

Wirral Local Plan Main Modifications Consultation

Our ref [REDACTED]
Date 8 November 2024
To Wirral Local Plan Examining Inspectors
From Development Consortium in Wirral (Representor ID 1323689)

Subject Representations on behalf of the Development Consortium in Wirral

1.0 Introduction

- 1.1 These representations to the Wirral Local Plan [WLP] Main Modifications [MMs] consultation have been prepared by Lichfields on behalf of the Development Consortium in Wirral [the Consortium]. The Consortium comprises twelve housebuilders, landowners, promoters, and developers, namely:
- 1 Barratt David Wilson
 - 2 Bellway
 - 3 Bloor Homes
 - 4 Elan Homes
 - 5 Leverhulme Eastes
 - 6 Miller Homes
 - 7 Mill Lane Estates
 - 8 Persimmon
 - 9 Redrow
 - 10 Russell Homes
 - 11 Story Homes
 - 12 Taylor Wimpey
- 1.2 The Consortium has submitted representations to all previous public WLP consultation stages, which have highlighted fundamental soundness issues. Verbal representations were also made on behalf of the Consortium to the WLP Examination in Public [EiP] hearings sessions between April and November 2023.
- 1.3 At the outset, the Consortium considers that the WLP is fundamentally unsound and is not capable of being made sound through MMs. The Consortium's evidence presented at earlier regulatory consultation stages and at the EiP demonstrated that there are serious flaws in the WLP's strategy and evidence base. Some of the Consortium's evidence has been

accepted by the Inspectors, as indicated through their Post Hearing Note [PHN] published in March 2024. This included the Consortium’s evidence on affordable housing need and housing land supply and deliverability. Other compelling evidence presented by the Consortium that was seemingly accepted at EiP, including on viability, appears not to have been addressed (adequately or at all) in the consideration of the MMs. Regardless, it is clear that the proposed MMs fail to address the fundamental issues of soundness raised. Indeed, the proposed MMs do not purport to address the intrinsic flaws in the WLP.

Purpose of Main Modifications

- 1.4 Planning Practice Guidance¹ [PPG] sets out that if asked to do so by the Local Planning Authority [LPA], the Inspectors must recommend MMs to make a submitted plan sound and legally compliant. However, the same PPG paragraph goes on to set out that where the changes recommended by the Inspector would be so extensive as to require a virtual re-writing of the local plan, the Inspector is likely to suggest that the local planning authority withdraws the plan.
- 1.5 The changes proposed to the WLP through the MMs are significant and go to the heart of the plan. In particular:
- The WLP submitted for EiP claimed to meet the housing needs of the borough in full. Subsequent to the proposed MMs, the plan is no longer seeking to meet the minimum housing needs and there is a significant shortfall in the supply of land;
 - The Council concluded that exceptional circumstances did not exist to release Green Belt release land on the premise that the WLP was meeting housing needs in full. This position has fundamentally changed and the WLP is no longer meeting minimum housing needs, but exceptional circumstances have not been reconsidered;
 - The affordable housing needs has nearly doubled from 374 dpa to 705 dpa. Despite this there has been no change in approach to address this acute affordable housing need.
- 1.6 This is a fundamental change to the strategy of the plan, extending beyond a simple consideration of the proposed MMs. The fundamental change in approach in Plan (in the light of the Inspectors' Interim Views and MMs) raise issues of soundness which need to be fully considered, through a re-opening of the Hearing Sessions. Even in the light of the fundamental change in the Plan, the proposed MM's do not go far enough to make an otherwise unsound plan "sound". Structure of the Representations:
- 1.7 The Consortium’s representations are structured around the following proposed MMs:
- **Section 2.0: MM3** – Table 3.2 (Supply)
 - **Section 3.0: MM5** – Policy WS 1 (Development and Regeneration Strategy)
 - **Section 4.0: MM6** – Supporting Text to Policy WS 1
 - **Section 5.0: MM9** – Policy WS 2 (Viability of Development)
 - **Section 6.0: MM10** – Policy WS 3 (Strategy for Housing)

¹ Reference ID: 61-057-20190315

- **Section 7.0: MM21** – WS 12 (Monitoring and Review)
- **Section 8.0:** Conclusion

2.0 MM3 – Table 3.2 (Supply)

- 2.1 The WLP submitted for EiP claimed to have a deliverable and developable supply of sites and broad locations to accommodate **16,322 new homes** over the plan period. This claimed position was a surplus of 2,972 against the **13,360 requirement** in the WLP submitted for EiP. It was on that basis (in part) that the LPA claimed that there was no need to consider Green Belt land release.
- 2.2 **Proposed MM3 reduces the WLP supply from 16,322 to 11,814.** This represents a reduction of 4,508 to the WLP supply. That is a fundamental change in the deliverability of the Plan as a whole. MM3 illustrates that this has transpired from reductions to the following components of the WLP supply:
- **New Build Commitments** at April 2023 – reduction of 184 (from 1,730 to 1,546)
 - **Regeneration Areas** – reduction of 2,543 (from 8,678 to 6,135)
 - **Settlement Areas** – reduction of 225 (from 2,425 to 2,200)
 - **Allowances** – reduction of 1,556 (from 3,490 to 1,934)
- 2.3 Pursuant to MM3, the total claimed WLP supply would be 11,814 (albeit as explained at the EiP and set out in the Consortium’s technical work², the Consortium continues to be of the opinion that this figure is overestimated and at least some of the supply does not meet the test of being developable). This is **a shortfall of at least 2,586 against the minimum housing requirement of 14,400 net** identified in the plan following MM5 (see Section 3.0). Therefore, **the WLP supply has gone from providing a surplus of 2,962 against the minimum requirement, to a shortfall of at least 2,586 (18%). This represents a fundamental change to the WLP strategy.**
- 2.4 The WLP strategy claims to meet the minimum identified needs of the plan. Paragraph 1.3 states that ‘*sufficient brownfield land and opportunities exist within the urban areas of the borough to ensure, subject to delivery, that objectively assessed housing and employment needs can be met over the plan period*’. In preparing the WLP, the Council did not explore if Exceptional Circumstances existed to justify the release of Green Belt land to meet future needs, as they claimed (wrongly as the Inspectors have concluded) to have surplus in the supply of land. However, as acknowledged by the Inspectors, this is not the case. Even if all the proposed 11,814 supply was to come forward as suggested in the WLP trajectory, there would be a shortfall of 2,586 against the objectively assessed housing needs over the plan period, contrary to what is claimed in WLP paragraph 1.3. Therefore, it is submitted that an exercise is required to consider (i) *how* the significant shortfall against the *minimum* housing requirement could be met; and (ii) the land use planning implications of meeting the *minimum* housing requirement. In the absence of such an exercise, which might logically include a consideration of lower performing parcels of Green Belt, it is not considered that the Plan meets the statutory or planning policy tests of soundness. In particular, no transparent justification, which is capable of being tested, has been provided to explain and justify why there are not exceptional circumstances for the release of Green Belt land, as a way of meeting the full housing requirements over the plan period and/or

² Lichfields (March 2023) – Development Consortium Technical Paper on Assessing the Housing Land Supply [AD05]

meeting affordable housing needs. NPPF [§145] provides that whilst there is no requirement for Green Belt boundaries to be reviewed or changed when plans are being prepared or updated, LPA's may choose to review and alter Green Belt boundaries where exceptional circumstances are fully evidenced and justified. Further, NPPF (11)(d) provides that strategic policies should, as a *minimum*, provide for objectively assessed needs for housing and other uses, as well as any needs that cannot be met within neighbouring areas (see Fn 6), unless the application of policies in the NPPF (that protect areas or assets of particular importance) provides "a strong reason" for restricting the overall scale, type or distribution of development in the plan area (see Fn 7). Neither the LPA nor the Examining Inspectors can conclude that the Green Belt provides a strong reason for restricting the overall scale of housing development (etc) in the absence of any analysis of the land use planning implications of such development.

- 2.5 NPPF [§35] states that plans are sound if they are positively prepared, which means providing a strategy that, as a minimum, seeks to meet the area's objectively assessed housing needs. **The WLP is therefore unsound as it does not seek to meet the minimum housing needs, without any (or any adequate) explanation.**
- 2.6 In addition, the WLP submitted for EiP claimed to have enough supply to meet minimum needs and so did not explore the possibility for any unmet need being accommodated in neighbouring authorities. Proposed MM3 would create an unmet housing need of at least 2,586 over the plan period, for which the possibility of this being met in neighbouring authorities has to be explored for the WLP to be positively prepared and to comply with the statutory and policy Duty to Co-operate. The Consortium has not seen any evidence that this process has occurred following the conclusion of the EiP sessions. This raises a fundamental issue of legal soundness, as a failure to comply with the statutory Duty to Co-operate cannot be remedied through MMs (see s.20 P&CPA 2004).
- 2.7 Notwithstanding the above, it was established at the EiP that the majority of WLP supply is in Viability Zone 1 [VZ1]. The Consortium's evidence presented at the EiP demonstrated that there are significant viability deficits of approximately £100,000 per unit in VZ1³. The Council's own evidence has accepted that there is an approximate £60,000 deficit per plot in VZ1 on brownfield sites with a development density of 70 dph⁴. This means that an overwhelming majority of the 11,814 supply remaining in the plan is wholly unviable and would require very substantial grant funding to come forward. The Consortium has not seen any evidence since the conclusion of the EiP to demonstrate how the very significant viability deficits would be overcome, despite the Council being asked at hearings to consider how viability should be addressed in the local plan. In the absence of any information to address how the viability deficits would be overcome, it remains a fundamental soundness issue that goes to the heart of the WLP strategy. The Plan cannot be found sound on the basis of an evidential 'leap of faith' that unidentified and unidentifiable grants will come forward to remedy such massive development deficits. A "justified" plan needs to be based on "proportionate evidence" to be found sound. There remains no evidence that there is any prospect (let alone a reasonable prospect) of such funding being available. Any

³ Roger Hannah (2023) – Development Consortium Viability Update [AD01]

⁴ Aspinall Verdi (2023) – Addendum Report Wirral CIL & Viability Assessment, Table 13.1 [WBC031]

modifications to address this issue would be so extensive that it would require the re-writing of the plan. On that basis, the WLP should be found unsound.

3.0 MM5 – Policy WS 1 (Development and Regeneration Strategy)

3.1 MM5 proposes several significant MMs to the WLP strategy, including on plan period, housing requirement, housing trajectory, and C2 need. The MMs proposed to Policy WS1 are considered in turn below.

Plan Period

3.2 The submitted WLP had a **plan period of 2021-2037**. MM5 proposes that the plan period should be **amended to 2022-2040**; the monitoring years 2022/23 to 2039/40. The Consortium considers that the extension of the plan period to 2040 is necessary to ensure that strategic policies look ahead over a minimum 15 year period from adoption, in accordance with the NPPF [§23].

3.3 Notwithstanding the above, it is unsound that ‘year 1’ of the plan period has been shifted forward from 2021 to 2022 when the evidence base that informed the plan was prepared to inform a plan period from 2021. As set out by the Inspectors at the outset of the Examination process in INSP003 (Examination Guidance Note) para.21, *‘we can only recommend MMs if they are necessary to make the submitted Plan sound or legally compliant’*. No information has been published by the Council to indicate why it considers a plan period from 2021 to be unsound and/or not legally compliant. As such, this change (and others proposed through the MMs) are not necessary for the submitted plan to be made sound.

3.4 Wirral’s Annual Monitoring Report 2021/22 states that there were 687 gross housing completions in the 2021/22 year. This is 148 less than the submitted WLP annual requirement of 835 dpa. Shifting forward the base date of the plan to 2022 is not required to make the plan sound, hides past under delivery and provides no mechanism for this undersupply to be accounted for.

Housing Requirement

3.5 The submitted WLP had a minimum housing requirement of 13,360 net additional dwellings. This was based on an annual requirement of 835 over a 16-year plan period. Footnote 36 in the submitted WLP states that this figure includes a 50 dpa uplift for demolitions (i.e. 785 dpa + 50 dpa). The 2021 Strategic Housing Market Assessment Update [2021 SHMA] set out that the 785 dpa figure was not based on LHN, but instead an economic growth scenario. The 2021 SHMA Update concluded that the standard method figure for Wirral at the time, which was 779 dpa, should be uplifted to 785 dpa to support economic growth.

3.6 MM5 amends the plan requirement to 14,400. This is based on a reduced annual target of 800 dpa but over the extended 18 year plan period. The Inspectors’ PHN states that this is based on the 2023 LHN figure for Wirral, calculated using the standard methodology.

PPG⁵ states that authorities should calculate their LHN figure at the start of the plan-making process and that this figure can be relied upon for a period of two years. PPG goes on to say that the LHN figure should be kept under review and revised where appropriate. Therefore, had the submitted WLP housing requirement been based on LHN, it would have been perfectly reasonable for the figure to be revised through the MMs to accord with the latest LHN. However, this is not the case because the submitted WLP housing requirement was based on an economic growth scenario. Although the economically derived housing requirement originally pursued by the Council in the submitted plan and the LHN at the time were close, this is irrelevant. The MMs are proposing a fundamental switch in the strategy of the WLP, which is unjustified and going beyond the statutory remit of being necessary to make the plan sound.

- 3.7 MM5 has seen the economic growth scenario silently and unjustifiably dropped from the WLP. No justification for this fundamental change in approach has been provided by the Council in the MMs (or by the Inspectors in the PHN). As set out, MMs should be made to rectify matters of soundness or legal compliance only. No justification has been provided by the Council or the Inspectors as to why it considers a housing strategy tied to economic growth to be unsound and/or not legally compliant. Moving away from the economic growth scenario represents a fundamental change in strategy. Together with the other MMs proposed, the Council is essentially seeking to re-write a plan during the examination. On that basis, the WLP should be withdrawn or the previous housing requirement of 835 dpa should be reinstated.

Stepped Requirement

- 3.8 An addition to Policy WS 1, part D, proposed as part of MM5 states that *'new dwellings will be delivered in line with the housing trajectory set out at Appendix 4, namely an annual requirement of 500 dwellings per annum to 2027/28, 850 dwellings per annum between 2028/29 and 2032/33, and 1,025 dwellings per annum from 2033/34 to 2039/40'*.
- 3.9 PPG⁶ states that a stepped housing requirement can be appropriate where there is to be a significant change in the level of housing requirement between emerging and previous policies and/or where strategic sites will have a phased delivery or are likely to be delivered later in the plan period.
- 3.10 On the former, in stating that the WLP should incorporate a stepped housing requirement, the Inspectors' PHN states that the annual housing requirement of 800 dpa represents 'a significant change from previous requirements for Wirral'. Examination document DSH38a is then referenced in the PHN to support this assertion. Firstly, Wirral has not adopted a local plan since the UDP was adopted nearly 25 years ago. Therefore, Wirral's housing requirement since 2015/16 has been established through the standard methodology. DSH38a shows that Wirral housing requirement has been in excess of 700 dpa every year since 2017/18 (with the exception of the 2020/21 year where it was reduced in light of the Covid-19 pandemic). If you discount the 50 dpa demolitions allowance from 800 dpa plan requirement, 750 dpa is comparable with what Wirral's recent housing

⁵ Reference ID: 2a-008-20190220

⁶ Reference ID: 68-021-20190722

requirement has been. The proposed stepped requirement is therefore based on a false assertion that 800 dpa represents ‘a significant change from the previous requirements for Wirral’.

- 3.11 The second element of PPG referenced above, where a stepped requirement may be appropriate in circumstances where strategic sites will have a phased delivery or are likely to be delivered later in the plan period, is not applicable in Wirral. This is because Wirral Waters, the largest strategic site, has an extant planning permission (and has done since 2012) and is not reliant on a WLP allocation to come forward. Therefore, the proposed WLP stepped requirement does not accord with the circumstances set out in PPG⁷ in which a stepped housing requirement may be appropriate.
- 3.12 The proposed 500 dpa requirement in the early years of the plan is not a sound approach and has been introduced to enable the Council to demonstrate a five year housing land supply position upon adoption. It is not underpinned by any evidence, and it is clear that it is a reactive approach, after it was demonstrated at EiP that large proportions of the WLP supply are not deliverable. The 500 dpa figure falls very substantially short of meeting the minimum identified housing needs. It is also 205 dpa short of even the identified and accepted annual affordable housing need figure of 705 dpa, which is addressed separately in Section 6.0. Not only that, artificially lowering the housing numbers in the early years of the WLP will be compounded by the fact that it does not have sufficient housing land identified overall and is incapable of making up for the short-term deficit (whether in the plan period or at all).
- 3.13 Furthermore, the MMs' Sustainability Appraisal Addendum Report [SA-AR] has not adequately considered the implications of the stepped requirement on the effects of the plan on housing (SA Topic 8). The stepped requirement is referenced in the SA-AR as a mitigating factor (along with the early review mechanism) to the fact that the total housing supply figure has reduced from 16,332 to 11,814, which the SA-AR predicts will result in less positive effects. The SA-AR incorrectly concludes that the stepped requirement will ‘encourage housing delivery’ when it will actually have the opposite effect of suppressing housing delivery. The SA-AR does not consider the effects of the lower housing requirement in the early years of the plan period, as a result of the stepped requirement, and does not consider reasonable alternative approaches to the stepped requirement.
- 3.14 A Written Ministerial Statement [WMS] from 30th July 2024, titled ‘Building the Homes We Need’, is an expression of Government policy that set the context for the proposals in the draft NPPF, as well as other planning reforms published for consultation on the same day and is a material consideration in decision making. These proposed reforms include a proposed new stock-based calculation for calculating LHN. This proposed new methodology would **increase Wirral’s LHN from 728 to 1,755**. The proposed 500 dpa stepped requirement would represent just 28% of this figure.
- 3.15 Whilst the draft NPPF and new standard methodology are not matters for this examination, the WMS is a statement of Government policy and is a material consideration for the WLP examination. The emerging stepped requirement is significantly out of step with the

⁷ Reference ID: 68-021-20190722

Government's strategy established in the WMS and is therefore an unsound approach. If the WLP strategy progresses any further, it would significantly undermine the Government's ambitions to achieve growth through boosting housebuilding.

- 3.16 The Consortium is of the opinion that the approach been taken in Wirral is regressive and in the short term could be seen by other LPAs as an example to constrain housing delivery and work against the existing (and proposed) national policy imperative to boost significantly the supply of new homes to meet identified needs. We are already aware that Solihull tried to use Wirral and the PHN as a justification for refusing to identify additional sites to address a shortfall of supply against requirement. However, the Inspectors of the Solihull Local Plan dismissed this approach and instructed the Council to withdraw its plan.
- 3.17 Wirral's position and characteristics are not unique and a consistent approach is required when dealing with all LPAs in an attempt to meet the Government's ambitions and attempt to significantly boost the supply of housing and harness economic growth. The approach that is proposed to be taken here is at odds with the Government's intentions and is not sound. In Elmbridge, for example, the Inspector has recommended that the plan is withdrawn. In doing so they cited Matthew Pennycook's letter to PINS which stated that pragmatism should not be used to address fundamental issues with the soundness of a plan, which would be likely to require pausing or delaying the examination process for more than six months overall.

Need for C2 Older Persons Accommodation

- 3.18 MM5 updates the Policy WS 1 to make reference to the requirement for 1,149 C2 residential extra care places in addition to the overall housing requirement of 14,400. This increases the overall residential requirement of the WLP to 15,549. Despite this, no further MMs are proposed to positively address how this additional housing need will be met. No additional sites are introduced into the supply to cater for C2. This approach is unsound because it fails to take into account the established "critical" need (PPG) for older persons accommodation.
- 3.19 The need for sites to address C2 need will put pressure on an already limited supply of housing sites, which do not even seek to meet the minimum identified C3 needs of 14,400 over the plan period. **When C2 need is taken into account, WLP supply represents a shortfall of 3,735 against the minimum identified needs.** The WLP is therefore planning to not meet the needs of the older population. This is despite, upon submission, the WLP claiming to address the development needs of the borough in full.

4.0 MM6 – Supporting Text to Policy WS 1

- 4.1 MM6 inserts the following paragraph to the supporting text of Policy WS 1:

‘The Local Plan strategy is premised on achieving momentum in respect of regeneration, increasing density where appropriate and increasing the viability of development over the Plan period. As such although the Local Plan does not contain sufficient deliverable or developable sites at the time of the examination to meet the full housing requirement of 14,400, it provides a policy framework that will enable that provision (along with robust monitoring and provision for review in the eventuality that is not realised over time)’.

- 4.2 The WLP strategy sought to meet the borough’s housing needs in full. The WLP, as submitted, claimed to provide enough supply to meet the plan’s housing requirement in full. It was not, as suggested by MM6, premised on achieving momentum in order to meet the minimum needs over the plan period. The pivot in strategy goes beyond the remit of MMs, which is the process for rectifying soundness issues, and not wholly rewriting the plan’s strategy. Therefore, in accordance with PPG⁸, the Inspectors should suggest to the Council that it withdraws the WLP or find it unsound.

5.0 MM9 – Policy WS 2 (Viability of Development)

- 5.1 The Consortium presented comprehensive evidence on viability at the EiP. This showed that the viability deficits across five strategic sites in Wirral is close to £1 billion (£964,000,000), with an average deficit of approximately £150,000 per dwelling⁹. This was without considering the deficits across the remainder of the plan supply, of which nearly 10,000 units are in VZ1. Whilst the Council disputed the extent of the viability deficits at EiP, its evidence¹⁰ did accept that there is a significant viability deficit of approximately £60,000 per dwelling for brownfield sites in VZ1. Across the 9,687 units in VZ1¹¹, this would amount to a deficit of over £580,000,000. The LPA have failed to demonstrate that such an enormous level of necessary public subsidy is available (reasonably or at all). The WLP is fundamentally not deliverable, even on the LPA’s contested evidence.
- 5.2 The Inspector’s PHN accepted that the viability of development is highly challenging in Wirral, particularly in respect of certain locations and typologies. Reference was also made to an action that the Council took away at the hearings to consider how viability is addressed in the local plan. However, the Consortium has seen no further evidence or work which has been undertaken by the Council to demonstrate how viability will be addressed and such deficits will be remedied. The Consortium wrote to the Inspectors on 9th April 2024 following the publication of the PHN to seek clarification as to: (i) what additional viability work was being prepared by the Council, (ii) how this would address the viability deficits, and (iii) how this would be used to inform the MMs. However, the Consortium received no response from the Inspectors to this letter.
- 5.3 No MMs are proposed to the WLP which acknowledge or seek to address the very significant viability deficits across the supply or provide an alternative strategy in the likely

⁸ Reference ID: 61-057-20190315

⁹ Roger Hannah (2023) – Development Consortium Viability Update, Figure 24 [AD01]

¹⁰ Aspinall Verdi (2023) – Addendum Report Wirral CIL & Viability Assessment, Table 13.1 [WBC031]

¹¹ WBC (February 2023) – Response to Inspectors’ Initial Questions – Batch B, Table 1 [WBC03a]

even that the Council's delivery trajectory does not progress as required due to viability issues.

- 5.4 The Viability of Development policy (WS 2) and its supporting text, inserted into the WLP by MM9, do not provide any form of solution to the identified fundamental viability issues and appear to completely overlook/ignore the aforementioned viability deficits. The new policy has three parts, none which seek to provide a mechanism for overcoming the fundamental viability challenges accepted at EiP.
- 5.5 Further, the policy is only focused on the delivery of affordable housing and has missed the overarching point that the majority of the supply is unviable even without any affordable housing requirement.
- 5.6 Part A of Policy WS 2 states that proposals will be expected to comply with all relevant policy requirements established within the WLP and that it is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. This is repetition of existing national policy (NPPF §58) and so will have no effect on viability blackholes.
- 5.7 Part B of Policy WS 2 states that *'proposals that do not fully accord with all relevant Local Plan policies on the grounds of viability, will only be approved by the Council where the applicant has demonstrated through a viability assessment that the proposed development cannot be viably developed at the current time'*. This part of the policy also requires *'all opportunities to obtain external funding towards meeting funding gaps have been fully explored and maximised'*, and *'that the benefits of the development outweigh any harm arising due to not fulfilling the policy requirements'*. This part of the policy is also ineffective because of the very substantial viability deficits across the majority of the WLP supply. This part of the policy would only be effective if the viability deficits across the supply were marginal. The Council's own evidence has accepted that this is not the case, with a £60,000 deficit per plot in VZ1 with little or no affordable housing being accounted for.
- 5.8 Part C of the policy states that, *'where deemed appropriate, a review and clawback mechanism will be incorporated into legal agreements to ensure that additional contributions are provided over time as viability improves'*. Similarly, this part of the policy is not effective because of the very substantial viability deficits that would not be overcome by deferring contributions. This part of the policy is also broadly a repetition of PPG¹² on how viability should be reviewed during the lifetime of a project.
- 5.9 In summary, proposed additional policy WS 2 is unsound because is it not effective and does not achieve what the PHN requested or what was discussed and verbally agreed as an action at the EiP. From analysing the three parts of the proposed new Policy WS 2, it is clear that it is simply a repetition of national planning policy and guidance. The Inspectors' PHN asked the Council to continue to work to address viability matters. Introducing a policy that goes no further than existing national policy does not address viability matters.

¹² Reference ID: 10-009-20190509

5.10 On that basis, the fundamental viability issues with the WLP remain unaddressed. The WLP should be found unsound and the Council should commence the preparation of a plan that identifies a sufficient supply of sites, taking into account their economic viability, as required by NPPF [§69]. It is unanswerable that, were such an exercise to be undertaken, there would be a requirement for significantly more deliverable housing sites to be identified, assessed and allocated, to meet the identified need for market, affordable and older people's housing.

6.0 MM10 – Policy WS 3 (Strategy for Housing)

6.1 It was accepted at the EiP by the Council that a (previously unknown) methodological error in the Council's evidence base led to the annual affordable housing need being understated. The Inspectors' PHN accepted the Consortium's evidence that **the affordable housing need in Wirral is about 705 dpa. This is nearly double the 374 dpa set out in the 2021 SHMA**, which informed the WLP. **This means that Wirral has a need for affordable housing alone of 12,690, which is more than the entire WLP supply of 11,814.**

6.2 NPPF [§63] requires affordable housing needs to be assessed and reflected in planning policy. The WLP is fundamentally unsound because it was not informed by robust evidence on the borough's actual affordable housing needs at the time of its preparation. The plan's strategy was developed using a flawed affordable housing requirement and without appreciation of the true scale of affordable housing need, which is not far short of the WLP's 800 dpa minimum housing requirement. However, this has not been considered or reconsidered in light of the flaw being highlighted and accepted by the Council and Inspectors.

6.3 Policy WS 3 sets out the affordable housing requirements for new build market housing proposals of 10 or more dwellings. It sets a 10% requirement for Viability Zones 1 and 2 and 20% in Viability Zones 3 and 4. It was accepted at the EiP that this policy would facilitate **the delivery of just 1,637 affordable homes** over the plan period. It should be noted that this assumes that all market schemes can viably deliver the prescribed 10% or 20% policy requirement, which the Consortium's and Council's viability evidence suggests they cannot.

6.4 Even on the discredited basis that all market schemes can deliver affordable housing, the delivery of just 1,637 affordable homes would represent **a shortfall of 11,053 over the plan period**. From this, it is clear that the WLP strategy comprehensively disregards the acute affordable housing needs over the plan period.

6.5 The Inspectors' PHN states that for the plan to be justified, Policy WS 3 should be modified to encourage and give weight to schemes, in line with the strategic approach to locating development, which provide a level of affordable housing above the foregoing percentages. MM10 inserts an additional bullet point to Policy WS 3. This addition states that *'proposals that would provide for levels of affordable housing exceeding the thresholds set out in Criterion C of this policy (10% for VZ1, VZ2; 20% for VZ3 and VZ4) will be accorded due weight in reaching a balanced planning judgement on their*

merits where such schemes are in accordance with the strategic approach to distributing the development through the WLP.’

- 6.6 MM10 does nothing to address the acute affordable housing need in Wirral or the significant viability challenges at play with the majority of the supply. The unanswerable consequence will be significant increases in the cost of housing, placing homes outside the reach of working people. Providing positive weight to a proposal that provides affordable housing above the minimum requirement in areas that accord with the strategic approach, where viability has been demonstrated to be extremely challenging, will be ineffective. In reality, the majority of schemes will be unable to deliver the minimum affordable housing requirements because of the overwhelming viability constraints. In addition to this, the proposed new Viability of Development policy would allow affordable housing to be deferred to later phases of schemes, further exacerbating the acute affordable housing need. Therefore, it is unclear how the Inspectors’ PHN has concluded that the changes to Policy WS 3 would ensure the plan is justified. It is manifestly unsound.
- 6.7 The original WLP as submitted was not proposing to use the SM2 figure as the basis for the housing requirement. As such, the housing requirement should have been reconsidered to factor in this increase in affordable housing requirement rather than unjustifiably change the strategy through the MMs and reverting to a different LHN figure and approach.
- 6.8 The magnitude of the affordable housing need alone fundamentally undermines the plan’s strategy. As soon as the true scale of this need was understood and accepted at the EiP, the WLP plan should have been withdrawn and the LPA should have grappled meaningfully with how it might be addressed (at least in substance). That has not happened. It is a completely flawed approach and would represent a failure in plan-making, if the WLP progresses with a supply that meets less than 13% of the Council’s identified affordable housing need.

7.0 MM21 – WS 12 (Monitoring and Review)

- 7.1 The Inspectors’ PHN states that an early review policy is necessary to ensure that the WLP is positively prepared. It is assumed that this reference to positively prepared is made because the plan, following the MMs, does not provide a strategy which seeks to meet the areas minimum assessed needs, as required by the NPPF [§35].
- 7.2 MM21 inserts a *part b* to Policy WS 12. This states that:

The Council will commence a review of the WLP earlier than the five year period after adoption set out in national policy, and that the following five factors will be taken into account in deciding the scope and nature of that review and whether the WLP should be updated:

- 1 *Annual housing delivery falls below 90% of the annualised requirement in the stepped housing trajectory for three consecutive years post adoption;*
- 2 *The expected delivery timescales for key sites have altered to such a degree that they impact on the ability of the Plan to deliver against the trajectory;*

- 3 *Funding which is crucial for the delivery of key sites in the Regeneration Areas has not been secured or is significantly reduced or delayed;*
- 4 *Implications of the Liverpool City Region Spatial Development Strategy review indicate that an early review of the Wirral Local Plan will be necessary;*
- 5 *Other factors have constrained or hindered the delivery, or prospects of the delivery, of the adopted regeneration strategy.'*

- 7.3 At the outset, the five factors proposed in Policy WS 12 only consider the Council's performance against a proposed plan strategy (stepped requirement, insufficient supply) that significantly fails to meet minimum needs and demonstrably cannot meet them over the plan period. The policy, as a minimum, should require the Council to commence an immediate review upon adoption to account for the c.2,500 shortfall against the 14,400 plan requirement (c.3,750 shortfall accounting for C2 as well). This should be tied to a timeline with consequences for the Council if certain milestones or triggers are not met i.e. the tilted balance is engaged.
- 7.4 NPPF §33 states that relevant strategic policies will need updating at least once every five years if their applicable local housing need figure has changed significantly; and they are likely to require earlier review if local housing need is expected to change significantly in the near future. Wirral's local housing need will increase significantly when the new proposed standard methodology comes in – from 728 to 1,755. This mean that, under current national planning policy, the WLP would require an earlier review solely on the basis of this increased local housing need figure. Whereas the first factor listed in the policy would significantly lower the threshold for requiring an early review, which is not positively prepared or consistent with national policy. Therefore, policy WS 12 is unsound.
- 7.5 Not only is the policy inconsistent with national planning policy, but it is also ineffective and unlikely to be engaged because of the stepped housing requirement. 90% of the annualised requirement in the early years would only represent 450 dpa, which would represent lower delivery than in recent years. Furthermore, as drafted, the reference to three consecutive years could be interpreted as meaning that no new homes could be delivered in Wirral across two consecutive monitoring years and the first factor would still not be engaged, should 450 or more homes be delivered in the following year. This demonstrates the fundamental unsoundness MM21, which is planning to fail to meet minimum housing requirements.
- 7.6 The other four factors (2-5) listed in the policy are equally ineffective because they are worded such that they are open to judgement and would allow the Council to conclude that they are not engaged in order to justify not undertaking a review. The second factor will have no bearing on an early review because the key sites are not expected to come forward in the early years of the plan period, and their failure to deliver will not be apparent until beyond the first five years of the plan.
- 7.7 The Council does not publish and/or regularly update a schedule of the sources and quantum of funding that is required to deliver the WLP's key sites. Therefore, it will not be possible to ascertain whether the third factor is triggered or not. The fourth factor, which makes reference to the Liverpool City Region Spatial Development Strategy [LCR SDS], is

equally unspecific and does not clarify what in that document would trigger a review of the WLP. The Consortium is concerned that the Council could cite any delays to the LCR SDS as the reason for not undertaking an early review, rather than the document triggering a review.

- 7.8 Notwithstanding the ineffectiveness of the five factors, Policy WS 12 is also worded such that the quoted factors only need to ‘be taken into account’ in deciding the scope and nature of the review and whether the WLP should be updated. They do not specifically trigger a review. This means that all five could be engaged and the Council could still avoid undertaking an early review, demonstrating the fundamental ineffectiveness of the proposed policy.
- 7.9 We consider that for an early review policy to be effective, it must require the Council to commence an immediate review of the plan upon adoption and require that an updated or replacement plan is submitted no later than three years after the adoption date of the plan, to meet the current up to date national policy. If these timescales are not met, then the policies in the plan which are most important for determining planning applications for new dwellings should be deemed to be ‘out of date’ and the presumption in favour of sustainable development engaged [NPPF §11d]. We have drafted a policy for Wirral which could be incorporated as part of their Main Modifications to this plan. A similar policy to this was included in the Bedford Local Plan 2030 (Policy 1), adopted in January 2020, because of changes to national policies and a need to plan for higher housing numbers.

Wirral Local Plan – Alternative Policy WS12

The Council will commence a review of the Wirral Local Plan no later than six months after the adoption of the plan. A replacement or updated plan will be submitted for examination no later than 30 months after the adoption of the Wirral Local Plan. If this timeframe for submission is not achieved by the Council, the policies in the Wirral Local Plan that are most important for determining planning applications for new dwellings will be deemed to be ‘out of date’ in accordance with paragraph 11d of the NPPF.

The plan review will seek to meet Wirral’s development needs in full and identify enough sites to, as a minimum, meet the shortfall of housing supply in the Wirral Local Plan. It will review the deliverability of the Wirral Local Plan’s strategic brownfield sites and their viability position in light of the public funding that has been secured, or otherwise. If the developability and deliverability of these sites cannot be appropriately justified and evidenced, the Council will identify alternative sites for allocation. The review will also consider a strategy to address the acute affordable housing need.

- 7.10 In summary, the WLP is not positively prepared and/or sound because it does not seek to meet the minimum objectively assessed housing needs. The proposed early review mechanism policy, which the Council was asked by the Inspectors to work up to ensure that the plan is positively prepared, is ineffective and seeks to lower the thresholds for requiring an earlier review from those already established by national policy.

8.0 Conclusion

- 8.1 The proposed WLP MMs are very substantial and effectively represent a re-writing of the plan. It is no longer seeking to meet the minimum housing needs of the borough and there is a significant shortfall in the supply of land. These changes to the strategy alone should have led to the Inspectors recommending that the WLP is withdrawn and/or is unsound. Furthermore, the proposed MMs do not address the affordable housing and viability flaws that were accepted by Council and Inspectors at the EiP. These are fundamental soundness issues that go to the heart of the WLP's strategy and should have led to the Inspectors finding the plan unsound.
- 8.2 A draft NPPF was published for consultation on 30th July 2024 and indicates the new Government's direction of travel in terms of significantly boosting the supply of housing across the country and considering Green Belt release where required. The draft NPPF was also accompanied by a new standard method which increases the national target to approximately 370,000 homes per annum. The implications for Wirral are significant with the proposed housing requirement potentially increasing from 728 dpa to 1,755 dpa.
- 8.3 For all the reasons set out in the Consortium's submitted evidence and in these representations, the WLP is fundamentally unsound and the proposed MMs do not make it sound. It is understood that the Inspectors will be keen to adopt any Plan, given the very long period without one. However, this Plan will fail to meet the identified need for market housing, affordable housing and older people's housing. It is not remotely viable and/or deliverable and (if adopted) would have very significant adverse consequences for the residents of the Wirral. The LPA should be required to undertake a robust plan-making exercise which (at least) engages with the consequences of planning to meet the identified claims (which the submitted draft claims to meet).