sites the Council's position is that it can demonstrate 5.86 year supply. Excluding these sites from the calculation leaves 4.8 years supply at most.

It is clear that there is no basis for including these sites in a 5-year supply calculation. The sites have no planning status whatsoever and being in conflict with adopted Local Plan policy SP/5 – *Development Outside Defined Settlements* (West Somerset Local Plan 2006) and emerging WSLP Policy OC1: *Open Countryside* they are not 'suitable' and therefore fail the test of deliverability in NPPF footnote 11. If the plan were adopted, the site would be instantly rendered instantly out-of-date by para. 49 of the NPPF.

Appendix 1 provides further justification as to why the early release sites have no basis for inclusion in the Council's deliverable 5-year supply. In our view, supply is just 3.7 years at most (given a persistent record of under delivery since the start of the plan period and application of a 20% buffer in accordance with NPPF para. 47). However, whether a 20% buffer applies or not it is clear that the Council cannot demonstrate a 5-year supply and has insufficient sites for years 6-10 and 11-15.
 2. Suggesting an early review of the Plan: The potential for an early review is identified in a report to Full Council dated **11th May 2016 (para. 4.21)**. This is not set out in the proposed modifications nor the latest draft of the WSLP to 2032. However, a commitment to an early review cannot make an unsound plan sound and does nothing to rectify the lack of a 5-year housing land supply and lack of developable sites for years 6-15.

The need to withdraw and resubmit the Plan

- 1.1.8 To continue to pursue the strategy as drafted could have clear social consequences for West Somerset's communities. With **MM5 / SC3 pp. 24-25** showing that some 80% of projected housing requirements is for affordable units (some 1,908 dwellings) the plan and accompanying SA/SEA fails to address this critical issue. In fact, the Plan is more likely to exacerbate the issue by relying on strategic sites which the Council's own evidence shows will struggle to meet affordable housing policy targets (given other infrastructure costs), and also risking delivery housing overall given lead-in times and no clear evidence on site infrastructure requirements, phasing or implementation. Concerns regarding delivery of the Council's housing trajectory and how realistic its assumptions are have still not been addressed (e.g. specific trajectories for each individual strategic site are still not presented, there is little evidence regarding infrastructure requirements or trigger points necessary to provide certainty, and issues regarding the capacity of markets like Watchet and Williton to accommodate the rate of annual growth have still not been addressed).
- 1.1.9 The Council's position during the hearings was to cite the lack of housebuilder interest and state that they were doing as much as they could. We disagree. The allocation of additional 'non-strategic' sites, will provide certainty, confidence and choice for developers and help encourage them to invest in West Somerset. The role of additional sites to provide developer confidence has already been recognised by the Council (**ED15 / para. 5.19**).
- 1.1.10 The allocation and release of land is the main planning tool at the Council's disposal and should not be resisted due to perceived market uncertainties or developer interest (which is what the Council appears to be suggesting). There is nothing in national planning policy to justify such an approach with the whole purpose of para. 47 in the NPPF and wider government policy is to boost housing supply.
- 1.1.11 During the hearings we identified the example of a site of 54 dwellings which is providing 11 affordable units in a sustainable and accessible location close to Minehead and the role of subsequent phases in delivering further growth, affordable housing and investment in community

facilities. Development is progressing swiftly following commencement of development in 2015 and first completions in summer 2016 with scheme completion due at the end of 2017. The WSLP 2032 would restrict further growth coming forward at Dunster Marsh for no clear planning reasons. The Plan therefore arbitrarily seeks to constrain housing growth when the need to expedite housing delivery and affordable housing provision is the critical issue facing the district.

- 1.1.12 As evidenced in The Crown Estate's submissions to the examination in **ED23 / Matter 6** its site options comprising DUM8 are at least as sustainable as both the strategic sites proposed in the Plan and those identified for early release. This includes a table to show how DUM8 is closer to secondary education, leisure and the range of higher order facilities on offer in Minehead than site options being proposed as Watchet, Williton, Washford, Stogursey and Carhampton. The site is also well-located in terms of public transport (A39 bus corridor) and pedestrian and cycle links into Minehead.
- 1.1.13 The proposed 'early release' sites do not provide any certainty regarding 5-year land supply or supply overall since they have no planning status, being unallocated and without the benefit of planning permission. Inclusion of these sites conflicts with NPPF para. 47.
- 1.1.14 We therefore see the only way forward as being to withdraw the plan and prepare and test a spatial strategy which addresses the district's affordability challenge, allocating a sufficient choice of sites underpinned by a robust SA. In doing so, The Crown Estate's landholding at Dunster Marsh should have a key role to play, as a landowner committed to delivery in one of the district's most sustainable and accessible locations close to Minehead on land which is already delivering both market and affordable homes.

MM3 / SC1 pp. 20-21

- 1.1.15 The definitions of 'limited development' and 'small scale development' remain unsound because they are unjustified, entirely arbitrary and have the effect of restricting the supply of housing. The lack of justification renders the definitions in conflict with NPPF para. 182 (justification being one of the four tests of soundness) and a policy which arbitrarily restricts housing land supply conflicts with the overall intention of the NPPF to 'boost significantly' the supply of housing (NPPF para. 47).
- 1.1.16 The settlement strategy for West Somerset should be based on a much fuller review of the role and function of settlements, their interrelationships and housing needs. At present, SC1, as modified by MM3, unnecessarily prohibits new development at Dunster Marsh, a settlement which has always been recognised as a sustainable and accessible location in both the adopted plan (which allocated 50 homes to the settlement) and initial draft of the Local Plan to 2032 (CD18 / Draft Preferred Strategy).
- 1.1.17 The implication of SC1 is that new development at Dunster Marsh would be restricted to just 17 dwellings over the remaining 16 years of the plan period against a wider context of the need to boost the supply of homes, address a critical affordable housing issue and need for additional sites to ensure choice in the housing market and provide a deliverable housing trajectory (explored in more detail in the following sections of these representations).

MM4 / SC2 pp. 22-23

- 1.1.18 MM4 does nothing to address the clear lack of 5-year supply as previously explained in these representations (para. 1.1.7) and evidenced in Appendix 1. Policy SC2 therefore remains in conflict with NPPF Para. 47. In addition, there is further conflict with para. 47 evidenced by confusion at the hearings regarding what the Full Objectively Assessed Housing Needs is and the appropriate Housing Market Area upon which to base this. MM4 does nothing to clarify these issues.

MM5 / SC3 pp. 24-25

- 1.1.19 MM5 evidences the key challenge facing the plan area: that 80% of West Somerset's housing need is for affordable housing. The Plan, as amended by the proposed modifications, still fails to address this critical issue by relying on strategic site allocations (where viability will restrict the



ability to achieve affordable housing targets) and the Council's resistance to allocating non-strategic sites which could have lower infrastructure costs and enable affordable housing targets to be met. The Council has still decided to pursue a strategy where its own SA and viability evidence shows that affordable housing delivery will be compromised, entirely at odds with the NPPF.

MM7 / MD2 p. 32

- 1.1.20 MM7 needs to recognise the key role of Dunster Marsh to meeting housing needs in the Minehead / Alcombe / Dunster Marsh area as raised in The Crown Estate's previous representations to the Plan (see **ED23 / Matter 6** in particular). This was previously accepted and proposed in an earlier draft of the Plan (**CD15**) and the Council has provided no proper justification for the current approach.
- 1.1.21 The two apparent reasons for rejecting the site relate to flood risk and access to services, however both reasons are unjustified. In terms of flood risk we propose development only in Flood Zone 1. In terms of access to services, our previous submissions show how the site is ideally located close to Minehead via public transport, pedestrian and cycle links (and better located for access to Minehead college, leisure and town centre services than other site allocations being pursued). As part of a comprehensive masterplan for Dunster Marsh, our previous submissions also show how a new community facility could also be provided for the village.

Author

Reviewer

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David Fovargue

.....
Neil Hall

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Appendix 1 5-year supply review

- 1.1.22 NPPF para. 47 requires a deliverable supply of housing sites for the first 5 years of the plan period with developable sites for years 6-10 and 11-15. The Council cannot demonstrate this.
- 1.1.23 The Council's quoted supply of 5.86 years (detailed in Appendix C to the proposed modifications) is predicated on 175 dwellings from 6 'early release' sites (MIN4, MIN5, MIN30, MIN41, SGR3 and WAT9) which have no planning status whatsoever and are not 'deliverable' under the definition provided in NPPF footnote 11:
- "To be considered deliverable, sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years and in particular that development of the site is viable. Sites with planning permission should be considered deliverable until permission expires, unless there is clear evidence that schemes will not be implemented within five years, for example they will not be viable, there is no longer a demand for the type of units or sites have long term phasing plans".*
- 1.1.24 Planning Practice Guidance (PPG) Paragraph (031 Reference ID: 3-031-20140306) states:
- "Deliverable sites for housing could include those that are allocated for housing in the development plan and sites with planning permission (outline or full that have not been implemented) unless there is clear evidence that schemes will not be implemented within five years.*
- "However, planning permission or allocation in a development plan is not a prerequisite for a site being deliverable in terms of the five-year supply. Local planning authorities will need to provide robust, up to date evidence to support the deliverability of sites, ensuring that their judgements on deliverability are clearly and transparently set out. If there are no significant constraints (e.g. infrastructure) to overcome such as infrastructure sites not allocated within a development plan or without planning permission can be considered capable of being delivered within a five-year timeframe."*
- 1.1.25 The key ruling testing the definition of a 'deliverable' site is Wainhomes (South West) Holdings Ltd v The Secretary of State for Communities and Local Government [2013] EWHC 597 (Admin) (25 March 2013). This ruling principally involved the inclusion of draft strategic site allocations as part of a Council's 5-year land supply. The court accepted the rationale for seeking to include them as part of 5-year supply on the basis that they were identified as a result of the local planning authority's responsible attempt to comply with para. 47 of the NPPF. However, the judgement was clear that whether or not such sites can truly be considered deliverable and included in 5-year supply is dependent on *"the quality of the evidence base, the stage of progress that the draft document has reached, and the knowledge of the number and nature of the objections outstanding. What cannot be assumed simply on the basis of inclusion by the authority in a draft plan is that all such sites deliverable."* (emphasis added).
- 1.1.26 What West Somerset Council is seeking to do in this case is include early release sites which do not have the status of draft allocations and with no justification that they could be delivered within 5 years being in direct conflict with both adopted and emerging development plan policy⁴ (lying beyond defined settlement boundaries). No evidence is included to substantiate their inclusion in the 5-year land supply calculation and the Local Plan committee's decision does not affect their planning status or suitability in any way.
- 1.1.27 These early release sites are proposed entirely outside of the plan-making process and have simply been selected by Officers and Members with no public consultation or proper site selection process. Their selection was entirely arbitrary based on a flawed SA and a SHLAA Panel with no

⁴ If they were determined against the adopted development they would be in conflict with Policy SP/5. If at some point in the future they were determined against an adopted WSLP to 2032 they would be in conflict with Policy OC1: Open Countryside Development.

transparency and clear conflicts of interest. The shortcomings with the SA and SHLAA Panel were clearly recognised during the examination hearings.

- 1.1.28 Whilst these sites have no planning status, the Council's use of them is fundamental to the soundness of the Plan because they are seeking to rely on them for the purposes of demonstrating a 5-year housing land supply.
- 1.1.29 Removing these early release sites from the calculation, 5-year supply reduces to 4.8 years at most, and that is assuming a 5% buffer (see Table 1). However, what is also now clear following the close of the examination hearings, particularly following publication of completions for 2015/16 (just 99 dwellings) is that a 20% buffer should now be applied. As demonstrated in Table 2 since the start of the current plan period (2012) the Council has achieved its annual housing requirement just once (in 2014/15). Regardless of whether the 145 dwellings per annum or 122.5 dwellings per annum target is applied there can be no doubt that there has been a persistent record of delivery since the start of the plan period.
- 1.1.30 This reduces land supply to just 3.7 years against the plan-wide average requirement of 145 dwellings per annum (dpa) (note that the suggestion of phased policy in MM4, whereby 122.5 dpa is provided in the first six years of the Plan conflicts with NPPF para. 47 to boost significantly the supply of housing). Even if 122.5 dpa were applied, supply is still just 4.2 years.
- 1.1.31 Whichever approach is taken, the Council cannot demonstrate a 5-year supply of housing land. Additional sites are therefore needed.

Table 1: Review of 5-year housing land supply position

Housing requirement 2016/17-2020/21	Council's quoted supply	Excluding 'early release sites' (175 dwellings)
Council's approach (from Housing Trajectory, Appendix C to Main Modifications) with a 5% buffer	974 / 5.86 years	799 / 4.8 years
Requirement 2016/17-2017/18: 244		
Requirement 2018/19-2020/21: 465		
Shortfall 2012/13-2015/16: 83		
Requirement + 5% buffer = 832		
Council's approach (from Housing Trajectory, Appendix C to Main Modifications) with a 20% buffer	974 / 5.12 years	799 / 4.2 years
Requirement 2016/17-2017/18: 244		
Requirement 2018/19-2020/21: 465		
Shortfall 2012/13-2015/16: 83		
Requirement + 20% buffer = 950		
Amec Foster Wheeler's approach (145dpa rolled across whole plan period) with a 20% buffer	974 / 4.5 years	799 / 3.7 years
Requirement 2016/17-2017/18: 290		
Requirement 2018/19-2020/21: 435		
Shortfall 2012/13-2015/16: 175		
Requirement + 20% buffer = 1,080		



Table 2: Why West Somerset is a 20% authority

	2012/13	2013/14	2014/15	2015/16
Completions	67	84	155	99
Against overall plan requirement 2012-2032 (145dpa)	-78	-61	+10	-46
Cumulative performance against 145dpa	-78	-139	-129	-175
Against 2012/13-2017/18 plan requirement (122.5dpa)	-55.5	-38.5	32.5	-23.5
Cumulative performance against 122.5dpa	-55.5	-94	-61.5	-85

Key

- Minimum requirement not achieved
- Minimum requirement achieved