



**Report To:** Planning Portfolio Holder  
**Lead Officer:** Director - New Communities & Planning

8 September 2015

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## **Development Management Implications of the Lack of a Five Year Supply of Housing Land in South Cambridgeshire**

### **Purpose**

1. To inform and update Members on recent advice received regarding the Council's response on planning applications where a lack of a five year supply of housing land is a material consideration.

### **Recommendations**

2. It is recommended that the Portfolio Holder endorses the approach set out in this report.

### **Considerations**

3. The National Planning Policy Framework (NPPF) introduced the requirement for local planning authorities to 'identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements with an additional buffer of 5%'. (20% where there has been a record of persistent under delivery). This quickly led to a number of successful appeals where the requirement for a 5 year land supply was the critical issue. Locally, the successful appeal last September at Cody Road, Waterbeach, highlighted the need for the Council to address the development management implications of cases where the Council's current lack of a five year supply of housing land was a significant consideration.
4. At the 9 July 2015 portfolio holder meeting, a report was received on the 'South Cambridgeshire Local Plan – Response to Inspector's Letter', in which it was noted that independent advice had been received and further advice commissioned on managing planning applications whilst the Council could not demonstrate a five year housing land supply.
5. Officers had already put under review all enquiries for such development and their potential infrastructure impacts and providing support to villages and parishes considering starting or already advanced in a Neighbourhood Plan. Planning obligations for such schemes were also being reviewed and updated.
6. These measures were in addition to seeking clarification from the Local Plan Examination planning inspectors as to the principle of relying on a joint housing trajectory of the Council with Cambridge City and asking them to issue a report upon this. At the time of writing, a reply is still awaited.
7. The Planning Officers Society, an association representing chief planning officers, was also requested to advise upon more detailed and technical aspects of report preparation in such cases.

8. The advice received was based upon an expert review of the management of five recent planning applications. Confidential comments were provided for each case, which will be taken into account in the preparation of reports and appeal statements. Set out below are the findings of the review.

### **Assessing Planning Applications in the absence of a 5 year housing land supply**

9. Applications can be divided into 3 basic categories:
10. Where an application can be recommended for approval on the basis that complies with the development plan and the NPPF, and there are no relevant material considerations which indicate otherwise.
11. Where the principle of housing development is acceptable but there are other factors which are material and which must be balanced against the lack of a 5 year supply. Relevant factors may include e.g. detailed design or policy requirements e.g. affordable housing. The balancing of considerations in such cases can be difficult and complex as the lack of supply has been afforded considerable weight at appeal. It is important that the factors involved and the balanced judgement are clearly expressed in advising the decision maker, whether it is a delegated or Committee decision.
12. Where the principle of housing development is not in accordance with the development plan and/or NPPF. This does not automatically mean that the application will be refused, as the Stroud case illustrates, but the issues are normally much clearer and easier to express. The relevant arguments e.g. where an application is in the Green Belt, AONB, Flood Risk area will still need to be considered and the case made that the impact of the proposal overrides the lack of supply.
13. Applications will not always fall clearly into one of these categories but it is considered that classifying them in this way at the outset will provide a useful 'triage' process to assist in the preparation of reports.

### **Review of Case Reports**

14. For the most part the reports reviewed were thorough and consider all the relevant factors. There were cases where the most significant issues were not perhaps expressed as forcefully as they could be. In the Council's present circumstances the balance of argument is usually whether the presumption in favour in the absence of a 5 year supply is outweighed by the harm caused by other considerations. These considerations should be highlighted at an early stage, whereas other issues which can be mitigated through condition or planning obligation are of lesser significance. If this distinction is buried in the depths of the report it is sometimes not as readily obvious to the reader as it could be. Officers may want to consider how best to ensure that the critical issues are highlighted.
15. The inclusion of an executive summary is very helpful as these can be used to flag up the major issues including the lack of a 5 year land supply and what other considerations need to be weighed against the resulting presumption in favour of sustainable development. Some of the executive summaries explain this very clearly, in others it was less apparent

16. Most of the reports have a section titled 'Planning Comments' where the planning issues and arguments are set out and considered. Planning comments suggests that these are only comments and therefore of equal significance to any other comment. This section should be re-titled 'Planning Appraisal' which better describes the role of the planning officers in taking account of all of the factors involved, appraising them and giving them appropriate weight within a balanced conclusion.
17. The quality of reports is very important, (particularly where an appeal is a possible outcome) but the presentation of the issues to members at Committee, the opportunity for officers to respond and to comment and the use of briefings to ensure members questions are fully explored are equally important in ensuring members come to a well informed decision.
18. The application of the statutory tests for planning obligations and the 5 obligation pooling restrictions were inconsistent and in some instances a misinterpretation of the position.

#### **Comments on specific questions raised**

19. Has the Council presented the argument and consideration of the under supply in each case in a reasonable manner?
20. Each of the cases reviewed established early in the report that the question of the 5 year supply was a major issue and explained that this led to a presumption in favour of sustainable development unless there were other factors of sufficient importance to outweigh the presumption. Whilst this can become very repetitive it is important that each case stands on its own and the reports set out the position.
21. Are there more specific issues of deliverability that officers should be including? Should a detailed programme for example, from the applicant be included?
22. Authorities should recognise that developers will always say that they are in a position to deliver housing development expeditiously. While it is good practice to get developers to provide a delivery statement which should include the pre-commencement stages – obtaining possession securing funding, appointing contractors, completing details and so on, they will build at the rate that suits them and the market. They will only build what they think they can sell and it is unusual for a single developer to build at more than 20 units a year on an individual site.
23. In assessing material considerations that could be set against the weight of a 5 year under supply, have officers generally got the balance right?
24. Generally speaking the reports highlight the significant issues which should be weighed against the 5 year supply. Conservation, village character, landscape, ecology are the type of considerations which can weigh against developments which are outside the out dated planning policies, because these are the types of factors which lead to the sites not being allocated for development in the first instance. Clearly the authority cannot rely on its LDF policies in relation to land supply but it should be exploring in particular the environmental and services issues which may lie behind those policies. The reports reviewed were clear on the weight to be given to highways and transportation, which in spite of local reaction rarely are sufficient to refuse development.

### **Officer response to the advice**

25. The advice is welcomed in confirming the correctness of the general approach adopted by officers, both individually and as a team, to cases involving the 5 year undersupply of housing land. Specific actions for improvement, particularly the need to clarify in reports the method of appraisal by planning officers, are being put into place. This will involve tightening up on the preparation and checking of reports. The inconsistency on planning obligations arose from two of the reports being drafted soon after the implementation date of CIL regulations in April this year, but additional training is being arranged on this and other aspects of S106 and the use of planning obligations and conditions.
26. Members may wish to reflect upon whether, in these cases, there is more briefing or information they would wish to receive from officers in making fully informed decisions.

### **Risks**

27. Key risks have been addressed in receiving this advice and relate to procedural matters:
  - (a) The quality of reports and presentations to Planning Committee and
  - (b) Achieving reasonable Member decisions that are robust to challenge.
28. There are no specific financial risks arising from this report, although the advice received should minimise the risk of costs awards from appeals.

### **Options**

29. The advice received has either been verbally delivered, or fully incorporated into this report. As the advice relates wholly to matters of planning procedure and reporting, there are no particular options to consider.

### **Background Papers**

Report to 9 July 2015 portfolio holder meeting - 'South Cambridgeshire Local Plan – Response to Inspector's Letter'

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