
EXMOOR NATIONAL PARK LOCAL PLAN EXAMINATION

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

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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 EX21¹, 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.

¹ 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.

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 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