

WRITTEN STATEMENT

INVITATION TO COMMENT:

EX17 – DCLG Building More Homes on Brownfield Land Consultation
Proposals

EX18 – Superseded by Case Law – West Berks DC and Reading BC SSCLG
[2015 EWHC 2222 (Admin) Changes to Government Policy

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1 Introduction

- 1.1 This written statement sets out the Exmoor National Park Authority position on examination documents [EX17](#) and [EX18](#) and their relevance to questions 3.7, 3.8 (and 3.17) of Hearing Session 3 of the Exmoor National Park Local Plan Examination. It has been prepared following the Inspector's invitation to submit written comments on documents [EX17](#) and [EX18](#), highlighted by Business Exmoor as part of their argument during Hearing Session 3, which was that Vacant Building Credit should apply to agricultural buildings and that a spatial strategy should not be applied.
- 1.2 [EX17](#) is a DCLG consultation document entitled 'Building More Homes on Brownfield Land Consultation Proposals'. [EX18](#) is an extract from the Planning Advisory Service webpage setting out questions and answers on the, then newly introduced, S106 thresholds for affordable housing and Vacant Building Credit.
- 1.3 Exmoor National Park Authority takes the view that documents [EX17](#) and [EX18](#) do not contain anything which would justify or necessitate an alteration of the proposed spatial, housing and employment strategies in the Exmoor National Park Local Plan. These strategies are justified by evidence and formulated to conserve and enhance the National Park and provide for development needed by the National Park's local communities, including to address the local need for affordable housing. Documents [EX17](#) and [EX18](#) do not justify a change to the proposed approach to vacant buildings, (including the new policy HC-Dx on Vacant Buildings in Settlements proposed by the Authority and set out in [EX6](#) pages 8-9). Taking account of National Park purposes, the approach proposed in the Local Plan ([SD1](#), [SD5](#) and [EX6](#)) to the development of brownfield land and to Vacant Buildings is consistent with Government policy which is applied appropriately in the context of Exmoor National Park's particular local circumstances.

2 EX17 DCLG Building More Homes on Brownfield Land Consultation Proposals

- 2.1 The DCLG consultation document 'Building more homes on brownfield land' published in January 2015 ([EX17](#)) reflects the government commitment to increase the level of house building including by re-using brownfield sites. It seeks responses on the identification of brownfield land suitable for new housing and the achievement of local development orders to be in place on over 90% of brownfield land suitable for housing by 2020. Questions in the consultation document relate to the identification of suitable brownfield land for housing development on 'brownfield registers' to be established by local planning authorities.
- 2.2 Paragraph 13 of the consultation proposals ([EX17](#)) states:

13. Brownfield' (previously developed) land is defined in Annex 2 of the National Planning Policy Framework as:

Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. This excludes:

- land that is or has been occupied by agricultural or forestry buildings;*
- land that has been developed for minerals extraction or waste disposal by landfill purposes where provision for restoration has been made through development control procedures;*
- land in built-up areas such as private residential gardens, parks, recreation grounds and allotments; and*
- land that was previously-developed, but where the remains of the permanent structure have blended into the landscape in the process of time.*

- 2.3 DCLG have not published a response to this consultation. However, provisions in the Housing & Planning Act 2016 clauses 150-151 introduce 'permission in principle' for development of land and for local planning authorities (LPAs) to keep a register of particular kinds of land (subject to secondary legislation).
- 2.4 A number of LPAs are currently piloting brownfield registers to identify brownfield land suitable for new housing.¹ The Pilot Brownfield Register Manual, prepared by DCLG to assist the pilot, provides information on the process of compiling a register and sets out four key stages for its preparation. The two stages which are considered to be most relevant for the purposes of

¹ <https://www.gov.uk/government/news/first-areas-to-push-for-faster-brownfield-land-development>

the Exmoor National Park Local Plan examination and this written statement are:

- 1 Identifying provisional sites** – Pilot authorities should consider their existing evidence base, including Strategic Housing Land Availability Assessments, and identify provisional brownfield sites that may be suitable for housing. All provisional brownfield sites are expected to meet the definition of ‘previously developed land’ in Annex 2 of the NPPF, and use existing evidence from an up-to-date Strategic Housing Land Availability Assessment and any other windfall sites with extant planning permission.
- 2 Assessing site suitability** – Pilot authorities should assess the suitability of their provisional brownfield sites against the specific criteria set out in the manual. At stage 2 pilot authorities should determine whether their provisional brownfield sites are suitable for housing by assessing them against specific criteria that have been drawn from policy in the National Planning Policy Framework. These sites should be available and capable of supporting 5 or more dwellings. They should also be capable of development by ensuring that sites are suitable for residential use and free from constraints that cannot be mitigated. The National Planning Policy Framework has strong policies for conserving and enhancing both the natural and the historic environment which should be taken into account, together with other specific policies in the Framework that indicate development should be restricted. Pilot authorities will need to support decisions about potential constraints with strong evidence and appropriate mitigations should be considered wherever possible to enable sites to be included on the register. [ENPA added emphasis - underlining]

2.5 The manual indicates the Government’s intended direction with regard to the establishment of brownfield registers, although the pilot is also intended to reveal potential issues or unintended consequences of this objective.

2.6 It is clear that the development strategy set out in the Exmoor National Park Publication Draft Local Plan² is consistent with the Government’s general intention in terms of the process set out for the establishment of brownfield registers. These are as follows:

- **The use of an up to date SHLAA to identify potential sites:** SHLAA sites have been through a rigorous process of assessment for their suitability, availability and deliverability. ENPA used the Northern Peninsula Strategic

² Policy GP3 Spatial Strategy – Exmoor National Park Publication Draft Local Plan 2011/2013

Housing Market Area Methodology for SHLAAs³ to inform the process. The methodology includes two stages for the assessment of sites - Stages A and B. Stage A criteria assess fundamental site suitability and discount sites in locations that are wholly unsuitable for housing development which include:

- Sites which do not accord with strategically appropriate locations through the development plan
 - Land within Flood Risk Zone 3b
 - Land within a Special Area of Conservation, a Special Protection Area, RAMSAR site or a Site of Special Scientific Interest.
- **Brownfield sites are expected to meet the definition of ‘previously developed land’ in the NPPF:** this specifically excludes land such as *‘that is or has been occupied by agricultural or forestry buildings’*, and *‘where the remains of the permanent structure have blended into the landscape in the process of time’*.

The SHLAA process therefore effectively eliminated most brownfield sites for housing development within the open countryside as wholly unsuitable unless they were considered to accord with the development plan. Several deliverable sites in the SHLAA within the open countryside are barns on farmsteads which, as conversions to local need or rural worker dwellings would be consistent with the development plan strategy (included as conversions in [EX14](#)); however, these would not be considered as brownfield sites, as the NPPF definition effectively excludes agricultural buildings.

- **Sites should be assessed against specific criteria that have been drawn from policy in the National Planning Policy Framework (NPPF)** – The Framework sets out *“specific policies that indicate development should be restricted”* including in National Parks.⁴ In particular, the NPPF is clear that *“Great weight should be given to conserving landscape and scenic beauty in National Parks...which have the highest status of protection in relation to landscape and scenic beauty. The conservation of wildlife and cultural heritage are important considerations in...these areas, and should be given great weight in National Parks and the Broads”* (para. 115 and footnote 25). This is a specific policy in the NPPF and together with strong policies for conserving and enhancing both the natural and the historic environment should be taken into account in plan-making and decision-taking and which indicate that development should be restricted (para. 14 footnote 9).

2.7 Reflecting evidence on Exmoor’s landscape sensitivity and capacity, and the very rural nature of the National Park, the Exmoor National Park Publication Draft Local Plan ([SD1](#)) sets out a spatial strategy for development within the

³ http://www.exmoor-nationalpark.gov.uk/data/assets/pdf_file/0009/578610/shlaa-methodology-final.PDF

⁴ DCLG (2016) The Pilot Brownfield Register Manual

National Park (GP3 Spatial Strategy), which identifies the named settlements considered to be suitable for development over the plan period. The strategy, which includes some very small settlements as well as allowing for some development outside them in particular circumstances, is explained in the ENPA response to question 3.5 of [Hearing Session 3](#) (para 2.21).

- 2.8 The Plan also includes a strategic policy (GP4 The Efficient Use of Land and Buildings) to promote the efficient use of land and buildings by encouraging the use of brownfield land or the redevelopment of existing buildings within the built extent of the named settlements. Opportunities for re-using existing buildings in hamlets or on farmsteads are also provided (including as a dwelling, where it would meet an essential need for a rural worker or a local need). This reflects the important role of existing buildings in the delivery of local need affordable housing and the need to ensure that the stock of remaining buildings can help to meet the local need for housing or employment. Brownfield sites in the open countryside would not be assessed as suitable or capable of housing development against the specific criteria in the NPPF.
- 2.9 It is considered that the Exmoor National Park Publication Draft Local Plan positively promotes housing development on brownfield land in a way that is consistent with the National Park's statutory purposes and duty, with the policies within the NPPF, and the Government's objective for building more homes on brownfield land. Evidence underpins and justifies the approach in the Local Plan. Allowing for brownfield land and vacant buildings, including in the open countryside, to become, for example, open market housing would undermine the Local Plan strategy and prevent the delivery of development needed to further the socio-economic well-being of Exmoor National Park's local communities and put further pressure on the finite stock of suitable brownfield and therefore greenfield sites.

3 EX18 Superseded by Case Law – West Berks DC and Reading BC SSCLG[2015 EWHC 2222 (Admin)]. Changes to Government Policy

- 3.1 [EX18](#) is an extract from the Planning Advisory Service webpage setting out questions and answers on the, then newly introduced, S106 thresholds for affordable housing and Vacant Building Credit and updated 30 March 2015. As such it does not have status as either national policy or guidance and it states “Please note that this note is PAS’s opinion only and DCLG have not endorsed or commented on these answers below”. It is entitled ‘**superseded by case law**’ which was presumably added to the webpage following the successful challenge to the national policy by West Berkshire and Reading Councils.
- 3.2 Exmoor National Park Authority (ENPA) has provided responses to the Inspector’s query on the Court of Appeal judgment in SSCLG v West Berkshire DC & Reading BC [2016] EWCA Civ 441. ([EX6](#), page 2) and in its statement for questions 3.7, 3.8 and 3.17 in relation to Section 106 thresholds for affordable housing and to Vacant Building Credit. They also set out the background on the successful challenge to the Government policy on S106 thresholds for affordable housing and the Vacant Building Credit and the subsequent Government appeal against the judgement. Taken together these explain and provide justification for the approach that ENPA intends to take in relation to the S106 thresholds and Vacant Building Credit within the National Park.
- 3.3 The Written Ministerial Statement (WMS) made on 28 November 2014 (and subsequently revised on 27 February and 26 March 2015) referred to the financial credit that should be deducted from the calculation of any affordable housing contributions where vacant buildings were brought back into re-use or demolished for redevelopment. This has become known as Vacant Building Credit (VBC).
- 3.4 Following the Court of Appeal decision, the WMS and the relevant paragraphs (021 to 23) of the national Planning Practice Guidance (PPG) were reinstated. The guidance on VBC is that where a vacant building is brought back into any lawful use, or is demolished to be replaced by a new building, a ‘financial credit’ is provided equivalent to the existing gross floor space of relevant vacant buildings when the local planning authority (LPA) calculates any affordable housing contribution.
- 3.5 The WMS and PPG refer to development on ‘brownfield land’ including ‘to boost or incentivise development on brownfield land’. Importantly, the NPPF treats the terms ‘brownfield land’ and ‘previously developed land’ (PDL) as the same:

Planning policies and decisions should encourage the effective use of land by re-using land that has been previously developed (brownfield land), provided that it is not of high environmental value (para. 111, NPPF)

- 3.6 Government statements on brownfield land and VBC cannot apply to agricultural or forestry buildings as they do not fall within the Government's own definition of previously developed (brownfield) land. This is because the NPPF definition of previously developed (brownfield) land excludes agricultural and forestry buildings:

Previously developed land: Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. This excludes: **land that is or has been occupied by agricultural or forestry buildings**; land that has been developed for minerals extraction or waste disposal by landfill purposes where provision for restoration has been made through development control procedures; land in built-up areas such as private residential gardens, parks, recreation grounds and allotments; and land that was previously-developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape in the process of time. [Annex 2 of the NPPF, ENPA emphasis]

- 3.7 On the introduction of the VBC there were a number of uncertainties over meanings and application in practice. Only limited guidance on exactly how the VBC should be applied and calculated in practice is given by the PPG. It stipulates that the credit will not apply if a building has been "abandoned" but does not offer guidance on how such a determination should be made.
- 3.8 Subsequent revision of the PPG wording (in March 2015) sought to provide added clarification on how the VBC applies to both affordable housing contributions and the provision of affordable units, and an example of how it is to be calculated was provided.
- 3.9 The PPG also included additional text for local planning authorities (LPAs) to consider how the VBC should apply to a particular development. This wording suggests that there is flexibility in deciding how to apply the policy and gives two examples of what it "may" be appropriate for LPAs to consider, namely whether the building has been "made vacant" for the sole purpose of redevelopment; and whether it is covered by an extant or recently expired permission for the same or substantially the same development. The implication is that LPAs can decide not to allow the credit to apply.
- 3.10 The proposed Local Plan strategy ([SD1](#)) and proposed changes ([SD5](#)) underpinned and justified by evidence as well as a further change to insert a new policy (HC-Dx Vacant Buildings in Settlements) proposed in [EX6](#), set out a positive approach for the development of brownfield/previously developed land and buildings. VBC is proposed to only be applied through the application of the proposed policy HC-Dx and not in other circumstances. This reflects Exmoor's particular local circumstances.

- 3.11 This approach to ‘Vacant Building Credit’ is justified because, although the Court of Appeal case⁵ focuses largely on the affordable housing thresholds, the same principles (regarding whether the LPA’s evidence base and local circumstances justify the LPA’s proposed thresholds) can apply to the application of the VBC. As set out above, PPG does anticipate potential exceptions for when it might not be appropriate to apply the VBC and so assumes some flexibility in its application.
- 3.12 As the PPG is not entirely clear in setting out how the VBC is intended to operate and the exceptions are not exhaustive; in light of the Court of Appeal decision it is possible for the planning judgement to be exercised by the decision maker. In practice therefore, it will be for the LPA to determine how the policy will apply in their area; taking into account the particular constraints and issues that relate to that area and this may include deciding not to apply the VBC.
- 3.13 The ENPA considers that given the evidence, that the proposed approach to VBC, applies national guidance⁶ appropriately in the context of Exmoor National Park and as part of the wider spatial and housing strategy which is underpinned and informed by National Park purposes and the National Park Authority duty.⁷ National policy and guidance should be read as a whole (paras. 6 and 14, NPPF) and also recognise the different approaches which may be necessary in a National Park (CE6, pages 3-6⁸). The Local Plan strategy is consistent with national policy in the NPPF including para. 14, footnote 9 (recognising a different approach where constraints apply such as in National Parks) and paragraph 115⁹ (CE6, para. 2.2.7 pages 5-6¹⁰).
- 3.14 The stated policy intention in PPG paragraph 023 is to incentivise brownfield development, including the reuse or redevelopment of "*empty and redundant buildings*".¹¹ Policies in the Publication Draft Local Plan (SD1) and SD5 Schedule of Proposed Changes include policies to maximise the use of brownfield land for development, consistent with this national policy approach.
- 3.15 ENPA statements for [Hearing Session 3](#) including those for questions 3.3, 3.7, 3.8, 3.13, 3.14 and 3.18 explain the very limited and finite opportunities for development needed by local communities - this includes for employment and housing.¹² Evidence of the scarcity and finite number of suitable housing sites on greenfield land is provided (CE6 Housing Topic Paper) and the importance of

⁵ Court of Appeal judgment in *SSCLG v West Berkshire DC & Reading BC* [2016] EWCA Civ 441

⁶ <http://planningguidance.communities.gov.uk/blog/guidance/planning-obligations/planning-obligations-guidance/> Paras. 021-023

⁷ These are set out in HM Government (1949) *The National Parks and Access to the Countryside Act 1949* - Section 5 (subsection 1) and section 11a (1) (as amended by Section 62 of the *Environment Act 1995*).

⁸ ENPA (2016) *Housing Topic Paper May 2016*

⁹ CLG (2012) *National Planning Policy Framework* (replicated on pages 14-15 of the *Submission Draft Plan SD1*).

¹⁰ ENPA (2016) *Housing Topic Paper May 2016*

¹¹ <http://planningguidance.communities.gov.uk/blog/guidance/planning-obligations/planning-obligations-guidance/> Paragraph: 023 Reference ID: 23b-023-

¹² [ENPA Statement Session 3](#)

existing buildings in delivering affordable housing needed by Exmoor's communities is set out in [EX6](#) paras. 2.3-2.5. The Exmoor National Park settlement strategy is to focus new development within settlements (Policy GP3 Spatial Strategy). The strategy is underpinned by evidence and an understanding of the very rural nature of Exmoor and includes some very small settlements as well as allowing for development outside them in particular circumstances. This is explained in the ENPA response to question 3.5 of [Hearing Session 3](#) (including in para 2.21). Given the high level of affordable housing need and the importance of the resource of existing buildings as part of the housing strategy, as an exception to normal policies of restraint, housing for rural workers and local need housing in rural communities outside settlements may also be permitted as well as through the conversion of existing buildings in the open countryside in certain circumstances (Policy HC-D7 Conversions to Dwellings in the Open Countryside).

- 3.16 The ENPA statements for [Hearing Session 4](#) to questions 4.5 - 4.9 set out justification for the spatial strategy and for the specific approach for the location and types of development which are provided for in the National Park including through the reuse of buildings. In the open countryside these uses include housing (addressing locally identified needs), holiday lets, employment, and serviced accommodation. Allowing the reuse or redevelopment of vacant buildings for open market housing, over and above the approach proposed in Policy HC-Dx, would undermine the spatial, housing and employment strategy of the Local Plan and conflict with National Park purposes and the duty. In particular, it would have a serious detrimental effect on the ability to deliver affordable housing in the National Park. It should be noted that in National Parks, the permitted development rights introduced nationally allowing the conversion of farm buildings to up to three dwellings were not extended to these designated areas.¹³
- 3.17 It is considered that the PPG never intended that VBC should apply to agricultural buildings nor to ignore the spatial aspects of planning. Therefore, it is not appropriate to apply the VBC either for the conversion of buildings or their redevelopment outside Local Service Centres and Villages. In conclusion, there are good reasons for applying the VBC in a way that is appropriate to local circumstances. The new Policy HC-Dx Vacant Buildings in Settlements ([EX6](#), page 8) applies the VBC within settlements and is appropriate in the context of Exmoor National Park.¹⁴

¹³ General Permitted Development Order 2015 – Schedule 2, Part 3, Class Q

¹⁴ see proposed policy HC-Dx set out in [EX6](#) and further proposed modifications to policies HC-D2 and HC-D3 in [EX19](#)