



Document Control

Project Name:	Duchy of Cornwall
Project Reference:	CP0003
Report Title:	Matter 5 EiP Statement
Doc Reference:	220522_CP0003_EiP_M5

	Name	Position	Signature	Date
Prepared by:	C Danks	Director		
Approved by:	A Tildesley	Director	<i>AT</i>	30.05.22

For and on behalf of Copperfield L&P Ltd

Revision	Date	Notes	Prepared	Approved
-	-	-	-	-

This report and the content herein have been prepared by Copperfield L&P Ltd for the client and project described in the particulars of the instruction.

This report has been prepared in accordance with the professional services appointment related to the project.

Unless by written consent of Copperfield L&P Ltd it should not be relied upon by any third party beyond the instructing client. Copperfield L&P Ltd accepts no duty or responsibility (including negligence) to any party other than the client and disclaims all liability to any such party in respect of this report



1. Matter 5 Strategic Policies

1. Introduction

1. Copperfield is instructed by the Duchy of Cornwall who made representations to the Local Plan Commencement Document in April 2020, the Regulation 18 Document in February 2021 and the Regulation 19 Document in October 2021.
2. This hearing statement reflects the representations previously made and is focused on the Inspectors' MIQs that are relevant or need additional expansion beyond those submissions.
3. The Duchy of Cornwall has land interest to the west of Bath including land between Twerton and Newton St Loe suitable for sustainable development.
4. Set out below are the responses to the relevant MIQs on behalf of the Duchy of Cornwall.

Policy CP3 Renewable Energy

Q.84 What is the justification for the requirements for community benefit, and an option of 5% community ownership in commercial led energy schemes with a capacity of over 5MW, in wind energy criterion 1f)? Is this a land use planning matter and is it consistent with the tests for planning obligations as set out in NPPF paragraph 57 and Regulation 122(2) of the Community Infrastructure Levy Regulations 2010?

5. The Council does not appear to have produced any evidence to demonstrate how the requirement of a community benefit or 5% ownership is necessary in CIL Regulation 122(2) terms. In our view it is therefore not consistent with national policy. Whilst the sentiment of the policy may be something that developers wish to engage with, that is different to making it a development plan policy requirement which needs to be sound and consistent with the CIL Regulations and as highlighted, Regulation 122(2).
6. As far as can be seen the approach being suggested is not necessary to make a development acceptable in planning terms having regard to the Acts, Regulations and National Policy.
7. The development plan supporting text could however encourage developers to explore the delivery of community benefits or the option of 5% ownership as a benefit of the proposals but the weight to be attached to it would be a matter for individual applications.

Q.87 What is the justification for the requirement for new residential dwellings to demonstrate a space heating demand less than 30kWh/m2/annum, total energy use less than 40kWh/m2/annum, and on-site renewable energy generation to match the total energy use, with a preference for roof mounted solar PV?

8. It appears that whilst reducing space heating demand represents a beneficial response to climate change as with Q.84, the development plan needs to align with National Policy and not seek to mandate something which goes beyond this. Paragraphs 152 and 153 of the NPPF2021

explain that the planning process should support a transition to a low carbon future as a general principle. A plan which proactively (positively) supports the objectives of the Climate Change Act 2008 in this context could be aligned with paragraph 153 and footnote 53 of the NPPF2021. However, paragraph 154b is also relevant to policy formulation and states:

“Any local requirements for the sustainability of buildings should reflect the Government’s policy for national technical standards.”

9. Emerging Policy SD6 should not give cause to undermine the Government’s technical standards set out in Part L of the Building Regulations.

10. NPPG Paragraph 12 (ID 6-012-20190315) explains that:

“Different rules apply to residential and non-residential premises. In their development plan policies, local planning authorities:

Can set energy performance standards for new housing or the adaptation of buildings to provide dwellings, that are higher than the building regulations, but only up to the equivalent of Level 4 of the Code for Sustainable Homes.

Are not restricted or limited in setting energy performance standards above the building regulations for non-housing developments.”

11. In accordance with the Written Ministerial Statement on Plan Making (25 March 2015) this equates to approximately 20% above current (2013 Building Regulations). Having regard to Planning and Energy Act 2008 all plan policies should be reasonable. Therefore, the supporting text to Policy SD6 could encourage a higher standard as a material benefit to be weighted in the planning balancing process of individual applications but should not mandate it.

Q.88 Are the cost assumptions arising from Policy SCR6 in the viability assessment for the Plan robust, realistic and justified? What, if any, effect would the requirements of Policy SCR6 have on meeting the other policy requirements of the Plan, such as affordable housing? What would the effect of the Policy be on the deliverability of new homes?

12. The Council’s Viability assessment at paragraph 4.20 and 4.32 sets out potential cost uplifts to respond to climate change (Options a, b, c and X, Y Z and the Duchy of Cornwall welcomes the Council’s encouragement of a robust response to this important topic. However, it is important that the financial impact is properly built into viability modelling. In both cases (residential and non-residential) the Council suggest the lowest cost uplift is allowed for (3% residential and 4% non-residential). This leaves no reasonable room for cost change and is not as resilient as choosing a higher cost option (6% residential and 6% non-residential) to provide a basic margin for error.

13. The Council cite the Cornwall Climate Emergency DPD (Currie and Brown and Etude) as the basis for the cost exercise. That work was underpinned by the February 2021 Energy Review and



Modelling Exercise carried out by Currie and Brown and Etude. Their 'high level' analysis on page 34 of the document suggests for residential dwellings:

- Cost increase to Part L 2021: 2.8%
- Cost increase from current building regulations to 2025 Future Homes Standard: 2.1%
- Cost increase from current building regulations to NetZero: 4.9%

14. That high level analysis was started from a baseline position of the interim 2021 Part L Building Regulations, and it seems the BaNES LPPU evidence does not allow for this. As such the evidence does not seem to support using a 3% cost uplift for the basis of viability testing and does not allow for any impact in the change in building regulations since the Cornwall work was carried out. It seems the cost uplift of delivering Policy SCR6 is not being fully factored in and with a reasonable margin for error.

15. It would be helpful for the Council to demonstrate viability based on the following basis:

- Minimum 6% cost uplift plus any further uplift to 2021 Part L Interim Regulations.

16. Within an increasingly volatile marketplace (within changing cost and sales prices) this would provide a more resilient assessment over the short operative life of the plan. Such an approach would reduce the potential delay, stalling or abandonment of projects caused by the need for more applications to be viability tested at the last minute and then a negotiation of how to balance viability and S106 obligations with meeting Policy SCR6.

Q.89 How do the proposed energy use requirements compare to the (transitional) requirements as currently set out in Part L of the Building Regulations?

17. The energy use specification of the emerging Plan is more onerous than the Building Regulations as confirmed in paragraphs 15.1 and 15.2 of EXAM1A (BaNES response to Inspectors Initial Questions ,7 March 2022) which is why resilient and robust viability testing now is important.

Q.90 What is the justification for seeking a financial contribution where the use of onsite renewables to match total energy consumption is demonstrated to be not technically feasible or economically viable? Is this element of the Policy consistent with paragraph 57 of the NPPF and Regulation 122(2) of the Community Infrastructure Levy Regulations 2010, and would it be effective?

18. The Duchy of Cornwall does not comment on whether the carbon off-set price per tonne is reasonable, but notes in relation to Q.87, that in its current form Policy SCR6 obligates rather than encourages developers to achieve a Climate Change outcome beyond that sought through National Policy and Regulation. The use of an offsite contribution is not in itself an unreasonable mechanism, but the viability and cost structure need to be fairly and reasonably related in scale and kind having regard to how SCR6 aligns with the NPPF2021 and Building Regulations.



Whilst Climate Change is an important topic to address, it is also important for the plan to meet its economic and social obligations. If housing or commercial delivery is stalled as a result of later viability issues, then the LPPU is not fulfilling the full suite of sustainability expectations set out in the NPPF2021.

Q.91 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 and there will be no need for policies in development plans to duplicate this. In this context, what is the justification for the requirement for applications for 50 dwellings or more to demonstrate that the CIBSE TM59 overheating target has been met in the current climate, and a strategy 12 submitted to show how overheating can be mitigated in the future climate, and is this consistent with national policy?

19. The approach is inconsistent with the Written Ministerial Statement of 15 December 2021 and adds an unnecessary layer of work at the planning application stage when it is a matter mandated by Building Regulations. The Duchy of Cornwall's concern is an ever increasing expectation to need to seek approval of the same matter more than once (ie at the planning application and Building Regulations stages). This increases the chance of conflicting decisions which adds unnecessary time to the delivery process.

Policy SCR7 Sustainable Construction Policy for New Build Non-Residential Buildings

Q.92 What is the justification for major development achieving a 100% regulated operational carbon emissions reduction from Building Regulations Part L 2013?

20. Whilst the Duchy of Cornwall supports the active work of BaNES to achieve a NetZero carbon position within new development, the response to Q.88 questions whether in all circumstances this is viable and therefore whether it would lead to development projects failing? This could lead to a plan which is not positively prepared to meet the economic and social needs of administrative area as well as responding to Climate Change?
21. Rather than making this a policy requirement it may be better framed as a positively worded objective although, it is noted that unlike housing the NPPG (paragraph ID:6-012-20190315) indicates that LPAs are not restricted or limited in setting energy performance standards above Building Regulations for non-housing developments; the level of standard set is therefore a matter of viability. Given that 'non-residential buildings' is a very broad category, it may be the only option to relay on individual schemes to highlight any viability issues.

Policy SCR8 Embodied Carbon

Q.96 What is the justification for the size thresholds for the application of the Policy, and the requirement that an Embodied Carbon Assessment that demonstrates a score of less than 900kg/sqm of carbon can be achieved within the development for the substructure, superstructure and finishes?

22. As with other policies of this nature the Duchy of Cornwall supports the notion of reducing embodied carbon within development but that has to be set within the context of the



requirements for sound development plans, including a demonstrable and robust evidence base. There does not seem to be a robust evidence base for setting this as a policy requirement and any policy should not conflict with building regulations or national policy. As with the response to Q.92 it may better to present this as a positively worded objective which can then be given weight in the decision-making process but is not a requirement.

Q.97 What effect would policy SCR8 have on the delivery of new buildings?

23. The Duchy of Cornwall is committed to achieving Net Zero Carbon by the early 2030s. Nonetheless, it is appropriate to ensure that policy is deliverable. Table 3.2 of the West of England NetZero background work by WSP (Core Doc RCC008) suggests that there would likely be a cost impact associated with addressing embodied carbon. The viability policy review (Appendix 1 of Core Document VIA001) appears to contradict this by stating it would have 'no direct cost to development'? It is not clear how these two pieces of evidence align?
24. Taking a precautionary approach and until evidence is presented otherwise, the West of England (WSP) work appears to present a reasonable and proportionate answer that there is a cost impact. Considering the limited room for flexibility in the BaNES viability appraisal (Core Document VIA001) the effect could push a greater number of proposals into a negotiated viability position. This could delay or stall projects to the detriment of achieving sustainable development.

Policy CP4 District Heating

Q.98 Would the requirement in Policy CP4 that development will be expected to incorporate infrastructure for district heating, and will be expected to connect to existing systems where and when this is available, unless demonstrated that this would render development unviable, be effective in reducing carbon emissions, and is the requirement justified in the context of the aims of the Plan?

25. In some circumstances and some locations, the provision of district heating system infrastructure may be beneficial where there is a realistic and reasonable prospect of a future connection (ie it is near or adjacent to an existing or planned system). In locations where there is little or no prospect of connecting to a district heating system then the infrastructure delivery would act negatively against the reduction of embodied carbon within development.
26. Targeting the policy at specific locations which are adjacent to existing district heating systems or planned locations may improve the justification for this policy.

New Policy SCR9 Electric vehicles charging infrastructure

Q.99 The approved document supporting Part S of Schedule 1 to the Building Regulations 2010 takes effect on 15 June 2022. Given the changes to the Building Regulations does the Policy serve a clear purpose and would it be effective?

27. It would seem that Part S of the Building Regulations addresses what emerging policy SCR9 is intending to do. It is therefore no longer necessary to be part of the plan. For reasons explained



above, it is more effective and efficient for one piece of legislation to be relied upon rather than seeking approval twice with the potential for delay and conflict.

Q.100 Is the requirement for the provision of on-street charging of electric vehicles where off-street parking is not provided justified, and would it be effective?

28. Notwithstanding whether the approach being suggested is reasonable, this is now addressed by Part S of the Building Regulations. As with the response to Q.99 above, it is better to rely on one piece of legislation to avoid conflict and delay.

Q.101 Is it intended that the Transport and Development Supplementary Planning Document will set out land use policy for parking standards? If so, why are these not set out in this Plan consistent with paragraph 107 of the NPPF?

29. Paragraph 107 of the NPPF2021 explains that where LPAs intend to set parking standards this should be through policies and not supplementary planning documents which are not subject to independent examination. As such these should be set out in the development plan and openly scrutinised as part of this process.

Q.102 What is meant by an abnormally high local electric grid infrastructure connection cost?

30. This was not defined at the consultation stage, but Part S of the Building Regulations sets an infrastructure cost cap of £3,600 for the installation of Electric Vehicle Charging Points. The DfT Electric Charging in Residential and Non-residential Buildings Consultation Outcome (Dec 2021) suggests the average cost of installation of a 7KW charging point is £1,500 and not £800 as set out in the LPPU BNP Paribas Viability Study. Again, this is an area where cost implications of the viability assessment seem less resilient than they should be.

Policy NE3a Biodiversity Net Gain

Q.106 What are the implications of the Environment Act 2021 for the Policy?

31. The LPPU should align with the Environment Act 2021 and subsequent regulations by setting a 10% mandated delivery requirement. Delivery beyond this should be optional and this can form part of any planning benefits case as a material consideration. In arriving at Policy NE3a, it is questioned whether BaNES has tested a range of delivery scenarios and what the implications are? In some cases, the levels of expected development on existing sites may no longer be achievable?
32. It is also noted that the Viability Study (Core Document VIA001) allows for a cost uplift of 0.8% in response to 10% provision. Again, going beyond this would change the cost uplift and would need to be factored into the evidence base alongside other sustainability, social and economic expectations of the LPPU.

Q.107 Is the Policy justified in not setting out a transition period for the implementation of the requirement for Biodiversity Net Gain?

33. The transitional arrangements of the Environment Act 2021 are intended to reflect cost analysis of sites that are about to or are already moving through the planning and development process. The policy should therefore align with the two year transitional period of the Act (the residual timeframe).
34. As an important topic, those wishing to deliver net biodiversity gain improvements early can still do so.

Q.108 What is the justification for requiring biodiversity net gain from minor development, which may be exempted development by the Environment Act 2021?

35. There does not appear to be any justification for the emerging LPPU departing from the legislative framework.

Policy GB2 Development in Green Belt Villages

Q.111 Policy GB2 states that new buildings in villages in the Green Belt will not be permitted unless it is limited to infilling and the proposal is located within the defined Infill Boundary. Is this consistent with paragraph 149 of the NPPF which lists specific exemptions where new buildings are not inappropriate in the Green Belt, or the judgement of the Court of Appeal in Julian Wood v The Secretary of State for Communities and Local Government, Gravesham Borough Council [2015] EWCA Civ 1519?

36. Paragraph 149 (a-g) is a significantly more refined policy approach than the proposed Policy GB2. The narrowing of the exceptions in the proposed policy is not consistent with the NPPF2021 and especially in circumstances where there may be sustainable brownfield sites on the outside edge of village boundaries which could be redeveloped under exception 149 (g) of the NPPF2021. Paragraph 149(g) states:

g) limited infilling or the partial or complete redevelopment of previously development land, whether redundant or in continuing use (excluding temporary buildings).... [Copperfield emphasis]

37. In this context, Policy GB2 is in conflict with National Policy. Moreover, in the context of clear national policy, the need for a local policy seems unnecessary.

End 22.05.22

