

## **EXAMINATION OF THE UPLYME NEIGHBOURHOOD PLAN 2016-2031**

### Examiner's initial consideration of issues arising from the representations; initial conclusions; general comments and list of questions for clarification

I have undertaken an initial assessment of the submitted plan against the requirements of the Act<sup>1</sup> and Regulations<sup>2</sup>. In this assessment account has been taken of the representations made on the plan following its submission to the East Devon District Council (EDDC). The questions are addressed to the Uplyme Parish Council (UPC) who, as the Qualifying Body, may wish to indicate whether or not they consider it might be appropriate or necessary for me to recommend that modifications be made to the plan in order that it meets the 'basic conditions'<sup>3</sup> and otherwise satisfies the statutory requirements. Introductory notes and comments are given in *italics*. Where they express a preliminary opinion about compliance with basic conditions they are open to comment in turn.

### Period covered by the plan and need for review

1. *Section 38B(1)(a) of the Town and Country Planning 1990 Act states that a neighbourhood development plan must specify the period for which it is to have effect. This is clearly stated on the front cover as being 2016-2031 and it is explained in the Foreward that the end date is to coincide with the adopted East Devon Local Plan period of 2013-2031. There are, however, some questions which arise from this:-*

- a. It is now April 2017 and the plan has several stages to progress before it can be 'made' and come into effect. Would the QB wish the start date of the final plan to be 2017 or some other date? (*I would treat this as an 'error' for the purpose of any modification along with all other required updates*).

*Also in the Foreward it is stated that although the plan runs until 2031 it 'may need to be reviewed before then'. However, the evidence for affordable housing allocations is derived from the 2014 Housing Needs Survey which identified need for a only a 5 year period, i.e. until 2019.*

- b. Have any affordable houses for rent become available since 2014, either in the parish or elsewhere, to meet any of the identified housing need?

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<sup>1</sup> The Town and Country Planning Act 1990, as amended by the Localism Act 2011 and the Housing and Planning Act 2016

<sup>2</sup> The Neighbourhood Planning (General) Regulations 2012 and amendment regulations 2015

<sup>3</sup> See section 8(2) of Schedule 4B to the Town and Country Planning Act 1990

*The three 'exception' sites identified in Policy UHG4 would provide for between 16 and 19 houses, of which, if around 66% are affordable, would mean only between 11 and 13 in that category. That would be barely enough to meet the need identified in paragraph 6.1.4.*

- c. Does this not suggest that a review will be required, including a new Housing Needs Survey, well within the next 5 years in order to ensure that Strategic Objective A. 'to satisfy the diverse housing needs for all' can continue to be met?
- d. A number of policies in the plan appear to relate to proposals which are likely to be implemented within a relatively short time span. Is it realistic to state that the plan, in reality, provides an adequate policy framework for the development in the parish much beyond a 5 year time horizon?

#### Plan content and policy wording

2. *Although it is recognised in Government guidance on the form and content of neighbourhood plans that they may be aspirational in content it is stressed that the plan can only contain policies which relate to the development and use of land. As stated in Planning Practice Guidance (PPG) 'Wider community aspirations than those relating to development and use of land can be included in a neighbourhood plan, but actions dealing with non land-use matters should be clearly identifiable. For example, set out in a companion document or annex.'<sup>4</sup>*

*Most of section 9 in the plan and the two UTR policies are dealing with highway safety improvements including those for pedestrians. Matters relating to the management of traffic are either not land-use matters at all or of an aspirational nature. They are not, therefore, appropriate to include within the statutory part of the plan but, as quoted from the PPG, will need to be set out in an annex or companion document.*

Q2. Is it accepted that the whole of section 9 of the plan should be moved to an appendix or annex to the plan?

3. *It is also stated in the PPG that 'A policy in a neighbourhood plan should be clear and unambiguous. It should be drafted with sufficient clarity that a decision maker can apply it consistently and with confidence when determining planning applications. It should be concise, precise and supported by appropriate evidence.'<sup>5</sup>*

*The 'decision-maker' will be the Local Planning Authority or an Inspector or the Secretary of State on appeal. Many policies are phrased in terms of development being 'supported' provided that certain criteria are met. This is an imprecise turn of phrase because the decision on an application can only be to either refuse or grant permission, sometimes subject to*

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<sup>4</sup> Reference ID: 41-040-20160211

<sup>5</sup> Reference ID: 41-084-20160519

*conditions. It is not appropriate to use Neighbourhood Plan policies to indicate the response the Parish Council might make when consulted upon an application. Be that as it may, in most instances the word 'support' can be taken as being synonymous with 'approve' or 'permit'. In a similar vein, the only way development can be 'resisted' (Policy UEN7) is by a refusal of permission. Nevertheless, the intention behind these policies is not so unclear that the plan could be held to fail to satisfy a basic condition for that reason alone. However, there is some variation on the wording which may cause difficulty in policy application. The Qualifying Body is requested to consider alternative wording for the following policies with the PPG advice in mind:*

*Policies UHG5 - 'favourably considered' and UEM3 - 'should be favourably considered'. Does that mean 'approved'? All applications must be 'considered' and on their individual merit in the context of development plan policy. Why say 'should be'?*

*Policy UCF1 - 'fully supported' and Policy UCF3 - 'especially supported'. Such adverbs of degree are superfluous in policy terms. Permission is either granted or it is not.*

4. *Need for updating. It is clearly desirable that the plan should be as up-to-date as possible at the time it is finally 'made'. There are several references to procedural matters, for example in section 2.2, which will either be irrelevant or out-of-date by the time the plan is 'made'. I am only able to make recommendations for modifications to update the plan if I treat them as 'errors'.*

The Parish Council is invited to provide a list of amendments that might be recommended as modifications in order to ensure that the plan is as up-to-date as possible when finalised.

### Main Issues

5. *Affordable Housing Provision. Please refer to the questions addressed to the Local Planning Authority on this matter and to my questions 1b. and 1c. above. In particular, the Parish Council is invited to comment on the adequacy of the 2014 Housing Needs Survey as a basis for the identification of the affordable provision on the 3 'exception' sites listed under Policy UHG4. Question:-*

*Q5a. It is stated in Policy UHG4 to the proposed development at Masters Close would 'round-off the recently developed affordable housing scheme'. Has that development been completed since the 2014 Housing Needs Survey and has it gone towards meeting any of the need identified at the time?*

*I have read the note produced by the UPC in response to representations that rural affordable housing exception sites cannot, by definition, be allocated in the plan. This provides me with sufficient information to be*

*able to reach a conclusion on the issue in my report. However, the following question arises:-*

Q5b. What work has been undertaken to establish whether there is any potential for further housing development within the BUAB either as existing or proposed?

6. Amendments to the BUAB. *The Parish Council is invited to comment on the position on the status of the amendments to BUAB as proposed in NP Policy UHG1. There is no reason, in principle, why the amendments cannot be confirmed by the Neighbourhood Plan but the position must be made clear.*

Q6. What is the preferred approach of the UPC to the treatment of the BUAB in the UNP?

#### Comments and questions relating to individual plan policies

#### **Policy USD1 Presumption in favour of sustainable development**

7. *Although this policy is closely modelled on paragraph 14 of the NPPF with regard to decision-making and is clearly intended to signal a positive stance towards sustainable development, the precise wording may cause difficulties in implementation. That is because paragraph 14 relates to 'the development plan' as a whole, of which the Neighbourhood Plan is only part. As currently worded the policy provides that the 'presumption in favour' will apply if the Neighbourhood Plan in isolation is silent on a particular matter. That may not be what was intended.*

Q7. In what way is policy USD1 intended to assist the decision-maker when determining planning applications? Does it add to the guidance in paragraph 14 of the NPPF or might it cause uncertainty should a proposal require assessment against a local plan policy covering a matter upon which the Neighbourhood Plan is silent?

#### **Policy UHG1 – Built-up Area Boundary**

8. *Please refer to the questions raised on this policy with the EDDC. As currently framed the policy will cause uncertainty for landowners and plan-users.*

Q8. Is it the wish of the Parish Council that the Neighbourhood Plan should be taken as introducing amendments to the BUAB now?

#### **Policies UHG3 and 4 – Exception housing development (sites)**

9. *Whereas Policy UHG4 clearly allocates three 'exception housing sites' the purpose of Policy UHG3 requires clarification. In particular, the inclusion of the reference to self-build, conversions and agricultural/forestry*

*dwellings as 'exceptions' may cause confusion. I have no particular difficulty with the inclusion of cross-references to the NPPF or EDLP policies in brackets but it appears that the main reference should be to EDLP Policy Strategy 35.*

Questions:-

9a. What exactly is intended by policy UHG3? Is it saying that rural housing exception sites in addition to those listed in Policy UHG4 will be approved provided that they meet all other NP policies?

*The cross-references in brackets in policy UHG3 are to EDLP Strategy Policies 6 and 7 rather than to Strategy Policy 35. Under those EDLP Policies development in the countryside (outside a BUAB) is only permitted where it is in accordance with a Neighbourhood Plan policy 'that explicitly permits such development'. Policy UHG3 permits 'the conversion of suitable existing buildings' but does not specify where or for what use(s). Conversions of existing buildings in the countryside are explicitly permitted by UNP Policies UHG5 and UEM3 although not for use as holiday accommodation and there is no explicit policy to permit other types of development in the countryside.*

9b. What is the intention behind the reference to self-build schemes, conversions and agricultural/forestry dwellings in the second paragraph of the text under paragraph 6.1.3 (*which is not policy*)?

9c. Are those categories of development intended to be permitted 'exceptions' to EDLP Policy Strategy 7 by virtue of the last paragraph in EDLP Policy Strategy 6?

9d. Does the term 'exception sites' in Policy UHG2 apply to those covered by Policy UHG3 as well as UHG4?

9e. Is it intended that housing development outside the BUAB should be permitted purely on the basis that the proposal is for a self-build dwelling? Does that mean that provided it is self-build it can be built anywhere in the parish provided other NP policies are satisfied? Would such a policy be in general conformity with the EDLP and/or have had regard to national policy?

9f. What NP policy applies to proposals for the conversion of existing buildings for holiday accommodation and for agricultural or forestry buildings or are EDLP Policies E16 and H4, respectively, adequate for the purpose?

*The term 'rural exception site' (for affordable housing) has a particular meaning in the NPPF and EDLP Strategy 35. The EDDC have pointed out, correctly, that the Government have not, to date, indicated that self-*

*build housing would be appropriate on rural exception sites and that category is not included under EDLP Policy Strategy 35.*

9g. Is the absence of reference to EDLP Policy Strategy 35 from the cross-referenced policies (in brackets) in NP Policy UHG4 an error? Does the UPC accept that, for the time being at least, self-build housing does not come within the definition of affordable housing for the purposes of Government policy?

9h. *A representation has been made against the inclusion of a paragraph at the bottom of page 19 in the plan, under paragraph 6.1.5, to a site on Harcombe Road, Raymond's Hill.* What is the justification for the inclusion of this paragraph? Although the site is included as site 8 in Appendix 6 of the SEA appendices the statement has no policy status. Might it increase uncertainty and prejudice the LPA consideration of any application?

*(I will deal in my report with the issue as to whether exception sites can be allocated or should be called something else.)*

#### **Policy UHG5 – Rural building conversions for residential use**

10. Q10a. Is it accepted that, for clarity, the term 'in rural areas' should read 'outside the built-up area boundary'?

Q10b. In the plan text, paragraph 6.1.6, it is stated that 'the Plan proposes that the conversion of rural buildings, other than those in isolated locations with no nearby built development' (*My emphasis*). Should that be stated in policy and does it adequately reflect Government policy? How should the words 'isolated' and 'nearby' be interpreted? Would the visual impact of the formation of a completely new access be a factor to be considered?

#### **Policy UEM1 - Business development**

#### **Policy UEM2 - Promote range of businesses**

#### **Policy UEM3 - Conversion of rural buildings (for business uses)**

11. The EDDC raise an issue about the sustainability of the development of businesses in the countryside and the provisions of EDLP Policy E5 which requires them to be well related in sustainability terms to the village. (*Examiner's note: EDLP Policy E5 is not a strategic policy. These NP policies would, therefore supersede EDLP policy*)

Q11a. Should a criterion be included in these policies relating to the sustainability of the particular location?

Q11b. Is Policy UEM2 intended to apply only to existing businesses?

Q11c. Does the term 'in rural areas' in policy UEM3 mean outside the BUAB of Uplyme?

## **Policy UEM4 – Tourism Uses and development**

12. *See note under 11 above. The same would apply to EDLP Policy E16.*

Q12. Should a locational criterion be included in Policy UEM4 in order to ensure that the plan 'contributes to sustainable development' or are there particular factors applying in Uplyme which justify a different approach?

## **Policy UEM5 – Business Centre**

13. *A specific issue has been raised in a representation on the future use of the existing school site buildings which casts doubt on the suitability of the buildings for re-use as a business centre?*

Q13a. To what extent does the implementation of this proposal depend upon the resources available for the building of a school on a new site as proposed in policy UCF2?

Q13b. In view of the wishes of the school trustees with regard to the redevelopment of the school site for housing how likely is it that this policy can be implemented?

Q13c. What is the justification for re-using the buildings as a business centre? Has the viability of such a scheme been tested?

Q13d. Irrespective of the views of the plan steering group, why has the redevelopment of the school site for residential development not been evaluated as an option in the plan?

## **Policy UCF3 – Sporting/recreational facilities**

14. *The EDDC raise a point about the distinction between 'support and 'especially support' (see note 3 above). Degrees of support are irrelevant for plan purposes.*

Q14. Is it accepted that any new sports or recreational facilities should be locationally well-related to the village? Would other locations 'contribute to sustainable development'?

## **Section 10.1.2 – Conservation Area**

*It is recognised in the last paragraph in this section that the Neighbourhood Plan is not the place to propose the designation of a Conservation Area. Any reference to it should, therefore, be distinct from the statutory land-use policies of the plan, which it is not at present. It will need to be moved to an appendix. As it is not a 'proposal' of the plan it should not be shown on the Proposals Map.*

### **Policy UEN5 – Trees and hedgerows**

15. *The EDDC make a point about the clarity of the wording in this policy which appears to apply to any development of whatever scale.*

Q15. Is it accepted that the wording of this policy should be amended to make it clear that it only applies to 'new housing or business development' and not to minor development or the re-use of existing buildings?

### **Policy UEN7 – Green Space in Uplyme**

16. *It is clear from paragraphs 76-78 of the NPPF that the designation of Local Green Space should only be applied if it meets all of number of strict policy criteria. Additional guidance is to be found in the PPG. It is not a designation which is appropriate in most cases and should not be applies to extensive tracts of land. The policy context is also clear.*

Q16a. Should the policy make reference to the need to demonstrate that 'very special circumstances' should be demonstrated to justify inappropriate development in such areas?

Q16b. What forms of development might be regarded as 'not inappropriate'?

Q17c. Are there any factual points the UPC would wish to make regarding the planning history of 'area E'?

### **Appendices**

*The appendices in the submitted plan fall within two categories. There are those which identify, by way of an OS map, the geographical extent to which particular plan policies apply. Those are only Appendices A, F and I. All of the others are of a non-statutory, informative nature. That will need to be made clear.*

*John R Mattocks*

Examiner

18.04.17