Stogumber Neighbourhood Plan

Stogumber Parish Council's response to the 'Examiner's supplementary questions' received on 5 April 2017

Proposed new Plan text is inset and shaded grey.

1*.	**Period of the Plan** The Examiner will have realised the mistake in our first reply. If the Plan is to have an effective term of 10 years from the date from which it is adopted, say September 2017, the 10 year term would end in September 2027 not 2026. If it ended in September 2016 only 9 years would have elapsed by September 2016. WSC: "No additional comments." ** From the Examiner's initial questions for clarification.*
16*.	We would be grateful if the Examiner would disregard and give no weight to the references to Archers Grove made in our initial reply to this question. Additionally, we request that all references to Archers Grove are struck from the record as the residents strongly disagree with the content and are upset that these statements were put in the public domain. ** From the Examiner's initial questions for clarification.*
25*.	We apologise for not answering this question in our first reply. a) We agree that EC1 and EC3 can be combined. b) We agree that the test in the 4th bullet of EC3 should be amended. If the Examiner accepts the wording proposed (in our first reply) for Policy O1, we suggest that EC1 could be written as follows: Proposals for economic development and premises for business are supported by this Plan, subject to Policy O1. WSC: "Support principle of removing duplication." ** From the Examiner's initial questions for clarification.*
1.	We are seeking a total of 19 new dwellings. Now that the proposal to permit the development of 5 dwellings in the hamlets has – reluctantly - been deleted, the 19 would been in Stogumber village. WSC: "Your response is a clarification of your position. Whilst the number of dwellings differs from figures in the WSC Local Plan, Neighbourhood Plans can promote additional development, and we are happy for the Examiner to consider the case you put forward."
2.	If we identify in the Plan any particular development sites (apart from the lower part of Beacon Field for community facilities) there is a significant risk that the consensus in the community that we have achieved - in support of the Neighbourhood Plan - will break down. Our evidence for this conclusion is that: i) An early proposal was to put a hard surface on the *existing* right of way that runs from Pickpurse Lane the length of the village to Hill Street, along rear garden boundaries of Slade Close, Zinch and Deane Close. This would have enabled pedestrians, pushchairs, children on bikes and people using mobility scooters to avoid Station Road where there is quite a lot of traffic and limited pavements. The reaction to this proposal was that a group residents of houses backing on to the right of way raised a petition *and* came as a group to the following Parish Council, to strongly object. Although these residents were a small minority of the residents in the village, it was clear that they were very unhappy and highly motivated to lobby against a Plan that included this proposal. ii) Another proposal was to identify particular sensitive sites (in terms of the setting of the village) where development would not normally be permitted but may exceptionally be allowed if it did not harm the setting of the village. The reaction to that was a very difficult public meeting and written responses, with landowners and their supporters objecting to land being identified in this way. By landowners, we do not mean just farmers, but also ordinary householders who happened to have gardens or amenity land that may be suitable for development and who were unhappy at the potential loss of value of their property even if they themselves had no development intentions. It was clear that these objectors could form an effective lobby against the Plan. We are quite certain that if we identified a number of sites for development, different sets of neighbours affected would join in opposing the Plan, and for quite different reasons, landowners whose land was *not* identified as suitable for development would also object. We would likely find ourselves in the miserable position losing the referendum because people *for development not identified in the Plan* and others *against development identified in the Plan* were more motivated and organised to lobby and vote than the moderate majority of residents who are perfectly happy with the Plan. In other words, we have demonstrated a strong consensus in favour of additional development to aid the viability of essential services and facilities, but that consensus breaks down when we try to turn

	into lines on a map. This is why we have chosen a criteria-led approach to the *location* of development, with these criteria being applied when an application is made for development. We note that the WSLP takes the same approach for the 'primary villages' (of which Stogumber is one) does not identify development sites and does not give settlement boundaries. This is despite the fact that the level of development proposed in the WSLP is not insignificant: 10% over that plan's period which is around two-thirds of that proposed in the Stogumber Neighbourhood Plan. In terms of the *amount* of development, in the Plan we have sought and achieved a reasonable balance between the community's acceptance of additional development (to aid the viability of essential services and facilities) with the impacts on the built and natural environment, and the social fabric of the community that would result from excessive growth in too short a time. The consensus is that balance is represented by a total of 19 new homes in the Plan period. Regarding the suggestion that the Plan states no limit on housing development (ie. the 19 houses proposed) and there were only the criteria, it is possible that considerably more houses would be built than 19 to be proposed. Architects advising on the he Hill Farm yard site (bottom left) have produced sketches showing possible development of 8-12 houses on this site alone. We had prepared solely for the Examiner a map indicating land occupied by agricultural buildings and areas within residential gardens that may be suitable for development. This amounts to more than twice the area of Hill Farm yard. However, WSC have advised us (see below) that if we submit this map to the Examiner, it would have to be published on the WSC Examination web pages. Given the contentiousness of identifying development sites (see above) we cannot therefore submit the map to the Examiner. WSC have seen the map, and if permitted, perhaps they could confirm to the Examiner that there are a number of potential development sites that, if they were all developed in the Plan period, could significantly exceed the proposed limit of 19 houses. WSC: "Your response is a clarification of your position, and we are happy for the Examiner to consider the case you put forward. As part of the Examination procedure WSC is required to publish the Examiners Questions and any formal written response to them. In light of this, given the potential sensitivity of the map indicating "land…that may be suitable for development", do you still want to include it with your final response?" Importantly, there is also the risk that unconstrained (in terms of a numerical limit) residential development would use up land that could provide desirable employment, services and facilities.
3a.	WSC: "Evidence required "to demonstrate that it will contribute to wider sustainability of the area": WSC response; there are no defined criteria, applications would be judged on a case-by-case basis, with the expectation that the applicant provides evidence in support of proposals."
3b.	WSC: 'In regard to the Examiners Supplementary Question Item 3b (from Examiners Supplementary Questions) – Stogumber School: as you know from my e-mail of the 10 April, WSC contacted Somerset Country Council – Education Schools Commissioning Team (SCC). They have provided the following information: "1.Stogumber has a Net Capacity of 49 and Crowcombe has a Net Capacity of 60. 2.Currently Stogumber has 49 children on roll and Crowcombe has 50 (Oct 2016 census) 3.The admission number (the number of children allowed per year group) is 7 for Stogumber and 8 for Crowcombe. 4.I have attached the school population forecasts for the Wiveliscombe SOP area (published in February 2017). These show a falling roll for both Stogumber and Crowcombe. 5.The October 2016 census data indicates that there are 51 primary aged children living in the Stogumber catchment area. 39 children attend Stogumber and 4 attend Crowcombe. There are 29 primary aged children living in the Crowcombe catchment area. 21 children attend Crowcombe and 2 attend Stogumber. 6.The LA does not currently have any plans to expand Stogumber Primary School. The number on roll is forecast to fall to 32 by 2021 and the latest housing data indicates that there are no significant housing developments expected to be built within the catchment area. 7.The LA has published an Education Infrastructure Growth Plan (www.somerset.gov.uk/EducationIGP) and Appendix B contains the formulas used to calculate the yield of pupils from new housing developments. This document was published in July 2016 and contains the forecasts published in February 2016. I am in the process of refreshing the plan using the latest forecasts and housing data and the 2017 IGP should be published by the end of June." '
3c.	We understand that WSC has applied such a condition in the past, and hence may be able to continue to use that wording, or the wording intended for use in St Ives (see below) could be obtained and used.

	We also attach the wording and a QC's opinion on the Exmoor National Park principal residency condition (around a quarter of Stogumber Parish is in Exmoor National Park – that portion not included in the Neighbourhood Plan area). We would wish the condition to be permanent, except that (as with any planning condition) application could be made by individual property owners to remove it, if they feel changes in the general circumstances have removed the justification for the condition (eg. if Stogumber were to lose all its essential services and facilities) or if the circumstances of the individual property or owners would justify removal. In respect of NPPF paragraph 206, we suggest that the principal residency condition: • is **necessary** to ensure that the additional development aids the viability of essential services and facilities in the village, such that all residents (not just those living in the additional homes) can continue to access these essential services and facilities sustainably (ie. within walking distance of their homes) and to contribute to the social sustainability of the community, through the shared use of these essential services and facilities; and • is **relevant to planning** because creating and maintaining sustainable communities is at the heart of planning policy, and because the means to achieving this, by having the new homes occupied as principal residents can only, can only be achieved by a planning condition; and it is obviously directly **relevant to the development** to which the condition would be applied; and • is **enforceable** and **precise** because the evidence required (taking the St Ives policy as an example) is readily obtainable by the resident and assessable by the planning authority; and • is **reasonable** given the importance of maintaining the sustainability of small rural communities, and because it ensures the availability of these new homes for full-time occupation, at a time of serious housing shortages in this area and nationally. WSC: "Suitable Condition for a Principal Residency Clause: WSC LP Policy SC1 is silent on the matter of Principal Residency Clauses. Whilst WSC applies Local Connections Criteria to Affordable Housing and Occupancy Conditions to Holiday Accommodation, this is not the same thing as a Principal Residency Clause. Subject to such a clause in the NDP meeting the Basic Conditions, WSC has reservations on how such a policy could be effectively enforced in practice, particularly given legal opinion on similar policies in other NDP's."
3c(2).	We think the definition and explanation of 'principal residence' in the St Ives Neighbourhood Plan is satisfactory: "Policy H2 Principal Residence Requirement Due to the impact upon the local housing market of the continued uncontrolled growth of dwellings used for holiday accommodation (as second or holiday homes) new open market housing, excluding replacement dwellings, will only be supported where there is a restriction to ensure its occupancy as a Principal Residence. Sufficient guarantee must be provided of such occupancy restriction through the imposition of a planning condition or legal agreement. New unrestricted second homes will not be supported at any time. ***Principal Residences are defined as those occupied as the residents' sole or main residence, where the residents spend the majority of their time when not working away from home.*** The condition or obligation on new open market homes will require that they are occupied only as the primary (principal) residence of those persons entitled to occupy them. Occupiers of homes with a Principal Residence condition will be required to keep proof that they are meeting the obligation or condition, and be obliged to provide this proof if/when Cornwall Council requests this information. Proof of Principal Residence is via verifiable evidence which could include, for example (but not limited to) residents being registered on the local electoral register and being registered for and attending local services (such as healthcare, schools etc)."
4.	We would still wish there to be a 19 new homes even if the restriction to principal residents is not accepted. Arguably, if there is a risk that some of the new homes would not be principal residences, a higher number of homes may be needed to achieve the same benefit to the viability of essential services and facilities. However, this risk is too hard to quantity and so we think the number in addition to 19 cannot be reasonably determined, and so it is better to stay with 19. WSC: Your response is a clarification of your position. We are happy for the Examiner to consider the case you put forward.

IN THE MATTER OF **ITEM 3 cont'd**
DEVON COUNTY COUNCIL

AND

THE USE OF PLANNING CONDITIONS TO CONTROL NEW OPEN MARKET HOUSING – EXMOOR NATIONAL PARK AUTHORITY

ADVICE

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1. My advice is sought with respect to the legality of a proposed planning condition to be attached to a grant of permission for new open market housing drafted along the following lines:

> "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 14 days of the local planning authority's request to do so) 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".

2. Those instructing me have sent me a copy of a paper drafted by the Council's Head of Planning and Community Services which addresses the question of whether such a condition would meet the relevant tests of lawfulness of planning conditions and concludes that it does. In the officer's view, that is to say, the proposed condition would be necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise and reasonable in all other respects.

3. The Annex to Circular 11/95: The Use of Conditions in Planning Permissions does not deal expressly with the type of condition contemplated by those instructing me. An indication of the sort of concerns to which such a condition might be regarded as giving rise can be gleaned, however, from paragraph 96 of

the Annex. This deals with "Domestic occupancy conditions" and states that (subject to the advice contained in the Annex about affordable housing, staff accommodation, agricultural dwellings and seasonsal use):

> "if the development of a site for housing is an acceptable use of the land there will seldom be a good reason on land-use planning grounds to restrict the occupancy of those houses to a certain type of person (eg those already living or working in the area). To impose such a condition is to draw an artificial and unwarranted distinction between new houses or new conversions and existing houses that are not subject to such restrictions on occupancy or sale. It may deter housebuilders from building homes for which there is a local demand and building societies from providing mortgage finance. It may also impose hardship upon owners who subsequently need to sell. It involves too detailed and onerous an application of development control and too great an interference in the rights of individual ownership. In the view of the Secretaries of State, such conditions should therefore not be imposed save in the most exceptional cases where there are clear and specific circumstances that warrant allowing an individual house (or extension) on a site where development would not normally be permitted".

4. The proposed condition specifically does not purport to restrict the occupancy of the dwelling house to which it would be attached to a "certain type of person", It does, however, impose a restriction on occupation which is liable to be taken into account by housebuilders and mortgage lenders in making their own decisions with respect to the property concerned, and involves a considerable interference in the rights of ownership associated with it.

5. Nevertheless, the Annex does allow for similarly restrictive conditions in certain circumstances, namely, those pertaining to "Granny" staff annexes, staff accommodation, agricultural dwellings, and, most pertinently, seasonal and holiday occupancy. In my view, it is difficult to see why, if a condition specifying the use of a dwelling as holiday accommodation only is permissible, and capable of meeting the tests of legality set out in the Circular, a condition requiring a dwelling to be occupied as a person's only or principal home should not be regarded as similarly acceptable.

6. As the paper to which I have referred above suggests, such a condition could plainly be regarded as necessary in the interests of sustainable development;

relevant to planning; and relevant to the development to be permitted. I agree with the author of the paper that the most thought-provoking issue to which the proposed condition gives rise concerns its enforceablility (and relatedly, precision). Again, however, if (as is the case) it is possible to take enforcement action to prevent holiday accommodation from being used by a person as his or her (only or principal) home, it would be equally practicable, at least in the majority of instances, to take such action with a view to preventing a dwelling from being used as holiday letting accommodation or otherwise than as a person's only or principal home.

7. There may, of course, be borderline cases, or, that is to say, cases in which there is a degree of uncertainty as to whether it could be said that a dwelling house is being used as a person's principal home or second home. It is presumably such a consideration that has led other planning authorities, in effect, to define what is meant by a person's principal home by reference to the time-period within any given year for which it requires to be occupied in order to meet the condition. As to this, however, I agree with the view of the officer that there is room for doubt as to whether it would be reasonable for a condition to require a dwelling house to be occupied for any particular time.

8. I have given some consideration to the question of whether it would be practical and/or desirable to define in some other way, within the wording of the condition, what is meant by a person's "principal" home, on the one hand, and "second" home, on the other (no ambiguity arises, in my view, with respect to the concept of holiday letting). Having considered the matter, I have concluded that this objective would not be practicable (nor, therefore, desirable). As the Council's officer has pointed out in his paper, when dealing with the issue of precision, in the majority of cases people only have one home and live in it. In cases in which there is room for dispute, it would be for the occupants of the relevant house to prove their case (eg on an appeal against an enforcement notice) by reference to relevant evidence as to the nature of their use and occupation of the relevant house in the normal way.

9. It follows from the fact that the proposed condition would be lawful that it would also be lawful for the Council to incorporate a policy within the development plan dealing with such a condition, for example, by explaining the reason for it and the circumstances in which it will be imposed.

10. My Instructing Solicitor should not hesitate to contact me in Chambers if he wishes to discuss this matter further.

LISA BUSCH

LANDMARK CHAMBERS
180 FLEET STREET
LONDON EC4A 2HG

22nd **January** **2013**