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Housing Land Supply

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Outline

Context

Plan-making and appeals

Lessons

Summary



Context Role of Inspector

Independent tribunal

- Appointed by SoS
- Evidence based decisions and recommendations
- Natural justice
- Inquisitorial
- No evidence of his / her own
- Consistency
- “Reasonable judgment” required in law
- Not policy maker – Tesco vs Dundee



Context: Policy -1

NPPF paragraph 47:

To boost significantly the supply of housing, local planning 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 as is consistent with the policies set out in this Framework, including identifying key sites which are critical to the delivery of the housing strategy over the plan period; and identify and update annually a supply of specific, deliverable sites sufficient to provide five years worth of housing against their housing requirements

and

paragraph 49 identifies the consequences of not doing so in applications and appeals....



Context: Policy - 2

NPPF para 14:

For **plan-making** this means that:

LPA's to positively seek opportunities to meet their area's development needs; meet objectively assessed needs, with sufficient - flexibility, unless: any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or specific policies in this Framework indicate development should be restricted.

For **decision-taking** this means:

approving development proposals that accord with the development plan without delay; and where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless: any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or specific policies in this Framework indicate development should be restricted.



Context Policy - 3

PPG Reference ID: 3-030-20140306:

Housing requirement figures in up-to-date adopted Local Plans should be used as the starting point for calculating the five year supply. Considerable weight should be given to the housing requirement figures in adopted Local Plans, which have successfully passed through the examination process, unless significant new evidence comes to light.



The challenge

“These appeals, if successful, would be a good example of the application of the rule of unintended consequences. It is only just over a year since we were defending an appeal by ***** for the development of *****. The unintended consequence is that where there is not an up to date Local Plan and there is not a five year supply of housing land based on ‘full objectively assessed needs’ then the local community is forced into the expense of fighting appeals to resist development which they believe to be unsustainable, and unintended by the NPPF in any event.”



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Starting point FOAN

Definitions:

- Plan
- Full
- Objective
- Assess
- Need



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Principles of plan examination

At the examination stage the Inspector will assess:

Whether the (whole) plan meets all the legal and procedural requirements including the duty to co-operate

Whether the plan is sound and capable of adoption

NPPF criteria for soundness (paragraph 182):

- Positively prepared
- Justified
- Effective
- Consistent with national policy

Starting point: the assumption that the LPA has submitted what it considers to be a sound and legally compliant plan



NPPF – plan making

Within the overarching roles that the planning system ought to play, a set of core land-use planning principles should underpin both plan-making (and decision-taking)

Pre-requisites for a sound plan:

What, where, when and how development will be delivered?
(NPPF 154, 156, 157)

(plans) “should provide a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency” (NPPF 17)



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Decision making (Planning applications and appeals)

Contrast with Plan-making:

- Single site focus

- Limited / partial evidence base

- Hardly likely to be based on or permit collaborative approach to planning for the area

- Indeed parties (appellant and immediate local community) arguably disinterested in “whole area planning”



Key steps

1. Establish the five-year housing land “supply requirement” against which the supply is to be assessed
2. Are there sufficient sites available to meet that requirement?
3. If the land supply falls short of five years, deal with the consequences for the application of policy



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Establish (F)OAN

PPG Reference ID: 2a-005-20140306

“There is no one methodological approach ... that will provide a definitive assessment of development need.”

PPG Reference ID: 2a-014-20140306 onwards

Start with DCLG household projections:



Establishing the five-year HLS requirement

Development Plan as starting point:

Potential scenarios:

- A. The development plan is recently adopted
- B. The development plan is not recent
- C. The development plan does not set out a figure for the housing requirement



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Housing land supply and the housing requirement - 1

Is there an existing shortfall in supply?

LPA's annual monitoring report against the housing requirement from the start of the plan period

Recently adopted LP: housing requirement should account for unmet need and/or supply shortfall from previous plan period



Housing land supply and the housing requirement - 2

Dealing with the shortfall in supply – ‘Liverpool’ v ‘Sedgefield’ approaches

Sedgefield approach – shortfall should be provided for in first five years

Liverpool approach – spread out over the remainder of the plan period

Decisions have generally favoured Sedgefield and PPG advises that LPAs aim to deal with any under-supply within first five years

But Liverpool sometimes found more appropriate; the LP housing trajectory may support it e.g. due to timescale for delivery of large, strategic sites



Housing land supply and the housing requirement (3)

The buffer

NPPF paragraph 47 – additional buffer moved forward from later in the plan period

Buffer of 5% or, if persistent under-delivery, 20%

‘Persistent under-delivery’ not defined in NPPF but PPG says a delivery record is likely to be more robust if a longer-term view is taken so that peaks and troughs in the market cycle are included

Cotswold DC [2013] – helpful and in line with PPG approach



Consequences of not having a five-year HLS

NPPF para 49: Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the LPA cannot demonstrate five-year supply of deliverable sites

Para 14 sets out how the presumption is to be applied: In cases where the development plan is absent, silent or relevant policies are out-of-date, permission should be granted unless a) the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in NPPF taken as a whole, or b) specific policies in NPPF indicate that development should be restricted



Policies relevant to the supply of housing

What are ‘relevant policies’?

William Davis Ltd [2013], held that a Green Wedge policy does not relate to the supply (emphasis in original) of housing

Cotswold [2013], held that a policy restricting development including housing development is a policy relating to the supply of housing.

S Northants [2013], describes the policies dealt with in the above judgments as lying at the opposite ends of a spectrum

S Northants [2014], inclines towards taking a broad approach, rather than restricting the application of paragraph 49 to policies that deal specifically with the numbers and distribution of housing

Summary: clear scope for exercise of planning judgment provided it is reasoned why the policy in question is, or is not, a ‘relevant policy’



Consequences of not having a five-year HLS - 1

NPPF paragraph 14

William Davis [2013], held that paragraph 14 only applies to a scheme that has been found to be sustainable

However neither NPPF nor PPG specify certain criteria against which a scheme must first be assessed for sustainability

Importantly, William Davis (above) does not preclude the application of the decision-taking approach set out in paragraph 14 (as distinct from its presumption in favour of sustainable development) to all development proposals, and not just those which have first been assessed in some other unspecified manner and found to be sustainable. See Dartford [2014]



Consequences of not having a five-year HLS - 2

Where the DP is absent, silent or relevant policies are out-of-date, applying the approach set out in paragraph 14 enables the decision taker to assess a proposal against the policies of NPPF as a whole and thus to determine if the proposal constitutes sustainable development

And in undertaking the overall balancing exercise, decision takers are either
a) applying the presumption in favour of sustainable development or b) determining that the presumption cannot apply because the development is not sustainable

Where other specific policies in NPPF indicate that development should be restricted (e.g. Green Belt), the approach for the balancing exercise is set out in the specific NPPF policies



Appeals: lessons learnt - 1

“Because the business of calculating the supply of housing land involves assumptions and judgment there will sometimes not be a single right answer to the question “can the local planning authority demonstrate a five-year supply?”...But since this question has considerable significance for the application of government policy in NPPF, a robust calculation is essential”

[Bloor Homes East Midlands Ltd [2014]]

Different approaches reflect the particulars of each case

Is HLS determinative? Other harm?



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Appeals: lessons learnt - 2

OAN / Requirement – shortfall, buffer, trajectory

Supply

Development Plan weight – plan period – NPPF consistency

Policies for the supply of housing



Appeals: lessons learnt - 3

NPPF para 47 applies

Case-law: Inspector not required to conduct Local Plan examination test but must be able to conclude for purposes of para 49

Circumstances where the figures and conclusions in the LP carry less weight?

SoS Aylesbury Vale and Neighbourhood Plan



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Summary

Clear government policy and commitment

Co-operation – collaboration - vision

Community / LPA led planning: responsibility for vision (FOAN)

Primacy of plan but plan (still) needs to be soundly based

Exercise right of appeal: evidence must objectively support case