

**Housing needs and
the Five Year
Housing Land Supply
High Court Decisions**

Hunston Properties Ltd v
Secretary of State for
Communities and Local
Government and St Albans
City and District Council

DLP BRIEFING NOTE 135

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Summary

These two cases highlight the following:

- Councils cannot rely upon revoked RSS housing figures which were policy constrained (for example due to green belt designations) when considering the issue of a five year land supply for an application or appeal
- Councils in reaching a decision on the appropriate housing requirement in the context of an appeal or a Local Plan must follow a two stage process of identifying total housing need and then the issue of whether this should be met in light of constraints
- Sites not yet allocated in an adopted plan might be included in the land supply but each site will need evidence to support its inclusion or exclusion from the calculation.

It is recommended that:

- If a five year land supply argument is being relied upon this needs to be supported not only by a robust assessment of supply but also a statement justifying the housing requirement used to set the 5 year housing target. As most adopted plans predate that National Planning Policy Framework this will be recommended in most cases.
- Representations are made at each stage of the Local Plan process regarding the “objectively assessed” housing needs and subsequent requirement.

Wainhomes Holdings Limited v The Secretary of State for Communities and Local Government

An appeal decision by an Inspector was quashed because he failed to consider a material appeal decision forwarded to him before his decision was released. The case also involved the interpretation of Footnote 11 of the NPPF. The Honourable Justice Smith concluded, in this regard, that there is no prior assumption that sites not having planning permission are deliverable. However, the fact that sites have been included in an emerging policy document or evidence base may (and often will) be a starting point for their inclusion to justify five year supply. In other words, inclusion may be evidence in support of a conclusion that the sites so included are deliverable. The weight to be attached to the evidence that they are deliverable will vary from case to case and is a matter of planning judgment for the Inspector. So too will be the weight to be attached to any evidence that they are not. Evidence that they cannot be delivered can in principle be specific (e.g. site specific evidence that a site is contaminated or in delay) or general (e.g. evidence that all sites are subject to objection, though this evidence may be refined to the extent that the objections to particular sites are identified and capable of being considered).

High Court Decision – Hunston Properties Ltd v Secretary of State for Communities and Local Government and St Albans City and District Council

In November 2011 Hunston Properties Ltd made an application to St Albans City and District Council, which was subsequently refused in February 2012 on three grounds. Hunston Properties Ltd’s proposal was to develop a five hectare site almost entirely in the Green Belt in St Albans for 116 dwellings and a 72 bed care home. Only two of these were relied upon by the Council when the developer appealed the Local Planning Authority’s refusal, under Section 78 of the Town and Country Planning Act (1990). The two grounds related to inappropriate development within the Metropolitan Green Belt, the Council argued that the developer had failed to demonstrate the existence of “very special circumstances” necessary to warrant development in the Green Belt and secondly that the proposed development would represent a built form of undue prominence.

The Inspector dismissed the appeal in March 2013 and Hunston Properties Ltd made a legal challenge on the validity of this decision in the High Court under Section 288 of the Town and Country Planning Act 1990.

In his Judgement, His Honour Judge Pelling QC identified under the heading “Main Issues” the Inspector’s decision letter recorded that it was “agreed by the parties [that] both the proposed residential development and the proposed care home would be inappropriate development in the Green Belt for the purposes of National and Local Policy...” Therefore the main issues to be resolved were whether the harm by reason of inappropriateness and any other harm, is clearly outweighed by other considerations, so as to amount to the “very special circumstances” to justify the development.

St Albans City and District Council could demonstrate a five year housing land supply when measured against the Regional Spatial Strategy housing target of 360 dwellings per annum that had been contained in the now revoked East of England Plan (2008). Huston Properties Ltd argued that, in light of the fact that St Albans City and District Council did not have an up to date adopted Development Plan the starting point for assessing the Council's housing requirement should be the objectively assessed needs, starting with the Department of Communities and Local Government's 2008 household projections.

St Albans City and District Council had put on hold the preparation of a strategic plan and the Regional Spatial Strategy had been revoked, a policy vacuum therefore exists with a lack of an adopted up to date plan in place. St Albans City and District Council had tried to adopt the revoked Regional Spatial Strategy housing target through a Cabinet resolution as an interim housing target/requirement for housing land supply purposes, but His Honour Judge Pelling QC stated in his decision that this did not fill the policy vacuum.

His Honour Judge Pelling QC's application of the National Planning Policy Framework is important as it sets out that it is necessary to take account all of the words used in the Framework and in this case it was therefore necessary to take account of the opening words of paragraph 47, which seek to significantly boost the supply of housing. Judge Pelling states that paragraph 1 of the National Planning Policy Framework represents a new start with a large number of policies being revoked and replaced including previous government planning policy. The decision is clear that he could not see how a constraints adjusted housing figure arrived at having regard to policy requirements as they applied at the time when the Regional Strategy took effect can be said to lead to the same conclusion when applying the first bullet point in paragraph 47 of the National Planning Policy Framework when that paragraph is read as a whole.

Judgement – an err in law

His Honour Judge Pelling QC stated that the approach adopted by the Inspector in this case was wrong in law. *“The proper course involved assessing need, then identifying the unfulfilled need having regard to the supply of deliverable sites over the relevant period. Once that has been done it is necessary next to decide whether fulfilling the need in fact demonstrated together clearly outweighed the identified harm to the Green Belt that would be caused by the proposed development”.*

In handing down his judgment His Honour Judge Pelling QC refused the request to appeal his decision.

DLP Planning Consultants – Strategic Planning Research Unit Comments

This is particularly relevant to local authority areas whose previous Regional Spatial Strategy housing requirements were constrained when measured against their objectively assessed needs. This is also applicable to the review of development plans as this means that objectively assessed need cannot be constrained by policy designations. It should be noted that in this case there was a policy vacuum with no up to date plan meaning that the emerging plan might have been capable of attracting some weight. This suggests that promoters of housing development should make representations on housing numbers in emerging plans even if they are promoting sites in advance of the Plan otherwise weight might be placed on these emerging assessments. Judge Pelling's judgment puts at the centre of any decision on housing objectively assessed housing needs. Therefore unless there is an up-to-date Core Strategy i.e. since March 2012 then the overall level of housing which sets the five year requirement is up for debate.

DLP Planning Consultants – Strategic Planning Research Unit

In the case of a planning application or appeal a robust up to date evidence base will be needed to support the provision of housing in terms demonstrating that the proposal is required to meet the objectively assessed housing need. While reliance maybe placed on previous development plans in many cases the evidence base will have changed and in some circumstances where plans have failed to be updated such evidence maybe absent altogether.

A comprehensive review of the demographic and associated evidence provided by the Strategic Planning Research Unit to provide an objective assessment of housing need is therefore an essential piece of evidence to demonstrate to the decision maker that the proposal is required to meeting an existing need. The output of this work can also provide guidance to the appropriate level of housing provision against which to calculate the five year land supply.

The Unit has a proven track record of producing and presenting evidence on housing need and the economic benefit of housing development both at planning appeals and in Local Plan examinations.

Whether supporting a proposed allocation or promoting an alternative allocation in an emerging plan it is essential that the case is supported by a robust assessment of the level of housing need for the plan period. The Framework requires that the overall level of need is assessed prior to any policy decisions regarding the impact of meeting that need in full. The Unit is experienced at critically examining the evidence base for local plans and testing the assumptions prior to producing their own independent objective assessment of housing need.

Members of the unit have experience of presenting their findings at Local Plan examinations and utilising the evidence base to argue for the appropriate level of housing within a district and its distribution.

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A summary of matters that the DLP Consulting Group provide services for follows:

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