

OVERVIEW & SCRUTINY

Five Year Housing Land Supply 14th October 2015

Report of Chief Officer (Regeneration and Planning)

PURPOSE OF REPORT

To advise members of the methodology followed in calculating the council's five year housing land supply position, providing information on the guidance followed and the judgements made in calculating this figure.

This report is public

RECOMMENDATIONS

- (1) Members note the content of the report**
- (2) Members agree and endorse the methodology followed**

1.0 Introduction

1.1 As a result of a motion to Council on 15 July 2015 (council minute 36) Officers have been asked to provide advice to this Committee on the calculation of the council's five year housing land supply position, providing information on the methodology followed and the judgements made in calculating this figure. This report provides an overview of this process and supplements the content of a more detailed presentation which will be presented to members on the evening of the 14th October 2015.

1.2 The council's current five year housing land supply position is described in the 'Five Year Housing Land Supply Position Statement' (September, 2015), a copy of which is appended to this report (appendix 1).

2.0 Details

National Planning Policy Framework

2.1 National planning policy requires local authorities to plan for and identify a continuous supply of housing that is appropriate to the specific needs, characteristics and requirements of local communities in order to meet their full objectively assessed housing needs.

2.2 In delivering this the National Planning Policy Framework (NPPF) (2012) requires authorities to identify and update annually a **supply of specific deliverable sites sufficient to provide five years of their housing**

requirement with an additional 5% (moved forward from later in the plan period) to ensure choice and competition in the market for land. This is increased to 20% where there has been a record of persistent under delivery (paragraph 47).

- 2.3 To be considered deliverable footnote 11 of the NPPF states that sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years and in particular that development of the site is viable. It goes onto state that sites with planning permission should be considered deliverable until permission expires, unless there is clear evidence that schemes will not be implemented within five years, for example they will not be viable, there is no longer demand for that type of units or sites have long term phasing plans.
- 2.4 The NPPF makes it clear that where a local authority is unable to demonstrate a five year supply its policies in relation to the supply of housing cannot be viewed to be up-to-date and as such its ability to determine applications in relation to its local planning policies is significantly weakened (paragraph 49 of the NPPF).
- 2.5 In such circumstances the NPPF states in paragraph 14 that decisions should be made in accordance with the presumption in favour of sustainable development. For decision making this means:

Where the development plan, in relation to its housing supply, is 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 the Framework as a whole; or
- Specific policies within the framework indicate development should be restricted.

Housing Requirement

- 2.6 The housing requirement is that currently set by the 2008 Core Strategy. This sets a requirement for the period 2003-2021 of 7,200 dwellings, equivalent to 400 dwellings per annum and 2,000 dwellings over a five year period.
- 2.7 The current 400 per annum figure was established through the regional planning process. As members will be aware this level of planning has now been abolished with local authorities now given responsibility for determining their own development needs.
- 2.8 The city council is currently in the process of determining its future housing requirement. When adopted the new housing requirement will set the context for determining the council's five year housing land supply position.
- 2.9 It should be noted that whilst this authority still uses the adopted 400 per annum figure as its housing requirement the use of historic Regional Strategy based figures are being increasingly challenged at appeal. This is confirmed by the High Court Gallagher Homes decision (Gallagher Homes Ltd & Another) v Solihull Metropolitan Borough Council) (EWHC 1283) which upheld a judicial review by Gallagher Homes that Solihull Metropolitan district council

had failed to take account of policy changes introduced by the NPPF in calculating its housing supply. The Judge concluded that extreme caution should be taken in using historic Regional Strategy based figures.

- 2.10 This view is confirmed in paragraph 30 of the National Planning Practice Guide which has been prepared by central government to support the NPPF. This states that evidence which dates back several years such as that drawn from now revoked Regional Strategies may not reflect current needs and that information provided in the latest full assessment of housing need should be considered.

NPPF Buffer

- 2.11 Having established the housing requirement the next stage in calculating the council's five year supply position is to determine whether a 5% or 20% buffer should be applied to this figure.
- 2.12 Paragraph 47 of the NPPF requires all authorities to apply a 5% buffer to their housing requirement. The purpose of which is to increase the stock of housing consents in an area so that more opportunities are provided for housing to come through the system and deliver the housing needs of the community. Importantly this does not increase the overall requirement of an area and is simply moved forward from the later part of the plan period. The overall housing requirement, as currently adopted, remains 7,200 dwellings.
- 2.13 Where an authority has a record of persistent under delivery of housing the NPPF requires the buffer to be increased to 20%.
- 2.14 There is no definition of persistent under delivery and it is for each local authority to determine which level of buffer to apply.
- 2.15 As reported in table 1 below the council has consistently under delivered against its housing requirement over recent years. As of the 31st March 2015 the council was in a position of undersupply by 1,622 dwellings.

Table 1 – Historic Housing Completions

Financial Year	Core Strategy Housing Requirement	Dwelling Completions (of which are student and other residential institution units)	Actual over/under completions
2003/04	400	556	156
2004/05	400	348	-52
2005/06	400	253	-147
2006/07	400	182	-218
2007/08	400	350	-50
2008/09	400	330	-70
2009/10	400	121	-279
2010/11	400	79	-321
2011/12	400	99	-301
2012/13	400	243 (68)	-157
2013/14	400	144 (3)	-256
2014/15	400	473 (48)	73
Running Total	4,800	3,178	-1,622

- 2.16 Whilst historically under delivering, completions for the most recent financial year, 2014/15, report improved conditions with 473 dwellings completed, exceeding the housing requirement for the first time in 11 years. Officers have therefore taken the view that the definition of persistent under delivery is no longer appropriate since it can no longer be claimed that this authority is in a position of continued under delivery against its housing requirement. The lower 5% buffer has therefore been applied.
- 2.17 Application of the 5% buffer increases the five year housing requirement to 2,100 dwellings.
- 2.18 Again this is likely to be challenged at appeal. Research undertaken by the Campaign to Protect Rural England (CPRE) notes that since the publication of the NPPF two thirds of appeals for residential development on greenfield land have applied the 20% buffer with appeals noting that where delivery is noted to have fallen short on a continuous basis, a 20% buffer should be applied. Very few authorities have been able to justify a 5% buffer at appeal.
- 2.19 Whilst Officers would argue that the low levels of completions is beyond the control of the council, coinciding with both the policy of constraint in the early part of this century and then more recently the economic recession, this is likely to be given little weight at appeal. Recent appeal decisions have confirmed that the economic downturn should not be used as a reason for not applying the 20% buffer.

Under-delivery

- 2.20 As reported above the council starts the current five year period in a position of under-supply, having failed to deliver 1,622 dwellings of its housing requirement.
- 2.21 Any shortfall in delivery represents unmet need. This need still needs to be addressed with local authorities required to meet their full housing requirement for the plan period. The 1,622 dwellings cannot therefore be discounted.
- 2.22 Whilst not prescribing how an authority should address under-delivery there are two main methods used by local authorities: the Sedgefield Method and the Liverpool Method. Both methods were established at planning appeals and both have been used at subsequent appeals. It should be noted that generally the Sedgefield method is the more favoured method at appeal.
- 2.23 Under the Liverpool method any past period of under-delivery is spread across the remainder of the plan period. In our case this would spread the 1,622 dwellings over the remaining 6 years of the plan period, resulting in an additional 270 dwellings per annum. Whilst this approach has experienced some success at appeal it is generally not favoured, being at odds with the government's requirement for local authorities to significantly boost the supply of housing.
- 2.24 The Sedgefield method by contrast requires past periods of under-delivery to be addressed within the next five year period. For Lancaster district this results in an additional 324 dwellings per annum over the next five years.
- 2.25 As noted above the Sedgefield method is emerging as the favoured approach

for dealing with this issue at appeal. It is also noted to be the approach promoted by central government with the Planning Practice Guide stating that local authorities should aim to deal with any undersupply within the first 5 years of the plan period, where possible (paragraph 35).

- 2.26 In line with best practice this authority applies the Sedgefield method when calculating its five year housing land supply.

Five Year Housing Requirement

- 2.27 In view of the above information the 'Five Year Housing Land Supply Position' reports the following calculation

Five year housing requirement
 $7/200/18 \times 5 = \mathbf{2,000}$
+
5% NPPF Buffer = **100**
+
Previous undersupply = **1,622**
=
3,722 dwelling requirement over 5 years or 744 dwelling requirement per annum

Student and Institutional completions

- 2.28 Student and institutional completions completed since 2012 are included within the supply position for the district. This follows revised guidance by the Government in relation to housing monitoring data and then more recently under paragraphs 37 and 38 of the Planning Practice Guide.
- 2.29 In line with best practice properties are converted into dwelling units, with each unit counted separately. For example a student hall with 8 bedrooms and a kitchen and living space would be counted as 1 dwelling unit.
- 2.30 A total of 230 student bedrooms have been recorded in the district since 2012, equivalent to 42 units. 98 institutional bedroom completions have been recorded since 2012 equivalent to 77 units.
- 2.31 Whilst officers have included these completions it should again be noted that this inclusion is likely to be challenged. A recent High Court decision (June 2015) (Waddeton Park versus Exeter City Council) confirms that for student housing to be included within the five year housing land supply position it must have been explicitly included within the original assessment of housing market need. The court also made clear that council's wishing to include student housing in their figures must be able to show strong evidence that the development will release other housing into the market.
- 2.32 Student housing and other institutional housing were not included as part of the calculation of housing need within the 400 per annum housing requirement of the Regional Strategy. The council is therefore likely to face significant challenge on the inclusion of this data.

Calculating future housing land supply

2.33 The calculation of what contributes to the district's future housing land supply is based on an assessment of:

- sites with planning permission; and
- sites identified through the allocation process (Strategic Housing Land Availability Assessment (SHLAA)).

2.34 For a site to be included within the council's five year supply it must be deliverable. As identified earlier in this report the definition of what constitutes deliverable development is expanded upon under footnote 11 of the NPPF.

Sites with planning permission

2.35 Whilst the NPPF states that sites with planning permission should be considered deliverable it clarifies that this may not always be the case with a number of caveats noted (e.g. where a scheme is no longer viable, there is no longer demand for the type of units or sites have long term phasing plans).

2.36 As of the 1st April 2015 the housing commitment for the district stood at 2,615 dwellings. Of these permission Officers have identified 1,863 dwellings as being expected to be delivered within the next 5 years, 71% of the total commitment.

2.37 It is understood that members are interested in understanding why all of the 2,615 dwellings with permission are not included within the five year supply. The main reasons for this are:

- Long term phasing plans - not all of the sites will be completed within the next five years. Evidence and dialogue with developers indicate an average annual build out rate of 30 dwellings per annum per site with developers in general unable to build out at rates much beyond this, often relying on sales on these completions before advancing further development.

712 dwellings from approved large sites (27% of the total commitment) in the district are expected to continue to be built out past the five year period and as such cannot be included within the 5 year supply. This includes anticipated completions at Lundsfield Quarry in Carnforth (110 dwellings), Luneside East in Lancaster (29 dwellings) and the former Pontins Holiday Camp at Middleton (573 dwellings).

- Anticipated lapses in permissions – not all small sites will be built out. Generally a lapse rate of 5-10% is applied by local authorities.

331 small sites have planning permission. In calculating the five year supply position an assumption has been made that just under 10% of these will not be built out, equivalent to 30 dwellings. This is supported by a recent appeal at Stratford upon Avon (APP/J3720/A/14/2215757) which recommended a 10% lapse rate.

- No allowance has currently been made for completions delivered through the prior approval route.

This is a new area of planning which allows in certain circumstances the change of use from an office to residential development without planning permission. To date 10 dwellings have been approved through this route. As this is a new area of planning Officers have not forward planned potential completions from prior approvals. Whilst the number of dwellings delivered via this route is likely to be small officers will keep this under review.

Strategic Housing Land Availability Assessment (SHLAA)

- 2.38 644 dwellings identified through the 2014 SHLAA are anticipated to be delivered in the next five year period. These are sites that do not yet benefit from planning permission but based on a detailed assessment of deliverability are viewed to be deliverable in the next five years.
- 2.39 Whilst paragraph 31 of the Planning Practice Guidance allows for the inclusion of sites that do not yet currently benefit from planning permission the council is likely to face challenges from the development industry on the deliverability of these sites.

Five Year Housing Land Supply Position

- 2.40 As identified above the council has identified a five year supply of 2,507 dwellings. Based on the adjusted 744 dwelling per annum housing figure (400 dwelling requirement + 5% buffer + undersupply) the council is able to demonstrate **3.4 years of supply** (2,615/744).

3.0 Conclusion

- 3.1 The council is currently unable to demonstrate that it can evidence a 5-year housing land supply. This report has set out the methodology followed by officers in arriving at this position, highlighting the use of best practice at other local authorities, appeals and judicial review decisions from the Planning Inspectorate and High Court and, importantly, the application of national policy and guidance. Members are also highlighted of the recent dismissal at appeal of 12 dwellings at Aldcliffe. This provides further support to the council's five year housing land supply methodology with the Inspector supporting the approach followed by the council in calculating this figure (appendix 2). Officers are confident that the methodology presented represents a comprehensive and robust approach to the calculation of its five year housing land supply position.
- 3.2 The report confirms that this position is calculated on the basis of the housing requirement of 400 dwellings per annum, this is established by the adopted Core Strategy. The start date for this figure is 2003. This is the local development plan position and it will remain the local development plan position until a replacement strategic plan is prepared and adopted. The council is currently preparing a new local plan that will set a new requirement figure.
- 3.3 In line with paragraph 47 of the NPPF a 5% buffer (extra) is additionally applied to the 400 housing requirement (moved forward from later in the plan period). This 5% figure is the lower of the two buffer figures which the NPPF directs must be applied. In circumstances where there has been persistent under delivery the NPPF directs that the buffer added should be 20% of the

five-year requirement. The council has achieved lower than the annualised requirement in every year between 2003/04-2013/14, however, because last year delivery exceeded the annualised requirement (that is 473 dwellings were completed) Council officers have taken the view that the condition of “persistence” no longer applies: thus the lower of the NPPF buffer directions (i.e. 5%) is being applied by officers to the 2,000 dwelling five-year requirement. The current rate of under-delivery stands at 1,622 dwellings. Taking these factors into account the five-year dwelling requirement is 2,100 plus the 1,622 under delivery. At a total of 3,720 dwellings, this means that in order to demonstrate a five-year land supply the council would need to evidence how it intends to see an average of 744 dwellings delivered over *each* of the next five years.

- 3.4 The report goes onto describe how officers can identify a five-year supply that of 2,507 dwellings.
- 3.5 This includes sites with planning permission and additionally sites identified through the SHLAA process, the latter of which do not benefit from planning permission. The SHLAA provides an assessment of supply across the district; the delivery prospects of all sites known to council officers is assessed. It is unlikely that further supply could come forward in addition to the sites shown in this document. As noted in the report the incorporation of SHLAA sites can be considered optimistic as these sites do not currently benefit from planning permission. In the event that planning applications are received on these SHLAA sites the community has the right to object to these proposals, even though the council is already counting delivery from these sites in the supply.
- 3.5 It is for very good reasons that not all sites that have consent are included in the five year supply figure. Officers have determined that more than 70% of the overall commitment, of 2,615 approved dwellings, will be completed over the next five years. More than 25% of the commitment will be completed in subsequent years. Should the council refuse a residential planning application then if that is the subject to an appeal, evidence on delivery of individual sites will be tested at appeal. The council will have to demonstrate how it knows that any individual site is to be developed; in practice delivery cannot be based upon an assumption that a site will be delivered due to the existence of a permission.
- 3.6 The report has also confirmed that student and other institutional housing completions are included within completion figures for the district. The inclusion of student and institutional equivalent completions against the overall requirement does need to be treated with caution; as student and institutional needs are not included in the calculation established the 400 per annum housing requirement. Members are advised that at any planning appeal the inclusion of student and institutional completions is likely to be challenged.
- 3.7 Based on the described methodology officers report a five-year housing land position, as of the 31st March 2015, of 3.4 years. Whilst officers consider this to be a reasonably robust approach it should be noted that at planning appeals the council’s calculation will face significant challenge from the development industry. The advice provided by officers is a local application of national principles that are well understood. It is unclear how alternative approaches could be advanced.

- 3.8 Additional information is being presented by Officers at the 14th October meeting. This will include further details on the sites included within the housing trajectory as well as an opportunity for further analysis and discussion.

CONCLUSION OF IMPACT ASSESSMENT

(including Health & Safety, Equality & Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)

Failure to deliver the district's housing needs would result in the council failing in its responsibility to meet the development needs of the district. This would have clear health and equality impacts for residents.

National planning policy makes it clear that local authorities should be looking to boost significantly the supply of housing. There is therefore a clear presumption that the council should be positively planning to meet its housing needs. Failure to do this would result in existing and future resident housing needs not being met.

LEGAL IMPLICATIONS

Any legal challenge to the Council's position on housing supply would be by way of a planning appeal against the refusal of planning permission to the Secretary of State under Section 78 of the Town and Country Planning Act 1990 or via judicial review if it was considered that the authority acted unlawfully in making its planning decision.

FINANCIAL IMPLICATIONS

Adoption of an alternative approach would increase the council's vulnerability to legal challenge resulting in increased attendance at appeal, additional legal costs and officer time together with potential cost claims if it could be demonstrated that the council acted unreasonably.

OTHER RESOURCE IMPLICATIONS

Human Resources:

Adoption of an alternative approach is likely to have increased resource implication with increased officer time spent defending the council's position.

Information Services:

No implications for Information Services.

Property:

No implications for Property Services.

Open Spaces:

No implications for Open Space.

SECTION 151 OFFICER'S COMMENTS

The Section 151 Officer has been consulted and has no further comments.

MONITORING OFFICER'S COMMENTS

The Deputy Monitoring Officer has been consulted and has no further comments.

BACKGROUND PAPERS

National Planning Policy Framework (2012)

National Planning Policy Guidance (2015)

Five Year Housing Land Supply Position
(September 2015)

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