

# Appendix 13

## Approach to Calculating 5 Year Housing Land Supply

## APPROACH TO CALCULATING FIVE YEAR HOUSING LAND SUPPLY

The following text sets out some of the areas where revisions to the NPPG could usefully provide further clarity on how to arrive at conclusions on five year housing land supply.

### The Housing Requirement

1. Where there is an up-to-date adopted development plan, this sets the housing requirement figure. Mostly this will be a flat rate across the plan period, but a Local Plan may allow for a stepped rate between phases of the plan.
2. In the absence of an up-to-date plan or published Inspector's report on a plan examination, the 'requirement' figure which should be used is an estimate of FOAHN for the individual local authority area plus any unmet need from another local authority where there has been a formal agreement to take that unmet need in an established position through a Memorandum of Understanding. Similarly where an authority has a Memorandum of Understanding whereby another authority is taking some unmet need from that authority, then the requirement should be reduced from the FOAHN accordingly.

### Backlog and Shortfall

3. Existing guidance does not offer advice over the base date for the calculation of backlog or shortfall for a five year housing land supply calculation. Our view is that 'shortfall' should be included from the base date of the first post-NPPF Local Plan produced up to a maximum of ten years prior to the date of assessment, or where one is not in place, from the base date of the FOAHN modelling (with FOAHN used as the appropriate housing requirement). One purpose of this is to ensure that any shortfall (or 'over-supply') to be included is not automatically wiped clean by virtue of a plan-review or new OAN evidence every five years, but equally that the period of shortfall to be addressed is proportionate. The NPPG should usefully clarify that 'backlog' of needs prior to the base date of the first post-NPPF adopted housing requirement or base date of the OAHN calculation should not be included. This exercise is distinct from the assessment of persistent under delivery to identify the appropriate buffer, which should look at longer term delivery.

## Buffer

### *Which buffer to apply*

4. The NPPF is clear that either a 5% or 20% (for persistent under delivery) buffer should be applied, but guidance is currently unclear about what exactly constitutes persistent under delivery, stating only that it requires judgment and that the factors behind persistent under delivery vary from place to place. The judgments made concerning persistent under delivery vary between LPAs, S.78 appeal Inspectors and the Secretary of State so it would be helpful if the approach was more definitive. In our view, the the High Court decision in *Cotswold District Council Vs SoSCLG* (27 November 2013) is very helpful with regards to what constitutes persistent under delivery<sup>1</sup> and could usefully form the basis of guidance. This would require consideration of a LPAs delivery record to cover the longer term (we would suggest a period of no less than ten years) and, using the analysis in the judgement as a proxy, we believe it would be reasonable to assume that under-delivery in circa 65% (two thirds) of monitoring years constitutes persistent under delivery. The under (or over) delivery should relate to the relevant housing requirement(s) that applied for that period (likely to be the relevant adopted development plan – including a Structure Plan figure where relevant). In an NPPF context, the absence of an up-to-date Plan post the 12 month transitional period (which ended in March 2013 means the requirement figure for that period should be the FOAHN.
5. The alternative to more determinative approach to defining persistent under delivery is to apply a blanket buffer to all LPAs. We heard views from some developers that a 5% buffer is inadequate to reflect the uncertainty implicit in any trajectory, and the application of a 20% buffer to all LPAs could also provide flexibility so some sites could not come forward but the underlying annual housing requirement could still be met. As per paragraph 47 of the NPPF, this supply is merely brought forward from later in the plan period and does not increase the quantity of housing the LPA needs to deliver over the whole plan period.

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<sup>1</sup> The Inspector's judgement considered in this High Court Judgement looked at various indicators of backlog and concluded a 20% buffer was applicable. On a 5 year basis, there was under delivery in 4 years, over 10 year there was a shortfall in 7 years (increasing to 8 years when using a different measure) and over the Structure Plan period there was a shortfall of 89 dwellings.

*Application of the Buffer*

6. The NPPF and PPG offer no guidance on how the buffer should be applied (to the housing requirement only, or the housing requirement plus backlog) and this has been applied differently by LPA's, appeal inspectors and the Secretary of State. The PPG should clarify the position and we consider there is a clear logic to apply the buffer to the requirement and backlog: the backlog has only occurred because an area has not met its housing requirement and the buffer should thus be applied to this backlog to ensure there is sufficient headroom to ensure the backlog is met.

*Liverpool vs Sedgefield*

7. The NPPF currently sets out that LPAs should aim to deal with undersupply within the first five years of the plan period where possible. Although this is advantageous so that current undersupply is dealt with immediately and does not go unaccounted for until well into the plan period, there will be instances where the Liverpool method can be more appropriate, for example where the strategic vision for a plan is to build large strategic sites which require a long lead in time and significant enabling works, the plan is clearly 'back loaded' and will deliver its housing needs in bulk later in the plan period. However, this might also be addressed in a 'stepped' requirement figure, so the application of 'Liverpool' rather than Sedgefield might represent double-counting. We recommend the current preference for Sedgefield is maintained, but with flexibility to adopt Liverpool (only where there is an adopted Plan and circumstances justify it), and with the annual determination of the housing trajectory being the mechanism for deciding which is the most appropriate method.

*Land Supply*

8. The components of supply included in a five year housing land supply calculation vary by each local authority area, but the following are some of the key areas of contention:
  - Deliverable sites: The NPPF's definition of a deliverable site (one which can be delivered in the next five years) as being suitable now, available for development now and achievable (including viable) is useful and can be effectively used to denote whether a component of supply is deliverable, particularly for sites without planning permission. However, one element of the supply side calculation which is not considered in the NPPG is lapse rates. Although the guidance

sets out that sites with planning permission should be included as a component of supply unless there is clear evidence to the contrary, in many instances Councils do not include evidence on lapse rates for small and large sites, despite there being clear evidence that the conversion rate of permissions to starts on site can vary between areas. An Inspector's approach which applied a buffer to both large and small sites with planning permission was accepted in the High Court decision in Cotswold District Council Vs SoSCLG (27 November 2013), which concluded that there was local evidence of a lapse in small site permissions and that in the absence of any local evidence on the lapse of large sites, a 10% proxy should be applied. The NPPG should include clearer guidance allowing for lapse rates in the calculation to be applied to both small and large sites and for the rate to be set based on local evidence on the rate at which permissions are converted into completions.

- Lead in times and build rates: significant debate over supply revolves around the assumed lead in time and build rates of larger sites. This is complicated by the fact that LPAs tend to use assumptions provided to them by the developers of the site, as the PPG suggests. However, this information can satisfy the best interests of the developer and is not always realistic, and the PPG should confirm that evidence on likely timescales drawn from experience on comparable sites may be highly relevant.
- Windfalls: The inclusion of windfalls in the five year housing land supply calculation is logical and the NPPF and PPG include a sufficiently detailed explanation setting out the need for local evidence and the exclusion of garden land.
- What types of units cannot be included: There is now a debate about what types of units of residential accommodation can be included in a five year housing land supply calculation and it would be useful to the guidance to address current uncertainties. In essence, estimates of FOAHN do not in the main include the need for specialist types of accommodation such as student accommodation, care homes and other uses falling within the C2 Use Class. It follows that if these uses are not included in the housing requirement, they should not be included in the

supply<sup>2</sup>. This should be clarified by the NPPG. To avoid this confusion, it may also be advisable for the NPPF and the NPPG to clarify that the needs for C2 uses (this can be done as a derivative of or alongside FOAHN, as we proposed in our revisions to the NPPG at Appendix 6) and have a separate mechanism (such as its own annual target or five year land supply expectation) to encourage its provision.

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<sup>2</sup> This was established in the context of student accommodation in the High Court in the judgement *Exeter City Council v (1) Secretary of State for Communities and Local Government and (2) Waddeton Park Limited and (3) The R B Nelder Trust* [2015] EWHC 1663.