

7th September 2016

Dear Mr Clews

ENPA Response to Letter Regarding Local Plan Policy ES-S2

Thank you for your letter dated 24th August, which sets out your consideration of the issues raised in relation to Policy ES-S2 The Lynton & Lynmouth Neighbourhood Plan, following the discussion of this matter at Hearing Session 4.

This information was circulated to members of the Authority and the Lynton & Lynmouth Town Council, and subsequently brought forward as an item under 'business of urgency' (see attached report) at the Exmoor National Park Authority meeting yesterday.

The recommendations of the report were to remove Policy ES-S2 from the Local Plan and align this with Option 3 (remove policy ES-S2 but do neither of the above). Members voted in favour of these recommendations, and as a result they reflect how we wish to proceed in this matter.

Yours sincerely



David Wyborn
Head of Planning & Sustainable Development

EXMOOR NATIONAL PARK AUTHORITY

6 September 2016

EXMOOR NATIONAL PARK LOCAL PLAN EXAMINATION UPDATE – POLICY ES-S2 LYNTON & LYNMOUTH NEIGHBOURHOOD PLAN

Report of the Head of Planning & Sustainable Development

Purpose of the report: To provide an update on the Local Plan Examination and pursuant to the Inspector's recent communication to recommend that Policy ES-S2 of the Publication Draft Local Plan 2011-2031 is removed from the Plan.

RECOMMENDATIONS: The Authority is recommended to:

- (1) Agree to the removal of Policy ES-S2 from the Publication Draft Local Plan 2011-2031 as it is considered by the Inspector to be unsound.
- (2) Agree that once the Local Plan is adopted the distinct policies of the Lyn Plan become a material consideration to weigh against determining the application in strict accordance with the Local Plan policies.

Authority Priority: Maintaining our core services – Working with the community and business. Securing more resources and influencing national and regional policy for Exmoor.

Legal and Equality Implications: Town and Country Planning Act 1990, Planning and Compulsory Purchase Act 2004, The Town & Country Planning (Local Planning) (England) Regulations 2012.

The equality impact of the recommendations of this report has been assessed as follows: It is not considered that the recommendations will have an impact on any particular group.

Consideration has been given to the provisions of the Human Rights Act 1998 and an assessment of the implications of the recommendations of this report is as follows: None on the basis of this report.

Financial and Risk Implications: The financial and risk implications of the recommendations of this report have been assessed as follows: Option 2 below would mean a risk of delay with progressing and adopting the Local Plan and potential financial implications if further steps in the Local Plan process are required.

1. INTRODUCTION – LOCAL PLAN EXAMINATION UPDATE

- 1.1 The Exmoor National Park Publication Draft Local Plan was submitted to the Secretary of State for examination on 6 May 2016. Subsequently the Inspector provided guidance notes and a programme for the hearing sessions which were held over 4 days between 12 and 15 July 2016. The Authority and other participants who attended prepared written statements for each hearing session to address the questions raised by the Inspector.
- 1.2 The hearings discussed a number of issues raised by objectors to the Local Plan and those raised by the Inspector. The Inspector opened discussion on each item and posed questions to participants to assist the Inspector's conclusions on the soundness of the Plan. During the hearing sessions, the Inspector asked the Authority to produce further information to assist discussion at subsequent hearings – this information has been subsequently published on the Authority's website.¹
- 1.3 After the hearings were held, the Inspector invited comments from participants at Hearing Session 3 (Housing) in relation to the additional information provided during the session by the Authority and Business Exmoor (General Examination Documents EX11, EX12, and EX14 –EX18) by the 12 August. The Authority provided comments on documents EX17 and EX18 which were submitted by Business Exmoor during the hearings.²
- 1.4 The Inspector also invited comments on the newly released 2014-based household projections (England, 2014 to 2039). These projections were released by the Department of Communities and Local Government on 12 July 2016 which coincided with the first day of the hearings. The respective Inspectors for the local plan examinations for West Somerset and North Devon & Torridge also requested similar information from the local planning authorities. Given that the newly released data has implications for the whole Northern Peninsula Strategic Housing Market Area, it was considered that further analysis of the 2014-based household projections was required to provide a robust and evidenced response to the Inspector. A report has been jointly commissioned by the Authority, North Devon Council and Torridge District Council which will inform the response to be provided to the Inspector by **16 September**.
- 1.5 Further requests to the local planning authority for information from the Inspector is standard practice during Local Plan examinations to assist the Inspector in the consideration of the Local Plan and the underlying evidence. The Inspector will expect the relevant material to be made available without the need for undue delay to the examination timetable.
- 1.6 Given the deadlines for further information/comments to be provided, the Inspector has outlined the timetable for the next key steps as set out in Table 10.1 below (please note that these dates may be subject to change depending on the implications of any information submitted to the Inspector in the meantime):

¹ <http://www.exmoor-nationalpark.gov.uk/planning/planning-policy/local-plan-examination/examination-library>

² http://www.exmoor-nationalpark.gov.uk/_data/assets/pdf_file/0009/777528/ENPA-Written-Statement-Invitation-to-Comment-EX17-and-EX18-FINAL.pdf

Table 10.1

Examination Stage	Date
<p>Inspector will provide:</p> <ul style="list-style-type: none"> • An outline of any necessary additional main modifications arising from the issues he took away from the hearings for further consideration • A list of any adjustments he considers necessary to the modifications already drafted • Any necessary recommendations on the proposed split between “main” and “additional” modifications • A review of all references in the Plan to “small-scale” 	7 October
<p>Officers will need to put the modifications into a Schedule of Main Modifications, using the Planning Inspectorate template and send this back to the Inspector.</p>	14 October
<p>Inspector to make final comments on the Schedule of Main Modifications</p>	21 October
<p>The Schedule of Main Modifications will be subject to the Sustainability Appraisal and Habitats Regulations Assessment processes to assess whether any further amendments are necessary.</p> <p>Meeting to be held with the Local Plan Advisory Group to discuss the Schedule of Main Modifications and report on the 2014 based household projections.</p>	End October - November
<p>The Schedule of Main Modifications will be provided to the Authority Committee with recommendations to</p> <ul style="list-style-type: none"> • approve the modifications • make a formal request to the Inspector to recommend modifications to the submitted Local Plan, and • agree to make these modifications subject to formal consultation. <p>An update will be provided on the next stages of the Local Plan examination timetable</p>	December Authority Meeting

2. INSPECTOR’S LETTER REGARDING POLICY ES-S2

Policy ES-S2 Background

2.1 Whilst the Lynton & Lynmouth Neighbourhood Plan (The Lyn Plan) was in the later stages of preparation (2013), it was considered important to reflect the status of the neighbourhood plan as part of the ‘development plan’ in the emerging Draft Local Plan; recognising that section 38(5) of the *Planning and Compulsory Purchase Act 2004* requires any conflict between policies in the development plan to be resolved in favour

of the policy in the last document to be adopted. Policy ES-S2 of the Lynton & Lynmouth Neighbourhood Plan was subsequently included in the emerging Local Plan and supported by Lynton & Lynmouth Town Council as an attempt to ensure that the neighbourhood plan policies continued to form part of the development plan once the Local Plan was in place, and used to determine planning decisions in the parish of Lynton & Lynmouth.

ES-S2 LYNTON & LYNMOUTH NEIGHBOURHOOD PLAN

- 1. Development proposals within Lynton & Lynmouth parish shall be determined in accordance with the Lynton & Lynmouth Neighbourhood Plan 2013 – 2028 and the strategic policies of the Local Plan.**
- 2. Development management policies in the Local Plan will only be given greater weight in the following circumstances:**
 - a) where the neighbourhood plan is silent, indeterminate or out of date; and**
 - b) using RT-D3 safeguarding serviced accommodation to determine related proposals for the change of use of serviced accommodation within the Neighbourhood Plan area (over-riding the Lyn Plan policy E2 Change of Use of Hotels & Guesthouses).**
- 3. Should a conflict arise between development management policies in the Local Plan and the policies in the Neighbourhood Plan, the conflict will be resolved in favour of the Neighbourhood Plan until the end of the Plan period in 2028 or until it is reviewed, whichever is earlier, unless it is considered that the proposal would otherwise have a detrimental impact on the achievement of National Park purposes.**

Policy ES-S2 – Exmoor National Park Publication Draft Local Plan 2011-2031

Hearings

- 2.2 During Hearing Session 4, which was held on Thursday 14 July at 9.30am, the Inspector queried the policy ES-S2 and its intentions based on the question posed in relation to Policy ES-S2: “4.11 Are the provisions of policy ES-S2 consistent with relevant legislation and national policy?”
- 2.3 The Authority’s response to this question was set out in the ENPA Statement Session 4 as follows:

Policy ES-S2 ensures that development proposals are determined in accordance with the neighbourhood plan and the strategic policies of the Local Plan. As a result of the consultation response from HBF, the Authority has proposed changes to the supporting text and Policy ES-S2 which are included within SD5 Schedule of Proposed Changes [refs 431 and 432, pages 189-190]. These changes provide further clarification to ensure that strategic policies of the Local Plan have precedence in the determination of planning proposals within the neighbourhood plan area.

- 2.4 At the hearing session the Authority explained that the intention of Policy ES-S2 was to ensure that the neighbourhood plan could continue to be used to determine planning applications within the parish of Lynton & Lynmouth once the Local Plan was adopted. The Inspector stated that given the legislation set out in section 38(5) of the *Planning and Compulsory Purchase Act 2004*, he would take advice from the legal team at the Planning Inspectorate (PINS). The Inspector was sympathetic to the objectives of the policy but felt he had little choice other than to raise the matter in order to ensure compliance with the legislation. The implications for other Neighbourhood Plans were also raised at the hearing session, and this was why the Inspector has discussed this with the legal team at PINS.
- 2.5 At the Inspector's request the Authority also prepared and published a document to illustrate the key policy differences between The Lyn Plan and the Publication Draft Local Plan – this was submitted to the Inspector and published on the Authority's website as EX21 Lyn Plan Policy Review (Appendix 1).

Letter from the Inspector

- 2.6 A letter was received setting out the Inspector's views regarding Policy ES-S2 and the options available to the Authority for consideration on how to proceed (Appendix 2). The letter clearly states that:

*“...the policy conflicts with the fundamental legal principle that a policy in a development plan cannot disapply a statutory provision. Nor can it prescribe the circumstances in which a decision-maker must give greater weight to one given set of development plan policies than to another. **Policy ES-S2 is therefore unsound and will need to be removed from the Local Plan.**”*

The Inspector presented three options for the Authority to consider:

- OPTION 1: remove policy ES-S2 and update, submit for examination and remake the Lyn Plan
 - OPTION 2: remove policy ES-S2 and include in the Local Plan additional policies specific to Lynton and Lynmouth Parish
 - OPTION 3: remove policy ES-S2 but do neither of the above
- 2.7 It is clear from the Inspector's letter that the Plan cannot be found sound unless Policy ES-S2 is removed.³ The options proposed identify distinct ways forward in relation to The Lyn Plan and its status in determining applications within the neighbourhood area. Members and Lynton & Lynmouth Town Council were notified of the Inspector's letter on the 25 August 2016. The Inspector has requested a response from the Authority by **7 September 2016**.

³ The Inspector may also recommend other main modifications necessary to make the Plan sound.

3. OPTIONS

- 3.1 **OPTION 1:** remove policy ES-S2 and update, submit for examination and remake the Lyn Plan.
- 3.2 This option would provide an opportunity to update the neighbourhood plan and focus on the distinct policy approaches highlighted by EX21 Policy Review of the Lyn Plan. There are policies in the Lyn Plan on business development, community services and facilities, affordable housing cascades and Principal Residence dwellings that have been reflected in the Local Plan and they are virtually identical. Other policies on hotels and changes of use have been discussed with the Town Council and the Local Plan policy approach is preferred by the Town Council as the Local Plan goes further and is more flexible. There are a few policies that are unique to the Lyn Plan such as the policies relating to the Lynton & Barnstaple Railway, safeguarding car parks, and provision of storage buildings for local businesses. However, the delivery of the Lyn Plan was very resource intensive for the community to bring forward under the 'vanguards programme' and it was challenging to maintain momentum towards the end of the process. It is considered there would be very little appetite to remake the Lyn Plan (which would fall to the Town Council to lead and fund) given the limited resources now available to communities and the time and commitment required.
- 3.3 **OPTION 2:** remove policy ES-S2 and include in the Local Plan additional policies specific to Lynton and Lynmouth Parish.
- 3.4 This option would provide an opportunity to include the key policy approaches of the Lyn Plan within the Local Plan succinctly, so they would be part of the development plan with which all decisions must be in accordance, unless material considerations indicate otherwise.
- 3.5 Option 2 would require the examination timetable of the Local Plan to be extended (potentially considerably) including time for consultation on the additional policies and examination by the Inspector, which may necessitate scheduling a further hearing session which may result in the Inspector requiring main modifications in order to make the policies sound. The Inspector has indicated this may add several weeks to the process, but given the need to take account of presenting reports to the Authority at various stages, it is likely this may mean a number of months are added to the timetable.
- 3.6 Delay to the Local Plan programme leads to a longer period of uncertainty for decision-makers, agents and applicants – particularly in terms of planning guidance for S106 thresholds for affordable housing, agricultural/rural workers dwellings policies, and affordable housing delivery. Delay also increases the risk of further changes to government policy or new evidence (e.g. as with the release of the 2014-based household projections), which may lead to the Inspector requesting further information from the Authority and/or changes to the Plan. The Government is also keen to ensure

that Local Plans are in place by early 2017⁴, a view endorsed by the Local Plans Expert Group whose recommendations were published in March 2016.⁵

- 3.7 **OPTION 3:** remove policy ES-S2 but do neither of the above.
- 3.8 This option would effectively mean that decisions on planning applications within the Lynton & Lynmouth neighbourhood area (parish) would need to be taken in accordance with the most up to date plan i.e. the Local Plan once it is adopted. The policies in the Local Plan would therefore have precedence in decision-making; however the Inspector notes in his letter that: *“it appears to me that the reasons and evidence underlying the distinct policies in the Lyn Plan could nonetheless potentially be capable of being a material consideration to weigh against determining the application in strict accordance with the Local Plan policies. This would be a matter of planning judgement for the decision maker on the facts of any individual case.”* However, it should be noted that there is no case law on this specific point.
- 3.9 This option would not result in a delay to the examination timetable and the Lyn Plan would still form part of the Development Plan; and where there is a conflict between policies in the Lyn Plan and the Local Plan, the Lyn Plan would be considered to be a material consideration in the determination of planning applications, once the Local Plan is adopted. It should be noted that Option 1 to produce a new neighbourhood plan, is still open to the community and may be considered once the new Local Plan is in place. Funding is still available through the Locality⁶ website and although this is a substantial reduction compared to the funds made available through the ‘Vanguards programme’, it may be instrumental in preparing a neighbourhood plan that focuses on implementing the key policy differences between the two plans. This would be fewer policies than are currently within the Lyn Plan.

Lynton & Lynmouth Town Council

- 3.10 The Lynton & Lynmouth Town Council convened a special meeting on 31 August 2016 to discuss the Inspector’s letter and its implications for the neighbourhood plan. It is clear from the minutes of the meeting (Appendix 3) that the Town Council are concerned about the prospects for the neighbourhood plan given the commitment from the community in preparing the Plan during 2011-2014 as part of the first wave of Neighbourhood Plan Vanguards, and the implications this may have for other neighbourhood plans across the country.
- 3.11 Lynton & Lynmouth Town Council recognise they would not have the necessary funds to prepare a subsequent neighbourhood plan (Option 1) and their preferred approach would be for the Local Plan to incorporate those distinct policy areas of The Lyn Plan (Option 2). However, they reluctantly accept that if ES-S2 is removed, The Lyn Plan

⁴ Fixing the Foundations Productivity Plan 2015: House of Commons Written Statement – Department for Communities and Local Government: Written Statement made by: Minister of State for Housing and Planning (Brandon Lewis)

⁵ Local Plans Expert Group (2016) Local Plans – Report to the Communities Secretary and to the Minister of Housing and Planning

⁶ <http://locality.org.uk/projects/building-community/>

Locality is a a national network of community-led organisations and associate members

could potentially be capable of becoming a material consideration in the determination of planning applications within the neighbourhood plan area (Option 3).

Recommendation

- 3.12 The Authority expresses its disappointment that Policy ES-S2 is unable to be found sound and concern about the consequences this has for the Lyn Plan and many other neighbourhood plans across the country which may be in a similar situation over the coming years, particularly where an up to date Local Plan is not in place, or a Local Plan is in the process of review. Given that the majority of the Lyn Plan policies are reflected in the Publication Draft Local Plan, and those policies which are unique to the Lyn Plan will be the adopted policy in relevant planning decisions; it is considered that this provides the most effective outcome in the circumstances. Therefore, Option 3 is recommended as it provides outcomes which are beneficial in terms of the Lyn Plan and future decision-making, and the Local Plan examination timetable.

4. CONCLUSION

- 4.1 In conclusion it is recommended that Policy ES-S2 is removed from the Local Plan as the Inspector has concluded it is 'unsound', and aligned with Option 3. This option is selected as it will deliver the outcomes that will provide an effective balance in decision-making in the Lynton & Lynmouth neighbourhood plan area, whilst ensuring the examination timetable for the Local Plan can proceed as currently planned. As stated in the report, a significant number of the Lyn Plan policies are already reflected in the Local Plan and would not be affected once the Local Plan is adopted, and a Local Plan policy to safeguard hotels and any subsequent change of use has been endorsed by the Town Council to replace the policy in the Lyn Plan.
- 4.2 Once the Local Plan has been adopted, the Lyn Plan will still form part of the development plan and those policies which are unique to the Lyn Plan will be the adopted policy in relevant planning decisions within Lynton & Lynmouth parish, whilst the reasons and underlying evidence are considered to be relevant and up to date. This would resolve issues where the approach in the Lyn Plan differs from that of the Local Plan.

Tessa Saunders, Senior Planning Officer (Policy/Community)
31 August 2016

Background papers on which this report, or an important part of it are based, constitute the list of background papers required by Section 100 D (1) of the Local Government Act 1972 to be open to members of the public comprise:

SD1 Exmoor National Park Publication Draft Local Plan 2011-2031, EX3 Lynton & Lynmouth Neighbourhood Plan 2013-2028, ENPA Statement Session 4

APPENDICES:

Appendix 1: EX21 Policy Review of the Lyn Plan

Appendix 2: Letter from the Inspector – 24 August 2016: Exmoor National Park Local Plan Policy ES-S2

Appendix 3: Lynton & Lynmouth Town Council Minutes of a Special Meeting of the Council (31 August 2016)

EX21 – Policy Review of the Lyn Plan

The following table sets out the policies within The Lyn Plan ([EX03](#)), which was made in December 2013, and reviews which policies may be at risk of being superseded by the policies within the Publication Draft Exmoor National Park Local Plan 2011-2031.

Lyn Plan Policy	Publication Draft Local Plan Policy	Comments
Policy P1: Overall Objectives for New Development	GP1 National Park Purposes and Sustainable Development	Policy P1 is consistent with the aims of Local Plan policy GP1.
ENV1: Location of Development & Enhancement of the Local Environment	GP1 National Park Purposes and Sustainable Development GP3 Spatial Strategy	Policy ENV1 applies a stricter test to ensure that infill brownfield/greenfield sites are utilised for new development before greenfield sites adjoining the settlements are proposed. This reflects that the landscape capacity for new development is very limited and development on infill sites and the redevelopment of previously developed land are important development opportunities within the settlements of Barbrook and Lynton & Lynmouth.
E1: Local Economy	SE-S1 A Sustainable Exmoor Economy SE-S2 Business Development in Settlements SE-S3 Business Development in the Open Countryside	Similar approach in both plans.
E2: Change of Use of Hotels and Guest Houses	RT-D3 Safeguarding Serviced Accommodation	Emerging Local Plan policy ES-S2 Lynton & Lynmouth Neighbourhood Plan makes provision for Local Plan policy RT-D3 to override Lyn plan Policy E2, as policy RT-D3 provides greater flexibility. This was a consequence of discussion with Lynton & Lynmouth Town Council.
E3: Loss of High Street Uses	HC-19 Safeguarding Local Commercial Services and Community Facilities	Similar approach in both plans.
E4: Change of Use of Shops	HC-D19 Safeguarding Local Commercial Services and Community Facilities	Similar approach in both plans.

Lyn Plan Policy	Publication Draft Local Plan Policy	Comments
E5: Loss of Tourist Facilities	HC-D19 Safeguarding Local Commercial Services and Community Facilities	Similar approach in both plans
E6: Temporary Uses	No similar policy in the Local Plan	Policy approach considered to be no longer required, with permitted development rights under the GPDO 2015 Schedule 2, Part 4, Class D – shops, financial, cafes, takeaways, pubs etc. to a temporary flexible use.
E7: Business Space	SE-S2 Business Development in Settlements	Similar approach in both plans
E8: Storage	SE-S2 Business Development in Settlements	This is a specific policy in the Lyn Plan which recognises the particular circumstances of the local economy including the need for storage facilities for local businesses.
E9: Rural Buildings and Land in Commercial Use Outside the Settlements	SE-S3 Business Development in the Open Countryside SE-D1 Home Based Businesses	Lyn Plan policy E9 provides for the conversion of rural buildings generally, they do not have to be located in a farmstead grouping or hamlet (as required by Local Plan policy SE-S3). Policy E9 also makes provision for new business development on land already in commercial use outside the settlements which is less restrictive than the proposed change to Local Plan policy SE-S3, clause 4. This reflects the extremely limited capacity for new development adjoining the settlements.
E10: Parking	AC-S3 Traffic Management and Parking AC-D2 Parking Provision and Standards	Lyn Plan policy E10 additionally safeguards existing parking capacity which reflects the issues surrounding the current availability parking within the settlements.
E11: Temporary Parking	AC-D4 Temporary Parking	Similar approach in both plans.
E12: Lynton & Barnstaple Railway	RT-D13 Safeguarding Land Along Former Railways RT-S2 Reinstatement of the Lynton & Barnstaple Railway	Lyn Plan policy E12 also makes provision for an extension of the railway line (beyond the former railway line) and a new station in Lynton, which is not accommodated for in Local Plan policy RT-S2. The policy also requires a transport link from the station to the centre of Lynton.
H1: Affordable Housing	HC-S1 Housing HC-D1 Conversions to	Similar approach in both plans.

Lyn Plan Policy	Publication Draft Local Plan Policy	Comments
	Dwellings in Settlements HC-D2 New Build Dwellings in Settlements HC-D7 Conversions to Dwellings in the Open Countryside	
H2: Local Connection	HC-S3 Local Occupancy Criteria	Similar approach in both plans.
H3: Principal Residence Housing	HC-S4 Principal Residence	Lyn Plan policy H3 provides for Principal Residence dwellings where it will enable the delivery of affordable housing, but also allows greater flexibility for the provision of Principal Residence housing where it provides greater balance and mix to the housing stock or opportunities for people to live and work in the area. Policy H3 also enables Principal Residence housing to cross subsidise the delivery of development that directly benefits the community.
H4: Staff and Seasonal Workers	RT-D2 Staff Accommodation	Lyn Plan policy H4 provides greater flexibility for the provision of staff accommodation including new build accommodation within and adjoining the settlements. This approach reflects the particular circumstances of Lynton & Lynmouth which has a large number of hotels and guesthouses compared to elsewhere in the National Park. This approach is considered to be reasonable in view of the particular circumstances of the Lyn Plan area.
S1: Loss of Services and Facilities	HC-D19 Safeguarding Local Commercial Services and Community Facilities	Similar approach in both plans.
S2: Improving Existing Services and Facilities and the Provision of New Services and Facilities	HC-S6 Local Commercial Services and Community Facilities	Similar approach in both plans.

APPENDIX 2

Mr D Wyborn
Head of Planning and Sustainable Development
Exmoor National Park Authority

24 August 2016

Dear Mr Wyborn

EXMOOR NATIONAL PARK LOCAL PLAN POLICY ES-S2

1. As you will recall, submitted Exmoor National Park Local Plan policy ES-S2 was the subject of discussion during Session 4 of the recent examination hearing sessions. I said I would give further consideration to the issues raised during that discussion. Having done so, it seemed to me that it would be helpful to write now to set out my views and what I see as the options available to the Authority, so that you can consider as soon as possible how you wish to proceed.
2. To begin with, as I made clear at the hearing session, I understand the motivation behind policy ES-S2. The Authority are aware that section 38(5) of the *Planning and Compulsory Purchase Act 2004* requires any conflict between policies in the development plan to be resolved in favour of the policy in the last document to be adopted. This means that any conflict between the policies of the Local Plan, once it is adopted, and those of the Lynton and Lynmouth Neighbourhood Plan ("Lyn Plan") would need to be resolved in favour of the Local Plan policies.
3. Policy ES-S2 attempts to overcome this by stating that where policies in the Lyn Plan conflict with development management policies of the Local Plan, the conflict will instead be resolved in favour of the Lyn Plan in most cases. However, in attempting to achieve this, the policy conflicts with the fundamental legal principle that a policy in a development plan cannot disapply a statutory provision. Nor can it prescribe the circumstances in which a decision-maker must give greater weight to one given set of development plan policies than to another. **Policy ES-S2 is therefore unsound and will need to be removed from the Local Plan.**
4. It seems to me that this will present the Authority with three options, as follows.

5. **Option 1 – remove policy ES-S2 and update, submit for examination and remake the Lyn Plan.** Assuming this occurred after the adoption of the Local Plan, section 38(5) would ensure that any conflict between the two plans' policies would be resolved in favour of the Lyn Plan. However, I appreciate that this option would be a time-consuming process for those involved in producing the Lyn Plan, coming only three years after the existing Lyn Plan was made. Indeed, at the hearing session you expressed doubt that it would be realistic.
6. **Option 2 – remove policy ES-S2 and include in the Local Plan additional policies specific to Lynton and Lynmouth Parish.** Examination document EX21 (*Policy Review of the Lyn Plan*), which the Authority helpfully prepared at my request, sets out the points of potential conflict between the Local Plan and the Lyn Plan, as identified by the Authority. Based on the analysis in document EX21⁷, it appears to me that there are five instances where significant conflict between policies in the two plans might arise. These are as follows:
 - Lyn Plan policy ENV1 vs Local Plan policy GP3
 - Lyn Plan policy E8 vs Local Plan policy SE-S2
 - Lyn Plan policy E9 vs Local Plan policies SE-S3 & SE-D1
 - Lyn Plan policy H3 vs Local Plan policy HC-S4
 - Lyn Plan policy H4 vs Local Plan policy RT-D2
7. If the Authority considers that there is sound evidence to support a distinct policy approach in Lynton and Lynmouth Parish to the matters covered by these policies, it would be open to you to draw up additional policies for the Local Plan, reflecting the relevant policies in the Lyn Plan, to set out that distinct approach. If adopted as part of the Local Plan, those policies would then be part of the last part of the development plan to be adopted and so would not be vulnerable to section 38(5). Any such additional policies would of course need to be examined by me in order to ensure their soundness and I cannot say at this stage what the outcome of that examination would be.
8. As part of the examination, any additional policies would also need to be subject to public consultation and potentially to consideration at a hearing session if any representors so requested. To save time, I would envisage that the consultation could run concurrently with consultation on Main Modifications to the rest of the Local Plan. However, consideration of additional policies would inevitably add some weeks to the overall length of the examination, particularly if a further hearing session and/or Main

⁷ Please note that I have not done my own full analysis of the two plans to assess any potential conflicts – I have only looked at the potential conflicts highlighted in EX21.

Modifications to the additional policies themselves were found to be necessary.

9. **Option 3 – remove policy ES-S2 but do neither of the above.** This would leave the position as described in paragraph 2 above, in respect of the formal relationship between the Lyn Plan and the Local Plan. Where there is conflict between the two, the development plan policies which apply for the purpose of section 38(6), i.e. those which the proposal should be determined in accordance with unless material considerations indicate otherwise, would be the Local Plan policies.
10. However, it appears to me that the reasons and evidence underlying the distinct policies in the Lyn Plan could nonetheless potentially be capable of being a material consideration to weigh against determining the application in strict accordance with the Local Plan policies. This would be a matter of planning judgement for the decision maker on the facts of any individual case. That said, it is important to note that there is no case law that I am aware of on this specific point and it may be that the courts would take a different view.
11. I would be grateful if you would consider the matters outlined above, taking any legal or other advice you consider to be appropriate, and let me know how you wish to proceed. It may of course be that there are other options than those set out above and I would be happy to consider any other reasonable course of action you wish to propose. I would appreciate a response to this letter by Wednesday 7 September 2016 if possible, but please let me know if you will require additional time.
12. If you have any queries on the contents of this letter, please do not hesitate to raise them with me, via the Programme Officer.

Yours sincerely

Roger Clews

Inspector

**LYNTON AND LYNMOUTH TOWN COUNCIL
MINUTES OF A SPECIAL MEETING OF COUNCIL HELD AT THE TOWN
HALL, LYNTON ON WEDNESDAY 31ST AUGUST 2016 AT 10AM**

Present: **Councillors**
 S Hibbert (Mayor)
 A Meakin (Deputy Mayor)
 J Patrinos
 A Rodway
 C Sleep
 P Wakeham

Officers: Town Council Secretary
Apologies: Apologies were received from Councillors J Frankish, J Harman, B Peacock, M Pearce, T Pretorius-Hanks, S Sprague

069/16 DECLARATION OF MEMBERS DISCLOSABLE PECUNIARY INTERESTS

There were none

070/16 NEIGHBOURHOOD PLAN

a. Exmoor National Park Local Plan Examination

The Mayor explained that following submission of the Exmoor Local Plan Policy ES-S2 it had been determined by the Planning Inspectorate that should any conflict occur between the Exmoor Local Plan and the Lyn Neighbourhood Plan it would not be resolved in favour of the Lyn Plan as had been envisaged. In an effort to resolve this, 3 options had been proposed by the ENPA:

Option 1 – Update, submit for examination and remake the Lyn Plan which would fall the Town Council.

Option 2 – ENPA remove the policy and include in the Local Plan additional policies specific to Lynton & Lynmouth Parish, leading to a delay in adopting the Exmoor Local Plan.

Option 3 – ENPA remove the policy but do neither of the above.

After careful consideration of the above three options it was unanimously

RESOLVED

1. The Town Council deplores the Planning Inspectorate's stance on this key local issue.
2. Lynton & Lynmouth Town Council acknowledge that due to the current state of public funding, it cannot invest in a new neighbourhood plan.
3. Lynton & Lynmouth Town Council would ask the local planning authority to consider any changes in the local plan that reflect the contents of the Lyn Plan. If not, Lynton & Lynmouth Town Council reluctantly accept the removal of policy ES-S2 meaning that the Lyn Plan could potentially be capable of being a material consideration in determining applications in accordance with Local Plan Policies.
4. Write to the Dept of Communities & Local Government asking if they have any plans which might affect the 100's of neighbourhood plans currently in preparation across the country.
5. Write to MP asking for support in resolving the unfortunate clash between Government policies.