

client - briefing



**Government Policy
Changes Regarding
Back Garden
Development**

DLP BRIEFING NOTE 15

Prepared by
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Government policy changes regarding back garden development or “garden grabbing”.

On 19th January 2010, Housing and Planning Minister, John Healey, published new, independent research by Kingston University, which shows that inappropriate development on back gardens is not a widespread national problem and is often linked to councils’ failure to have local policies in place.

363 Local Planning Authorities were approached for their views. Of the 127 who responded, less than half (50 councils) considered it to be an issue in their area. Of these, only 7 councils had specific, local policies in place. The report concluded that councils with local plans in place were more successful at stopping inappropriate development on garden land. The report also found that the problem was greatest in areas with average houses prices of between £150,000 and £500,000.

Nevertheless, Mr Healey promised action to head off any current or future problems. He has amended national planning policy to make it crystal clear that previously-developed land, which can include garden land, is not necessarily suitable for development and that decisions to stop unsuitable building on gardens is a matter for councils to decide at a local level.

The Government has amended Planning Policy Statement 3 (PPS3), by moving text from the definition of previously-developed land (Annex B) to the main body of the document itself. Consequently, this means that paragraph 41 of PPS 3 now reads as follows:

“The national annual target is that at least 60 per cent of new housing should be provided on previously developed land. This includes land and buildings that are vacant or derelict as well as land that is currently in use but which has potential for redevelopment. When identifying previously-developed land for housing development, Local Planning Authorities and Regional Planning Bodies will, in particular, need to consider sustainability issues as some sites will not necessarily be suitable for housing. There is no presumption that land that is previously-developed is necessarily suitable for housing development nor that the whole of the curtilage should be developed.”

Effectively, this means that councils, dependant upon local circumstances, are being encouraged by the Government to develop and adopt policies to protect garden land from development.

So far only a small number of councils have successfully used local policies to determine garden development applications and defend decisions at appeal. These are as follows:

London Borough of Hillingdon

Residential/Urban Design policy – identifies key objectives, criteria and issues for consideration in the design of residential developments. The policy specifically looks at integrating development within residential areas. The policy states that strict adherence alone to principles in the design guide does not guarantee planning permission.

London Borough of Sutton

Loss of Garden Land policy – lays out the reasons for resisting development on garden land where it is considered to be of local ecological value.
Minimum Standards for Private Garden Space policy – sets local minimum standards for provision of private garden space depending on type and size of dwelling and prevents curtilages being sub-divided into excessively small plots.

Reigate and Banstead Borough Council

Specific Garden Development policy – sets out a range of criteria, which developments on garden land must comply with and discourages ad hoc developments on gardens.

Swindon Borough Council

Garden Development policy – sets out requirements with which garden development must comply, including pictures to illustrate the criteria and provides clear examples of acceptable and unacceptable development with reference to local appeal decisions.
Warwick District Council Parking standards – specific parking policy for residential developments. Allows refusal of development that causes additional on-street parking.

Woking District Council

Character Statement or Plan – outlines key areas of special character, which are considered to be worthy of retention, provides a detailed definition of the “character” within each particular area and sets out the general principles and features of development within these areas. In particular, mentions the character of plots and gardens and in some cases states that further garden and infill development would cause harm to the character of the area.

Tandridge District Council

Housing Need policy – sets out the basis for discretion to refuse development when housing land supply has been exceeded or where the need for a particular type of development has been met.

Cheltenham Borough Council

Recently adopted a Supplementary Planning Document entitled “Development on Garden Land and Infill Sites in Cheltenham” (June 2009). Although the saved policies of the Local Plan cover issues such as design, housing density and development in conservation areas, none of the policies specifically control ‘garden grabbing’. The SPD attempts to fill this gap. It encourages applicants to ensure their Design & Access Statements comprehensively address issues such as:

analysis of the character of the locality, explanation of how the scheme has been designed to respond to that character, consideration of how the proposal complements and respects the character of the street and block, is the development likely to cause unacceptable harm to the amenity of neighbouring residents, are access and parking arrangements adequate and appropriate and so on.

It is clear from the above that the few councils, which have adopted policies to tackle “garden grabbing”, have each adopted slightly different approaches to the issue. Some, from a landowners or developers point of view, are more onerous than others.

Now that the Government is encouraging councils, who perceive loss of residential gardens to development as a problem, to adopt suitable policies, with the support of newly amended PPS3, it is likely that many more councils will adopt similar policies in the near future.

Landowners and developers should be aware of this wave of changing policy and should expect to have to put forward more robust evidence as part of planning applications to demonstrate that any development proposed on garden land will not harm the character of the area and will comply with all relevant development plan policies.

It is also likely that some councils may decide to place a blanket ban on back garden development. In such cases, the council may need to be able to demonstrate how it has assessed garden land as unsuitable, and how it can meet its 5 year housing land supply commitments. It will be necessary for landowners and developers to ensure that the presence of such policies is detected at an early stage and addressed as necessary as part of any planning application or development plan representation.

Of course, this all points to one likely outcome, which is that more development will have to switch back from brownfield to greenfield sites. It was objections to the loss of green fields, from the likes of the CPRE, which led to the amendment of PPG3 in 2000. This contained requirements for councils to only allow development at a density exceeding 30 dwellings per hectare and for at least 60% of housing to be built on previously-developed land. In turn this led to more development on garden land.

DLP, with its broad geographical coverage and in depth knowledge of relevant matters, can draw upon its experience of the approaches adopted by many councils and advise accordingly, both in respect of development proposals and in considering responses to policy changes

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