

Bath and North East Somerset Council
Examination of the Bath and North East Somerset Council Local Plan (Core Strategy and Placemaking Plan) Partial Update
Inspector: Philip Lewis BA(Hons) MA MRTPI
Programme Officer: Ian Kemp

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Dear Mr Daone

Examination of the Bath and North East Somerset Council Local Plan (Core Strategy and Placemaking Plan) Partial Update

1. As I indicated at the conclusion of the examination hearings on 6 July 2022, I am writing to set out my thoughts on the Bath and North East Somerset Council Local Plan (Core Strategy and Placemaking Plan) Partial Update (the Plan) at this stage and the way forward for the examination. My comments are based on all that I have read, heard and seen to date. However, I emphasise that the examination is not yet concluded and consultation on main modifications is still to take place. Therefore, these comments are without prejudice to my final conclusions on the Plan.
2. Overall, I consider that, subject to main modifications, the Plan is likely to be capable of being found legally compliant and sound. I will set out my reasoning for this in my final report.
3. The Council has provided me with a first draft of the main modifications as discussed at the hearings and I will respond separately in this regard. In addition to these potential amendments to the Plan, there were several matters discussed at the hearings which I said I would take away for further consideration. I set out my response to these matters below.

Contextual and procedural matters

4. The Council has submitted for examination a number of proposed changes to the adopted Core Strategy and Placemaking Plan as set out in the Schedule of Changes to the Local Plan (CD-SD001). As I set out in my note on the scope of the examination (EXAM5), I am concerned only with those parts of the Core Strategy and Placemaking Plan which are proposed to be changed through the Plan before me. In the interests of clarity however, on adoption of the Plan, it should be made clear as to which policies have been updated.

5. The Council has prepared the Plan in the context of the preparation of the West of England Spatial Development Strategy (SDS). The SDS, as expressed in a Statement of Common Ground (CD-SD064) is to set out a spatial strategy for growth to meet the need for homes and jobs in a clean and inclusive way across the West of England Combined Authority area over the next 20 years. A number of representors have argued that the Plan should be dealing with cross boundary matters such as the question of how any unmet need arising from Bristol should be addressed. However, whilst the Metro Mayor has halted work on the SDS, the Council's note (EXAM7) is clear that the legal duty to prepare and publish that strategy remains. Whilst future progress with the SDS is unclear at this point, there is no reason why the Council cannot update the selected policies of its development plan, particularly as the proposed update does not affect the spatial strategy.
6. I am satisfied that the Council was clear at the outset of the plan making process for the partial update that its scope is confined to those areas that can be addressed without changing the spatial priorities of the Core Strategy and Placemaking Plan, namely the spatial strategy and the strategic housing and job growth requirements. Furthermore, it is clear that the Council engaged and consulted with local communities and other interested parties on this basis.

The supply of housing

7. The scope of the submitted Plan includes the replenishment of housing supply in order that the Core Strategy housing requirement can be met, and the necessary supply of housing land maintained.
8. The Core Strategy sets out an overall dwelling requirement of about 13,000 dwellings for the period 2011 to 2029, which equates to about 722 dwellings per annum. The National Planning Policy Framework (NPPF) in paragraph 74 and footnote 39 says that local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than five years old, unless these strategic policies have been reviewed and found not to require updating.
9. In this case, the submitted Plan does not seek to update the dwelling requirement. However, in considering whether there is a five-year supply of housing land, I need to reach a view on whether the adopted housing requirement or the local need calculated using the standard method is used as per paragraph 74 of the NPPF.
10. The Council has undertaken a review of the housing requirement as evidenced in CD-SD027 (Bath and North East Somerset Core Strategy Housing Target The basis of the Housing Requirement for the Core Strategy Review December

2021). At that time, it was concluded that the standard method produced an annualised local housing need below that set out in the Core Strategy, namely 676 dwellings per annum rather than 722. The Council has therefore undertaken a review of the Core Strategy housing requirement and concluded that it does not require updating in the Plan before me as per the NPPF. It is sound therefore to calculate the five-year housing land supply using the Core Strategy housing requirement.

11. There was some discussion at the hearing regarding the application of the standard method. The standard method for calculating local housing need is a formula based approach and as components change, such as the affordability ratio, the resulting local housing need figure may change. The standard method derived figure is currently 741 dwellings per annum. However, the provision of student housing has not been included in the calculation of the housing land supply against the Core Strategy requirement. The Council's latest calculation of this (EXAM 11) is that student housing provision would add 426 dwellings to the housing land supply should the standard method figure be used. This additional component of supply would more than cancel out the modest difference between the Core Strategy housing requirement and the local housing need if factored into the five-year housing supply, should I had decided that the five-year housing land supply should be calculated using local housing need rather than the Core Strategy requirement.
12. In the plan period to date, there has been over-supply of 760 dwellings above the Core Strategy housing requirement. There is no national policy and limited guidance on whether past over-supply should be factored in in the calculation of housing land supply, or whether it should be considered over the full lifetime of the plan or over a shorter period such as to reduce the five-year requirement. This is a matter which falls to the exercise of planning judgement as per *Tewkesbury BC v SSHCLG* [2021] EWHC 2782 (Admin).
13. In this case, the Council is able to demonstrate over-supply in the plan period to date in part because a number of its allocated sites have come forward at the same time as illustrated in the updated housing delivery trajectory in appendix 1 of EXAM 11. This illustrates that over-supply took place on an annualised basis in the years 2015/16 to 2020/21, with over-supply against the cumulative requirement taking place since 2017/18. The Council project that over-supply in cumulative terms over the Core Strategy requirement will continue for the remainder of the plan period, despite the annualised rate of provision dropping back somewhat until 2024/25 when the allocations proposed in this Plan start to deliver dwellings. The evidence before me does not convince me to the contrary. The anticipated overall provision of dwellings is projected to be around 1,000 dwellings over the Core Strategy target at the end of the plan period.

14. It would seem unreasonable if the over-supply to date was not taken into account in considering the five-year housing land supply. This is especially so as the Council had made adequate provision to meet overall housing needs for the plan period established in the Core Strategy through its adopted plans. Indeed, if there was under supply, that would be taken into account as per national policy and guidance. I shall therefore take the over-supply into account in calculating the housing land supply.
15. Having considered the housing land supply evidence, I am minded to conclude that there will be a five-year supply of deliverable housing sites on the adoption of the Plan and that given the extent of the housing land supply as a whole, there would also be adequate provision of specific, developable sites for the remainder of the plan period to 2029. I am also of the view that this would be the case even if I did not take the past over-supply into account.

Strategic policies

16. At the hearing, there was some discussion regarding the soundness of the Plan in respect of consistency with the NPPF in the way in which the identification of strategic policies would be undertaken, and the duration of the strategic policies which would be updated by the Plan, and the new policies. The submitted Plan in paragraph 29a states that 'it is considered that all policies in the Core Strategy and Placemaking Plan are 'strategic''.
17. The NPPF in paragraph 20 sets out that strategic policies should set out an overall strategy for the pattern, scale and design quality of places, and make sufficient provision for housing, infrastructure, community facilities and the conservation and enhancement of the natural, built and historic environment. NPPF 21 sets out that strategic policies should be limited to those necessary to address the strategic priorities of the area (and any relevant cross-boundary issues), to provide a clear starting point for any non-strategic policies that are needed. In addition, strategic policies should not extend to detailed matters that are more appropriately dealt with through neighbourhood plans or other non-strategic policies.
18. The Core Strategy specifically identifies a number of policies and allocations as being strategic, and identifies 'core policies'. The Placemaking Plan also includes a number of identified strategic policies, such as Policy B2 Central Area Strategic Policy. This reflects paragraph 17 of the NPPF which includes that 'Plans should make explicit which policies are strategic policies'.
19. Whilst collectively, the policies of the Core Strategy and Placemaking Plan may address the strategic priorities of the area as set out in the local plan objectives, I have not been convinced that all of the policies of the Placemaking Plan constitute strategic policies. There is not the evidence before me to justify the inclusion of paragraph 29a in the Plan and therefore I do not find the Plan sound in this regard. The Plan should be amended to indicate which of the

policies of the development plan are strategic as per the NPPF. Please prepare a main modification to this effect and provide a note to justify the identification of the strategic policies, to be published in the examination library.

20. The NPPF in paragraph 22 says that strategic policies should look ahead over a minimum 15 year period from adoption, to anticipate and respond to long-term requirements and opportunities, such as those arising from major improvements in infrastructure.
21. The submitted Plan as a partial update to the adopted Core Strategy and Placemaking Plan, has a limited scope, with the intention that changes proposed are confined to those areas that can be addressed without significantly changing the strategic policy framework of the adopted Plan. Consequently, the Plan is not seeking to amend the plan period, of 2011 to 2029. Inevitably, fitting with the Core Strategy timeframe means that the strategic policies which are proposed to be amended, or new strategic policies, would not look forward for a 15 year period from adoption.
22. Whilst the changes proposed in the submitted Plan are limited in scope and do not change the overall spatial strategy or the scale of development required, those amendments to policies considered necessary to address climate and ecological emergencies, such as that relating to wind energy development and the energy efficiency of buildings, are nevertheless significant.
23. I take into account the particular circumstances which led up to the point when the Council decided to prepare the Plan. The Council was preparing a new Local Plan (2016-2036) within the context of the West of England Joint Spatial Plan (JSP). However, following the withdrawal of the JSP, the Council paused the preparation of the new local plan. This has been followed by the West of England Combined Authority preparing the SDS, alongside which the Council intends to undertake a full review of its Local Plan. Whilst the Council has set out its commitment to do this in its Local Development Scheme, this will nevertheless take time. I consider it pragmatic therefore, for an otherwise sound Plan (as amended) to proceed to adoption despite the plan period being unchanged, and amended/new strategic policies not looking forward for a 15 year period, in order to update policies so that they better address the climate and ecological emergencies, address certain local issues, replenish housing supply and maintain the necessary supply of housing land, and amend policies so they are up to date with national policy.

Policy SSV4: Former Welton Manufacturing Site

24. The adopted Policy includes a requirement for the de-culverting of the Wellow Brook through the site to provide continued natural sections through the site, and provide habitat creation/enhancement which will be part of a strategic green infrastructure route. The Plan does not propose that this requirement is amended, and given the potential flood risk and biodiversity benefits of the de-

culverting of the Wellow Brook, and that there is not convincing evidence as to the effects of the requirement on the viability of the proposal, I shall not be making any recommendations to amend the plan in this regard.

Proposed allocations - transport requirements

25. A number of the proposed allocations and as set out in proposed main modifications in the Council hearing statement, include detailed specific transport infrastructure requirements which were discussed at the hearing. I explained that I would provide advice to the Council on a number of these in this letter.
26. Policy SB8, Bath Riverside includes criteria relating to the delivery of sustainable transport. In the hearing statement, the Council suggest a number of additional changes to the Policy. However, I do not find it justified to require integration with the emerging Metrobus / Mass Transit proposals and the provision of a grade separated crossing of Windsor Bridge Road if feasible. This is because these amended requirements are not justified or necessary for soundness. To be effective, the Policy should be amended so that it is clear that the specific infrastructure elements are amongst the matters to be investigated to find feasible solutions in the provision of sustainable transport at the development management stage, which if found necessary would be provided as per the legal tests for planning obligations.
27. Policy SB18 Royal United Hospital. The Policy requirement for development proposals to set out a sustainable transport masterplan for the whole of the RUH site would apply to all development proposals at the hospital. This is not justified and is inconsistent with paragraph 16 d of the NPPF in that it is not clearly written and unambiguous. In this regard, the detailed measures set out in criterion 8 have not been justified. Criterion 9 is concerned with parking and is inconsistent with criterion 1 of the policy. Criterion 9 would not be effective as it requires compliance with the Transport and Developments SPD which is not part of the development plan, and the provisions regarding the possible provision of a Residents Parking Zone are not justified. The Policy should be amended accordingly.

Purpose Built Student Accommodation

28. Through adopted Policies B5 Strategic Policy for Bath's Universities and proposed Policy H2A, the approach to the provision of Purpose Built Student Accommodation (PBSA) is that as a first priority it would be delivered on campus. The dwelling requirement set out in the Plan excludes the provision of student housing. Consequently, I consider that the campus first approach is justified so as to avoid the unnecessary loss of housing development sites which are necessary to boost the supply of housing in the plan area. In principle, the approach set out in the Plan does not however prevent off campus accommodation where need is evidenced.

29. As discussed at the hearing, the forecasting of student accommodation needs is subject to a number of variables, which can give rise to changing outputs over time. However, whilst the forecast need may change over time, the forecast of need by the Council before me is robust and valid currently.
30. Policy H2A as submitted includes a requirement that proposals for PBSA are required to demonstrate that there is a need for additional student accommodation of the type and in the location proposed, evidenced by a formal agreement between the developer and a relevant education provider, for the supply of bed spaces created by the development. Whilst a formal agreement may be helpful, say in ensuring provision for 2nd and 3rd year students rather than additional 1st year students to reduce pressure for additional HMOs, I am not convinced that a requirement for such an agreement in all cases is justified, given that it is dependent upon the agreement of a third party. Instead, the Policy should be amended to be clear that there should be clear evidence of need for additional student accommodation of the type of, and in the location proposed, and that such evidence may include a formal agreement between the developer and a relevant education provider, for the supply of bed spaces created by the development.

Policy H7 Housing accessibility

31. Policy H7 seeks to apply the optional Building Regulations standards for the provision for accessible housing. I am satisfied that the proposed policy provisions are justified. I do not therefore propose to recommend any changes to Policy H7.

Policy GB2 Development in Green Belt Villages

32. The NPPF in paragraph 149 states that a local planning authority should regard the construction of new buildings as inappropriate in the Green Belt and sets out a number of exceptions to this. One of these is limited infilling in villages. Adopted Policy GB2 Development in Green Belt Villages, sets out that development in villages in the Green Belt will not be permitted unless it is limited to infilling and in the case of residential development the proposal is within the defined Housing Development Boundary. It is proposed that the Policy is altered so that new buildings in villages in the Green Belt will not be permitted unless limited to infilling and the proposal is located within the defined Infill Boundary.
33. The Council has defined Infill Boundaries for a number of settlements, by reviewing and redefining existing Housing Development Boundaries as Infill Boundaries and for other villages without existing Housing Development Boundaries, assessing and defining an Infill Boundary where considered appropriate (Topic Paper: Policy GB2 Development in Green Belt villages CD-SD037). I find the methodology and approach to identifying what constitutes a village and in defining these Infill Boundaries to be robust.

34. Policy GB2 as submitted is inconsistent with national policy as set out in paragraph 149 of the NPPF in that it would restrict the construction of new buildings in villages in the Green Belt to limited infilling only. It also does not deal with the question of what is considered to constitute 'limited', which is, for the purposes of the methodology, set out in paragraph 2.6 of CD-SD037.
35. Policy GB2 should be amended so that it is clear that it is concerned with limited infilling in villages only and that forms of development which fall within the other exceptions set out in NPPF 149 would be dealt with consistent with national policy as set out in the NPPF. The Policy should also be amended so that it is clear what is meant by 'limited infilling', taking the key elements of the methodology in CD-SD037 into the Plan. Additionally, the explanatory text should be clear that the decision maker would still have to conclude whether a development proposal constitutes inappropriate development, and if so, should not be approved except in very special circumstances.

SCR6 Sustainable Construction Policy for New Build Residential Development

36. Given that the Written Ministerial Statement of 15 December 2021 sets out that the new overheating standard is a part of the Building Regulations and is therefore mandatory, so there will be no need for policies in development plans to duplicate this, the Policy as submitted is not consistent with national policy in this regard. The final paragraph of Policy SCR6 should be deleted. An amendment is also necessary to paragraph 107f to explain that this matter is dealt with by the Building Regulations, though the Council may wish to consider if it wishes to reference the use of tools such as CIBSE TM 59 in the explanatory text.

Conclusion

37. On the evidence I have read and heard to date, all of the main modifications I set out in this letter are necessary for the Plan to be sound. I should be grateful if the Council would prepare a final set of main modifications for my review prior to consultation on them.
38. On receipt of this letter, the Council should make it available to all interested parties by adding it to the examination website. However, I am not seeking, nor envisage accepting, any responses to this letter from any other parties to the examination.

Yours sincerely

Philip Lewis

INSPECTOR