

**5 Year Housing Land
Supply
Matters and Trends
in Inspectors
Decisions**

DLP BRIEFING NOTE 138

Prepared by
DLP Planning Consultants

October 2013

www.dlpconsultants.co.uk





DLP Planning Consultants

Bedford
Bristol
Cardiff
East Midlands
London
Sheffield

Disclaimer

DLP Consulting Group Ltd, and its constituent companies disclaims any responsibility to the client and others in respect of matters outside the scope of this Report. This Report has been prepared with reasonable skill, care and diligence, is the property of DLP Consulting Group, and is confidential to the client, DLP Consulting Group Ltd accepts no responsibility of whatsoever nature to third parties, to whom this report has been provided.

Introduction

Introduced in March 2012, the National Planning Policy Framework (the Framework) has led to a number of significant changes in the operation of the planning system in England. One of the Framework's key provisions, as ratified by Mr Justice Pelling QC in his recent ruling (*Hunston Properties Ltd v Secretary of State for Communities and Local Government and St Albans City and District Council*) is the requirement for local authorities to objectively assess their own housing needs in an unconstrained manner, and demonstrate sufficient sites to meet this need over the next 5 year period. This requirement, which is also one test of the status of development plans, is proving a challenge for many Councils, particularly in areas of high housing demand.

This Briefing Note seeks to provide an overview of the Framework's requirements and report on trends developing in Inspector's decisions relating to five year housing land supply.

Paragraph 47 of the Framework

Paragraph 47 states that to **boost significantly the supply of housing**, local authorities should:

“Use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far is consistent with the policies set out in the National Planning Policy Framework, including identifying key sites which are critical to the delivery of the housing strategy over the plan period.”

In essence, following the enactment of the Localism Act 2011 and subsequent revocation of all Regional Spatial Strategies, local authorities are now expected to undertake their own assessment of market and affordable housing need in their areas and identify sufficient land to meet this need for the next 5 years. Once a robust assessment of need has been established, authorities must then:

“Identify and update annually a supply of specific deliverable sites Sufficient to provide five years' worth of housing against their housing requirements with an additional buffer of 5% (moved forward from later in the plan period) to ensure choice and competition in the market for land. Where there has been a record of persistent under delivery of housing, local planning authorities should increase the buffer to 20% (moved forward from later in the plan period) to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land;”

In this context 'deliverable' means that **a site is available for use for building now, offers a suitable location for development and be achievable with a realistic prospect that housing will be delivered on the site within five years**, and in particular **that the development of the site is viable**.

Presumption in favour of sustainable development

The presumption in favour of sustainable development – the 'golden thread' running through the Framework – dictates that where the development plan is absent, silent or relevant policies are out of date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or where specific policies in the Framework indicate development should be restricted.

Crucially, should a local authority be unable to demonstrate a five year supply of sites (plus the required additional buffer) relevant policies on the supply of housing land should **not** be considered up-to-date (paragraph 49 - Framework).

Trends – Appeal Decisions

There have been now a number of appeals where in decisions pointing to an absence of the 5 year supply has resulted in appeals being allowed. Some of these we highlight here.

In an appeal decision in July 2012 at Bishops Cleeve, Gloucestershire (PINS ref: APP/G1630/A/11/2146206, APP/G1630/A/11/2148635 and APP/G1630/A/11/2159786), the Secretary of State, in his decision letter, stated that the most significant material consideration was the requirement for a five-year housing land supply, which could not be demonstrated against the development plan. The appeal was allowed as a consequence.

Appeals such as that at Burgess Farm, Manchester (PINS ref: APP/U4230/A/11/2157433) show how rigorous the application of the supply argument is despite the permanent loss in an area of open countryside, the Secretary of State considered that this was outweighed by the scheme's contribution to reducing the significant shortfall of some 4,000 homes (2.5 years supply) against the housing land requirement. This was further evidenced in appeal at Silverstone, Northamptonshire (PINS ref: APP/Z2830/A/12/2183859).

The Secretary of State has further demonstrated support for Inspector's, granting planning permission for the construction of circa 375 dwellings on four sites in Cherwell District in Oxfordshire (PINS ref: APP/C3105/A/13/2189896, APP/C3105/A/12/2178521, APP/C3105/A/12/2184094 and APP/C3105/A/12/2189191). All four appeals were upheld by the Inspector and the Secretary of State, because of the absence of an up-to-date plan with an up -to-date housing provision, and because of the inability of the Council to demonstrate a five year housing land supply. The four schemes were judged to assist in rectifying the undersupply that had accrued in recent years. The argument that the schemes were premature and would compromise the emerging Local Plan and the decisions of local people was considered carefully but the Local Plan was deemed to be at too early stage for this argument to be given weight.

Another tendency identified is that weight given to existing Local Plan allocations as part of the five year supply is diminished where those sites do not benefit from planning permission. This was shown in planning appeal decisions at Chapel-en-le- Frith (PINS ref: APP/H1033/A/11/2159038), Wincanton (PINS ref: APP/R3325/A/12/2170082) and Ottery St Mary (PINS ref: APP/U1105/A/12/2180060). The Inspector ruled in these decisions that to be deliverable and hence recognised in the five year supply, land must benefit from planning permission.

Trends - High Court Decisions

In a case in Stratford-Upon-Avon (J S Bloor, Hallam Land Management and Secretary of State v Stratford on Avon District Council), Mr Justice Hickinbottom dismissed a section 288 challenge in the High Court of Justice to the grant of planning permission on appeal (PINS Ref APP/J3720/A/11/2163206/NWF) by the Secretary of State for up to 800 dwellings, a mixed use local centre, highway and green infrastructure, and various associated works at land west of the village of Shottery. His decision was made on the basis that the Secretary of State and Planning Inspector had rightly concluded that the objectively assessed housing figure of 8,000 dwellings preferred by the Council was not sufficiently evidence-based and that, on all the evidence before him, the requirement for the period 2008-2028 was instead correctly deemed to be 11,000-12,000 dwellings.

As reported in a previous briefing note, in a case in St Albans (Hunston Properties Ltd V Secretary of for Communities and Local Government and St Albans City and District Council), His Honour Judge Pelling QC dismissed the approach taken by St Albans Council and the Inspector's arguments that only 360 new dwellings per year were needed and that this target could be met by sites which had already been allocated for residential development. 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"***. (PINS Ref APP/B1930/A/12/2180486).

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. 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.

Which methodology?

Local authorities have been using two distinct methodologies in order to calculate their 5 year housing land supply. The 'Sedgefield method' of calculating land supply involves adding any shortfall of housing from previous years to the five year period, whereas the 'Liverpool method' distributes the shortfall evenly over the whole remaining plan period.

In recent appeal decisions there has been a shift towards the Sedgefield method. In an appeal at Honeybourne, Wychavon (PINS ref: APP/H1840/A/12/2171339) an Inspector dismissed the Council's arguments in favour of the use the 'Liverpool method', saying that it would be inconsistent with the Framework by spreading additional provision over the whole plan period.

However, the 'Sedgefield method' is not always upheld, as an appeal decision at a 91-home scheme in Groby, Leicestershire (PINS ref: APP/K2420/A/12/2181080/NWF) highlighted the inconsistencies in appeal decision making. The Inspector backed the Council despite only showing a marginal five-year housing supply using the Liverpool method.

Conclusion

The introduction of the Framework has placed an increased emphasis on the need to boost significantly the supply of housing. This turn places additional pressure on local authorities to objectively assess their local need for housing as a proper basis for this, and identify sufficient sites to meet this need.

As demonstrated in a number of recent appeal decisions, where a Council fails to provide sufficient evidence to suggest that they have an up to date five year housing land supply the Council will be vulnerable to Inspectors overturning their decisions at appeal.

Looking forward, DLP Planning Consultants Ltd will be scrutinising evidence produced by Councils and ensuring that they are sufficiently satisfying the requirements of the Framework and meeting all of their objectively identified needs and demonstrating a suitable five year supply of sites.

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 DLP Strategic Planning Research Unit to provide an objective assessment of housing need is therefore an essential piece of evidence to demonstrate to decision makers that the proposal is required to meet an existing need. The output of this work can also provide guidance on the appropriate level of housing provision against which to calculate the five year land supply.

DLP is licensed to use the Chelmer Model for population forecasting, and has very considerable experience of using this at all levels The Unit has a proven track record of producing and presenting evidence on housing need and the economic benefits 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 needs.

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 and have delivered this for both private and public sector organisations

If you require more information or would like to discuss the issues mentioned in further detail please contact:

Bedford

4 Abbey Court
Fraser Road
Priory Business Park
Bedford
MK44 3WH
T 01234 832 740
F 01234 831 435

Bristol

Unit 1 Blenheim Court
Beaufort Office Park
Woodlands
Bradley Stoke
Bristol
BS32 4NE
T 01454 410 380
F 01454 410 389

East Midlands

The Old Vicarage
Market Street
Castle Donington
DE74 2JB
T 01332 856971
F 01332 856973

London

1st Floor
3 More London Riverside
London
SE1 2RE
T 020 3283 4140

Sheffield

11 Paradise Square
Sheffield
S1 2DE
T 0114 228 9190
F 0114 272 1947

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

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

Strategic Planning Research Unit (DLP)
Objective Assessment of Housing Needs
Five Year Land Supply Assessment
Economic Impact of Housing
Economic Impact of development proposals
Retail Impact Analysis
Expert Witness on housing needs
Local Plan Examinations

DLP Planning Consultants

Planning Applications and Appeals
Public Consultation
Development Promotion
Development Plan Representations
Land Searches
Project Management
Minerals and Waste Planning
Conservation Area/Listed Building Negotiation
Enforcement
Retail Impact Analysis
Renewable Energy Planning and Delivery
Discharge of Planning Conditions

DLP Environment Ltd

Strategic Environmental Assessments
Sustainability Appraisals
Environmental Impact Assessments

If you would like to receive a brochure providing more detail of the service provided by the DLP Consulting Group, please contact any of the offices listed on the left of this page.

briefings

BEDFORD

4 Abbey Court
Fraser Road
Priory Business Park
Bedford
MK44 3WH

t 01234 832 740
f 01234 831 435
bedford@dlpconsultants.co.uk

BRISTOL

Unit 1 Blenheim Court
Beaufort Office Park
Woodlands
Bradley Stoke
Bristol
BS32 4NE

t 01454 410 380
f 01454 410 389
bristol@dlpconsultants.co.uk

CARDIFF

28 Cathedral Road
Cardiff
CF11 9LJ

t 029 2064 6810
cardiff@dlpconsultants.co.uk

EAST MIDLANDS

The Old Vicarage
Market Street
Castle Donington
DE74 2JB

t: 01332 856971
f: 01332 856973
eastmidlands@dlpconsultants.co.uk

LONDON

1st Floor
3 More London Riverside
London
SE1 2RE

f 020 3283 4140
london@dlpconsultants.co.uk

SHEFFIELD

11 Paradise Square
Sheffield
S1 2DE

t 0114 228 9190
f 0114 272 1947
sheffield@dlpconsultants.co.uk

