

## Planning Policy Topic Paper

# Principles of Settlement Boundaries (BUABs)



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Cover photograph: Honiton

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## Contents

1	Introduction .....	4
2	What is the national planning context? .....	5
3	What can we learn from recent case law? .....	6
4	What are the benefits of defining settlement boundaries? .....	8
5	What are the potential problems of defining settlement boundaries? .....	8
6	Would a criteria based policy be a better approach?.....	9
7	Could we propose a hybrid involving boundaries and criteria based policies?.....	9
8	Which settlements should be considered for BUAB's or alternative approaches for guiding development? .....	10
9	If development boundaries are drawn, how much additional development should they allow? .....	10
10	How can work on the local plan on this issue link to neighbourhood planning? .....	11
11	How can we involve local communities and landowner/developer interests in informing the approach taken in the draft plan? .....	11
12	What is the role of the Sustainability Appraisal? .....	12
13	Next steps .....	12
	Appendix 1: Extract from Planning Inspector Training Manual .....	13

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# Settlement Boundaries Draft Topic Paper

This paper has been prepared for consideration by the Strategic Planning Committee on 5<sup>th</sup> October 2021 in order to inform the production of the new local plan.

Built-up Area Boundaries (BUABs) have been used for many years to define where countryside policies do and do not apply in East Devon. As part of the preparation of the new local plan we need to consider whether to continue with this approach. There may be better alternatives more suited to current national planning policies and practices. Whatever approach we take needs to help deliver our plan strategy while being flexible enough to adapt to different circumstances and also give a degree of certainty to decision makers, residents, landowners and developers.

## 1 Introduction

- 1.1 The definition of settlement boundaries is a well-established approach to planning in England and has been followed in East Devon for the last 50 years or so, but it is not inevitable that it should continue. Settlement boundaries are referred to as Built-up Area Boundaries (BUABs) in East Devon. Outside of the BUABs the land is considered to be ‘countryside’ for planning policy purposes, where development is usually only allowed in certain specific circumstances. The term ‘built-up area boundaries’ may be misleading because many of the areas excluded from the BUAB are physically built-up. The purpose of drawing the line is not to identify which areas are built-up, but to identify the areas where the ‘countryside’ policies of the plan do and do not apply. In the case of the current local plan these policies are Strategy 6 – Development within Built-up Area Boundaries and Strategy 7 – Development in the Countryside.
- 1.2 It is common planning practice to establish some kind of settlement boundary to help determine planning applications, although there are many different names for them. In this paper the term ‘settlement boundary’ will be used to refer to the general practice and BUAB to settlement boundaries in the adopted East Devon Local Plan. The current local/villages plan defines BUAB’s around seven of the main towns (excluding Cranbrook) and the 15 settlements identified in Strategy 27 of the adopted local plan. In addition, the boundaries have been repeated or amended in neighbourhood plans and occasionally similar neighbourhood plan lines have been drawn in other settlements to inform planning applications. The development of a fresh strategy for the new local plan gives us an opportunity to consider alternative approaches (to defining settlement boundaries).
- 1.3 This topic paper considers the options for continuing with a form of settlement boundaries and alternative approaches by exploring the following key questions
  - What is the national planning policy context?
  - What can be learnt from recent case law?
  - What are the benefits of defining settlement boundaries?
  - What are the potential problems of defining settlement boundaries?

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- Would a criteria based policy to define the countryside be a better approach?
  - Could we propose a hybrid involving boundaries and criteria based policies?
  - Which settlements should be considered for BUAB's or alternative approaches for guiding development?
  - If development boundaries are drawn, how much additional development should they allow?
  - How can work on the local plan on this issue link to neighbourhood planning?
  - How can we involve local communities and landowner/developer interests in informing the approach taken in the draft plan?
  - What is the role of the Sustainability Appraisal?

## 2 What is the national planning context?

- 2.1 There is no mention of settlement boundaries or similar terms in the National Planning Policy Framework (NPPF). There are several references to 'countryside'.
- 2.2 Paragraph 11a of the NPPF requires all plans to promote a sustainable pattern of development.
- 2.3 Paragraph 12 of the NPPF states that "The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making. Where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted".
- 2.4 Paragraph 16a requires plans to be prepared with the objective of sustainable development and 16d requires policies to be clearly written and unambiguous to make it clear to the decision maker how to react to development proposals.
- 2.5 Paragraph 72 of the NPPF states that local planning authorities should support entry-level exception sites adjacent to existing settlements in certain circumstances.
- 2.6 Paragraph 79 of the NPPF states that: "To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Planning policies should identify opportunities for villages to grow and thrive, especially where this will support local services. Where there are groups of smaller settlements, development in one village may support services in a village nearby."
- 2.7 Paragraph 80 of the NPPF states that "Planning policies and decisions should avoid the development of isolated homes in the countryside unless" there is an essential need for a rural worker; there are heritage benefits; redundant or disused buildings would be enhanced; the development involves subdivision of an existing residential dwelling; or the design is of exceptional quality. The wording of paragraph 80 in the current (2021) NPPF is similar to paragraph 55 in the 2012 version of the NPPF that was current when the local plan

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was adopted – ‘Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances’.

- 2.8 Paragraph 105 of the NPPF states that “The planning system should actively manage patterns of growth ... Significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes... However, opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in both plan-making and decision-making”.
- 2.9 Paragraph 174b of the NPPF says that planning policies and decisions should enhance the local environment by recognising the intrinsic character and beauty of the countryside.
- 2.10 National Planning Guidance on [rural housing](#) advises that ‘a wide range of settlements can play a role in delivering sustainable development in rural areas, so blanket policies restricting housing development in some types of settlement will need to be supported by robust evidence of their appropriateness’.
- 2.11 Our approach to settlement boundaries will form part of our plans role in actively managing patterns of growth as envisaged in the NPPF. In deciding how to guide development to sustainable locations we will need to have regard to the policies set out in the NPPF and particularly the paragraphs set out above. We need to find a balance between enabling rural communities to grow and thrive at the same time as ensuring that our plan can help us to resist inappropriate development in areas that could result in unsustainable patterns of development. We need to define what is and is not ‘countryside’ (where we would not wish to direct development except in limited circumstances) for the purposes of the plan. We should always keep in mind that one of the best ways in which the planning system can help to prevent an acceleration of climate change is to encourage the right kind of development in the right location at the same time as minimising development in locations that would hasten climate change by promoting unsustainable travel patterns.

### 3 What can we learn from recent case law?

- 3.1 The phrase in paragraph 80 of the NPPF about avoiding ‘isolated homes in the countryside’ has caused much discussion in appeal decisions across England, some of which have been considered by the high courts. Versions of this paragraph have appeared in similar form as paragraph 55 in the 2012 NPPF and paragraph 79 of the 2018 and 2019 NPPF.
- 3.2 In 2018 the Court of Appeal found that the NPPF advice to ‘avoid isolated homes in the countryside’ “Simply differentiates between the development of housing within a settlement - or village - and new dwellings that would be ‘isolated’ in the sense of being separate or remote from a settlement” ([Braintree District Council v Secretary of State for Communities and Local Government & Ors](#)). The implications of the ruling are that the term ‘isolated’ in the NPPF means ‘physically isolated’ and that there is no need to take into account ‘functional isolation’ as well (that is whether the proposed dwelling would be isolated relative to services and facilities). This high court judgement has been used by developers to argue that planning permission should be granted for homes in the ‘countryside’, particularly where

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the site is not physically isolated from a settlement. Some Inspectors have accepted these arguments, even where the proposals are contrary to the development plan and there is a five year housing supply (for example in [Wychavon](#) and [Newark](#), which was challenged in the High Court, but the judge [found](#) that the Inspector had made ‘an unimpeachable judgment on the planning balance’).

- 3.3 However, in 2021 the Court of Appeal accepted that an Inspector had **not** erred when considering whether a site was “locationally sustainable”. ([City & Country Bramshill Ltd v Secretary of State for Housing, Communities And Local Government & Ors](#)). The court ruled that the decision-maker had to consider whether the development would be physically isolated, in the sense of being isolated from a settlement. What constituted a “settlement” and whether the development would be “isolated” from it were both matters of planning judgement for the decision-maker on the facts of each case. The Court rejected the developer’s argument that the existing buildings on the site represented a “cluster” of dwellings forming a settlement. The Court held that “to adopt remoteness from other dwellings, instead of remoteness from a settlement, as the test for “isolated homes in the countryside” would seem inconsistent from the government’s evident intention in producing the policy in paragraph 79”, namely to promote sustainable development in rural areas.
- 3.4 Inspector’s reports into local plans can also be relevant when considering options for our local plan. In a very recent [report](#) into the North Warwickshire Local [Plan](#), the Inspector was critical of the local planning authority for not basing its development distribution policy on an updated assessment of the availability of services and facilities settlement by settlement (paragraphs 90 – 93). As a consequence, the Inspector found that the restrictive approach to enabling development only within defined settlement boundaries to be inconsistent with national policy. Our ‘role and function of settlement study’ does provide an up-to-date assessment of services and facilities that will be taken into account when deciding where to define settlement boundaries (if that is the approach taken). Even so, it is interesting to note that the North Warwickshire Inspector found that, for the plan to be sound, [modifications](#) were needed to give flexibility for all settlements to play a role in delivering sustainable development consistent with national policy (MM24). The modifications made provision, in the smaller settlements with a ‘development boundary’, for no more than 10 units directly adjacent to the ‘settlement boundaries’ with all development being considered ‘on its merits’. Outside of the settlements listed in the settlement hierarchy, the Inspector modified the policy to say that *‘In all other locations development will not generally be acceptable, albeit as set out above that there may be some instances where development may be appropriately located and would enhance or maintain the vitality of rural communities under this category. Special circumstances should exist to justify new isolated homes in the countryside such as rural workers’ needs, the optimal viable use of a heritage asset, the re-use of redundant buildings enhancing its immediate setting, the subdivision of an existing residential dwelling, or development of exceptional quality or innovative design or for rural exception sites in line with national planning policy. All such development will be considered on its merits and with regard to other policies in this plan’*. It could be argued that the wording of this particular policy does not meet the expectations of paragraph 16d of the NPPF that policies should be clearly written and unambiguous to make it clear to the decision maker how to react to development proposals. Nevertheless, this is a clear indication that a local plan inspector may be reluctant to accept a policy that only allows

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development outside of any defined settlement boundary in very restrictive circumstances and is likely to want a degree of flexibility for decision makers.

- 3.5 The planning inspectors training [manual](#) from May 2020 was published by the Planning Inspectorate following a freedom of information request. This document does not constitute government guidance, but it does highlight useful case law and is intended to provide practical advice to Inspectors. Paragraph 162 of the manual states that “...*paragraph 79 (para. 80 of the 2021 NPPF) does not imply that a dwelling has to be “isolated” in order for restrictive policies to apply and there may be other circumstances when development in the countryside should be avoided. So a proposed development may not be “isolated” as defined but this does not mean that it will accord with development plan policies that seek to prevent the location of new housing outside of settlements*”. Paragraph 164 goes on to state that “...*there is nothing in the revised Framework to indicate that the definition of settlement boundaries is no longer a suitable policy response and therefore that such policies are bound to be out- of-date...*”. The relevant extracts from the manual (paragraphs 162 – 169) have been included in Appendix 1 of this paper.
- 3.6 In East Devon, we have been fairly successful at appeal in resisting housing outside of the BUABs, even where dwellings were not found to be ‘isolated’, with some Inspectors quoting Paragraph 12 of the NPPF set out in Paragraph 2.3 above (regarding the statutory status of the development plan). However, there has been some dissatisfaction with the approach of our current local plan that has encouraged the Planning Committee to give some permissions for dwellings outside of the BUAB contrary to policy thereby risking inconsistency and causing uncertainty for decision makers, developers and communities. We need to be mindful of the national planning context when devising a strategy and policies and particularly our approach to rural development and settlement boundaries.

## **4 What are the benefits of defining settlement boundaries?**

- 4.1 Settlement boundaries could continue to form a key role in the management of growth by directing development to areas within the settlement boundaries and limiting (but not stopping) development beyond them. By drawing lines on maps it is very clear where development is most likely to be acceptable and this gives a high degree of certainty to decision makers, local communities, land owners and developers.
- 4.2 Defining settlement boundaries on a proposals map also represents the ‘continuity’ approach where local communities, landowners and developers are familiar with how the system works

## **5 What are the potential problems of defining settlement boundaries?**

- 5.1 The drawbacks of using settlement boundaries tend to be the reverse of their benefits. Whilst they give certainty, by their nature they are rigid and inflexible. Circumstances can change between the lines being agreed through the local plan and the time that a planning application is made. Although the development plan is only the ‘starting point’ for the determination of applications and deviations can be made from it if ‘material considerations’

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override the plan, this can be difficult for local communities to comprehend and accept. By aiming to give certainty about how an application is likely to be considered it is harder to take the individual circumstances pertaining to a development proposal into account. This could inhibit a more flexible approach that could be taken if development lines were not drawn in the local plan.

## 6 Would a criteria based policy be a better approach?

- 6.1 A 'criteria based' policy could be devised to guide decisions on where it would be likely to be appropriate to allow development. This would remove the need for the local plan to define settlement boundaries. Any policy would need to consider how it could promote appropriate forms of development (such as meeting a local housing need or new community facilities) whilst protecting settlements from 'excessive' development. Examples of criteria that could help to achieve this balance are likely to include the relationship with existing built form, respecting the settlements distinctive character, its scale in relation to the existing settlement and sensitivity to landscape setting. It would also be useful to define what constitutes a 'settlement' and preferably to list settlements to avoid confusion over what may constitute an 'isolated' dwelling.
- 6.2 A variation of this approach could be to have policies that refer to 'built-up areas' and areas of 'countryside' without specifically drawing a boundary around them. The [Huntingdonshire Local Plan](#) (see pages 53 and 54) has taken this approach and defines a built-up area as 'a distinct group of buildings that includes 30 or more homes. Land which relates more to the group of buildings rather than to the surrounding countryside is considered to form part of the built-up area'. This criteria based definition is used to avoid the perception that any land within a drawn boundary is suitable for development, which could damage the loose knit character of settlements and create harder, more regular edges. We could explore taking a similar approach in East Devon, although it would be incompatible with the work undertaken through the role and functions of settlement study if based solely on the number of homes.

## 7 Could we propose a hybrid involving boundaries and criteria based policies?

- 7.1 A potential alternative could involve identifying settlement boundaries but with a criteria based policy to help determine when sites on the edge of, but outside boundaries may be developed. This could give some flexibility for development adjacent to the boundary, either for very small scale (say under 5 dwellings) or in proportion with the scale of the related settlement. It could be for all homes (similar to the North Warwickshire approach set out in paragraph 3.4 of this report) or specifically linked to the type of development we may wish to encourage, such as community build, self-build, homes for older people or for community facilities. It could also be linked to the NPPF exception for entry level housing (paragraph 72).

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- 7.2 A drawback of this approach is that it would reduce the likelihood of mixed market affordable schemes coming forward (if we keep a mixed market affordable exceptions policy similar to the current Strategy 35).

## 8 Which settlements should be considered for BUAB's or alternative approaches for guiding development?

- 8.1 A draft Role and Functions of Settlement [paper](#) (RFS) was considered by Strategic Planning Committee in [July](#). It was agreed to use this as evidence to inform the local plan, subject to all Members of the Council having the opportunity to comment. This has now been done and a revised draft version of the paper is presented elsewhere on this agenda. The RFS study recommends the following settlement hierarchy:

- Tier One – Principal Centre: Exmouth
- Tier Two – Main Centre: Honiton, Sidmouth, Axminster, Seaton, Ottery St Mary, Cranbrook
- Tier Three – Local Centre: Budleigh Salterton, Colyton, Broadclyst, Lypstone, Woodbury
- Tier Four – Service Village: Clyst St Mary, Uplyme, Beer, West Hill, Newton Poppleford, Feniton, Whimble, Kilmington, Otterton, East Budleigh, Dunkeswell, Stoke Canon, Tipton St John, Musbury, Sidbury, Chardstock, Broadhembury, Payhembury, Branscombe, Plymtree, Hawkchurch, Exton, Westclyst

- 8.2 The logical approach would be to draw settlement boundaries around these settlements and to focus growth in line with the hierarchy, but subject to consideration of other factors such as landscape and habitat protection. Whilst this is the approach that is advocated, it can be difficult to explain that some of the settlements excluded from this list, together with recent developments such as Mosshayne and Blackhorse, are classed as 'countryside'. A change of wording might help with perceptions so that, rather than referring to areas outside of settlement boundaries as 'countryside' they were described as 'other areas' or an alternative term that better reflected their planning status.

## 9 If development boundaries are drawn, how much additional development should they allow?

- 9.1 The current BUABs are drawn very tightly and constrain the outward growth of settlements. In the Villages Plan this was the key principle of the [methodology](#) used to define the boundaries. There was no need to identify land for development in the Villages Plan and this approach enabled neighbourhood plans to identify their own growth options.
- 9.2 The context for the new local plan is very different to the Villages Plan. We need to encourage development and there is a focus on allocating smaller sites of less than 1 hectare (to meet paragraph 69 of the [NPPF](#) and ensure a pipeline of developable sites). We

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could continue to draw the boundaries tightly except for allocated sites. This would give a very clear indication of direction and scale of growth, but sites capable of accommodating less than 5 (or 10) homes would be unlikely to be worth the effort involved in their allocation, notwithstanding the NPPF requirement to allocate 10% of our housing requirement on sites of less than one hectare. The resulting settlement forms, particularly in the smaller villages, may not harmonise with the existing built fabric or sit well in the landscape. Sites of less than five are more likely to be visually acceptable and help meet local community desires for the incremental growth of settlements. However, drawing the boundaries ‘loosely’ (to allow more opportunities for development inside the line) would be a more complex and time consuming activity than drawing them tightly. For example, additional consultation with local communities and developer/landowner interests would be needed and statutory bodies would require us to justify including land within the boundary in terms of the potential impact on heritage and natural assets or similar issues.

- 9.3 These factors point to an approach of defining boundaries ‘tightly’ with some allocations, but also devising a criteria based policy to allow for some small scale development adjacent to settlement boundaries in specific circumstances – essentially the local plan sets boundaries, but allows detailed analysis through planning applications to determine whether some development should extend beyond. This could be linked to increasing the supply of self-build, community led affordable housing, older persons housing or other types of development that we may wish to promote. It may also be appropriate to link this to the settlement hierarchy with larger settlements having the most flexibility to reflect the scope for sustainable growth to be accommodated in those locations.

## **10 How can work on the local plan on this issue link to neighbourhood planning?**

- 10.1 Deciding where development should happen around settlements goes to the heart of what could be considered to be one of the main roles of neighbourhood planning. In the Villages Plan, conflict was avoided by drawing the boundaries very tightly and leaving very little scope for additional development, unless included in the neighbourhood plan. Only one village has enlarged its BUAB from that defined in the Villages Plan. However, some settlement boundaries have been drawn around villages not specified for a BUAB in the local plan, additional housing sites have been allocated and policies devised to allow development in the countryside in certain circumstances. It will be more difficult to avoid conflict in the new local plan, given the need for the plan to promote and manage growth. The key to dealing with such potential conflicts will be involving local communities and particularly parish councils in decisions about where growth should go. However, this level of community input could slow plan production.

## **11 How can we involve local communities and landowner/developer interests in informing the approach taken in the draft plan?**

- 11.1 Prior to undertaking any detailed work on either drawing new BUABs or proposing an alternative approach, the input of representatives of local communities and

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landowners/developers would be helpful. Our Statement of Community **Involvement** allows for targeted evidence gathering through workshops and focus groups at this stage of plan production. Following consideration of this paper by the Strategic Planning Committee, we plan to discuss options for our approach with parish councils/neighbourhood plan groups and local planning agents. This work would help to inform the draft local plan, scheduled for consultation in early summer 2022.

## **12 What is the role of the Sustainability Appraisal?**

- 12.1 As part of the sustainability appraisal of the plan, we need to identify and appraise reasonable alternatives and use this comparative assessment work to inform decision making. The identification and consideration of alternative approaches through this paper and subsequent work will help with this process.

## **13 Next steps**

- 13.1 We hope to use this paper to guide discussion of the options with parish councils and neighbourhood plan groups (through an online seminar) and for representatives of developers and landowners (through the existing Agents Forum). This work, together with comments from the Strategic Planning Committee, will inform the approach put forward for consideration as part of a draft plan in December 2021, with detailed work to be completed for consultation as part of the draft plan in early summer 2022.

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## Appendix 1: Extract from Planning Inspector Training Manual

162. Rural housing is covered at paragraphs 77 to 79 of the Revised Framework. In summary, planning decisions should be responsive to local circumstances in rural areas, support opportunities to bring forward rural exceptions sites, locate housing where it will enhance or maintain the vitality of rural communities and avoid the development of isolated homes in the countryside unless one of the five listed circumstances applies. According to the Court of Appeal in Braintree DC v SSCLG, Greyread Ltd & Granville Developments Ltd [2018] EWCA Civ 610 "...the word "isolated" in the phrase "isolated homes in the countryside" simply connotes a dwelling that is physically separate or remote from a settlement. Whether a proposed new dwelling is, or is not, "isolated" in this sense will be a matter of fact and planning judgment for the decision-maker in the particular circumstances of the case in hand" (paragraph 31). However, paragraph 79 does not imply that a dwelling has to be "isolated" in order for restrictive policies to apply and there may be other circumstances when development in the countryside should be avoided. So a proposed development may not be "isolated" as defined but this does not mean that it will accord with development plan policies that seek to prevent the location of new housing outside of settlements.

163. Further guidance is within the PPG chapter Rural housing although this pre-dates the revised Framework and simply addresses the question of how local authorities should support sustainable rural communities. Development plans

164. You may need to consider whether or not the development plan policies can reasonably be regarded as consistent with the revised Framework. Are they distinctive local policies that promote sustainable development? Plan policies may also identify which rural settlements are appropriate to receive housing development, and at what scale. Provided they are supported by appropriate and robust evidence, such policies need not necessarily be inconsistent just because they adopt a particular approach (such as the use of settlement boundaries or development limits) which is not specifically referred to in the Framework or the PPG. In particular, there is nothing in the revised Framework to indicate that the definition of settlement boundaries is no longer a suitable policy response and therefore that such policies are bound to be out- of-date having regard to paragraph 213.

### Casework

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165. Common concerns expressed by LPAs are that new housing would be located outside existing settlements and would conflict with development plan policy regarding development in the countryside. This often arises in cases where the appeal site is located at or near the edge of a settlement - whether or not defined by a settlement boundary.

166. Depending on the cases advanced by the parties - questions to consider could include:

- What is the underlying concern behind the reason for refusal? What are the objectives of the relevant development plan policies? For example, is the aim of policy to protect the character and appearance of the countryside and rural settlements, to ensure that car-reliant development is avoided or to focus development where it would support the vitality of settlements? Do any of those issues arise in your case?
- What is the relationship between the site and the settlement – visually, physically and functionally? What is the relationship between the site and open countryside surrounding the settlement? Is the site more closely related to the settlement or to the surrounding countryside?
- Is there evidence that the proposal would enhance or maintain the vitality of rural communities? Are there existing services, such as a shop, pub or school, in the settlement or in a nearby village, which residents of the new housing could reasonably be expected to use and thereby support?
- Would occupants be reliant on the use of a car? What options would there be to travel without using a car? What services are there within walking distance? Would they meet some everyday needs? Would the walk feel safe to users? Is there a bus service? Where does it go and how often? What about options for cycling?

167. In considering the issues in this last bullet point, paragraph 103 of the Revised Framework provides that opportunities to maximise sustainable transport solutions will vary from urban to rural areas and that this should be taken into account in decision-making.

168. Evidently you would not expect the same level of bus service, for example, in a village as in an urban area. It will be a matter for your judgment in each case whether there are realistic alternatives to the car for any of the journeys that future residents of the development are likely to make. Even if there are no evening bus services, for example, it may be possible to travel to and from the nearest town by bus for work or shopping. In cases where there are few or no alternatives to the car, you will need to consider the extent of any negative consequences, for example in terms of increased traffic levels or isolation for those without a car. However, locational considerations should encompass a range of relevant matters as outlined in

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paragraph 52 above and not be solely focussed on the likelihood of future occupiers being able to access services and facilities by means other than the car.

169. It will also be important to bear in mind that conflict between a proposal and a development plan policy or policies that seek to achieve a particular distribution of development across an LPA area is also likely to result in harm in achieving the planned strategy. Even if the proposed development is visually acceptable then this aspect of the scheme should be conspicuously identified and weighed in the overall balance. See High Court judgment in *East Staffordshire BC v SSCLG and Barwood Strategic Land* [2016] EWHC 2973 (Admin). 67

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