

PLANNING PROSPECTS

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PLANNING LAWYERS

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Housing Targets - The Brakes are Off

It is ironic that when the economy was running at full tilt housing supply was throttled back by planning policy. The existence of housing moratoria in some areas and housing requirements capped by Regional Planning Guidance (coupled with easy money) contributed to drive house prices skyward. Now the housing market has come to a standstill and mortgages are hard to come by, the Government has belatedly but very significantly eased the brakes on housing supply.

The Barker Review endorsed the need to deliver more housing and increase the land supply – borne out by the lowest building rate since the 1920s. In response housing delivery is now high on the Government agenda. A number of instances of the Government loosening the reins significantly on housing supply may be highlighted.

Firstly, housing requirements in the Regional Spatial Strategy (“RSS”) are being increased nationwide – very significantly in some cases. In many areas Local Planning Authorities (“LPAs”) have very challenging requirements.

Secondly, the Government has made it clear that the figures in RSS are to be regarded (unlike before) as targets, not ceilings. LPAs should look also to emerging figures where regional housing targets are outdated. A further and important policy change evidencing a more laissez-faire approach is that LPAs are under a requirement to demonstrate a five year supply. Unless such a supply can be shown the LPAs are required to “consider favourably” planning applications for housing.

The creation of eco-towns and growth points and areas is a third manifestation of the growth agenda.

Conversely, many LPAs remain under-resourced and officers are struggling to cope with the Local Development Framework (“LDF”) system, which seems unlikely to deliver the numbers particularly within the timescales. Calculations of five year supply are sometimes often woefully optimistic and the structural mismatch between the LDF system and the need to deliver a five year supply is responsible for a significant increase in the number of appeals.

In the 1980s, when Mrs Thatcher presided over the planning system, the famous presumption was introduced in favour of development unless it could be proved that there was demonstrable harm to interests of acknowledged importance. The echo may be faint but a presumption that applications should be considered favourably if a five year supply cannot be proved underlies the current Government thinking.

Quite rightly those advising development interests see that Government’s approach is much more supportive of housing delivery. For those with the time and resources, the national planning policy context for delivery of housing has rarely been better. The irony is that for the moment finance has dried up. The fact remains that 3 million houses are still needed on Government projections. When the financial brakes are removed planning permissions will need to be in place.

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PPS3 Housing – Assessing Supply and Managing Delivery

PPS3 issued in November 2006 requires Local Planning Authorities (“LPAs”) from April 2007 to identify and maintain a rolling five year supply of deliverable land for housing.

“Where LPAs cannot demonstrate an up to date five year supply of deliverable sites....they should consider favourably planning applications for housing having regard to the policies in PPS3”. (Paragraph 71)

LPAs should also identify a further supply of specific developable sites for years 6 – 10 and where possible years 11 – 15. Where it is not possible to identify specific sites for years 11 – 15, broad locations for future growth should be indicated (Paragraph 55).

LPAs should have regard to:-

- Achieving high quality housing
- Ensuring developments achieve a good mix of housing reflecting the accommodation requirements of specific groups, in particular families and older people
- The suitability of a site for housing, including its environmental sustainability
- Using land effectively and efficiently
- Ensuring the proposed development is in line with planning for housing objectives reflecting the need and demand for housing in, and the spatial vision for, the area and does not undermine wider policy objectives, e.g. addressing housing market renewal issues. (Paragraph 69)

LPAs should not refuse applications solely on the grounds of prematurity (paragraph 72).

At the local level, LPAs should set out in local development documents their policies and strategies for delivering the level of housing provision, including identifying broad locations and specific sites that will enable continuous delivery of housing for at least fifteen years from the date of adoption (paragraph 53).

Drawing information from the Strategic Housing Land Availability Assessment (SHLAA) and other relevant evidence, LPAs should identify sufficient specific deliverable sites to deliver housing in the first five years. To be considered deliverable, sites should, at the point of adoption of the relevant local development document:-

- be available (the site is available now);
- be suitable (the site offers a suitable location for development now and would contribute to the creation of sustainable mixed communities); and
- be achievable (there is a reasonable prospect that the housing will be delivered on the site within five years) (paragraph 54);

DCLG have also published practice guidance on how to carry out such an assessment. Where LPAs have an up to date five year supply of deliverable sites and applications come forward for sites that are allocated in the overall land supply, but which are not yet in the up to date five year supply, LPAs will need to consider whether granting permission would undermine the achievement of their policy objectives (paragraph 70).

The Planning Inspectorate’s website contains further advice produced by DCLG on the way in which LPAs should demonstrate a five year supply of deliverable

sites. A three-stage approach is identified.

- Identify the level of housing provision to be delivered over the following five years.
 - LPAs should use, where available, housing provision figures in adopted development plans, adjusted to reflect the level of housing that has already been delivered (within the lifetime of the current plan).
 - Where housing provision is not available in the development plan for the following five years, LPAs should make the best available estimate of the level of housing required over the full five year period. For example, this may include having regard to the evidence underpinning housing provision policies in the emerging Regional Spatial Strategy ("RSS"), projecting forward based upon current development figures or drawing on other relevant up to date information.
- Identify sites that have the potential to deliver housing during the following five years.
 - Potential sites include those that are allocated for housing in the development plan, sites that have planning permission (outline or full planning permission that has not been implemented) and specific, unallocated brownfield sites that have the potential to make a significant contribution to housing delivery during the five year period.

Such unallocated brownfield sites would normally have made sufficient progress through the planning process to be able to be considered deliverable in the terms of paragraph 54 of PPS3.

- Assess the deliverability of the supply
 - Unallocated brownfield sites may be included in the five year supply of deliverable sites, but only where the LPA is satisfied, having considered the particular circumstances of the specific site, that the site will meet all the tests of deliverability in paragraph 54 of PPS3.

- Unallocated sites that are not likely to make a significant contribution to the delivery of housing during the relevant five year period should not be taken into account in an assessment of the five year supply until a planning permission has been granted and the land supply is being reviewed.

Deliverability Criteria	Assessing Deliverability
Available	Does the information that supports either the allocation of a site in an up-to-date plan (subject to planning permission), or the granting of a planning permission, clearly indicate that site is available now? If existing information is not sufficient, it may be necessary for the Local Planning Authority to gather further, up-to-date evidence by discussing availability of the site with relevant developers/landowners.
Suitable	Can sites that are allocated or have planning permission be regarded as being suitable? This will usually be a reasonable assumption, but it may be necessary to assess whether circumstances have changed (e.g. since a site was allocated) that would alter the suitability of the site for housing.
Achievable	Does the information supporting the site allocation or planning permission clearly demonstrate that there is a reasonable prospect of housing being delivered within 5 years? It may be necessary to discuss with relevant developers/landowners and/or analyse current housing market conditions in order to make an informed judgement about this.



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(From Left to Right) Vicki Richardson, Charlotte McKay, David Walton, Patricia Blakemore, James Cook, Kirsty Morris and Paula Churm

About Us

We are fast approaching our fourth anniversary after another busy year which saw us ensconced in Queen Street. We also are very pleased to announce two new arrivals. James Cook joined us after two years with Kirklees Metropolitan Council having previously spent five years with Eversheds' Planning Team. Charlotte McKay joined us from Plymouth City Council following two years in their planning unit.

We continue to pride ourselves on the delivery of commercially workable planning permissions by the most cost effective and quickest means.

Advising upon major infrastructure projects and more complicated negotiations are our forte but we are experienced in all aspects of planning law and policy. In addition, a significant part of our practice is advising upon highway and transportation matters, which may often form pre-conditions to the commencement of development. Compulsory purchase law and compensation form an increasing proportion of our work, where we often work with clients' retained property lawyers and surveyors.

Practice Areas

- Planning Applications
- Planning Advice & Strategy
- Interpretation of Planning Permission
- Development Plan Representations
- Planning Appeals
- Compulsory Purchase & Compensation
- Planning Obligations
- Highway Advice & Agreements
- Drainage Agreements
- Rights of Way
- Footpath Orders and Diversions
- Listed Buildings & Conservation
- Environmental Assessment
- Judicial Review
- Statutory Review