

Central Lincolnshire Local Plan Team,
North Kesteven District Council,
Kesteven Street,
SLEAFORD. NG34 7EF

26678/A3/MK/dw

BY EMAIL & POST: talkplanning@central-lincs.org.uk

6th March, 2017

Dear Sir/Madam,

**CENTRAL LINCOLNSHIRE LOCAL PLAN EXAMINATION: PROPOSED POST-SUBMISSION
MAIN MODIFICATIONS:
SUBMITTED ON BEHALF OF CYDEN HOMES LIMITED**

These representations are submitted on behalf of Cyden Homes Limited in response to the above consultation. The representations are made further to Barton Willmore's participation in the Local Plan Examination on behalf of Cyden relating to land off Hawthorn Road, Cherry Willingham (site reference: CL4363).

MM/2 POLICY LP2 (LARGE VILLAGES)

The modifications set out in MM2 include clarifications relating to the wording of Policy LP2 (4. Large Villages). We address the following matters:

1. The use and definition of "exceptional circumstances"
2. The definition of "appropriate locations"
3. Taking account of 1. and 2., the inclusion of the development/site size threshold of 25 dwellings / 1 ha (whichever is smaller)

"Exceptional Circumstances"

The inclusion within Policy LP2 of an "exceptional circumstances" test for non-allocated sites at Large Villages was subject to considerable debate at the relevant Examination hearing session. No clear outcome was reached despite the Inspectors inviting officers to consider the deletion of this part of Policy LP2 or, alternatively, to clarify how this test should be interpreted.

This response to MM/2 expands upon our previously submitted written statement for Matter 5 and evidence presented orally.

The proposed definition of "exceptional circumstances" is ambiguous, stating that it is a matter for the decision maker to determine. As such, it does not provide a clear indication of how a decision maker should react to a development proposal. It is therefore contrary to paragraph 154 of the National Planning Policy Framework ('the Framework') and unsound in this respect.



The definition offers just one example of what could potentially constitute exceptional circumstances for the purposes of Policy LP2. This example appears to conflict with paragraph 204 of the Framework which requires planning obligations (which would very likely be required to secure the delivery of a community facility) to be, inter alia, fairly and reasonably related in scale and kind to the development. This is both a policy and legal test for planning obligations. This conflict further contributes in our view to part of MM/2 being unsound.

The inclusion of an exceptional circumstances test for development proposals on non-allocated sites is, in principle, contrary to the Framework in our view. It is important to note that the Court of Appeal is due in May 2017 to consider the East Staffordshire Borough Council & SSCLG v Barwood High Court (HC) Judgement.

This HC judgement, relating to the interpretation of the presumption in favour of sustainable development, is widely expected to be repealed. In advance of this Court of Appeal judgement, any further progress regarding the inclusion of an "exceptional circumstances" test in Policy LP2 risks being unlawful. It is imperative in our view that this key judgement is awaited prior to the Inspectors' determining the soundness of Policy LP2 in this respect.

Such a judgement from the Court of Appeal would therefore reinstate the interpretation of the paragraph 14 of the Framework established through previous case law, namely Wychavon DC V SSCLG [2016] EWHC592.

Importantly, the Wychavon HC Judgement establishes that where there is a conflict between a proposal and a development plan, the policies within the Framework, including the presumption in favour of sustainable development, are important material considerations to be weighed against the statutory priority of the development plan.

We therefore conclude that the inclusion within Policy LP2 of an exceptional circumstances test, whilst clarified through the proposed definition, remains in conflict with the golden thread running through the entire Framework, and is therefore clearly unsound.

"Appropriate Locations"

Whilst we broadly support the addition of a definition of "appropriate locations" which refers to national policy and policies in the Local Plan, particularly Policy LP26, we object to the first 'additional' criterion - retain the core shape and form of the settlement - in order to be judged an appropriate location.

An assessment of whether the development of a site would retain the core shape and form of a settlement relies on an interpretation of the terms used. It would rely upon a highly subjective position being reached. For this reason and due to the wide range of other policies and other additional criteria identified in the definition, the criterion for proposals to retain the core shape and form of the settlement is considered unclear, unnecessary and should therefore be deleted.

Unlike the first criterion, the second and third criteria included in the definition for assessing whether a site is an "appropriate location" are supported. They are clear tests for assessing the impacts of a development proposal.

Separately, Policy LP2 (4. Large Villages) includes a development / site size threshold. There is no evidence or justification however to conclude that the size threshold is based upon the wide range of considerations listed in the definition for determining whether a site is an appropriate location. Furthermore, in the entirely likely event that a larger development/site satisfied the appropriate location definition, it is unclear whether the size threshold in Policy LP2 is either balanced against these other considerations or 'overruled'.

On this basis, alongside an amendment to the definition of "appropriate locations", we seek the deletion of the development/site size threshold in Policy LP2 (4. Large Villages).

Conclusions on MM/2

For all the reasons set out above, proposals for "sustainable development" on non-allocated sites could be severely restricted as a result of Policy LP2 (4. Large Villages).

Taking account of our objections to the "exceptional circumstances" test and the definition of "appropriate locations" included in Policy LP2 (4. Large Villages), and the clear conflict with the presumption in favour of sustainable development and the exhortation to boost significantly the supply of housing, Policy LP2 (4. Large Villages) including the modifications set out within MM/2 is unsound.

To resolve our objections, we seek the deletion of the reference to "exceptional circumstances" and the development/site size threshold in Policy LP2 (4. Large Villages). The revised wording we seek is as follows:

"4. Large Villages

To maintain and enhance their role as large villages which provide housing, employment, retail, and key services and facilities for the local area, the following settlements will be a focus for accommodating an appropriate level of growth. Most of this growth will be via sites allocated in this plan, or appropriate infill, intensification or renewal within the existing developed footprint. ~~In exceptional circumstances*****, a~~Additional growth of non-allocated sites in appropriate locations** outside of, but immediately adjacent to, the developed footprint*** of these large villages might be considered favourably, ~~though these are unlikely to be of a scale over 25 dwellings / 1 ha per site (whichever is the smaller)~~ **having regard to material planning considerations including the presumption in favour of sustainable development."**

MM/8 POLICY LP3

We object to the propose reference to the use of the Liverpool method in Policy LP3. This is not supported by national policy and guidance. It is also contrary to the Government's ambitions of significantly boosting the supply of new housing by 2020. It is unsound and we therefore seek the deletion of MM/8.

Please contact the writer on [REDACTED] should you wish to discuss this further or if you have any questions.

Yours faithfully,

[REDACTED]

 **MICHAEL KNOTT**
Director

cc. A. Burling, Esq. - Cyden Homes