

DLP BRIEFING NOTE 178

Prepared by
**DLP Planning Consultants –
Strategic Planning Research Unit**

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DLP Planning Consultants

Bedford

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No 5 Chambers has recently held its Annual Planning Review, which was attended by representatives from DLP Planning Ltd.

A summary or a few of the key points made at the various Seminars follow:

A Review of 'Housing Land Supply' Appeal Decisions

- This Seminar reiterated the point that the consequences of there not being a five year supply of deliverable land for housing are by now well known. These include relevant policies relating to the supply of housing being out of date and the weight to be given in a planning balance to the need to significantly boost the supply of housing will increase and as such for these reasons much time can be taken up in planning appeals arguing over the supply.
- The seminar identified that a five year assessment considers the 'requirement-side' then the 'supply-side' and then does the math.
- A five year assessment must have a 'base date'; this is normally the complete year for which the LPA has published annual information.
- A five year calculation is usually carried out on a LPA wide basis and not for individual settlements, but in large LPA areas, particularly those formed by a recent amalgamation of former districts/boroughs housing land supply can be examined by reference to Housing Market Areas.
- Early Core Strategy's adopted under 2004 Act procedure can now be out-of-date.
- Where there is not an up-to-date plan the requirement figure should be for the full Objectively Assessed Need.
- There is a third way of calculating supply emerging – Sedgefield minus or Liverpool plus (this has also been called Sedgefield light). This is when the shortfall is spread unevenly over the remaining plan period according to the trajectory shown in the local or emerging local plan which shows what the LPA assesses can be realistically achieved.
- 5% buffer is the default. 20% is applied where, as a matter of planning judgement, there has been persistent under delivery.
- Paragraph 47 of the National Planning Policy Framework and Footnote 11 provide that to be deliverable sites must be 'available now', 'suitable now' and therefore there must be a reasonable prospect of delivery of houses in five years. 'Available now' connotes that if the site had planning permission now there would be no other legal or physical impediment integral to the site that would prevent immediate development. 'Suitable now' means suitable in planning terms 'now'. The Planning Practise Guidance suggests that suitability is really about the prospects of the site being allocated or granted planning permission.
- Some appeal decisions show a tendency for the Secretary of State to accept information held by the LPA unless an appellant has significantly different and site specific information. This is the case even where a site has no planning permission and therefore in theory the evidential burden is on the LPA to justify its inclusion. It would appear that often just simply attacking the credibility of the LPA's site specific evidence is not enough; appellants need their own. However, appellants can succeed (if they have substantive evidence) in attacking the LPA's supply.

Local Plans and the need for robust evidence

- Appeal decisions note that it is to be expected that landowners and developers would talk up likely delivery of housing development in their pre application discussions.
- Important for the full objectively housing and employment needs to be assessed before applying policy considerations.
- All foreseeable types of economic activity over the plan period, including for retail and leisure development.

- LPAs should achieve a clear understanding of business and work closely with the business community to understand their changing needs and identify and address barriers to investment including a lack of housing, infrastructure or viability.
- The business needs evidence base should be used to assess the needs for land or floor space for economic development including both the quantitative and qualitative needs for all foreseeable types of economic activity over the plan period, including for retail and leisure development.
- Reviews of land available for economic development should be undertaken at the same time as, or combined with, Strategic Housing Availability Assessments and should include a reappraisal of the suitability of previously allocated land.
- Duty to Cooperate – It is not a duty to agree. If the other local authority will not cooperate LPA should still submit Local Plan, but needs a 'comprehensive and robust evidence of efforts made to cooperate'. It is continuous. It should produce effective and deliverable policies on strategic cross boundary matters.
- Speed necessary to produce Local Plan, but not haste as this would be counterproductive otherwise.

Neighbourhood Planning

- Neighbourhood Plans are not going away. There appears to be cross party consensus that plans will remain in force post 2015. They are the most significant innovation emerging from the Localism Act. Their removal would require further legislation: with knock on effects.
- The overall number of neighbourhood plans will increase significantly in the next 12 to 18 months.
- Developers should closely scrutinise the extent to which the neighbourhood plan is being presented as a mechanism to resist new development. The simply unavoidable fact is that will apply in the majority of cases.
- In respect of national planning policy, imperative in paragraph 47 is not going away indeed it is more acute and more entrenched than local concerns which may have found restrictive policies. Sight should not be lost that planning remains a technical process of calculating and meeting need and balancing proper planning concerns.
- Where neighbourhood plans do allocate, a developer should do far as possible negotiate at the outset simply to ensure that they can secure some level of community support.
- If a community is unwilling to negotiate or to seek a compromise then the appeal process will proceed in the conventional fashion as a balancing of material considerations. The mere existence of the neighbourhood plan does not change the underlying principle of identifying whether the development is sustainable and ultimately the benefits outweigh the harms.
- If a neighbourhood plan does reach submission (likely whilst an appeal is underway) then a developer will need to consider detailed submissions supported by legal advice and specialist planning commentary.
- At appeal two of the major arguments are that: first the neighbourhood plan does not have proper regard to or is out of step with the Government's policies' on delivering housing and it's not a proper plan as envisaged by the Government (in its own policy and guidance) or second that the proposal is not in conflict with the Neighbourhood Plan.

Conclusion

It is recommended that:

- If a five year land supply argument is being relied upon when submitting an application or promoting a site these need to be supported not only by a robust assessment of supply, but also a statement justifying the underlying housing requirement used to set the 5 year housing target. •
- As most adopted plans predate that National Planning Policy Framework (The 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.

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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 (SPRU) 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 SPRU 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 SPRU 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 SPRU 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:

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
Renewable Energy Planning and Delivery
Discharge of Planning Conditions

DLP Environment Ltd

Strategic Environmental Assessments
Sustainability Appraisals
Environmental Impact Assessments

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briefings

