

WEST OXFORDSHIRE LOCAL PLAN EXAMINATION**INSPECTOR'S PRELIMINARY FINDINGS – PART 2****Housing supply and delivery; affordable housing and requirements for particular housing needs; viability; and Traveller policy****1. Introduction**

1.1 As I made clear at the hearings on Issues 3 and 4, many of the matters being discussed at those hearings may need to be discussed again if the Examination is suspended for further work on the housing requirement. If the housing requirement is increased the deliverability of a 5 year supply will need to be reassessed. If the Examination is suspended for 6 months or so, circumstances affecting the likely start on various sites may well change. Consideration of the detail of the affordable housing policy and viability will need to be reviewed in the light of the Government's emerging proposals, particularly with regard to Starter Homes. Accordingly, on many matters in this note, I do not come to a firm conclusion, but aim to highlight matters of potential concern and to encourage the Council to be alert to possible difficulties that may arise which should be addressed during any suspension.

2. Housing supply and delivery*Allocations in the plan and other major sites*

2.1 The *merits* of the allocations made in the plan were not discussed at the hearings in November 2015. The position of the Council and of the site promoter/landowner regarding the likely start date and subsequent rate of housing delivery on each major site/allocation is set out in WOLP14, 15, 16, 17, 18, 19. The Council is relying on some delivery from all of these sites to contribute to the current 5 year supply assessment, so the likelihood of an early start on these sites is an important consideration.

2.2 The landowners/promoters of the greenfield sites allocated in the plan at East Witney, North Witney and East of Chipping Norton are all seeking to increase the residential capacity of the allocations and to make various other changes to the policy for their allocation. Accordingly, there is the possibility that they will delay the submission of planning applications until well after the completion of the Examination. But at the hearing they all indicated that they wanted to make progress on their sites rather than wait. I accept that if they use the period of any suspension to progress master plans in discussion with the Council, then those may help resolve some of the current disputes and minimise delays. The Council will need to be alert to slippage in likely start dates on these major sites.

2.3 In relation to East Winey, the Council envisages an application in Autumn 2016 and the first dwellings complete in Spring 2018. The developer envisages first completions in Winter 2018 (WOLP16). I consider that there is currently a high risk of delay to progressing this site because the main parties involved have some conflicting aims.

2.4 The Council expects the developer to pay for the whole cost of the Shores Green Slip Roads (SGSR). The landowner accepts that the site could not be built-out without this scheme in place, but disputes having to meet its full cost, given that it is needed to address existing traffic problems. So the landowner may not want to progress the

matter quickly unless the Council's position changes. In any case, the landowner of the allocation does not own all the land needed to deliver the SGSR to the design required by the Highway Authority (HA). Whilst the landowner does control sufficient land for an alternative slip road design, this is not acceptable to the HA.

2.5 One of the owners of the additional land necessary for the slip road design required by the HA is promoting an additional/alternative housing site nearby and so may, understandably, have little interest in facilitating the East Witney scheme by resolving the land ownership issue quickly. The Council has indicated a willingness to use a CPO to acquire needed 3rd party land, but a CPO should always be a last resort and is unlikely to be a speedy process.

2.6 Whilst all the main parties agree that some (as yet unassessed) housing could be built before the SGSR are open, I cannot see that the landowner would want to submit a planning application, let alone the Council grant permission (assuming all other matters are satisfactory) unless there is the ability to deliver a road scheme which is acceptable to the HA and with secure funding in place to meet the full cost. All these difficulties might be resolved expeditiously, but the Council needs to more aware of the risk of delivery slipping considerably.

Windfalls

2.7 The plan (paragraph 5.34) relies on 2,000 dwellings as small site windfalls (below the threshold of 10 dwellings used in Strategic Housing Land Availability Assessment) in the period 2015-2031 to help deliver 10,500 homes overall. The assumed annual rate is 125 dwellings per annum (dpa). Since 2001 the annual rate of delivery of small site windfalls has averaged 175 dpa. There is little evidence either way to indicate whether this level might be sustained over the plan period, but given the test in NPPF (paragraph 48), it is right to take a fairly cautious approach. I consider that the assumed rate of 125 dpa is a reasonable and necessary discount from the past average to reflect inevitable uncertainty, including how the emerging policies in this plan (see below) might affect decisions on planning applications for small housing sites.

2.8 In the Council's calculation of the 5 year supply, only 130 additional windfalls are assumed for the whole 5 year period to 2020 to avoid double counting with small site permissions (HOU5, Table 1 line Q). This is necessary and reasonable. So the annual rate of 125 is applicable for 11 years only from 2020. The total to be delivered from small sites windfalls is thus 1,505 (11x125+130), not 2,000. In the plan, each housing delivery table for each of the 5 sub-areas includes homes completed and existing commitments (permissions and Council resolutions to grant) at 1 February 2015, but also 400 windfalls (one fifth of 2,000). There is therefore double counting in these tables. The tables need adjusting to reflect the correct approach adopted in the 5 year supply assessment.

2.9 Finally, the equal apportionment of the windfall allowance between the 5 sub-areas is not justified by evidence. For example, the table in the Council's hearing statement shows that small sites windfalls in the Chipping Norton sub-area have been significantly fewer than elsewhere. The apportionment should reflect actual likely delivery (pro-rata for the discounted rate of 125 dpa). It will be for the Council then to consider what consequential changes need to be made to the housing delivery tables (ie whether to identify more housing to be delivered on allocations or adjust sub-area totals).

2.10 In my Part 1 Note I have already questioned the Council's expectation of large site windfalls in relation to affordable housing delivery.

SHLAA sites

2.11 The local plan makes several strategic allocations, but does not allocate all the remaining sites necessary to deliver the housing requirement over the plan period. However, in each of the sections dealing with 5 spatial sub-areas, the text of the plan lists specific sites which were identified as suitable/deliverable/developable in the SHLAA, July 2014 (HOU6). The housing delivery tables for each sub area include a figure for delivery from SHLAA sites which is precisely the total capacity of the listed SHLAA sites. The SHLAA sites listed in the plan are the *only* sites identified in the SHLAA as suitable/deliverable/developable, so there is no menu of SHLAA sites from which possible allocations can be chosen. The listing in the plan are de-facto allocations, but without the clarity created by allocations properly made. In a commentary on my hearing agenda (IN 011) I set out my concern with this approach to identifying and relying on specific SHLAA sites in the plan, but not actually allocating them. My concern is shared by a number of parties and the Council accepted the general thrust of the point, noting that this situation arose from the evolution of the document from a strategic plan to a more comprehensive local plan.

2.12 I therefore confirm that in any further work the Council will need to include in this plan sufficient additional site allocations to support the delivery of an on-going 5 year supply. As a minimum, allocations should ensure adequate delivery for sufficient time to allow for any subsequent plan to be adopted which made further allocations. No specific SHLAA sites should be identified in the text. The tables on housing delivery should clearly identify the various sources of supply, such as allocations made in the current plan and then a quantum of housing to be delivered by allocations in a subsequent plan (if this is the chosen way forward).

2.13 The SHLAA (or any subsequent update) would remain important evidence to demonstrate that the scale and general location of any further required allocations was achievable. Not listing specific SHLAA sites in the plan allows for other sites to be considered fairly in the future (such as where additional information demonstrates that a previously rejected SHLAA site is now suitable/developable). Given the need for these changes, I do not need to make any comment on the assessment of sites in the SHLAA. Any new allocations made in the plan would need to be assessed for soundness in the usual way. The choice of any such allocations would also need to be informed by Sustainability Appraisal, which had assessed reasonable alternatives.

5 year supply calculation

2.14 It is appropriate to consider whether there has been persistent under delivery over a long time period, such as 10 years or more, to incorporate the full economic cycle. In my Part 1 Note, I referred to the substantial over-delivery that had taken place between 2006-2011 compared with the requirement of the South East Plan. Delivery in recent years has been well below the requirement in the submitted local plan, but taking a 10 year period as a whole it would not be reasonable to conclude at present that there had been persistent under-delivery. Accordingly, only the normal 5% buffer is currently required. If delivery continues to be below that which is required, future decision makers may take a different view. The Council would be in a more robust position going

forward if the plan creates a 5 year supply with a buffer greater than 5%, thus allowing for any unexpected delays on some sites.

2.15 On the basis of the plan's current requirement of 525 dpa there has already been a shortfall in delivery since 2011 of 885 dwellings. National Guidance seeks any such shortfall to be made up in the next 5 years. On the Council's own assessment of land supply this is achievable and so the Council accepts that an alternative approach could not currently be justified. If the housing requirement is increased, the shortfall will be greater and may need further action to address. The Council needs to have particular regard to National Guidance on this matter, as the "Liverpool method" (spreading the shortfall over the whole plan period) is not mentioned. In passing, I would comment that the Council's calculation (HOU5, Table 1) appears to apply the 5% buffer only to the normal annualised requirement and not to the shortfall. It should apply to both since the buffer is intended to boost supply to give greater confidence that the overall housing requirement will be delivered.

3. Other housing related policies

Settlement Hierarchy and Rural Areas

3.1 The 3 tiers of named settlements in table 4.1 of the plan is justified on the basis of the *Settlement Sustainability Report 2013*. I have seen no evidence of substance to undermine the Council's assessment.

3.2 The 4th tier of this table and policies OS2 and H2 group together small villages (unnamed), hamlets and open countryside. In these areas, new residential development would be limited to those categories listed in H2, part 2 (eg reuse of buildings, dwellings necessary for rural workers/businesses, rural exceptions sites and a few other specific exceptions).

3.3 National Guidance on Rural Areas states: *However, all settlements can play a role in delivering sustainable development in rural areas – and so blanket policies restricting housing development in some settlements and preventing other settlements from expanding should be avoided unless their use can be supported by robust evidence.* (Paragraph: 001 Reference ID: 50-001-20140306). Many of the small villages and hamlets being treated as open countryside may have no services or facilities.

Furthermore, even if some do have some provision, I have seen no evidence that a small amount of additional housing would make any real difference to the viability or long term retention of services or facilities. I thus consider that the Council is justified in taking a cautious approach to further residential development in such small settlements. Policy HS2 provides a number of opportunities to meet locally justified needs. Providing indiscriminately for further additional development in these small settlements, such as by an overall quantum of development to be shared between them, would not directly contribute to sustainable development.

3.4 Neighbourhood plans enable communities to identify their own development needs, but such plans must be in general conformity with the strategic policies of the development plan. To ensure that communities in small villages have the opportunity of identifying small-scale residential (or other) development in addition to the categories in policy HS2, the policy should include an additional category, along the lines of: *such other small scale development as identified in a made Neighbourhood Plan*. This would provide the strategic policy 'hook' for such neighbourhood plans to remain in conformity

with the development plan. Any such housing would be additional to the 10,500 dwellings proposed in the plan and so any uncertainties about delivery would not have any wider implications.

Development management requirements in relation to housing delivery

3.5 I had previously indicated (IN 006, paragraph 3.13) that the parallel, but overlapping lists of criteria for development management in policies OS2 and H2 are confusing and will undermine effectiveness. I invited the Council to prepare an amended list, with any criteria in H2 being only those additional criteria necessary for housing developments. This suggested revised list was discussed at the hearing. I remain of the view that duplication and lack of clarity in the submitted policies needs to be avoided as it is likely to hinder rather than facilitate clear decision-taking. The lists should be simplified. There are probably several sound ways of rewriting the criteria. The Council should have regard to the following in proposing changes.

3.6 Firstly, are all the criteria necessary (eg on protecting local landscape and flooding) given the specific policies in the plan on a number of these matters (eg policies EH1 and EH5)? The plan should be read as a whole. Not all the later general policies of the plan are given a 'hook' in the general principles in OS2/H2, so why highlight some of them at all? It is often difficult to express correctly in a short summary criterion the comprehensive and balanced policy approach which is required, which has to be covered in a full policy. Where any such criteria are retained, great care is needed to be consistent with wording in national policy and with the other policies in the plan on the same topic.

3.7 Secondly, consider whether some of the criteria are intended to apply only to unallocated sites, since necessary allocations might result in some adverse impact on matters such as the setting of settlements and so on. Thirdly, be clearer as to the purpose of the criterion and how it would actually apply in practice - what does it require an applicant to do, is this reasonable and how would it be applied in decision making? For example, what does the requirement to *make use of previously developed land where available* mean in relation to a small scale housing proposal on a greenfield site on the edge of an identified settlement? This consideration would seem more relevant to plan-making and the selection of allocations than individual applications. Finally, the Council has already accepted that the criterion to *be of demonstrable benefit to the local community*, is not needed (WOLP38, FM14) and that the criterion relating to superfast broadband needs amending to be deliverable by developers (FM15).

3.8 In the light of the National Productivity Plan and the outcome of the Housing Standards Review, the Council has suggested amendments to policy OS3 and related text (eg WOLP38 FMs 6, 7, 8, 9, 10, 11, and 12). However, I am concerned that the suggested requirement for all development proposals to be *sustainably designed and constructed* is too generalised and vague for applicants to know what has to be achieved. Given that energy efficiency standards for housing are to be set only in the Building Regulations and the demise of the Code for Sustainable Homes, I consider that the requirement is not justified.

3.9 To avoid contradictory aims, the clarification proposed on solar gain is necessary (WOLP38, FM13). Given the background evidence on water stress and the concern of the Environment Agency, the Council accepts that the local application of the nationally

prescribed standard on water efficiency appears to be justified (WOLP13). A suspension for further work would enable the Council to properly consider introducing this change.

3.10 OS5 states, among other matters that: *development proposals that fail to make adequate or timely provision for necessary supporting infrastructure will be resisted.* The Council has submitted its Draft CIL Charging Schedule for Examination. As and when CIL is introduced, infrastructure included in the Council's Regulation 123 list would be provided by the Council and other agencies, funded in whole or in part by CIL. Developers would not control the delivery of such infrastructure. Some necessary supporting infrastructure may thus be outside the scope of *development proposals*. Accordingly, the policy needs to be amended to reflect this position.

4. Affordable Housing, housing to meet particular needs and viability

4.1 Policy H3 on Affordable Housing sets out 3 different percentage rates for the provision of affordable housing based on the 3 value zones identified in Fig 5.1 of the plan. The justification for this approach is in the Council's Viability Study (Aspinall Verdi February 2015 VIAB 1 and 1a, which is also CIL document CIL4 and 4a). It is likely that the viability evidence will need to be up-dated during any suspension to take account of the proposed requirements of the current Housing Bill in relation to Starter Homes. In this note, I particularly highlight other matters which should be incorporated in any such up-dated evidence.

4.2 I consider that the 3 value zones and the inclusion of Witney in the medium value zone, are justified at present on the basis of the Aspinall Verdi Study and, in particular, the table of sales prices in Table 5.9. I accept that the boundaries between the 3 zones could have been drawn differently and note that in an earlier study Witney had been included in the low value zone. However, this does not make the Council's inclusion of Witney in the medium value zone unsound, given the updated evidence. Later hearings will need to assess whether the combination of affordable housing and infrastructure requirements and the proposed CIL charge are justified for particular allocations.

4.3 At the hearing it was agreed that the Aspinall Verdi Study had sensitivity tested a 25% increase in build costs (to encompass likely increases such as zero carbon homes), but that its recommendations were not based on the consequences of these higher costs. It was also agreed that the Government now has no current plans for any further increases in energy efficiency standards or for zero carbon homes. Accordingly, the Building Regulations Part L 2013, which came into force in April 2014, will remain for the foreseeable future. There is thus no need for the recommendations of the Viability Study to take account of zero carbon homes. This position is not reflected in the Statement of Common Ground on build costs (CIL 04). In my Post-Hearing Housekeeping Note I have requested the parties to this SCG to update it to try to agree the above position.

4.4 Policy H4 includes 2 requirements for developments of 11 or more units. Firstly, a minimum of 25% of new dwellings are to be accessible and adaptable housing and secondly a minimum of 5% are to be wheelchair user dwellings, in both cases the policy indicates that such provision would be a matter for negotiation. These policy requirements raise issues relating to the justification for the requirement and the impact on build costs and thus on viability.

4.5 The Written Ministerial Statement of March 2015 introduced a new regime for planning policies to incorporate local requirements for housing construction. They can

do so only by reference to the Nationally Prescribed Standards. The Council have confirmed that these 2 requirements are intended to relate to the optional Building Regulations M4(2) - accessible and adaptable dwellings and M4(3) - wheelchair user dwellings. This needs to be made clear in the policy and the supporting text.

4.6 National Guidance requires Councils to assess and demonstrate the need for these requirements locally. The Council accepted that there was limited evidence and the requirements in the policy were an informed judgement. I recognise the importance of meeting the housing needs of an ageing population and of those with disabilities. It is also important to ensure that the required evidential justification for such policies is not disproportionate. However, I consider that the Council does need to draw clearer conclusions from any evidence which is available, coupled with a brief explanation of how the Council sees the policy requirements actually working in practice to meet those requirements. For example, to what extent are the proportions being sought directly related to likely needs among the local population or intended to embed a degree of flexibility, recognising that people may not be willing or able to move if their needs change and that some of the dwellings meeting these standards might be occupied by households who do not currently require that particular type of accommodation.

4.7 In relation to M4(3) wheelchair user dwellings, National Guidance states (Paragraph: 009 Reference ID: 56-009-20150327): *Local plan policies for wheelchair accessible homes should be applied only to those dwellings where the local authority is responsible for allocating or nominating a person to live in that dwelling.* There is no local justification for departing from this guidance and applying the policy to both market and affordable dwellings as proposed in policy H4. The policy therefore needs to be amended. The text of the plan will need to make very clear to which types of affordable housing the standard applies. The appropriateness of the proposed percentage requirement will need to be reviewed given the much smaller number of dwelling to which it would apply. Consistent with National Guidance, the text should also acknowledge that there may be sites or types of development (eg non lift-served flats) where the application of the requirement would not be appropriate.

4.8 In relation to viability, National Guidance indicates that Councils can take account of the evidence in the recent Government Impact Assessment (*Housing Standards Review Final Implementation Impact Assessment* DCLG, March 2015). For the M4(2) standards the estimated cost is £521 for a 3 bedroom house (paragraph 157). In isolation, I would not see this as requiring any further viability work, but if the Viability Study is updated for other reasons regard should be had to this cost factor. For M4(3) the estimated cost is £22,791 (paragraph 160). This is clearly a more significant factor. The Council needs to consider carefully how this affects the viability modelling in relation to the cost of providing affordable housing and the assumed "value" of those to the developer. The Council should also consider overall deliverability in discussion with Registered Providers.

4.9 Policy H5 concerns custom and self-build housing and requires 5% of plots on sites of 100 units or more to be serviced and made available for this purpose. National Guidance states that local planning authorities should plan to meet the strong latent demand for custom and self-build housing. Amongst other matters, it also suggests that in order to assess the local need for this type of housing Councils should compile a local list or register of people who want to build their own homes. Such a database is referred to in the text of the plan.

4.10 In principle, I consider that the aim of the policy is justified. Whilst there is not currently evidence specifically to justify the 5% requirement (or any alternative figure), it is a reasonable starting point. Critical to the acceptability of the proposal, is that the policy would allow the developer to build-out any plots that had not been sold after 12 months marketing. This is essential to ensure that development is not delayed. The requirement should also be kept under review in the light of emerging evidence of need from the database.

4.11 At the hearing, it was explained that for the purposes of the Viability Study, it had been assumed that self-build could include units to be made available for self-finish (as referred to in policy H5), thus enabling the developer to accrue a builder's profit. Thus the policy was considered unlikely to make much difference to viability overall. However, it was acknowledged that internal self-finish may not come within the definition of self-build in the current Housing Bill. Accordingly, I consider that the viability implications should be reassessed in any update of the Viability Study.

4.12 Other aspects of the Viability Study, such as the assumed market land value (and related issues such as land promotion costs) were not discussed at the November hearing. From the representations, these issues are closely related to other aspects of the viability of some of the Strategic Development Areas and will need to be discussed in the context of those sites in due course.

4.13 The rural exceptions policy within H3 does not specifically refer to allowing any market element to facilitate provision. NPPF paragraph 54 indicates that Councils *should in particular consider* whether allowing some market provision would facilitate delivery on such sites. The text of the plan (5.57) refers to developers having to demonstrate why market housing is needed to subsidise the delivery of the affordable housing. However, unless the policy itself acknowledges this possible need, any proposal which included some justified market housing, may not be policy compliant. The Council has accepted that policy H3 could be better articulated on this point and this should be pursued as a change.

5. Travelling Communities

5.1 I expressed some concerns/raised some preliminary questions on this policy in ID 001 and the Council's response is in WOLP1. The Council has suggested some changes to the policy, namely: extrapolate the figures of need to cover the full plan period and include them in the policy; and make clearer and more certain the means to deliver the additional pitches required. Subject to the need for further adjustment in response to points below, these changes are necessary for soundness to make the policy effective and should be included in any consultation on changes.

5.2 No evidence has been submitted to undermine the assessment of future need for Gypsy and Traveller pitches as set out in the *Cherwell, West Oxfordshire and South Northamptonshire Gypsy and Traveller Needs Assessment* January 2013 (HOU14). I consider that this is a sufficiently thorough and informed study to identify future needs. My conclusion is consistent with that of the Inspector reporting on the Cherwell Local Plan.

5.3 HOU14 did not include Travelling Showpeople. For those needs the Council relies on *A Need Assessment for Travelling Showpeople* November 2008 (HOU15). I am concerned that there has been no attempt to refresh this evidence and, in a particular,

no recent formal engagement with representatives of Travelling Showpeople as to their accommodation needs or the continued reasonableness of the evidence in HOU15. Active engagement is required by *Planning Policy for Traveller Sites* (PPTS) (paragraph 7).

5.4 At the hearing, it was apparent that the Council's planning officers did have a good knowledge of the Travelling Showpersons' sites in the district, likely future household needs, changes in circumstances since 2008 and related issues. This could form the basis of a succinct update on need without undue additional work. Particular consideration should be given to how to respond to the potential "need" suggested by a waiting list for plots at the Cuckoo Wood site. If these are from families outside West Oxfordshire, care will be needed to ensure that any such need is being appropriately included in a needs assessment somewhere else if they are not being included in that for West Oxfordshire. This will require liaison with relevant Duty to Cooperate partners. Any such update of needs should be informed by appropriate engagement with local representatives of Travelling Showpeople and their views recorded. The update should set out clearly needs over the whole plan period and enable any 5 year supply requirement to be calculated.

5.5 HOU14 identified a pitch requirement of 6 for the 5 year period 2012/13-2016/17. The need should now be rolled forward taking account of any new permanent pitches granted permission in that period. WOLP1 (paragraph 5.9) refers to a number of permissions granted since 2011, but this includes a year before the base date of the assessment (31 March 2012). It refers to 2 sites where additional caravans have been permitted, but unless these were to enable the creation of new pitches for new households they cannot count as meeting part of the assessed need. Likewise the removal of the personal occupancy condition at Little Willow cannot count because Little Willow is already included in the count of authorised sites in Table 4.1 of HOU14. There would therefore appear to be a continuing unmet current need. There is not a 5 year supply of sites to meet this need. When the need for Travelling Showpersons' plots is updated there may also be a current 5 year need for additional sites for that group.

5.6 PPTS (paragraph 19) states that in producing a local plan, local planning authorities should identify and update annually a supply of specific deliverable sites to provide 5 years worth of sites against their locally set targets and sites or broad locations for growth for years 6-10 and, where possible, 11-15 years. This is comparable to what local plans need to do in relation to the requirement for conventional housing. The submitted plan does not make any allocations for sites for Travelling Communities. The Council envisages making allocations in the local plan review. In this regard the plan is not consistent with national policy.

5.7 On the basis of its currently identified housing requirement and the Council's own assessment of the 5 year supply, the local plan does provide a 5 year supply of housing and the Council is not reliant on any further development plan to meet West Oxfordshire's own housing needs (although that may change in the light of my conclusions in Part 1). I cannot therefore see why it is fair and justified to disadvantage one group by delaying provision for their needs alone to a later plan. Opportunities to provide sites in sustainable locations may be lost if not considered at the same time as the allocation of large areas of land for other purposes.

5.8 I acknowledge the very real difficulties the Council face in finding appropriate and deliverable sites that reflect the identified need (WOLP1 paragraph 5.6). But there is no reason to envisage these difficulties being any more readily overcome in the future than at present. Given that further work is now needed in relation to the housing requirement, the Council should make further efforts to find and allocate deliverable sites to provide at least a short term rolling 5 year supply until further sites could be allocated in a later plan. Alternatively, of course, the 5 year supply of pitches/plots could be met prior to the adoption of the plan by the grant of planning permissions for additional sites. In the absence of provision of a 5 year supply I cannot endorse as sound the criteria in policy H7 since considerable flexibility in the assessment of site suitability may be required to achieve necessary delivery.

Simon Emerson

Inspector

15 December 2015