

**The Prematurity Issue
in Planning Decisions**

DLP BRIEFING NOTE 75

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The Prematurity Issue in Planning Decisions

The document *'The Planning System: General Principles'* issued in 2005 by the former Office of the Deputy Prime Minister (now known as Communities and Local Government) states that:

"In some circumstances, it may be justifiable to refuse planning permission on grounds of prematurity where a DPD is being prepared or is under review, but it has not yet been adopted. This may be appropriate where a proposed development is so substantial, or where the cumulative effect would be so significant, that granting permission could prejudice the DPD by predetermining decisions about the scale, location or phasing of new development which are being addressed in the policy in the DPD."

It goes on to say:

"Where a DPD is at the consultation stage, with no early prospect of submission for Examination, then refusal on prematurity grounds would seldom be justified because of the delay which this would impose in determining the future use of the land in question."

Where a DPD has been submitted for examination but no representations have been made in respect of relevant policies, then considerable weight may be attached to those policies because of the strong possibility that they will be adopted. The converse may apply if there have been representations which oppose the policy. However, much will depend on the nature of those representations and whether there are representations in support of particular policies."

In cases where it has been cited as the reason for refusal, then the decision-maker must give a robust explanation of how the granting of the application would prejudice the DPD process.

Chapter 2 of *'Planning Policy Wales'* gives similar guidance.

Of course, failure to demonstrate a 5 year land supply triggers paragraph 71 of PPS 3 which requires Local Planning Authorities to give applications favourable consideration subject to those considerations set out at Paragraph 69 (quality, mix, environmental sustainability, effective and efficient use of land, and not undermining wider policy objectives). Paragraph 72 goes on to state that:

"Local Planning Authorities should not refuse applications solely on the grounds of prematurity."

Interestingly, there is no direct reference to the issue of prematurity anywhere in the draft National Planning Policy Framework, though it is at pains to stress that planning should be *"genuinely plan-led"*. Where the plan is absent, silent, indeterminate or where relevant policies are out of date, the draft NPPF indicates that the presumption in favour of sustainable development should apply. Recent appeal decisions, however, would support the view that the Secretary of State has not abandoned his Localism Agenda, as some critics of the draft NPPF would have us believe.

St Austell, Cornwall

Permission was refused by Cornwall Council for residential development of up to 1,300 dwellings; up to 9,000 sq m of Classes B1, B2 and B8 floorspace; ancillary retail floorspace (Classes A1, A2 and A5) and leisure (Classes A3 and A4); 60 bed care home (Class C2); primary school (Class D1); strategic landscaping and public open space; community transport hub of up to 100 spaces and access connections; and associated engineering works, infrastructure, drainage and car parking. The decision was made by the Secretary of State on 31st October 2011. He agreed with the Inspector's report which cited prematurity as a reason for refusal based on the development prejudicing the ability of Cornwall Council to decide the best options for growth.

The Secretary of State concluded that it was "probable" that a five year supply of housing land did not exist in Cornwall and that, on this basis, the PPS3 paragraph 71 presumption in favour of the grant of planning permission applied. However, he also concludes that the appeal proposal was of such a scale that to permit it now would have prejudiced decisions that he considered ought properly to be taken locally as part of the LDF process and that the appeal scheme would not have accorded with PPS3 on account of it undermining wider policy objectives in Cornwall. The Secretary of State considered that allowing the appeal in advance of establishing the appropriate level of future housing provision across Cornwall would pre-empt decisions that should properly be taken locally. That was notwithstanding the fact that adoption of a Core Strategy is probably still, at the very least, 18 months away.

Barton Farm, Winchester

CALA Homes appealed the decision of Winchester City Council to refuse planning permission on grounds of prematurity for 2,000 houses on the Barton Farm site, North of Winchester. The final decision was made by the Secretary of State in September 2011. He agreed with the Inspector that there were no overriding issues with the actual site that justified a refusal of planning permission, but felt that the issue needed to be resolved locally to avoid undermining Winchester's ability to plan for its future.

Abbeyfields, Sandbach

Cheshire East Council refused planning permission for 280 homes in Sandbach with prematurity being cited as one of the reasons for refusal. It was also thought that allowing the development of the greenfield site to go ahead might stop developers looking at brownfield sites in Sandbach. The decision was upheld by the Secretary of State in September 2011.

These decisions only increase the level of uncertainty, in the short term, around the prospects for achieving planning permission on appeal where plans are still some way off being adopted.

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