

**NORTH DORSET LOCAL PLAN 2011 – 2026 PART 1**

**EXAMINATION**

**Inspector's requests and points arising during hearing sessions**

**Note on: Legal view of implications of Satnam Millennium Limited v  
Warrington Borough Council (2015)**

May 2015

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# 1. Recommendation

- 1.1 The recommendation is that no changes are required to the Local Plan arising from this recent case law.

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## 2. Introduction

- 2.1 The inspector has asked that the Council produces a Note providing a view on the legal judgement between *Satnam Millennium v Warrington* and the implications for meeting affordable housing needs in North Dorset.
- 2.2 For the purposes of clarification, the full case reference is:  
Satnam Millennium Limited v Warrington Borough Council (2015) QBD (admin) – Case No. CO/4055/2014.
- 2.3 The case contained five grounds of claim. Aspects of these were very much fact specific. However, the main legal principles arising are:
- A As part of an Objectively Assessed Need exercise(OAN), both the LPA and a Local Plan inspector should identify an Objectively Assessed Need for Affordable Housing (OANAH).
  - B Having identified an OANAH, consideration should also be given (by the LPA / LP inspector) to its likely delivery as a proportion of mixed market/affordable housing development;
  - C An increase in the total housing figures included in the Local Plan should be considered where it could help deliver the required number of affordable homes;
  - D The Local Plan should meet the OANAH subject to relevant constraints.
- 2.4 The Council's overarching case for 'Meeting Housing Needs, including affordable housing and the needs of gypsies, travellers and travelling showpeople' is set out in detail with the Hearing Statement for Issue 4.
- 2.5 The Council's position in relation to SHMAs has in part been updated by the Council's response (INS008) to the Planning Inspector's Question 3 (INS004), where the Inspector sought clarification on any implications emerging from the letter dated 19 December 2014 from Brandon Lewis MP to Simon Ridley (Chief Executive of the Planning Inspectorate) concerning SHMAs (MHN021).

## 3. The implications for meeting affordable housing needs in North Dorset

- 3.1 The legal principles noted above are considered to have some specific relevance to meeting affordable housing needs in North Dorset.
- A As part of any OAN, both the LPA and a LP inspector should identify an objectively assessed need for affordable housing (OANAH).**

3.2 The 2012 SHMA Update (MHN004) indicates the level of need for affordable housing in the District. The objectively assessed need for affordable housing is 387 affordable dwellings per annum for the first five years of the Plan.

3.3 This figure reflects national planning practice guidance (Paragraph: 004 Reference ID: 2a-004-20140306),

'Can local planning authorities apply constraints to the assessment of development needs?

The assessment of development needs is an objective assessment of need based on facts and unbiased evidence. Plan makers should not apply constraints to the overall assessment of need, such as limitations imposed by the supply of land for new development, historic under performance, viability, infrastructure or environmental constraints. However, these considerations will need to be addressed when bringing evidence bases together to identify specific policies within development plans.'

3.4 The Council's OANAP is therefore the full requirement, unconstrained by supply side issues including constraints such as viability.

**B Having identified an OANAH, consideration should also be given (by the LPA / LP inspector) to its likely delivery as a proportion of mixed market/affordable housing development.**

3.5 The 2012 SHMA Update (MHN004) indicates the level of need for affordable housing in the District. It also highlights the important role of the private rental sector in meeting this need. The SHMA Update suggests that if attempts were made to provide all of the 387 affordable dwellings per annum, there would be significant problems with the wider housing market as significant numbers of existing private tenants move to affordable housing.

3.6 In addition to the need for affordable housing being met in part through the private rental sector, there are viability constraints to the provision of affordable housing through on-site provision across the District.

3.7 Part of the negotiations to secure affordable housing on a site will therefore include a consideration of viability. Where viability is considered to be an issue, the Council will expect an 'open book' discussion of the issues and involve the expertise of the District Valuer or other mutually agreed independent assessor to arrive at an agreed position. Such an assessment of viability would look at all the policy requirements on a site.

3.8 The level of affordable housing provision at each town is based on the assessment of viability contained in the North Dorset Affordable Housing Provision and Developer Contribution Report (MHN017). This suggests that residual land values in Gillingham are lower than across the remainder of the District and therefore higher

levels of affordable housing provision would not be viable. For this reason, a split target has been proposed to reflect residual land values whilst maximising the delivery of affordable housing.

- 3.9 Taking into account the role of the private rented sector and the issue of viability, the Council is seeking to maximise the provision of affordable housing whilst still seeking contributions towards the provision of infrastructure.
- 3.10 The policies in LP 1 indicate that, in accordance with the spatial strategy, about 1,480 additional affordable dwellings would be delivered over the plan period in the four main towns. The four main towns are the most sustainable locations; thus, the delivery of affordable housing in these places is considered to be the most appropriate approach. These are also the largest centres of population, where the greatest need will arise. The SHMA Update - North Dorset Summary (MHN004) estimated that the greatest levels of need were in Gillingham and Blandford, significantly more than in Shaftesbury and Sturminster Newton.
- 3.11 In the rural areas, there is the opportunity to deliver affordable homes on exception sites under Policy 9 where a need is identified. In addition, through neighbourhood plans or via the opt-in route, local communities can bring forward housing including affordable housing to meet need or to deliver community aspirations.
- 3.12 The Council's view is that the framework in LP 1 is sufficiently robust to deliver affordable housing having regard to viability constraints and the role of the private rented sector. The approach, reflecting residual land values, is considered to be the most appropriate given the available evidence and is therefore justified.
- 3.13 Over the past five years, some 43% of housing in North Dorset has been delivered as affordable housing (520 affordable homes from a total of 1,210 net additional completions). This level of delivery is above the overall level sought by Policy 8.

**C An increase in the total housing figures included in the Local Plan should be considered where it could help deliver the required number of affordable homes.**

- 3.14 The Council's housing trajectory sets out the delivery of housing over the plan period. Affordable housing constitutes an important component of this. It is assumed that its delivery will reflect the overall trajectory in line with the provision of affordable housing as part of new development. While national guidance sets out that consideration needs to be given to increasing overall housing delivery where it might contribute to delivering the identified need for affordable housing, the key issue is that a proportion of those seeking to move to affordable housing will already be living in housing (albeit not housing that is suitable for them for some reason (such as size or cost)). If these households were to move to an affordable home then their current dwelling would become available for another

household and there would be no net need for an additional dwelling.

- 3.15 This point has been acknowledged in Section 7 of the Planning Advisory Service's Technical Advice Note<sup>1</sup>, where in paragraph 7.3 it recognises that:

‘As defined in the PG, affordable need also includes housing for existing households – including those that are currently in unsuitable housing and those who will ‘fall into need’ in the plan period (i.e. their housing will become unsuitable for them). For the most part the needs of these households are not for net new dwellings. Except for those who are currently homeless or ‘concealed’, if they move into suitable housing they will free an equivalent number of existing dwellings, to be occupied by people for whom they are more suitable. If the affordable needs of existing households are included in the OAN, the resulting figure will too large’.

- 3.16 Having considered the situation in North Dorset, from the information available to the Council it is clear that a simple uplift in the overall housing figure would not help in the delivery of affordable housing in the District.

**D The Local Plan should meet the OANAH subject to relevant constraints.**

- 3.17 The Council has commissioned research to identify the future need for affordable housing and to assess the level of provision that may be realistically achieved, having regard to strategic viability considerations.

- 3.18 The Council aims to provide as much affordable housing as can be realistically delivered within strategic viability and other constraints, whilst also having regard to other matters. The Council's policy approach, notably Policy 8: Affordable Housing, sets out how this will be achieved, by:

- Establishing a threshold (in terms of the size of site) above which affordable housing will be sought;
- Setting out the proportion of homes on a site that the Council will seek to be provided as affordable, which varies in different parts of the District;
- Outlining the Council’s approach to site-based viability considerations and associated issues, such as resolving viability disputes, the provision of affordable housing off-site and off-site financial contributions;
- Providing guidance on the form of affordable housing tenure (or tenures) that should be provided on sites; and
- Outlining the key considerations that will apply to the delivery of affordable housing on sites.

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1 Objectively Assessed Need and Housing Targets: Technical Advice Note, Planning Advisory Service (June 2014)

## 4. Conclusion

- 4.1 A number of issues have been identified arising from the case of Satnam Millennium Limited v Warrington Borough Council and considered. It is considered that the Council's approach to the provision of affordable housing and the relevant Local Plan policies stand as robust when tested in the context of the case.