

# FAREHAM

## BOROUGH COUNCIL

### Report to Planning Committee

**Date** 15 November 2017

**Report of:** Director of Planning and Regulation

**Subject:** HOW PROPOSALS FOR RESIDENTIAL DEVELOPMENT SHOULD BE CONSIDERED IN THE CONTEXT OF THIS COUNCIL'S CURRENT 5 YEAR HOUSING LAND SUPPLY POSITION

#### SUMMARY

At their meeting on the 9<sup>th</sup> October, 2017, the Executive received a report providing an overview of the recent Cranleigh Road, Portchester planning appeal decision and the implications for the Council's 5 Year Housing Land Supply (5YHLS) position.

The Executive resolved that Officers present a report to the Planning Committee as soon as practicably possible which outlines how proposals for residential development should be considered in the context of this Council's current 5YHLS position.

The following report follows from the Executive resolution on the 9<sup>th</sup> October.

#### RECOMMENDATION

That the Committee note the content of the report.

## **INTRODUCTION**

1. At their meeting on the 9<sup>th</sup> October, 2017, the Executive received a report providing an overview of the recent Cranleigh Road, Portchester, planning appeal decision and the implications on the Council's 5 Year Housing Land Supply (5YHLS) position.
2. The Executive noted the Cranleigh Road appeal decision and this Council's current 5-year housing land supply position. The Executive further resolved that Officers present a report to the Planning Committee as soon as practicably possible which outlines how proposals for residential development should be considered in the context of the Cranleigh Road Portchester, appeal decision (i.e. lack of 5 Year Housing Land Supply), the NPPF, relevant case law and policies considered up-to-date in the Local Plan.
3. This report explains the implications of this Council's current 5 Year Housing Land Supply (5YHLS) position, and sets out the resultant approach to the determination of planning applications.

### **The Cranleigh Road appeal decision**

4. On 14<sup>th</sup> August 2017 planning permission was granted on appeal for the erection of 120 dwellings on land North of Cranleigh Road in Portchester (Appeal Ref: APP/A1720/W/16/3156344). The Council had refused planning permission for the development principally for two reasons, firstly that it was unnecessary development in the countryside given the Council's five year housing land supply (5YHLS), and secondly the landscape and visual harm associated with the proposed development.
5. The Inspector concluded, contrary to the Council's case that the Council could not demonstrate a 5YHLS, and that permission should be approved. In reaching this conclusion the Inspector disagreed with the Council's approach to calculation of the five-year housing requirement.
6. The Inspector determined that the relevant case law, in combination with the National Planning Policy Framework (NPPF), and the Planning Practice Guidance (PPG) and Ministerial letter, required the 5YHLS calculation to be made with reference to the Strategic Housing Market Analysis' calculation of the Borough's OAHN. The Inspector's reasoning can be summarised as follows:
  - a. Paragraph 47 of the NPPF "seeks to boost significantly the supply of housing" and required Local Planning Authorities to "ensure that Local Plans meet the full, objectively assessed needs for market and affordable housing" (OAHN);
  - b. The adopted Local Plan's housing requirements were not consistent with the approach required by the NPPF – LP1 was adopted in 2011 before the NPPF, and was based on a Regional Strategy which was not NPPF-compliant, and neither LP2 nor LP3 undertook an OAHN exercise;
  - c. The PPG advises that considerable weight should be given to housing requirement figures in adopted Local Plans, "unless significant new evidence comes to light", going on to state that it "should be borne in mind that evidence which dates back several years, such as that drawn from revoked regional strategies, may not adequately reflect current needs", so that "information provided in the latest full assessment of housing needs should be considered";
  - d. The 2014 Ministerial Letter went on to note that Local Planning Authorities were expected actively to consider new evidence emerging over time;

- e. The Inspector noted that the OAHN identified in the 2014 SHMA was “materially higher than the CS requirement” and that it would be “rare in the extreme” to conclude that this OAHN would reduce, especially when available evidence suggested it would “continue to rise materially”;
7. Having concluded that the OAHN figure should be used as the starting point, the Inspector then added the minimum 5% buffer to arrive at the housing requirement figure (as opposed to the 20% buffer sought by the Appellant).
8. In then considering the 5YHLS that the Council had at the time of the Inquiry (based on April 2016 figures as updated), the Inspector concluded that the Council did not have sufficient evidence to demonstrate the availability and deliverability of all of the sites it was seeking to rely on within the 5-year period. As a result, the Inspector discounted some dwellings from the Council’s 5YHLS figure which comprised sites within Local Plan Parts 2 and 3.
9. Taking all of the above into account, the Inspector’s conclusion was that the Council could demonstrate just over two years housing supply in August 2017, considerably below a 5YHLS.

**What are the implications of this Council’s current position on 5YHLS for decision making?**

10. The most significant implication of the Council’s current position on 5YHLS is that the approach that the Council takes to determining applications for residential development will necessarily have to be altered until the Council can robustly demonstrate that it has a 5YHLS.
11. As Members will be aware, the starting point for the determination of planning applications is section 38(6) of the Planning and Compulsory Purchase Act 2004:  
*“If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise”.*
12. In determining planning applications therefore, there is a presumption in favour of the policies of the extant Development Plan, unless material considerations indicate otherwise. Material considerations include the planning policies set out in the NPPF, and this contains specific guidance in paragraphs 47, 49 and 14 for Councils unable to demonstrate a 5YHLS.
13. Paragraph 47 of the NPPF seeks to boost significantly the supply of housing, and provides the requirement for Councils to meet their OAHN, and to identify and annually review a 5YHLS including an appropriate buffer. Where a Local Planning Authority cannot do so, paragraph 49 of the NPPF clearly states that:  
*“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 local planning authority cannot demonstrate a 5-year supply of deliverable housing sites.” (emphasis added)*
14. Paragraph 14 of the NPPF then clarifies what is meant by the presumption in favour of sustainable development for decision-taking, including where relevant policies are “out-of-date”. For decision-taking (unless material considerations indicate otherwise) 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. (\*for example, policies relating to sites protected under the Birds and Habitats Directive and/or Sites of Special Scientific Interest; Green Belt, Local Green Spaces, Areas of Outstanding Natural Beauty, Heritage Coast and National Parks; designated heritage assets; and locations at risk of flooding or coastal erosion).

15. The approach detailed within the preceding paragraph, has become known as the “tilted balance” in that it tilts the planning balance in favour of sustainable development and against the Development Plan.

#### **What does the tilted balance approach involve?**

16. There is a growing body of case law on the correct interpretation and application of the “tilted balance”, most recently through consideration at the Supreme Court in the case of *Suffolk Coastal District Council v Hopkins Homes* [2017]. The Court judgement deals with the correct interpretation of paragraphs 14 and 49 NPPF, and the weight to be given to Development Plan policies where there is a 5YHLS deficit.

17. The judgement of the Supreme Court in relation to NPPF paragraph 14 was that:

*“... [Under Paragraph 14] the starting point is the presumption in favour of sustainable development, that being the “golden thread”... The decision-maker should therefore be disposed to grant the application unless the presumption can be displaced. It can be displaced on only two grounds both of which involve a planning judgment that is critically dependent on the facts. The first is that the adverse impacts of a grant of permission... will “significantly and demonstrably” outweigh the benefits of the proposal. ... The second ground is that specific policies in the Framework, such as those described in footnote 9 to the paragraph, indicate that development should be restricted.”*

18. However, the Supreme Court was clear in its conclusion that when making its determination under the “tilted balance” approach, the correct weight to be attributed to material considerations in the planning balance was not dictated by the NPPF, and it remains a matter for the decision-taker. It is for the decision maker to conclude whether a policy is either “out-of-date” or “up-to-date”, and the appropriate weight to be given to it, according to the circumstances of the case and in the ordinary exercise of planning judgment.

19. The Supreme Court also adopted the “narrow” interpretation of the phrase “relevant policies for the supply of housing” (i.e. those which are deemed “out-of-date” by a 5YHLS deficit under paragraph 49). Earlier decisions at appeal and in lower courts had broadened out the scope of this phrase to include policies which interact with housing policies, such as Strategic or Local Gap policies, or safeguarding policies. The Supreme Court held this was not the correct approach. Only policies “for the supply of housing” are

rendered out of date by a lack of a 5YHLS.

20. The Supreme Court also provided helpful clarification on the importance of the Development Plan and section 38(6) of the Planning and Compulsory Purchase Act 2004, and the status of the NPPF. The Court concluded that *“The Framework itself makes clear that as respects the determination of planning applications... it is no more than ‘guidance’ and as such a ‘material consideration’*. It went on to note that *“The NPPF... cannot, and does not purport to, displace the primacy given by statute and policy to the statutory development plan.”*
21. Other (and earlier) cases provide further assistance on the application of the tilted balance, including the weight to be attached to other factors in determining applications.
22. In the *Phides Estates (Overseas) Limited v. Secretary of State for Communities and Local Government* [2015] High Court judgement, it was made clear that paragraph 14 of the NPPF did not prescribe the weight to be attached to a contribution towards meeting a housing shortfall as a benefit to be put in the balance against any adverse effects. This was a matter for the decision-maker and would depend on not just the extent of the shortfall, but upon *“how long the deficit is likely to persist”*. In other words, if action is being taken to meet housing needs in the medium-longer term, the weight to be attributed to the ability to reduce a shortfall in housing land supply in the short term can properly be reduced.
23. This point was also relevant in the Court of Appeal judgement in *Suffolk Coastal v Hopkins Homes Ltd* [2016] EWCA, where the other side of the planning balance – the weight to be attributed to the breach, by a housing proposal, of development constraint was considered. The judgement of the court was that:

*“The weight to be given to such policies is not dictated by government policy in the NPPF. Nor is it, nor could it be, fixed by the court. It will vary according to the circumstances, including, for example, the extent to which relevant policies fall short of providing for the five-year supply of housing land, the action being taken by the Local Planning Authority to address it, or the particular purpose of a restrictive policy—such as the protection of a “green wedge” or of a gap between settlements. There will be many cases, no doubt, in which restrictive policies, whether general or specific in nature, are given sufficient weight to justify the refusal of planning permission despite their not being up-to-date under the policy in para.49 in the absence of a five-year supply of housing land. Such an outcome is clearly contemplated by government policy in the NPPF.”* (emphasis added)
24. The Courts have also identified some of the factors that affect how much weight a decision-taker might give to a contribution to a 5YHLS deficit, including as follows:
  - The extent and significance of the shortfall;
  - How long the shortfall is likely to persist;
  - What steps the authority could readily take to reduce it; and
  - How much of the deficit the development would meet.
25. In relation to development constraint policies, it is important for decision takers to have proper regard to the purposes of any development constraint policies which a housing proposal might breach, in reaching conclusions about the relevant weight that should be

accorded to them in the planning balance. Furthermore, where specific NPPF policies (and related Development Plan policies) “*indicate that development should be restricted*” (for example, policies relating to sites protected under the Birds and Habitats Directive and/or Sites of Special Scientific Interest; Green Belt, Local Green Spaces, Areas of Outstanding Natural Beauty, Heritage Coast and National Parks; designated heritage assets; and locations at risk of flooding or coastal erosion), the “tilted balance” no longer leans in favour of permission being granted by virtue of NPPF paragraph 14.

26. Put simply, the tilted balance approach requires the Council, as decision taker, to go through a robust exercise in considering applications for residential development, to ensure that the correct approach is followed. In the absence of a 5YHLS, the NPPF introduces a presumption in favour of granting such applications unless material considerations indicate otherwise, or the adverse impacts of doing so would significantly and demonstrably outweigh the benefits; or specific policies indicate development should be restricted. In undertaking the planning balance when deciding planning applications, it is for the Council as decision taker to determine the appropriate weight to be afforded to the conflict with policies and the benefits of the development proposal, ensuring its decisions are reasonable and justified.

#### **For how long will the tilted balance approach need to be followed?**

27. Until the Council can robustly demonstrate that it has a 5YHLS (including buffer) assessed against its OAHN figure, the Council will need to follow the tilted balance approach in determining applications for residential development.
28. The Council is progressing its new Local Plan, which is currently the subject of public consultation. Alongside this the Council is liaising closely with the landowners and prospective developers of all of the committed and allocated sites within existing adopted Local Plans to provide a robust evidence base of their availability and deliverability. This information will be made available in support of the Council’s 5YHLS position statement. The Council is also continuing to work closely with the landowners of the Welborne Garden Village along with a multitude of public bodies who will assist in bringing the development forward, which represents a significant component of the Council’s future housing land supply.
29. The Council has to date annually reviewed its 5YHLS position, in light of completions and commitments during the preceding year ending in March, as published in the Annual Monitoring Report. In the current circumstances, it is intended that a more frequent update of the 5YHLS will be included within reports to Planning Committee on applications for planning permission for residential development. In this way, the most up to date 5YHLS position will be reported alongside an application for residential development, including identifying the potential contribution that the proposals would make towards the 5YHLS shortfall should the application be permitted. This will assist the Planning Committee in determining the weight to be attached to both the 5YHLS shortfall, and the potential contribution that an individual planning application may make towards meeting it.

#### **How should planning applications be determined in the absence of a 5YHLS?**

30. As explained above, the correct approach to the determination of planning applications for residential development is to follow the tilted balance whereby the NPPF introduces a

presumption in favour of granting such applications unless material considerations indicate otherwise, or the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, or specific policies indicate development should be restricted. However, and as stated above, in undertaking this planning balance, it is for the Council as decision taker to determine the appropriate weight to be afforded to the conflict with policies and the benefits of the development proposal, ensuring its decisions are reasonable and justified.

31. In determining planning applications for residential development, consideration will need to be given to Policy DSP40 (Housing Allocations) within the adopted Local Plan Part 2: Development Sites and Policies. This is an extant Development Plan Policy specifically directed to housing applications on unallocated sites in the absence of a 5YHLS:

*“Where it can be demonstrated that the Council does not have a five year supply of land for housing against the requirements of the Core Strategy (excluding Welborne) additional housing sites, outside the urban area boundary, may be permitted where they meet all of the following criteria:*

- i) The proposal is relative in scale to the demonstrated 5 year housing land supply shortfall;*
- ii) The proposal is sustainably located adjacent to, and well related to, the existing urban settlement boundaries, and can be well integrated with the neighbouring settlement;*
- iii) The proposal is sensitively designed to reflect the character of the neighbouring settlement and to minimise any adverse impact on the Countryside and, if relevant, the Strategic Gaps*
- iv) It can be demonstrated that the proposal is deliverable in the short term; and*
- v) The proposal would not have any unacceptable environmental, amenity or traffic implications.”*

32. As an adopted planning policy, it is considered that weight can be accorded to DSP40 in the planning balance, along with all other material considerations. It must be stressed however that even if a planning application were judged not to comply with Policy DSP40, decision makers will still need to undertake the planning balance.

33. Given the 5YHLS shortfall, it is considered that the degree to which any development proposal can accord with criterion (iv) – “deliverable in the short term” – will be of particular relevance, in support of a proposal that appropriately addresses the other requirements of Policy DSP40, since it enhances the prospects of it making a contribution to the 5YHLS as required by the NPPF.

34. Reports to Planning Committee for applications for residential development will clearly assess the extent to which the application proposals accord with Policy DSP40, other relevant up to date Development Plan policies, and other material considerations. The emerging Local Plan is a material consideration, however Officers consider it attracts limited weight in the decision making process at the current time, given its early stage of preparation. The weight that can be afforded to it will increase as it progresses towards adoption.

35. Committee reports will be written to have regard for the tilted balance approach, considering the extent to which application proposals accord with up to date Development Plan policy and other material considerations. The reports will clearly identify the benefits associated with development proposals, including the extent to which it would contribute towards meeting the 5YHLS, set out any specific policies that indicate development should be refused, and any adverse impacts associated with a proposed development. This information will enable Members to appropriately undertake the planning balance in making their determination of the application.
36. The correct approach to the determination of planning applications for residential development in the period until the Council can robustly demonstrate a 5YHLS is then to follow the tilted balance, fully recognising that the NPPF introduces a presumption in favour of granting such applications unless material considerations indicate otherwise, or the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, or specific policies indicate development should be restricted.

### **CONCLUSION**

37. That the contents of this report be noted.

### **Risk Assessment**

38. There are no significant risk considerations in relation to this report.

**Background Papers:** Planning Inspectorate appeal decision on Cranleigh Road Portchester (Appeal reference APP/A1720/W/16/3156344)

### **Enquiries:**

For further information on this report please contact Lee Smith. (Ext 4427)