






ENPA RESPONSE TO THE INSPECTOR'S INITIAL ASSESSMENT AND QUERIES

EXMOOR NATIONAL PARK LOCAL PLAN 2011 - 2031
EXAMINATION
JUNE 2016

If you have any queries or questions relating to this document please get in touch with the Policy & Community Team using the contact details below:

 Exmoor National Park Authority
Exmoor House
Dulverton
Somerset
TA22 9HL

 localplan@exmoor-nationalpark.gov.uk

 01398 32366

CONTENTS

1	Introduction.....	1
2	Court of Appeal judgement: Secretary of State for Communities and Local Government v West Berkshire DC & Reading BC [2016] EWCA Civ 441..	2
	Inspector’s Query	2
	ENPA Response.....	2
3	Principal Residence Housing	10
	Inspector’s Query	10
	Authority Response	10
4	Pre-hearing discussions and statements of common ground.....	15
	Statement of Common Ground between Exmoor National Park Authority and the National Trust	15
5	Clarification Points Arising from the Inspector’s Initial Assessment of the Exmoor Local Plan.....	16
6	Appendix 1: Paper Seeking Legal Opinion on Principal Residence	29
7	Appendix 2: Map 24 Unsuitable Areas for Small Scale Wind Turbines and Freestanding Solar Arrays	35

[page intentionally left blank]

1 Introduction

- 1.1 This document provides the Exmoor National Park Authority (ENPA) response to the queries set out by the Inspector in EX2 Exmoor LP – Initial assessment letter with queries, dated 27th May 2016.
- 1.2 The Inspector has clarified that these queries do not represent findings on the soundness or legal compliance of the Plan, nor are they binding on any recommendations for main modifications that the Inspector may make after considering all the evidence presented during the examination.

2 Court of Appeal judgement: Secretary of State for Communities and Local Government v West Berkshire DC & Reading BC [2016] EWCA Civ 441

Inspector's Query

- 2.1 **This recent judgment may have implications for a number of policies in the submitted Plan. I would be grateful if you would consider what revisions may be required, in the Authority's view, to the submitted Plan and/or the Schedule of Proposed Changes in the light of the judgment.**

ENPA Response

- 2.2 The Authority recognises that the aforementioned judgement was made on the 11th May 2016, after the submission of the Exmoor National Park Local Plan to the Secretary of State.
- 2.3 The initial consultation¹ regarding the use of planning obligations (S106 agreements) in relation to thresholds for affordable housing was of great concern to the National Park Authority; particularly that the 10-unit threshold for S106 contributions, and vacant building credit could be applied to existing buildings and other brownfield sites within the National Park. A response was submitted which was focussed on the following points:
- An unforeseen consequence of the approach would be no affordable housing provision on this type of site. The threshold would therefore have considerable impact on the delivery of affordable homes for local people on Exmoor in the future. S106 legal agreements have not been used for affordable housing contributions per se but rather to ensure that affordable homes provided on rural exception sites are occupied by local people in affordable housing need in perpetuity.
 - Given the importance of existing buildings and brownfield land for future provision of local affordable housing in the National Park, the Authority strongly objected to the 10-unit threshold that was initially proposed to apply to smaller housing schemes; not least because it would undermine an important means of affordable housing provision, in the adopted and emerging Local Plan, and the Lynton & Lynmouth Neighbourhood Plan.
 - As a result, there would be pressure for further greenfield sites for affordable housing to address local housing need resulting in a conflict between potential landscape harm or not being able to permit needed affordable homes for local communities where landscape capacity for new housing is limited. This approach would also use up the stock of potential greenfield sites at a faster rate, already potentially the case as a result of the NPPF change to the status

¹ DCLG (2014) Planning performance and planning contributions: consultation (March 2014)

of exceptions sites to consider market housing to facilitate the provision of affordable homes

- The National Park Authority is committed to ensuring that the best use is made of the resource of existing buildings on Exmoor to contribute towards a sustainable future for local communities. In settlements and hamlets or on farmsteads the conversion of buildings to residential is to local affordable homes.

2.4 At the time of the consultation² on the introduction of thresholds for affordable housing, of the 51 dwelling units permitted in the National Park between 2005 and 2014 on exception sites of less than 10 units, a third (17 units) were created through the conversion of existing buildings, or the subdivision of existing dwellings. Under the arrangements proposed in the thresholds for affordable housing; these homes on brownfield sites would not have been delivered.

TABLE 2.1: Affordable Housing Approved Since 2005³	
Sites in Local Rural Centres involving the conversion and change of use of existing buildings	
<u>No. of applications</u> approved for >10 units on conversion schemes where a mix of open market and affordable housing is permitted	1
<u>No. of affordable housing units</u> approved on sites of >10 units for conversion schemes where a mix of open market and affordable housing is permitted	3
<u>No. of applications</u> approved for <10 units on conversion schemes where a mix of open market and affordable housing is permitted	5
<u>No. of affordable units</u> approved on sites of <10 units for conversion schemes where a mix of open market and affordable housing is permitted	12
Exception sites including conversions of existing buildings in other locations:	
<u>No. of applications</u> approved for > 10 units on exception sites	3
<u>No. of affordable dwellings</u> approved on exception sites of >10 units	39
<u>No. of applications approved</u> for < 10 units on exception sites	29
<u>No. of affordable dwellings</u> approved on exception sites of <10 Units	51

² DCLG (2014) Planning performance and planning contributions: consultation (March 2014)

³ ENPA (2014) Planning Committee Report – Item 11 Consultation response to the Department for communities and local government (DCLG) Planning Performance and Planning Contributions Consultation <http://www.exmoor-nationalpark.gov.uk/about-us/meetings-agendas-reports/enpa-planning-committee/06-may-2014/ar-epc-06.05.14-Item-11.pdf>

- 2.5 The implications of the thresholds for the delivery of affordable housing were considered to be very significant for Exmoor National Park given the evidence on landscape sensitivity; the limited capacity for new build housing; the small scale of most buildings in settlements; and the potential of brownfield land including existing buildings for delivering affordable housing. This is reflected by evidence on the high proportion of affordable housing delivered through the change of use of existing buildings. As an example, the NPA was aware of there being outstanding affordable housing need in one of the Local Service Centres and existing buildings with the potential to deliver affordable housing but no greenfield/available SHLAA sites.
- 2.6 On 28 November 2014 a Written Material Statement (WMS) was issued by the Secretary of State introducing national planning policy regarding the use of planning obligations (S106 agreements) in relation to thresholds for affordable housing; on the same day further detail was included in Planning Policy Guidance (PPG). This included the ability to apply a lower threshold (up to 5 units) in designated rural areas, including National Parks.
- 2.7 At the time, the Authority was in the process of preparing the Publication Draft Local Plan (PDLP) following consultation on the Draft Local Plan in November and December 2013. Following discussion and agreement with Members, the PDLP was prepared for consultation having specific regard to the WMS and PPG pertaining to planning obligations and thresholds for affordable housing.
- 2.8 The PPG clarified that the thresholds would not apply to rural exception sites, and it was considered that the thresholds would not apply to new build housing in the National Park, as the policy approach for housing across the National Park is to address the affordable housing needs of local communities using a rural exception site approach without the need for a Plan housing target or site allocations.
- 2.9 The NPA was aware that a legal challenge had been made to the WMS and PPG. It was concerned that amending the Plan to reflect the thresholds – in effect losing the ability to seek any affordable housing provision in some developments -- would result in the thresholds being included in the development plan; while subsequently the national guidance could change. The ‘Text Box’ included in the PDLP⁴ after policy HC-S1 Housing sets out how the thresholds for affordable housing will be applied in the National Park context and specifies that this approach will only apply if the government guidance on planning obligations relating to thresholds for affordable housing is extant (i.e. the PPG). This has included introducing the lower threshold (up to 5 units) that can be applied in designated rural areas, including National Parks.
- 2.10 Additional clauses were included in policies relating to housing development through conversions and new build, namely:

⁴ Text Box on page 133 of [SD1 Exmoor National Park Publication Draft Local Plan 2011-2031](#)

Table 2.2 – Policy Changes as a Result of the Introduction of Thresholds for Affordable Housing

Policy	Changes introduced
HC-S1 Housing	Clause 4 – sets out where Principal Residence market housing would be considered in relation to thresholds for affordable housing (whilst the guidance is extant) – namely through the change of use of buildings or redevelopment of vacant buildings within Local Service Centres and Villages.
HC-D1 Conversions to Dwellings in Settlements	Additional clause to cross reference to policy HC-S1 clause 4 (see above).
HC-D2 New Build Dwellings in Settlements	Additional clause relating to the redevelopment of vacant buildings in accordance with policy HC-S1 clause 4 (see above).
HC-D6 The Change of Use of Serviced Accommodation to Housing	New policy introduced for the change of use of serviced accommodation included a clause to refer to HC-D1 for serviced accommodation in Local Service Centres and Villages which would have regard to the thresholds for affordable housing. (Serviced accommodation in the open countryside would need to deliver 100% affordable housing unless Principal Residence market housing is required to make the development financially viable).

2.11 On the last day of the consultation on the PDL, held during 15 June – 31 July 2015, the judgement on the legal challenge by Reading Borough Council and West Berkshire District Council against the WMS and PPG issued by the Secretary of State was announced as successful.⁵ The relevant paragraphs pertaining to the thresholds for affordable housing were subsequently withdrawn from the PPG.

2.12 As a consequence of the withdrawal of the guidance on thresholds from the PPG, the NPA agreed to delete the Text Box (and relevant clauses within policies listed in Table 2.2 above. These changes are included in [SD5 Schedule of Proposed Changes submitted to the Inspector with the Local Plan](#). – those most relevant are:

Proposed Change Ref	Page Number (SD5)	Policy/Para.
222	94-95	HC-S1 Housing
223	95-96	Text Box
250	109	Para. 6.90
258	111-112	HC-D1 Conversions to Dwellings in Settlements
265	116	Para 6.107
267	117-118	HC-D2 New Build Dwellings in Settlements
298	131-132	Para. 6.135

⁵ Judgement in R (on the application of West Berkshire District Council and Reading Borough Council) v Secretary of State for Communities and Local Government [2015]

Proposed Change Ref	Page Number (SD5)	Policy/Para.
299	132-133	HC-D6 The Change of Use of Serviced Accommodation to Housing

2.13 The successful appeal by the Secretary of State for Communities and Local Government resulted in the order of the Court of Appeal dated 13 May 2016, which gave legal effect to the policy set out in the WMS and reinstated the thresholds guidance in the PPG⁶ on 19th May 2016.

2.14 The judgement specifically in paragraph 26 states that:

26 (iii) In the determination of planning applications the effect of the new national policy is that although it would normally be inappropriate to require any affordable housing or social infrastructure contributions on sites below the thresholds stated, local circumstances may justify lower (or no) thresholds as an exception to the national policy. It would then be a matter for the decision-maker to decide how much weight to give to lower thresholds justified by local circumstances as compared with the new national policy;

2.15 It is clear from the judgement, that it is open to local planning authorities to make the case for applying a different approach, dependent on local circumstances:

26 (iv) Likewise if in future an LPA submits for examination local plan policies with thresholds below those in the national policy, the Inspector will consider whether the LPA's evidence base and local circumstances justify the LPA's proposed thresholds. If he concludes that they do and the local plan policy is adopted, then more weight will be given to it than to the new national policy in subsequent decisions on planning applications."

⁶ Planning Policy Guidance: Paragraph: 031 Reference ID: 23b-031-20160519, Paragraph: 013 Reference ID: 23b-013-20160519, Paragraph: 014 Reference ID: 23b-014-20160519, Paragraph: 015 Reference ID: 23b-015-20160519, Paragraph: 016 Reference ID: 23b-016-20160519, Paragraph: 017 Reference ID: 23b-017-20160519, Paragraph: 019 Reference ID: 23b-019-20160519, Paragraph: 020 Reference ID: 23b-020-20160519, Paragraph: 021 Reference ID: 23b-021-20160519, Paragraph: 022 Reference ID: 23b-022-20160519, and Paragraph: 023 Reference ID: 23b-023-
<http://planningguidance.communities.gov.uk/blog/guidance/planning-obligations/planning-obligations-guidance/>

- 2.16 It would appear that the judgement is that the WMS or PPG paragraphs (or any government planning policy or guidance) should not be applied in a 'blanket manner';⁷ therefore, where a local planning authority's development plan policies are supported by up-to-date evidence, they could continue to seek affordable housing in relation to small sites (of 10 or less dwellings – 5 or less in the National Park).
- 2.17 In summary, the NPA considers that the text box and relevant policy clauses should be removed from the Local Plan, as set out in the Schedule of Proposed Changes, despite the Government's successful appeal. This is because the Government's policy approach has significant implications for the delivery of affordable housing in the National Park, as, in effect, it means that any conversions to affordable housing in settlements will be lost. This would have implications for the delivery against the estimate of local affordable need in the Local Plan, as evidenced in paragraph 2.4 and Table 2.1, and would increase the pressure on suitable greenfield sites for housing in settlements which evidence has demonstrated are a limited and diminishing resource ([CE6](#) pages 8-9, 25-26 and 36-37).
- 2.18 However, some further changes to the Plan are proposed which apply the national guidance on Vacant Building Credit in the National Park in a way which takes account of the up to date and comprehensive evidence prepared to inform the Local Plan housing strategy ([CE6](#), [CE8](#), [CE9](#), [CE10](#), [CE11](#), [CE12](#), [CE17](#), [CE18](#), [EB30](#))
- 2.19 It is proposed to make changes to clauses 3 and 4 of strategic housing policy HC-S1 to link it with a new policy for vacant buildings. The new policy serves to enable, exceptionally, vacant buildings to be converted to Principal Residence Housing with no affordable housing provision, where it can be demonstrated that no affordable housing can be delivered either on site, as part of the development, or as a commuted sum. The proposed policy approach provides a definition for vacant buildings; requires viability for affordable housing provision; and includes specific provisions for the re-use of the building or redevelopment proposals as appropriate. The policy provisions would only apply where government guidance on Vacant Buildings Credit is extant (HC-S1).
- 2.20 It is considered that the further proposed changes implement the vacant building credit guidance appropriately in the context of the National Park designation and in the light of the up to date evidence and local Exmoor circumstances. The amended clauses 3 and 4 of HC-S1 and the proposed new policy are set out below.

⁷ [Court of Appeal judgment in SSCLG v West Berkshire DC & Reading BC \[2016\] EWCA Civ 441](#)

HC-S1: HOUSING [amended clauses 3 and 4 only]

- 3. Consistent with an exceptions approach to housing, provision will not be made for housing solely to meet open market demand and housing land will not be allocated in the development plan. Principal Residence market housing will only be considered where:
 - a) it is essential to deliver an identified need for local need affordable housing in Local Service Centres or Villages and in accordance with HC-S4; or**
 - b) The proposal relates to a Vacant Building in a Local Service Centres or Village (HC-Dx).****

- 4. Clause 3 b) above and Policy HC-Dx of this Plan will only apply as long as government guidance on planning obligations relating to vacant buildings credit is extant. If the guidance changes, policy HC-Dx and clause 3 b) above, will no longer apply.**

PROPOSED NEW POLICY HC-DX VACANT BUILDINGS IN SETTLEMENTS

- 1. Exceptionally, Principal Residence market housing may be considered through the change of use or redevelopment of an existing Vacant Building where:
 - a) the proposal accords with Policy HC-S1 clause 3 b) and 4;**
 - b) sufficient evidence is provided to demonstrate that the building can be considered to be Vacant through meeting the following tests:
 - i. that it is not abandoned,**
 - ii. it has been unoccupied, without content and has been marketed for a minimum of 3 years;**
 - iii. it is not an agricultural building or previously developed land without a building; and**
 - iv. it can be demonstrated that the building has not been made vacant for the sole purpose of re-development and there has been no intent to leave the building empty or cause it to become empty in order to circumvent affordable housing requirements. Extant or recently expired planning permissions applying to the building for the same or similar development will be taken into account in considering proposals;****
 - c) the building is within a Local Service Centre or Village; and**
 - d) clear and robust evidence demonstrates that no affordable housing can be provided on site or as part of the development for viability reasons. In such cases, provision for a commuted sum towards local need affordable housing****

in the National Park will be sought commensurate with an agreed and robust viability assessment.

- 2. Proposals for the change of use of a Vacant Building will only be considered where:**
 - a) the existing building is able to accommodate two or more dwelling units of 93sqm floorspace in size (HC-D1);**
 - b) the existing building(s) is considered to be worthy of conservation and it does not have an adverse impact on the character and visual amenity of the area; and**
 - c) they will accord with CE-S5.**

- 3. Proposals for the redevelopment of a 'Vacant Building' will only be considered where:**
 - a) the existing building is not a traditional building, is not listed or considered to be of historic or architectural importance worthy of conservation and it has an adverse impact on the character and visual amenity of the area;**
 - b) the redevelopment proposal will achieve demonstrable environmental enhancement of the building and its locality; and**
 - e) the gross floorspace of the Principal Residence housing achieved will be no greater than the existing gross floorspace of the existing Vacant Building(s). Housing which would exceed the gross floorspace will be required to meet an identified local affordable need in accordance with Plan policies.**

3 Principal Residence Housing

Inspector's Query

- 3.1 Submitted policy HC-S4 says that any new market housing must be Principal Residence housing, as opposed to second or holiday homes. In paragraph 6.87 this requirement is justified by reference to the existing high percentage of homes with no usual residents and its impact on the social well-being of a number of communities. It would be helpful if I could be provided with a summary of, and references to, evidence that demonstrates this impact on social well-being.
- 3.2 Paragraph 6.43 of the Plan argues that the "exceptions" approach of permitting local need affordable housing where new housing would not normally be allowed has the effect of reducing the value of land and buildings. Are the requirements of policy HC-S4 in respect of Principal Residence housing also intended to have an effect in reducing land values? If so, again it would be helpful if I could be provided with a summary of, and references to, evidence that demonstrates this effect.
- 3.3 I am aware of policy H3 of the made Lynton and Lynmouth Neighbourhood Plan, which contains a Principal Residence housing requirement. In order to inform discussion at the hearing session it would be helpful if I could also be provided with any examples of similar policies in adopted Local Plans.

Authority Response

- 3.4 The purpose of the Principal Residence housing policy is to create developments which are more sustainable in the Exmoor context, and contribute to the long term sustainability of local communities. This directly meets the sustainable development tests in the NPPF, particularly in terms of the social role of sustainable development, since building new homes that stand empty for much of the time does not contribute to sustainable communities. During the period 2001 – 2011 some 263 dwellings were built within the National Park, however the population recorded in the Census for these dates demonstrates a decline in the National Park population by 600.⁸
- 3.5 **Summary of evidence:** A policy introducing the concept of Principal Residence homes was first sought through the preparation of the Lynton & Lynmouth Neighbourhood Plan ([EX3](#)). The significant evidence underpinning the neighbourhood plan policy approach included the very high proportion of household spaces with 'no usual residents', which in Lynton and Lynmouth parish was recorded as 28% (2011 Census)⁹ – most of these being second/holiday homes within the settlements of Lynton & Lynmouth. A notable development of 33 dwellings on a former hotel site in the settlement illustrates the problem faced by

⁸ Population recorded in 2001 census 10,873 – 2011 census recorded a population 10,273.

⁹ ONS Neighbourhood Statistics for Lynton & Lynmouth parish

<https://www.neighbourhood.statistics.gov.uk/dissemination/LeadTableView.do?a=7&b=11126213&c=lynmou th&d=16&e=62&g=6416324&i=1001x1003x1032x1004&m=0&r=1&s=1464949693391&enc=1&dsFamilyId=2481>

the community as only a very small proportion are lived in as a principal residence – the majority are empty for most of the year.

- 3.6 A paper was produced by the Authority seeking a legal opinion regarding the introduction of a Principal Residence condition to new market housing. The paper set out the particular circumstances regarding the need for this approach and how it might be implemented and enforced (see Appendix 1). The legal opinion received has been added to the Examination Library ref [EX1](#).¹⁰
- 3.7 Across the National Park the proportion of dwellings with ‘no usual residents’ is high at 19.2% when compared with a national figure of only 4.3% for England (see Table 3.1). The 19.2% figure for ‘no usual residents’ includes both vacant dwellings and second or holiday homes. Table 3.1 also demonstrates that individual parishes across Exmoor (which have a ‘named settlement’ identified in Policy GP3 Spatial Strategy) have a proportion of dwellings with no usual residents which are all considerably higher than the national figure – it is particularly acute in the parish of Brendon & Countisbury where almost a third of household spaces have no usual residents. The latest SHMA¹¹ indicates that the percentage of vacant dwellings varies between 3.33% and 2.78% in the North Devon and West Somerset districts (also part of the National Park) respectively. Therefore around 16% of all household spaces can be stated to be second or holiday homes.

TABLE 3.1: 2001 and 2011 Census comparison of household spaces with no usual residents.

PARISH (with a named settlement – Policy GP3)	2001 - % household spaces with no residents - second homes	2001 - % of household spaces with no residents - vacant	2001 - % second homes + % vacant household spaces	2011 - % household spaces with no usual residents	Percentage Difference
Brendon	15.73	4.49	20.2	32.6	12.4
Brompton Regis	8.44	4.88	13.3	14.8	1.5
Challacombe	12.73	0.00	12.7	24.6	11.9
Cutcombe	8.74	1.64	10.4	14.1	3.7
Dulverton	8.64	3.27	11.9	14.7	2.8
Dunster ¹²	6.83	2.42	9.3	30.4	21.2
Exford	10.85	5.66	16.5	22.9	6.4
Exmoor	12.63	5.26	17.9	22.8	4.9
Exton	9.10	4.92	14.0	13.6	-0.4
Luxborough ¹³	14.00	3.00	17.0	20.9	3.9

¹⁰ [EX1](#) Landmark Chambers (2013) Legal Opinion - Principal Residence Condition

¹¹ [CE 11](#) - Housing Vision (2015) SHMA Update – Exmoor National Park: Implications of 2012-based Household Projections (December 2015)

¹² Parish of Dunster is split by the National Park boundary – the proportion of household spaces with no usual residents will be affected by Dunster Chalets (located in Dunster Marsh outside the National Park boundary)

¹³ Includes figures for Treborough Parish

PARISH (with a named settlement – Policy GP3)	2001 - % household spaces with no residents - second homes	2001 - % of household spaces with no residents - vacant	2001 - % second homes + % vacant household spaces	2011 - % household spaces with no usual residents	Percentage Difference
Lynton & Lynmouth	13.82	5.30	19.1	28.1	9.0
Monksilver ¹⁴	5.17	5.17	10.3	10.3	0.0
Old Cleeve ¹⁵	4.78	3.53	8.3	10.9	2.6
Parracombe	12.50	5.56	18.1	19.5	1.4
Porlock ¹⁶	7.71	3.79	11.5	19.7	8.2
Timberscombe	4.02	4.46	8.5	17.5	9.0
Winsford	13.45	0.00	13.5	18.3	4.9
Withypool	15.63	2.34	18.0	25.4	7.4
Wootton Courtenay	10.56	0.00	10.6	10.7	0.1
Local planning authority, regional and national comparisons					
Exmoor National Park	9.92	3.81	13.7	19.2	5.5
South West	1.76	2.82	4.6	5.97	1.4
England	3.18	0.64	3.8	4.3	0.5

3.8 As a result of the implementation of the Principal Residence policy approach in the Lynton & Lynmouth Neighbourhood Plan, a similar approach was agreed to go forward in the Draft Local Plan (November 2013) given the high proportion of homes with no usual residents across the National Park – this was supported by views from local residents at the Your Future Exmoor events.¹⁷ Historically, research into the ownership of newly built open market homes between 1992 and 2000 demonstrated that 23% were being used/occupied as either holiday or second homes.¹⁸

3.9 In terms of new development and assessing viability - all plots will be based on a rural exception value, which reflects the approach to the delivery of housing within the National Park and maximises the cross subsidy from the market Principal Residence dwellings.

The land value assumed was the same across the National Park and was based on a single plot value that all schemes should achieve. This was set at £10,000 per

¹⁴ Settlement split by the National Park boundary

¹⁵ Parish split by the National Park boundary. Main settlements are Roadwater (inside the National Park) and Washford (in the West Somerset local planning authority area).

¹⁶ Includes figures for Oare Parish

¹⁷ [EB1](#) - ENPA (2010) Your Future Exmoor (YFE) consultation events January – March 2010 (full feedback report) – page 34

¹⁸ [CE6](#) – ENPA (2016) Housing Topic Paper May 2016 – para. 3.8

*dwelling...reflecting the exceptional circumstances of development in the National Park and that market housing is only permitted to allow the development of affordable housing... The £10,000 value per plot is consistent with, and in many cases above, recent historic plot values achieved but reflects current expectations and was broadly accepted by the development industry attending the workshop as a reasonable starting point for the development being allowed in the Park [paragraph 4.4]*¹⁹

- 3.10 At workshop held to inform the Viability Assessment, local developers and estate agents understood the policy approach and did not argue against it. The workshop attendees came to an agreed view that a 5% reduction in value would be likely to affect the Principal Residence condition on market dwellings. The Viability Assessment used this reduction in value when calculating the viability of housing schemes (i.e. those listed as case studies in the report). The report illustrates that Principal Residence homes still allows development to be viable and therefore enables developers to deliver housing schemes within the National Park.²⁰
- 3.11 The Authority is not aware of any Local Plans which have introduced a Principal Residence requirement for new market dwellings. However, it is common to have types of housing which are tied in some way as a person's or household's principal/main/primary/sole residence. Appendix 1, (the paper seeking a legal opinion on Principal Residence homes) cites a number of examples including agricultural worker's dwellings, staff accommodation and affordable homes.
- 3.12 Other National Park Authorities' development plans have introduced the concept of new dwellings to meet a 'local need' whereby the limited opportunities for new development in the National Parks and the popularity of these areas for second homes and retirement, have resulted in restricting the occupancy of new housing, not just for affordable housing need but also for identified local needs. The Lake District National Park Authority have introduced local need housing which is secured in perpetuity through legal agreements restricting the occupancy to people with a local connection through work or residency – these homes are also restricted to be the person's main residence in all cases.²¹
- 3.13 In recently published Regulations for self-build and custom housebuilding registers²² an individual "*must declare that they are intending to occupy the self build or custom build dwelling as their 'sole or main residence'*" – this implies that there should be some type of mechanism to ensure that this will be the case. The Housing and Planning Act 2016 also amends the Self-build and Custom Housebuilding Act 2015 to insert a section regarding the registers – again stating

¹⁹ [CE12](#) - Three Dragons (2016) Exmoor National Park Viability Assessment May 2016

²⁰ Ibid – page 38

²¹ Lake District National Park Authority (2014) [Housing Provision Supplementary Planning Document – How we use Core Strategy Policy CS18 'Housing Provision' in planning decisions.](#)

²² The Self-build and Custom Housebuilding (Register) Regulations 2016 - Regulation 4.(1)(c) seeking (either alone or with others) to acquire a serviced plot of land in the relevant authority's area to build a house to occupy as that individual's sole or main residence.

*“the building or completion...of houses to be occupied as homes”.*²³

- 3.14 The introduction of the Principal Residence policy (HC-S4) is not an attack on second homes *per se* as the policy will only apply to new dwellings within the National Park and principally where they enable the delivery of local affordable homes. The intention is to ensure that any new market homes are lived in by people who will contribute to the long term sustainability and resilience of local communities within Exmoor. The majority of dwellings within the National Park are unfettered.
- 3.15 In conclusion, the Authority considers that the Principal Residence policy approach is in complete accordance with the intentions of the NPPF and responds to the local context of the National Park in helping to sustain thriving local communities.

²³ Housing & Planning Act 2016 - CUSTOM HOUSEBUILDING – section 9 Definitions

4 Pre-hearing discussions and statements of common ground

Statement of Common Ground between Exmoor National Park Authority and the National Trust

- 4.1 A Statement of Common Ground between the Authority and the National Trust sets out the matters which are subject to agreement with regard to the objections raised by the National Trust through the Publication Draft Local Plan consultation during June-July 2015, and the proposed changes and further modifications put forward by the Authority to address these concerns.²⁴
- 4.2 It is considered that subject to these matters of agreement, there are no outstanding issues or matters which are required to be resolved in advance of the hearing sessions.

²⁴ HD1 – Statement of Common Ground between Exmoor National Park Authority and the National Trust

5 Clarification Points Arising from the Inspector's Initial Assessment of the Exmoor Local Plan

5.1 Table 5.1 below provides the Authority's response to a number of less significant queries highlighted by the Inspector.

TABLE 5.1: Clarification Points				
Ref. no.	Page	Policy/ Para	Inspector's Query	ENPA Response
1.	8	2.2	The sub-title is "VISION FOR EXMOOR NATIONAL PARK TO 2031", but under sub-heading 1, the text begins "In 2030, ...". Should it be "In 2031, ...?"	Agree – reference to 2030 should be amended to 2031. However, we consider that if the subheading "VISION FOR EXMOOR NATIONAL PARK TO 2031" the words "In 2030 [or 2031], ..." are not required.
2.	8-11	2.2	To avoid misunderstanding if the individual sections of the Vision are read out of context, might it be sensible to preface each one with "In 2030 [or 2031], ..." as is done with section 1?	Consider that if the subheading "VISION FOR EXMOOR NATIONAL PARK TO 2031" the words "In 2030 [or 2031], ..." are not required for each individual section.
3.	11	2.3	Would it be sensible to make it clear that the order in which the objectives appear does not indicate any order of priority?	Agree – propose that the last sentence is amended to read: "The objectives are set out below <u>do not appear in any order of priority.</u> <u>They relate to sections and throughout the Plan where appropriate.</u> "
4.	13	2.4	Would it be sensible to make it clear that each of the strategic priorities has equal importance?	Agree – propose that the last sentence is amended to read: The following strategic priorities <u>are of equal importance and</u> have been identified as a focus for development management within the National Park:
5.	19	3.23	In the second sentence, exceptional circumstance(s) are defined as "if the development is absolutely necessary, in the public interest and there is no practical alternative". Does this wording accurately	Consider that this sentence reflects the NPPF and the NP Circular. <ul style="list-style-type: none"> • "if the development is absolutely necessary" reflects the NPPF para. 116 in terms of consideration of 'the need for the development'.

TABLE 5.1: Clarification Points

Ref. no.	Page	Policy/ Para	Inspector's Query	ENPA Response
			reflect the NPPF and the NP Circular 2010?	<ul style="list-style-type: none"> • “in the public interest” reflects para. 31 of the NP Circular and para 116 of the NPPF. • “there is no practical alternative” reflects para. 116 of the NPPF in terms of ‘the cost of, and scope for developing elsewhere outside the designated area or meeting the meet for it in some other way’. <p>These aspects of the NPPF and NP Circular are also included within the policy GP2 Major Development.</p>
6.	19	3.27	The last sentence of this paragraph appears to quote from policy GP2 rather than policy CE-S3. In line 11, therefore, should the reference to policy CE-S3 in fact be a reference to policy GP2?	Agree that to be clear the reference should be to GP2, but a reference to CE-S3 is considered to be helpful in providing further information regarding mitigation and compensation measures.
7.	23	3.42	The third sentence says “...some farmsteads are also likely to meet the same definition”. I assume “the same definition” is a reference back to the definition of a hamlet in the second sentence. Is it strictly accurate to say that a farmstead would meet that definition, in particular that it would include a “number of dwellings”? If not, the last part of the third sentence (after the words “National Park”) should perhaps be deleted.	<p>Yes, it is correct that the definition is a reference back to the definition of hamlet.</p> <p>Within the National Park there are a number of ‘estate farms’ which often have several dwellings associated with the farm building group which are a result of the larger estates formerly requiring a large number of labourers.</p>
8.	23	3.43	The meaning of the first sentence is not entirely clear. If it were deleted, and the word “Existing” were added at the beginning of the	<p>Agree with the proposed deletion and re-wording.</p> <p>The paragraph, if cross referencing all policies would need to also reference</p>

TABLE 5.1: Clarification Points

Ref. no.	Page	Policy/ Para	Inspector's Query	ENPA Response
			second sentence, would that convey the intended meaning better? Should there also be a cross-reference to policy HC-D7?	<p>HC-D4, HC-D8 and HC-D10 with regard to extended family dwellings, rural worker dwellings and succession farm dwellings.</p> <p>HC-D5 is specifically cross-referenced because it relates to the particular settlements (i.e. rural communities which are not identified in the spatial strategy) where self-build intermediate affordable homes may be permitted.</p>
9.	25	Map 3.1	I assume Map 3.1 is not part of the Policies Map – please confirm.	Map 3.1 is the Key Diagram and is <u>not</u> part of the Policies Map.
10.	27	3.49	By whom, and in what context, is the reuse of traditional agricultural buildings “considered” to be greenfield development?	<p>Within the glossary to the NPPF, the definition of previously developed (brownfield) land excludes “land that is or has been occupied by agricultural and forestry buildings”.</p> <p>For clarification the paragraph will be amended to read: (in addition to the proposed change ref 58 [p. 20-21] in SD5 Schedule of Proposed Changes):</p> <p>3.49 The re-use of t Traditional agricultural buildings is are not considered to be greenfield development <u>previously developed land</u>.</p>
11.	28	3.54	In line 5, do the words “these grades” refer to Grades 1, 2 and 3a (first sentence), or “poorer grades” (second sentence)? Needs clarification.	<p>Agree – propose that the third sentence is amended to read: “Within the National Park there are relatively few areas of agricultural land which fall within these grades <u>1, 2 and 3a</u>, and these are found mainly within Porlock Vale.</p>
12.	28	GP4	It is not entirely clear what clause 1 requires a development proposal to	<p>Agree – propose that clause 1 is amended to read: 1. Development proposals <u>will be encouraged which should demonstrate</u></p>

TABLE 5.1: Clarification Points

Ref. no.	Page	Policy/ Para	Inspector's Query	ENPA Response
			demonstrate. Could it be more clearly worded?	the efficient use of land and buildings including <u>through</u> : a) <u>the redevelopment of</u> brownfield land located within the built extent of the named settlements that does not have a high ecological value; <u>or</u> b) the re-use of existing buildings within the built extent of the named settlements, or within or well-related to hamlets and farmsteads.
13.	32	Map 4.1	I assume Map 4.1 is not part of the Policies Map – please confirm.	Confirm that Map 4.1 is not part of the Policies Map – this map reflects the Landscape Character Types set out in the Exmoor National Park Landscape Character Assessment.
14.	38	CE-D1	Could the words “considered to be” be deleted from clause 4, line 1 without loss of meaning? (Otherwise it is unclear by whom they would be considered significant.)	Agree – clarification of how this would apply is set out in the Schedule of Proposed Changes. ²⁵ Propose that clause 4 is amended to read: 4. Proposals which are considered to be significant in terms of scale and/or impact should provide a professional landscape appraisal as part of the application submission.
15.	41	Map 4.2	I assume Map 4.2 is not part of the Policies Map – please confirm.	Map 4.2 is not part of the Publication Draft Local Plan Policies Map. However, the Dark Sky Reserve Core Zone and Dark Sky Reserve Critical Buffer Zone are proposed to be included on the Policies Map. ²⁶
16.	57	CE-S4	How is clause 2 of the policy intended to be applied to development proposals?	Clause 2 will be applied to development proposals in accordance with the remaining clauses of CE-S4 and where appropriate the clauses set out in CE-D3. To provide clarification,

²⁵ SD5 Schedule of Proposed Changes – reference 70, page 26

²⁶Ibid – reference 459, page 199 (see also Appendix 6 for amended Policies Maps)

TABLE 5.1: Clarification Points

Ref. no.	Page	Policy/ Para	Inspector's Query	ENPA Response
				<p>clause 2 is proposed to be amended to read:</p> <p><u>2. Development proposals in relation to</u> Heritage assets (identified on the Exmoor National Park Historic Environment Record) and their settings, will be considered in a manner appropriate to their significance including:</p>
17.	57	CE-S4	In clause 3, line 4, should "and" be replaced by "or"?	<p>Agree – propose that clause 3 line 4 should be amended to read:</p> <p>3. Development proposals should make a positive contribution to the local distinctiveness of the historic environment and ensure that the character, special interest, integrity, and significance of any affected heritage asset and its setting is conserved and <u>or</u> enhanced.</p>
18.	60	CE-D3	In clause 1, line 2, should "character and appearance" read "character <u>or</u> appearance"?	<p>Agree – propose that clause 1, line 2, should be amended to read:</p> <p>1.a) the character and <u>or</u> appearance of the area are preserved or enhanced;</p>
19.	65	CE-S5	Should the words "any existing" be added at the beginning of clause 1(d)?	<p>Agree – propose that clause 1(d) is amended to read:</p> <p>d) <u>maintains or replaces any existing</u> bat and barn own roosts are maintained or replaced.</p>
20.	65	CE-S5	In clause 3, line 2, should "considered" be replaced by "permitted"?	<p>Agree – propose that clause 3 is amended to read:</p> <p>3. In addition to clause 1, proposals for the conversion or structural alternation of non-traditional buildings, will only be considered <u>permitted</u> if traditional buildings are demonstrated to be incompatible with the intended use or</p>

TABLE 5.1: Clarification Points

Ref. no.	Page	Policy/ Para	Inspector's Query	ENPA Response
				no such buildings are present, and where:
21.	65	CE-S5	What is the justification for the "environmental and visual enhancement" requirements of Clause 3(b)?	<p>The justification is to provide opportunities for positive enhancement of the site, recognising that the term non-traditional buildings will also include modern agricultural buildings. The wording reflects a consultation response to the policy criteria from North Devon Council on the Draft Local Plan (November 2013).</p> <p>The existing use of agricultural buildings in particular, may result in changes to the local landscape over time. The clause aims to achieve the conservation and enhancement of the National Park in accordance with National Park purposes.</p>
22.	74	CE-D5	As currently structured (with "or" at the end of clause 1(a)), the policy seems to indicate that all joint or community advertisements or signs will be permitted by criterion 1(a), whether or not they also meet criteria 1(b), (c) and (d). Is that the intention?	<p>No, the intention is that either a) or b) also meet criteria c) and d). Propose that the clause is amended to combine a) and b) to ensure the criteria are inclusive.</p> <p>1. Advertisements, and private road signs will only be permitted where it can be demonstrated that in the interests of amenity:</p> <p>a) The proposal represents a joint or community advertisement or sign; b) or the advertisement is located on, or is well related to the building that is used for the business or attraction;</p> <p>b) e) there will be no adverse individual, cumulative, or sequential impact on landscape character and local distinctiveness or the locality; and</p> <p>c) d) the size, scale, colour and siting are appropriate and the</p>

TABLE 5.1: Clarification Points

Ref. no.	Page	Policy/ Para	Inspector's Query	ENPA Response
				materials and design are of a high standard which conserve or enhance the character and appearance of the area.
23.	77-78	4.180	Does this paragraph need to be amended to reflect the proposed deletion of policy CE-S8?	Yes – see reference 117, page 52 of SD5 – Schedule of Proposed Changes .
24.	79	CE-D7	In clause 1, line 5, should the words “the health and amenity of” appear before “local communities”, for consistency with CE-S7 1(d)?	Agree – for reasons of consistency propose that the clause is amended to read: Interim Development Order permissions will be subject to an environmental impact assessment that will determine a set of comprehensive conditions in order to mitigate and control any adverse impact on the National Park’s landscape, wildlife, geodiversity, cultural heritage, other special qualities, its enjoyment, or <u>the health and amenity of</u> local communities, of Exmoor and to ensure satisfactory restoration and after-care of the site.
25.	86	5.23	In the light of representation ID 0033/02, is this paragraph correct to say that “Applicants should consult the Environment Agency ...” when considering the design of SuDS?	Reference 123, page 56 of SD5 – Schedule of Proposed Changes only refers to the proposed change to the footnote. Therefore the last sentence in paragraph 5.23 should also be amended to reflect this change: Applicants should consult the <u>Environment Agency the relevant Sustainable Drainage Systems Approving Bodies</u> and the National Park Authority ¹⁷³ when considering the design of sustainable drainage systems.
26.	103	Map 5.2	I assume Map 5.2 is not part of the Policies Map – please confirm.	Map 5.2 is not part of the Policies Map – the suitable / unsuitable areas are aligned with Landscape Character Types identified within EB48 Exmoor

TABLE 5.1: Clarification Points

Ref. no.	Page	Policy/ Para	Inspector's Query	ENPA Response
				<p>National Park Landscape Character Assessment and associated maps.</p> <p>It is proposed that unsuitable areas for small scale wind turbines and freestanding solar arrays will be shown on Map 24 of the suite of Policies Maps (see Appendix 2). These areas cannot be effectively shown on Maps 22/23 for the east and west of the National Park due to the number of designations already shown in these particular areas. It is intended that text will be added to Policies Maps 22/23 and inset Maps 11a/11b, 14, 17 and 20 to state:</p> <p>“Map 24 shows the extent of Unsuitable Areas for Small Scale Wind Turbines and Freestanding Solar Arrays”</p>
27.	104	CC-D3	<p>Clause 1 refers to “Proposals for individual wind turbines serving individual properties or groups of properties ...”. Would other wind turbine proposals (that do not meet this description) be considered under policy CC-S5, or is policy CC-S3 intended to cover all future wind turbine proposals?</p>	<p>Clause 2 of policy CC-S5 states that large commercial wind turbines will not be permitted in the National Park.</p> <p>It is intended that CC-D3 is applied to all other wind turbine proposals within the National Park.</p>
28.	132	HC-S1	<p>In clause 1, line 3, should “development” be inserted after “new housing”?</p>	<p>Agree – propose to amend clause 1 to read:</p> <p>The purpose of housing development will be to address the housing needs of local communities. The principal community identified need is for affordable housing with local occupancy ties. Exceptionally, new housing <u>development</u> will be</p>

TABLE 5.1: Clarification Points

Ref. no.	Page	Policy/ Para	Inspector's Query	ENPA Response
				acceptable where it addresses an identified local housing need for:
29.	132	HC-S1	In clause 1, line 4, should "acceptable" be replaced by "permitted"?	<p>Agree, given that the Plan should be read as a whole. Propose to amend the third sentence of clause 1, to read:</p> <p>Exceptionally, new housing will be acceptable <u>permitted</u> where it addresses an identified local housing need for:</p>
30.	132	HC-S1	In clause 1(b), should "homes for" be inserted before "rural workers"?	<p>Agree to be consistent with the other sub-clauses propose to amend to read:</p> <p>1.b) <u>homes for</u> rural workers in agriculture, forestry or other rural land based enterprises...</p>
31.	140	HC-S4	Would the intended meaning of the first part of clause 1 be clearer if it were amended as follows: "Any <u>new</u> market housing <u>development</u> will be " <u>Principal Residence</u> " housing and will only be permitted through the change of use of non-residential buildings to housing in settlements, and/or <u>where it is required to enable ...</u> "?	Agree – propose to amend the policy to read as suggested.
32.	150	6.127	In line 2, should the definition of descendants also include grandchildren and great-grandchildren?	<p>Agree for consistency and clarity to include reference to grandchildren and great grandchildren. Text to be amended to read:</p> <p>Clause 2 of the policy requires the occupants to be 'immediate family' as a direct descendent or antecedent i.e. children, <u>grandchildren, great grandchildren</u>, parents, grandparents, or great grandparents.</p>

TABLE 5.1: Clarification Points

Ref. no.	Page	Policy/ Para	Inspector's Query	ENPA Response		
33.	152	6.132	What is the evidence base to support the definition of rural communities set out in latter part of this paragraph? Should the term be defined in the Glossary?	<p>The evidence base for rural communities is set out in CE14 ENPA (2015) Spatial Strategy: Local Plan Topic Paper and an explanation of the policy approach and definition of rural communities is given in the written justification preceding policy GP3 Spatial Strategy.</p> <p>Agree to include a definition of the term in the Glossary. Propose to amend the Glossary to insert the following:</p> <table border="1"> <tr> <td>Rural community</td> <td>Small rural communities which are not identified in the spatial strategy, but have an established, closely grouped number of dwellings within a contiguous built form, and are separate from other named settlements, plus service provision in the form of a shop, pub or community meeting place/hall.</td> </tr> </table>	Rural community	Small rural communities which are not identified in the spatial strategy, but have an established, closely grouped number of dwellings within a contiguous built form, and are separate from other named settlements, plus service provision in the form of a shop, pub or community meeting place/hall.
Rural community	Small rural communities which are not identified in the spatial strategy, but have an established, closely grouped number of dwellings within a contiguous built form, and are separate from other named settlements, plus service provision in the form of a shop, pub or community meeting place/hall.					
34.	155-156	6.140	Where are the “criteria of an Exmoor worker”, referred to in the penultimate sentence, set out? How do those criteria relate to the Plan’s policies?	It is intended that the definition of an Exmoor Worker will be included in the forthcoming Housing SPD. Work on the SPD will be progressed immediately following the hearings and completed by the end of 2017. This will be set out in an amended LDS which will be presented to members by the end of 2016.		
35.	158	HC-D9	In clause 1(d), could the words “the Authority is	Agree – propose that clause 1.d) is amended to read ²⁷ :		

²⁷ Incorporating proposed change reference 316, page 139 – SD5 Schedule of Proposed Changes

TABLE 5.1: Clarification Points

Ref. no.	Page	Policy/ Para	Inspector's Query	ENPA Response
			satisfied that" be deleted, or replaced by "it is demonstrated that" or similar wording?	d) the net floorspace <u>gross internal area</u> will be 90 <u>93</u> sqm or less unless the Authority is satisfied <u>it is demonstrated</u> that a larger dwelling is required in which case, the size of the dwelling will be commensurate with the needs of the holding, it can be sustained by the farm business and it would be affordable for the essential need in perpetuity.
36.	176	HC-S6	In clause 4, should "Local Services and Villages" be replaced by "named settlements"?	Yes, to be consistent with policy HC-D18 Local Commercial Service Provision. Propose to amend clause 4 to read: 4. New build developments should be located within Local Service Centres and Villages <u>the named settlements</u> or, for community facilities where no suitable site exists, are well-related to these settlements.
37.	186	HC-S7	Could the second and third lines of clause 1(a) be altered to read simply: "accord with policy CE-S5"?	Agree – propose to amend clause 1.a) to read: 1.a) they re-use existing buildings without the need for significant extension and accord with policies relating to the conversion or structural alteration of buildings (<u>policy CE-S5</u>);
38.	199	7.51	In line 7, should the words "very special circumstances" be replaced by "exceptional circumstances", for consistency with policy SE-S4, clause 3?	Agree – propose to amend the last sentence of 7.51 to read: Applicants will need to demonstrate that very special <u>exceptional</u> circumstances exist to justify the functional need for a building in this context.

TABLE 5.1: Clarification Points

Ref. no.	Page	Policy/ Para	Inspector's Query	ENPA Response
39.	200	SE-S4	In clauses 1(d), (e) & (f), what does the word "they" refer to?	<p>Propose to replace the word "they" ensure clarity – the clauses are proposed to be amended to read:</p> <p>d) they <u>buildings, tracks or structures</u> are sited appropriately in the context of local topography and of an appropriate design that responds to and reinforces landscape character in terms of size, scale, massing, layout, external appearance and materials – if a landscaping scheme is required it should be in accordance with policy CE-D1;</p> <p>e) they <u>proposals</u> do not generate a level of activity or otherwise detrimentally affect the amenity of surrounding properties and occupiers including through loss of daylight, overbearing appearance, or conflict with neighbouring land uses;</p> <p>f) appropriate measures are taken to ensure they <u>proposals</u> do not, including through the level of activity, have an adverse impact on biodiversity and cultural heritage (in accordance with CE-S3 and CE-S4) or cause other unacceptable environmental impacts;</p>
40.	212	RT-D4	In clause 2(a), should there be a reference to specific policy number(s)?	<p>Agree – propose to amend clause 2.a) to read:</p> <p>2.a) the character and appearance of the building and its setting is conserved, and where they accord with policies on landscape character, cultural heritage and design (<u>CE-S1, CE-S4 and CE-S6</u>);</p>

TABLE 5.1: Clarification Points

Ref. no.	Page	Policy/ Para	Inspector's Query	ENPA Response
41.	239	Map 9.1	I assume Map 9.1 is not part of the Policies Map – please confirm.	The Exmoor Route Network is included on the Policies Map.

6 Appendix 1: Paper Seeking Legal Opinion on Principal Residence

Principal Homes

Background

The Lynton and Lynmouth Town Council with the support of others have been consulting with their community on a forthcoming Neighbourhood Plan. One of the clear issues coming from the community is concerns with second and holiday homes.

The Town Council area has documented high levels of second homes. Second home owners often infrequently visit and therefore make little contribution to the area. There is, for instance, the example of a long street of terrace properties in Lynmouth where all but a handful of the homes are permanently occupied. This is affecting the viability of local convenience shops, the school roll, provision of local bus services, health care facilities etc.

There is ample documented and local practical evidence to demonstrate that the level of holiday and second homes is affecting the sustainability of the Lynton and Lynmouth Town Council area.

Coupled with this situation is a relatively low wage economy and high house prices. This means that many local families are unable to afford to purchase a property and stay within their community. Regular Housing Needs Survey has shown that there is a high need for local needs affordable housing.

The Community wish to see as many Local Needs Affordable Houses delivered as possible and this is in line with the requirements of the adopted Local Plan. However, affordable homes need to be paid for and with the substantial reductions in grant funding there is a requirement for cross subsidy from open market housing. The community accept this but wish to ensure that every dwelling that is provided makes a contribution to making their community more sustainable. This is very much in line with the approach of the National Planning Policy Framework.

A key issue for this community is that the settlement areas of Lynton and Lynmouth are highly constrained by topography which mean that there are very few opportunities to develop housing. Vertical cliff faces, the sea, SSSI and other physical constraints such as rivers limit the sites for development. There is a wish to ensure that every house that is provided makes a contribution to the sustainability of the community. To this end if a new open market house is to be provided then the community do not wish to see it sit empty for large parts of the year as a holiday or second home. They wish it to be occupied on a permanent basis so that occupant uses local facilities such as the shops, doctors, and potentially uses local bus services or sends their children to the local school. Consequently, the draft Neighbourhood Plan proposes a requirement that any new open market housing is restricted to the person's principal home. It is appreciated

that this could be someone from the other side of the world but that is not a concern to local residents providing that the occupant(s) is living (and will therefore in some way contribute) to the Lynton and Lynmouth community.

I explain this in some detail as the planning case with the documented evidence, in the view of the ENPA Planning Officers, does provide a compelling planning justification for ensuring that any new open market housing is restricted to a person's principal home. This would only affect new dwellings and would not be retrospective to other properties, the vast majority of which could still be bought as second or holiday homes.

The next section sets out the rationale for Council to consider as the legal basis to restrict the new open market dwellings to an occupant's principal home.

Other Occupancy Restrictions.

A dwelling falls within the C3 Use Class. There are other examples of restricting occupation of a dwelling to a sub-class within the C3 dwelling category by condition for good planning reasons.

Agricultural Worker's Dwellings.

Circular 11/95 recommends the following standard condition:

The occupation of the dwelling shall be limited to a person solely or mainly working, or last working, in the locality in agriculture or in forestry, or a widow or widower of such a person, and to any resident dependants.

Staff Accommodation.

Circular 11/95 recommends the following standard condition:

The occupation of the dwelling shall be limited to a person solely or mainly employed or last employed in the business occupying the plot edged red on the attached plan, or a widow or widower of such a person, or any resident dependants.

Affordable Dwellings

This is very well established and a requirement to restrict occupation to local persons in housing need is often controlled by Legal Agreement and on occasion by planning condition. Government fully accepts such an approach, it is in the NPPF and even Government grants money to provide schemes that restrict housing to a sub-set that is dedicated to local persons in housing need.

Holiday Lets

Again it is well established that, in appropriate circumstances, it is necessary in planning terms to restrict a dwelling to use solely as a holiday let. The Good Practice Guide on Planning for Tourism produced by CLG explains how this can be achieved. Standard conditions vary but are along the lines of:

The development hereby permitted shall not be used otherwise than for the provision of short let holiday accommodation. The property shall not be occupied as a permanent dwelling and shall not be occupied by any person for a period exceeding 28 days in any calendar year. The owner or operator shall maintain a register of occupants for each calendar year. This shall be made available on request for inspection by any duly authorised officer of the Local Planning Authority.

This condition allows the occupation of the dwelling only as a holiday let and specifically excludes use as a permanent dwelling. What the Neighbourhood Plan is trying to achieve is the reverse, to restrict the occupation as a principal dwelling and not as a holiday let. The holiday let approach and detailed condition wording has been the subject of many appeals and indeed Court Cases and is accepted as being legally justifiable.

There is a subtle distinction between principal home (or sometimes primary residence), which is someone's main home, which they would normally reside at and a permanent home which gives the impression that the unit would be occupied on a full time basis.

Principal Home

Housing, Tax and Council Tax Law all refer to principal housing as a legal concept. While these are not directly referable to the planning situation it does show as a legal principle Principal Housing is definable and understood as a concept. For instance, *Caradon District Council v Paton; Same v Bussell: CA (Clarke and Latham LJ): 10 May 2000*

The concept of a principal dwelling is used regularly in planning decisions in the Lake District which has an acute problem with second homes. Attached are examples of planning permissions which include a condition which states that the dwelling shall be occupied as someone's only or principal home.

There is also a recent example of an appeal decision from 25 October 2012 where an Inspector allowed an appeal subject to a condition that required the new dwelling to be occupied only as a principal dwelling. It must be assumed that the Inspector considered that the condition met all the circular tests and the condition states:

The dwelling-house hereby permitted shall not be occupied otherwise than by a person as his or her only or principal home. The occupant shall supply to the local planning authority (within fourteen days of the local planning authority's request so to do) such information as the local planning authority may reasonably require in order to determine compliance with this condition. For the purposes of this condition, an "only or principal home" is a dwelling which is occupied continuously for a minimum period of six months in every twelve month period. For the avoidance of doubt the dwelling shall not be occupied as a second home or for holiday letting accommodation".

Suggested Approach and Circular Requirements.

It is established practice that, where there is a planning justification, it is possible to control the occupation of dwellings to a specific sub-set of occupant. It is very common practice to restrict a dwelling by condition to a holiday let and because of the particular circumstances of Lynton and Lynmouth, in terms of the data available and the will of the community, the reverse is required in relation to the control of new dwellings.

It is suggested that the condition which could be applied in relation to any permission to an open market delivered under the Lynton and Lynmouth Neighbourhood Plan could be drafted as such:

The dwelling-house hereby permitted shall not be occupied otherwise than by a person as his or her only or principal home. The occupant shall supply to the local planning authority (within fourteen days of the local planning authority's request so to do) such information as the local planning authority may reasonably require in order to determine compliance with this condition. For the avoidance of doubt the dwelling shall not be occupied as a second home or for holiday letting accommodation".

(The requirement to occupy the dwelling for at least 6 months in each year has not included for the reasons explained in relation to future enforcement).

It is essential to examine the proposed condition against the Circular tests of 11/95.

Necessary

This relates to the planning case and the data available, the aims of the Neighbourhood Plan in terms of sustainable development for their community, the requirements of the NPPF (which promotes sustainable development and the vibrancy of communities) and the details in any Neighbourhood Plan that is adopted. It is important to note that the examination of the Neighbourhood Plan will look only at a limited number issues and the planning justification, if the plan is in general conformity with strategic development plan policies and the NPPF etc, will not question the content of the policies beyond the tests in the regulations.

The data and the will of the community indicates that it is necessary in the interests of sustainable development to ensure that new units of open market accommodation are restricted to principal homes.

Relevant to Planning

The occupation of a dwelling can be relevant to planning. This is shown by restriction in relation to agricultural workers and holiday let dwellings. If the requirement is in a Neighbourhood Planning policy then it will clearly be relevant to planning. Indeed it will be a planning policy requirement.

Relevant to the Development to be Permitted.

Again if the requirement is included in a development plan policy and that directly relates to the type of development in question then it will be very relevant, indeed essential to be considered in relation to the determination of an application for housing.

Enforceable.

This is the area which has generated the requirement for most thought. If one takes the scenario of a dwelling with a requirement to be used as a principal dwelling then it will not be able to be occupied as a second home or as a holiday home. If a dwelling is occupied and concerns are raised then information can be collected.

There is information, such as how often the dwelling is occupied, council tax, children at school, registration at doctors, etc that will lead to a conclusion as to whether the unit was occupied as a second home and not as someone's principal home.

A holiday home use is even easier to judge, advertising, turn over of occupants etc. If it is clear in relation to a condition in terms of holiday accommodation and this can be enforced then the opposite is considered to be the case. (I appreciate that there will always be someone who tries to circumvent the system with how they design their lives but this is no different than the approach for Council Tax and discounts for second homes, and this is a system that is legally accepted). It is common place in planning to follow up and decide on the occupation of agricultural worker's dwellings, holiday lets etc and take appropriate action as expedient.

If a principal home was to be bought by someone who used it as a second home, when they occupied it as a second home there would be a breach of the condition. A Breach of Condition Notice or Enforcement Notice could be served to cease that form of occupation. The owner could decide to not occupy the house, use it as their principal home, or rent or sell to a person who would use the dwelling as a principal dwelling. It will always be possible for someone to make a planning application to seek to remove or vary the condition which will be considered in the normal way.

If the dwelling is not occupied then there is no breach of planning control. This is where there is a concern with the precise wording of the condition used by the Lake District because that requires occupation for a minimum of 6 months per year. I am not convinced that it is reasonable to require occupation, only to require that if the dwelling is occupied that it occupied as a principal dwelling. This would be similar to a situation with, say, an agricultural worker's dwelling. It is not possible to force an agricultural worker to occupy an agricultural worker's dwelling. If such a dwelling is not occupied then there is no breach. This would also cover the situation with a principal dwelling when someone was in hospital for a prolonged period or away with the army forces, such that the house was not occupied for a legitimate reason but the house would still be that person's principal home. For this reason the draft condition presented to Counsel does not require a minimum occupation period.

Precise

The suggested wording is considered to be as clear and as precise as the other conditions that restrict occupation in relation to holiday lets and agricultural workers dwellings. The reality is that everyone knows when someone's lives in a house as their principal home. The vast majority of people own only one home and live in it. The condition allows the LPA to check with the owners as to what the situation is if an issue is raised. The wording is the opposite of the holiday let condition and the holiday letting condition is well established and has been judged enforceable. This restriction would only apply to new dwellings and any one purchasing such a dwelling would be aware of the requirements. This is not about applying a restriction retrospectively.

Reasonable in all other respects

Given the planning circumstances in this particular part of the National Park there is very good planning case and following a referendum there is a strong desire for this approach to be included in the Neighbourhood Plan. If the legal case is accepted and the clause included in the Plan there will be a requirement to make decisions in accordance with the Plan as the Neighbourhood Plan once adopted will form part of the Development Plan for the purposes of decision making.

Advice

Counsel is asked to advise whether the drafted condition to control the occupancy of a new dwelling to a person's only or principal home is a legally acceptable approach, and if not, either to redraft the condition or advise on an alternative mechanism to achieve the desired aims of the Community and the National Park Authority.

7 Appendix 2: Map 24 Unsuitable Areas for Small Scale Wind Turbines and Freestanding Solar Arrays