

HOUSING DEVELOPMENT ON UNALLOCATED LAND

for The National Trust

by *Green Balance*



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SUMMARY

The National Planning Policy Framework encourages a 'plan-led' system in which proposals for meeting the nation's need for housing and other development can be approved in line with adopted local authority plans. This brief report examines experiences in those planning authorities which have adopted both strategic plans (Core Strategies) and detailed land allocations plans. There are currently just 27 such authorities in England, excluding London Boroughs, other wholly urban authorities and National Parks. Telephone discussions were held with senior planning staff in each authority and documents analysed.

The study focused on housing development and the extent to which new development was taking place on allocated sites or unallocated sites. For unallocated sites, the study concentrated only on greenfield sites which authorities had not expected to release for housing, neglecting 'windfall' sites where urban land was sensibly recycled.

The impact of the National Planning Policy Framework's detailed policies on housing land release and the requirement on local authorities to have available at least five year's supply of land for house building were examined. 16 of the 27 local authorities studied had experienced difficulties of one kind or another with pressure to release land for housing on sites that had not been allocated in their plans. The main problems were:

- house building rates had often reduced dramatically during the economic downturn, but the backlog was added to current requirements (usually with the assumption that it should be cleared within five years), leading to unrealistic housing targets for which insufficient land was immediately available;
- authorities reliant on most development at a small number of large sites (such as large urban extensions or new settlements) were at risk of being required to release unallocated sites if for any reason house builders delayed development at the large sites;
- authorities which had adopted high growth targets – higher than strictly necessary to satisfy their identified needs – could find that even the extra land they had allocated for the purpose was insufficient if development rates failed to meet aspirations: filling the numerical gap between housing target and land requirement could involve releasing unallocated sites for development;
- whether or not an authority had a five year housing land supply might be disputed where a recent assessment of housing needs suggested that the housing target figure adopted in the authority's plans was too low: tension surrounded use of an individual planning application to decide housing requirements rather than a plan review;
- the change in Green Belt policy in the NPPF had resulted in unallocated sites being developed that authorities had not previously expected: the new policy allows development on previously used land without the need to demonstrate 'very special circumstances', provided it has no greater impact on the Green Belt than did the previous development.

The report reviews examples of unallocated sites permitted for housing due to NPPF housing land policies in South Hams, Breckland and South Cambridgeshire. A series of conclusions is then drawn. The arithmetical requirements of national planning policy are often displacing common sense approaches to good planning: authorities with adopted plans can still be obliged to permit housing development on unallocated sites, causing great uncertainty for all parties and allowing developers to cherry pick sites they most want.

1. Introduction

1.1 The National Planning Policy Framework published by the Department for Communities and Local Government in March 2012 stresses the merit of the local development plan as the starting point for decision making in land use planning¹. Paragraph 12 states that “Proposed development that accords with an up-to-date Local Plan should be approved, and proposed development that conflicts should be refused unless other material considerations indicate otherwise. It is highly desirable that local planning authorities should have an up-to-date plan in place.” The first of the Framework’s 12 core principles is that “planning should be genuinely plan-led, empowering local people to shape their surroundings, with succinct local and neighbourhood plans setting out a positive vision for the future of the area. Plans should be kept up-to-date, and be based on joint working and co-operation to address larger than local issues. They should provide a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency” (paragraph 17).

1.2 The National Trust supports this plan-led approach. It is in principle an effective way to protect special places, whilst building the homes and other facilities which people need in the most suitable places. The Trust sees a democratically and locally agreed plan-led system as the best way to reconcile and integrate environmental, social and economic concerns when deciding the best locations for development. The Trust wished to establish whether this vision for plan-led decisions was being achieved in relation to housing development. Housing is the development type which uses more land than any other and which is a principal user of greenfield sites. In particular the Trust wished to establish whether housing development was being allowed on land not allocated in plans, on sites which local authorities would have preferred to remain undeveloped. Special research is required to identify this because the scale of housing applications not in conformity with adopted plans is no longer known. (Since 2009, the Government has not required such planning applications² to be referred to the Secretary of State for his/her possible determination instead of by local authorities³, other than in very limited circumstances.)

1.3 Government Ministers have repeatedly stressed that local authorities which have adopted plans to allocate land for necessary development will be well-placed to resist inappropriate development. The National Trust wanted to establish if this was true. In August 2014 Green Balance was commissioned by the National Trust to carry out a short study to examine these issues in those authorities which had adopted both Core Strategies⁴ and Allocations Plans⁵.

¹ The National Planning Policy Framework (NPPF) is the principal document setting out the Government’s national policies on land use planning. Local planning authorities are expected to give considerable weight to this when preparing their own local policies and when deciding planning applications.

² Often called ‘departure applications’, because to approve them would be a departure from the adopted plan.

³ The Secretary of State may ‘call-in’ a planning application for his/her own decision, but needs to be alerted to applications which might merit this special treatment. Called-in applications are usually decided following a public inquiry. Data on called-in applications are provided intermittently, typically in Parliamentary Answers.

⁴ Prior to the NPPF, each local planning authority was required to prepare a Core Strategy (though this could be jointly with one or more other authorities). This set out strategic local policies and identified the broad locations for major developments. Authorities now prepare Local Plans which also allocate specific sites.

⁵ These plans allocate specific sites for particular development types (and are given various titles locally).

2. Scope of the study

2.1 The project aimed to study all local planning authorities which had adopted both Core Strategies and site allocations plans where there was a plausible option of developing housing on greenfield sites. London Boroughs were excluded as were the wholly urban authorities of Sandwell and Bristol, due to the few realist greenfield development opportunities. Other marginal cases were included, notably Poole. National Park Authorities were excluded as different arrangements apply there. The outcome was that the sample size was 27 authorities (about one tenth of the eligible authorities which might have adopted such plans). Information on the authorities, their plans and adoption dates is provided in Appendix 1. Given that the legislation to be applied was passed in 2004, and that the first authorities to adopt allocations plans (after adopting their Core Strategies) did so in 2007, this is a strikingly small number of authorities with allocations plan coverage ten years later.

2.2 In a few cases the coverage of allocations plans was not across the entire authority, which could cause uncertainty over how to apply NPPF policy. In Central Bedfordshire the coverage applied only to that part of the authority which had formed Mid Bedfordshire DC prior to local government reorganisation in 2009. In East Northamptonshire the Rural North, Oundle & Thrapston AAP covered much of the district but not the urban south around Raunds. In South Kesteven the Site Allocations and Policies DPD excludes the important town of Grantham. Breckland DC has not proceeded with an Area Action Plan for Attleborough which was intended to allocate land for the 4,000 houses to which the Core Strategy made a commitment: this urban extension is now being pursued instead through a new emerging Local Plan. The Wycombe Delivery and Site Allocations Plan did not in the event include housing land allocations when it was adopted, though the Council issued a Position Statement on land for housing and business instead.

2.3 Telephone interviews were held with senior planning staff in all 27 authorities. Each was asked whether their authority had released any site for housing development that was not allocated (and was not a 'windfall' site – see paragraph 4.2). Discussions extended to the issues surrounding the authority's experience so far as necessary to understand the impact of the NPPF policies (see below). In cases where difficulties had arisen with the application of the NPPF, the study made further investigations into planning applications, planning appeal decisions, annual monitoring reports and other relevant material.

2.4 When a site allocations Development Plan Document (DPD)⁶ is adopted, the local authority will have in place at that time a five year supply of housing land. The result for this study was that authorities with relatively recently adopted site allocations plans usually (but not always) had sufficient allocated land available to be able to resist inappropriate development on greenfield sites. There were site allocations plans in 14 of the 27 selected authorities which post-dated the issuing of the NPPF – i.e. are less than 2.5 years old – and these plans at least are therefore likely to be considered fully up-to-date.

⁶ An authority's formal Local Plan is comprised of a series of Development Plan Documents (e.g. including the Core Strategy and site allocations plan), all of which go through an Examination phase.

3. Policy background

3.1 The National Planning Policy Framework (NPPF) takes a positive approach to development, stating for example that “planning should proactively drive and support sustainable economic development to deliver the homes, business and industrial units, infrastructure and thriving local places that the country needs.” Specifically it wishes to “boost significantly the supply of housing” and with this in mind it sets out a detailed method local authorities must follow to establish if they have what the Government considers to be the necessary land supply to enable this to happen.

3.2 For some years there has been a requirement that local authorities should have at least five years’ supply of land for house building, but the NPPF codifies this in more detail than previously. In addition, the Planning Practice Guidance (PPG) issued by the Government in March 2014⁷ provides further clarification. The key requirements relevant to this study can be summarised as follows (with quotations from the NPPF):

i) The Local Plan for an area should establish “the full, objectively assessed needs for market and affordable housing in the housing market area.” This should be derived from a Strategic Housing Market Assessment (the scope of which the NPPF describes in paragraph 159). The key sites for delivering the housing strategy over the plan period should be identified in the Plan.

ii) Local authorities should identify a supply of deliverable sites sufficient to provide five years’ worth of housing against those housing requirements. The supply of identified sites should be updated annually. A five year land supply should always be available.

iii) In addition to the five years’ supply, local authorities should provide land for an additional 5% building as a buffer to ensure choice and competition in the market for land. This buffer rises to 20% “where there has been a record of persistent under delivery of housing” to achieve the additional objective of providing a realistic prospect of achieving the planned supply.

iv) Sites identified as contributing to the five year land supply must 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.”

v) A contribution to future housing land requirements may be allowed from ‘windfall’ sites (not identified in advance but acceptable when proposed) if local authorities “have compelling evidence that such sites have consistently become available in the local area and will continue to provide a reliable source of supply” (though residential gardens may not be included in any allowance).

⁷ Planning Practice Guidance largely explains how the policies in the NPPF should be applied in more detail and is therefore a slightly lower level of central advice than the NPPF. The extensive documentation is divided into a series of individual PPG notes by topic. Details are updated from time to time as necessary.

vi) Where the rate of house building is less than that needed to achieve the planned scale of supply, the backlog of under supply is carried forward into the remainder of the Plan period. This increases the future intended rate of supply. Planning Practice Guidance advises that local planning authorities should aim to deal with any undersupply within five years where possible. This is to be achieved by increasing the amount of land available corresponding to the scale of the backlog.

vii) Housing requirement figures in up-to-date adopted Local Plans should be used as the starting point for calculating the five year supply. The PPG note on *Housing and economic land availability assessment* then states: “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. 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” (paragraph 30). The PPG then advises on the steps to take if revised plans are not yet in place or if there is no robust recent assessment of full housing needs. New information can be considered, though the weight given to this should take account of the fact that it has not been tested through the plan-making process.

viii) If a local authority does not have a five year housing land supply (plus the appropriate buffer and after taking into account the need to clear any backlog), then “Relevant policies for the supply of housing should not be considered up-to-date”. The consequence of this is spelt out in paragraph 14 of the NPPF: planning applications should be granted 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” (including Green Belt, Areas of Outstanding Natural Beauty and protected wildlife sites). In effect, housing proposals must be assessed against the broad ‘sustainability’ provisions in the NPPF, which are then to be given greater weight than authorities’ own plan policies and land allocations.

4. NPPF housing land policies in practice: an overview

4.1 Major new Government planning policies like the NPPF attract enormous attention from practitioners and the Courts as different interpretations are put forward. The Government slightly clarified how it wished its flagship policy to be understood when, after consultation, it issued Planning Practice Guidance in March 2014, e.g. in respect of the period over which previous undersupply of housing should be cleared (five years rather than the remainder of the plan period, see paragraph 3.2(vi) above). The Courts have also clarified various issues, though that is not necessarily the same as resolving problems for local authorities. One of the most significant cases, and some of its consequences, is summarised in Appendix 2: this concerns the question of how to interpret ‘objectively assessed need’ for housing when deciding a planning application.

4.2 A distinction must be made between housing development proposals on land not allocated in a Plan which local authorities are concerned about, and proposals which the authorities consider acceptable or desirable. Almost all local authorities anticipate

development on ‘windfall’ sites. These are usually previously used sites where an existing activity ceases and the land becomes available for another purpose (e.g. a public house or a petrol filling station)⁸. Plans may also anticipate suitable greenfield sites becoming available within generally built-up areas, depending on circumstances. This is the approach taken in Bedford, Newark & Sherwood and Wakefield, for example. The concerns are usually most acutely perceived when development is proposed beyond the urban edge. In these cases local authorities generally prefer to use the forward planning process to select the most appropriate locations for urban expansion, given the choice of sites available and the importance of maximising the use of existing infrastructure and promoting efficiency in the use of land and energy. This study has only enquired about sites of concern in the latter category, as there is no policy conflict in respect of windfall sites.

4.3 This study confirms that a key issue affecting whether local authorities are able to control the release of sites for housing under NPPF policies is whether or not they have a five year housing land supply. This is not a black and white issue: many local authorities consider they do have the requisite land supply, but still find they are being challenged on this point. The interpretation of the requirements is therefore critical. This has much more to do with the arithmetic of the methodology than with the practical sufficiency of housing land available to builders in the real world. As paragraph 3.2 explained, failure to demonstrate a five year housing land supply has significant consequences for local authorities whereby they risk some loss of control over which land is developed for housing. The result is that local authorities and the developers challenging them expend considerable effort pressing their arguments on how the numerical requirements of the NPPF should properly be applied.

5. Problems for local authorities caused by the NPPF housing land policies

Overview

5.1 Eleven of the local authorities studied had experienced no significant difficulties with pressure to release land for housing on sites that had not been allocated in their plans. All but one of these reported that they had five year land supplies, the exception being Poole (where demand had been affected by the economic downturn and there was a heavy reliance on windfall sites). Some of these authorities had recently adopted allocations plans, so problems would not have been expected there (such as Rochford and Wyre Forest). Adequate or high rates of housing supply and land release in recent years were a principal reason why some authorities considered they were not experiencing problems in meeting their five year requirements now (e.g. Tonbridge & Malling, Ashford, Bedford, Mid Devon and South Kesteven). Some authorities had assisted their position by identifying substantially more land for release in their allocations plans than strictly necessary to satisfy the housing requirements stated in their Core Strategies (e.g. Wyre Forest and Wakefield). That approach clearly raises the prospect of more housing being developed than planned for, though this need not be a problem in authorities with strong growth agendas.

⁸ The cessation of a use often cannot be predicted, so these sites are not allocated for development. No attempt is made in any event to identify very small windfall sites which might become available, as these too tend to be individually unpredictable and do not justify the work required.

5.2 The other sixteen authorities had experienced difficulties of one kind or another. These are outlined under the headings below, though it should be appreciated that some authorities had faced multiple difficulties rather than just one, notably Breckland, South Hams and South Cambridgeshire.

The economic downturn and its impact on house building rates

5.3 The most frequent cause of local authorities being unable to demonstrate a five year land supply was the economic downturn which had depressed house building rates in the period 2008-2013. Most were now experiencing a satisfactory recovery in building rates. The problem generated was that the shortfall in dwellings built (against the annual average rate required in order to achieve the overall number across the whole of a Plan period) was simply added to requirements to be supplied in the future. The annual requirement would obviously rise, sometimes significantly above the annual rate of supply anticipated in the authority's Core Strategy. Finding sufficient land which could genuinely be built upon within the next five years could then become a problem. Eight authorities specifically identified this as the cause of their actual or alleged land supply shortfall, and many more appeared to have been affected by it to some degree.

5.4 The assumption made here by the NPPF is that the failure to supply dwellings in earlier years – the cause of the backlog in supply – was an insufficiency of land on which to build, which must now be rectified. This is simply incorrect, particularly in the authorities in this study which had allocations plans adopted after careful scrutiny. The reduction in house building responded to people's reduced ability or inclination to buy (e.g. due to much reduced mortgage availability, job insecurity, and falling house prices), while the land supply – ample in the first place – remained plentiful. In effect the NPPF caused the local authorities' planning function to be penalised by the structural problems of the development market and by the reduced desire of the house building industry to supply new housing in difficult economic times.

5.5 Accommodating the backlog into future requirements in principle was not the only difficulty caused by this aspect of the NPPF methodology. Two further issues arose. First, for the two years between the issuing of the NPPF and the PPG, there was no guidance on the period within which local authorities were expected to clear the backlog. The two main candidates were to remove the backlog within five years (the 'Sedgefield' method) or over the remaining period of the Plan (the 'Liverpool' method). In some cases the choice makes a significant difference: Peterborough has a five year land supply under the Liverpool method but not under the Sedgefield method. The City Council argues that one of its major allocated sites is only expected to become available late in the plan period, so the whole period should be allowed to meet the backlog. The PPG opted broadly in favour of the Sedgefield method. This could put authorities like Peterborough at risk of being unable to implement their Plan – and being obliged to rely primarily on NPPF policies – for arithmetical reasons rather than real planning reasons.

5.6 The second consequence of an under supply of dwellings built is that, if the backlog is sufficiently large and sustained, then authorities are likely to fall foul of the argument that "there has been a record of persistent under delivery of housing" (see paragraph 3.2(iii))

above) and so must make provision for a buffer of 20% extra land rather than the normal 5%. North Norfolk DC reported that over its plan period so far there was a shortfall in the supply of 800 dwellings (two years' supply) due to the economic downturn. Adding these back into the five year requirement and adding a 5% margin, the Council still had a 5.5 year land supply due to substantial land allocations. However, if the view was taken that the Council had persistently under-delivered, then there would be a 20% margin and the land supply would be 4.8 years. This would raise the possibility of its forward planning system being set aside and land releases being allowed on sites which had not been allocated. The outcome is currently awaited of an appeal in Oundle, East Northamptonshire, on an unallocated site where the decision could turn on exactly this issue. As with the backlog itself, the higher buffer again specifically assumes that shortage of land is the cause of the original problem, when it isn't, and that identifying more land for use in the next five years will resolve the problem, which this is extremely unlikely to do. There is a feeling amongst authorities that this is penalising the local planning system for no obvious benefit.

Reliance on large sites

5.7 The study found that one of the principal circumstances in which local authorities struggled to demonstrate a five year land supply (plus buffer) arose when a substantial fraction of the anticipated land supply was within a very small number of large sites. If there was any delay to the delivery of houses in significant numbers on these major sites, then there were potentially severe knock-on consequences for housing supply throughout the whole authority area. There were examples of serious problems arising as a result of this in Breckland, South Cambridgeshire and South Hams, resulting in pressure for land not allocated in adopted site allocations plans to be permitted for housing. In each of these three areas the local authorities had themselves permitted individual developments on unallocated sites as a direct response. The economic downturn was a factor in the delay to the bringing forward of these major sites, but the scale of the shortfall and the difficulties of responding to it merit the matter being treated separately.

5.8 Case studies from South Cambridgeshire, Breckland and South Hams are presented in Boxes 1, 2 and 3. Horsham DC is another authority reliant on strategic sites, at Horsham and Crawley. These were approved in 2011 but slow to come forward. The major 2,000 dwelling site west of Horsham is now being developed, though more slowly than hoped. This has depressed the Council's housing land supply somewhat below 5 years.

Box 1 South Cambridgeshire case study: impact of delay in starting a new settlement

The locational priorities for new development in South Cambridgeshire moved away some years ago from development in villages. South Cambridgeshire now places a reliance on housing supply in new settlements to meet its housing supply obligations. However, commencement of the principal new town at Northstowe (for which an Area Action Plan was adopted in 2007) has been delayed some years, creating an interim shortfall. This has had a serious impact on the District. The Core Strategy anticipated 4,800 houses being built at Northstowe by 2016, but developers are only due to begin work on site in autumn 2014. This problem was addressed at a public inquiry into a planning appeal for 90 dwellings at Waterbeach in South Cambridgeshire, decided in June 2014. Although there was agreement that the Council had a good record in forward planning, the Inspector allowed the appeal because partly he considered that the shortfall in its housing land supply (at 3.9 years) might support the contention that “it is the strategy that has failed because of its over-reliance on the delivery of large strategic sites” (i.e. not the economy, the house builders or anything else that might have contributed).

He accepted that the Council had a limited range of options to address under-supply – it had 108 villages and no towns in the district – but this was not a good reason not to boost the supply of housing. However, development on village sites is the only option realistically now available for additional housing supply in the short term in South Cambridgeshire, as the Council is already doing what it can to achieve development at new settlements and has little control over the timing of development spreading out from the edge of Cambridge City into the district on sites which straddle the authority boundary.

Box 2 Breckland case study: the impact of a delayed urban extension

Breckland DC is significantly reliant for the achievement of its housing supply on land coming forward at major sites. It adopted its Core Strategy in 2009 and then in 2012 it adopted two site allocations plans: the Thetford Area Action Plan (which allocated an urban extension of 6,500 dwellings) and a Site Specific Policies and Proposals Development Plan Document for the rest of the district (including an urban extension at Attleborough with 4,000 dwellings). Outline planning permission has been given at Thetford for 5,000 dwellings, which was found to be all that could be achieved. Phasing of development here means that only 625 will be built in the next five years, so that is all that can be counted towards the Council’s five-year housing land supply. There is no phasing in the allocations plan, so all the ‘requirements’ of the urban extension count now but only the first five years of the ‘supply’. The Attleborough extension of 4,000 dwellings has not made much progress, and the Area Action Plan for Attleborough which was intended to allocate this has been abandoned: a new link road was needed first and then the NPPF was published, so the Council decided on a fresh start and the allocation will now be pursued in an emerging Local Plan. The delay in implementing the major schemes planned in the Core Strategy, and the shortfall in housing supply coming from them has put Breckland DC under great pressure to permit other sites instead.

Box 3 South Hams case study: the impact of a delayed new settlement

The circumstances in South Hams DC were particularly remarkable. The South Hams Core Strategy was adopted in December 2006, the first in England, and covers the period 2001-16. It allocated land for 4,500 dwellings in the 'Plymouth Principal Urban Area' (PPUA), of which 4,000 were to be in a new community at Sherford. This was designed as an overspill settlement primarily to meet the needs of Plymouth, but located within South Hams district. A requirement to supply land for 4,600 dwellings applied to the rest of the district. A series of Development Plan Documents covering different parts of the district have allocated specific land for 4,000 dwellings at Sherford and for over 1,500 dwellings elsewhere (500 remain to be allocated in the rest of the PPUA, and the remaining 3,100 dwellings are anticipated on 'windfall' sites). It is clear that South Hams has been proactive in plan-making and land allocations.

Progress in bringing forward the Sherford scheme has been slower than expected. A *Housing Position Statement* issued by the Council in March 2014 observes: "Like most Local Authority areas the recession and the downturn in the economy have impacted on the proposed growth levels which were... written at a time when the housing market was much more buoyant... The downturn in the economy has however had the most impact on the delivery of the 4500 dwellings within the PPUA and in particular the way in which the proposed new settlement of Sherford has come forward during the plan period. For example, the significant complexities that have arisen from a single planning application for a site of this scale, and in turn the extent of the obligations to be included within the S106 agreement significantly prolonged negotiations. These negotiations to complete the S106 were further complicated by difficulties in seeking finance for larger sites with preferable rates, and uncertainties of the mortgage lending market. South Hams District Council and Plymouth City Council have maintained their commitment to planned growth at Sherford, and have worked closely with the developers to enable development to come forward. Following a kick start loan of £32m announced in May 2012 by DCLG, S106 negotiations were concluded and the outline planning permission for all 5500 dwellings has now been issued."

South Hams aims to plan for (and monitor) development in the PPUA and the rest of the District separately. This is supported by Plymouth City Council and Devon County Council, but apparently not by the NPPF. The NPPF does not formally allow any exceptions to the application of its policies on housing land supply at the district level. The matter was reviewed as a subsidiary issue at a public inquiry in 2013 (APP/K1128/A/12/2179204), where the Inspector reported on 27 February 2013 (paragraph 64): "Using the Council's figures, it is only able to show in excess of five years' worth of housing land supply when the assessment is based on a disaggregated approach, which excludes the proposed new settlement at Sherford. I note the Council's arguments for adopting such an approach, namely that Sherford is intended to assist in meeting Plymouth's housing needs/demand. However, there is nothing within 'the Framework' that would support the Council taking such an approach. Using the Council's own figures, there is only a 2.7 years supply of housing land in the district as a whole."

As a result, the delayed delivery of housing at Sherford is assumed for housing land supply purposes to be a land use planning problem for resolution in South Hams, rather than either for resolution in Plymouth or accepted as a problem of housing economics rather than of planning. The consequence has been straightforward: development has controversially been permitted on unallocated sites in South Hams to substitute for delays in supply in Sherford, even though there is a strong supply in the rest of the district. The significant effort applied by South Hams Council to identify sufficient land within Plans has been undermined.

High growth targets

5.9 Local authorities keen to encourage growth may opt to adopt housing requirements in their development plans which are higher than strictly necessary to satisfy their likely identified needs. If they do this, then their Local Plans must identify sufficient land to meet this extra requirement. However, if allocated sites are not developed and a backlog in housing supply occurs, the housing target becomes a problem as the authority struggles to satisfy an unnecessarily high objective. A five year housing land supply is more difficult to demonstrate (because the target supply has been raised), and an authority will be pressurised, by the arithmetic of the NPPF housing land requirements, to permit development instead on sites it has not allocated. This has the perverse consequence that even in an authority encouraging development and making land available for it, house builders may still be able to use the NPPF's five year supply rules to secure the release of other sites which they prefer rather than the substantial allocated land. The higher the target an authority sets for itself, the greater the risk if allocated sites do not come forward for any reason.

5.10 Breckland DC adopted an ambitious growth target in its Core Strategy, pushing for the inclusion of a higher figure than necessary. Since 2001, the annual housing supply intended has only been exceeded in the boom years of 2003-04 and 2004-05. As a result, and in combination with the other difficulties, the Council now faces a housing supply objective which is becoming progressively harder to meet. Likewise, Peterborough City Council wanted higher growth than its housing need figures indicated at the time it was preparing its Core Strategy, and in effect took in some of the allocations that would otherwise have gone to surrounding areas. However, the dampened demand in the economic downturn years is putting pressure on the city's five year land supply, as noted in paragraph 5.5 above.

5.11 In order to keep control over the location of housing development in their areas, authorities promoting growth would be better advised to increase their allocated housing land supplies without committing themselves to higher housing targets. The NPPF can have the perverse effect of penalising authorities ambitious to supply extra housing.

Housing needs assessments

5.12 Many of the local authorities included in this study based the housing supplies in their Core Strategies on the housing requirements derived from the Regional Spatial Strategies (RSSs)⁹ available at the time. This was in line with the advice the authorities were receiving. They then drafted allocations plans to implement the strategic commitments they had made. Very often the Inspectors examining those allocations plans either confirmed that the housing targets remained relevant or simply agreed that an allocations plan could reasonably implement a strategic policy. With the abolition of RSSs, the passage of time, the Court of Appeal ruling (see Appendix 2) and the new Planning Practice

⁹ Regional Spatial Strategies have been abolished by the Coalition Government. Previously they were regional plans, required by law, prepared by Regional Planning Bodies for the nine standard English regions. They provided strategic planning policy and distributed development requirements, including housing, between the district and unitary authorities in their areas, reflecting development opportunities and constraints.

Guidance (see paragraph 3.2(vii) above), the original strategic housing supply policies increasingly require review. Many local authorities in this position encountered by this study had begun the review process, particularly by commissioning a Strategic Housing Market Assessment to provide a new objective assessment of housing need.

5.13 The authorities often had a five year housing land supply based on the target figures in their adopted Plans, and therefore considered they were implementing the NPPF in the way that had been intended. However, some authorities were nonetheless being challenged by developers on this issue, not through the process of preparing a new Local Plan but on individual planning applications submitted on land not allocated for development. These developers wished to establish that an up-to-date assessment of housing need would produce a distinctly higher figure than currently used, requiring a five year land supply in excess of the quantity which the local authority could identify. The existing adopted plans would then be out-of-date and the NPPF policies would take precedence, increasing the likelihood of permission being granted on unallocated land.

5.14 At least four authorities studied were facing this challenge. Case studies of Hambleton and Wycombe are summarised in Boxes 4 and 5 respectively. Waveney DC considers that it has a five year housing land supply, but that is being disputed at an appeal shortly (into refused application for 30 dwellings at Kessingland). Part of the dispute is about the objectively assessed need for housing, as the Core Strategy was based on the figure in the now-abolished East of England RSS. A further site has recently been refused for 50 dwellings on the north edge of Lowestoft, but this has not yet been appealed.

Box 4 Hambleton case study: responding to the challenge to a planned housing supply

Hambleton DC reported that in the last year the Council has received and refused three planning applications at Easingwold, Stokesley and Great Ayton for over 100 houses each on land not identified in its Site Allocations Plan adopted less than four years ago. These have been appealed and the Council will defend its decisions at inquiries. The committee report on the most recent application observes: "The applicant questions the appropriateness of target based on RSS due to it being out of date and subject to policy restraints and that the RSS is revoked. The applicant within their planning statement indicate they have been working on the development of an objective housing target for Hambleton based on NPPF and NPPG (Regeneris Consulting, January 2014). The applicant indicates an Objective Housing Requirement which is much higher than the Council's adopted housing target consequently the ability of the Council to demonstrate a five year supply is questioned." The Council feels that there is nevertheless an adequate supply of land in the short term to meet realistic requirements.

Hambleton DC does not at present have an up-to-date SHMA, but it has commissioned an assessment of housing needs based on household projections under various scenarios. The Council has also agreed to prepare a full review of its Plan. To increase its five year housing land supply it has recently removed all the phasing requirements from its allocations plan is reviewing its stock of employment land in relation to demand to see if additional housing could be provided on suitable sites. The Council is disappointed that the effect of the NPPF has been to raise the risk that it may have to release speculative sites quite unnecessarily to satisfy a procedural requirement: it does not object to updating its plan to meet housing need, but considers that a plan review is the mechanism for deciding where land should be released, not appeals.

Box 5 Wycombe case study: the impact of a revised housing needs assessment

Wycombe District Council adopted a Core Strategy in July 2008. It has achieved house building on average in excess of the 400 dwellings per annum specified there, and has an ample housing land supply. Its Annual Monitoring Report for the period 2012-13 (May 2014) reports supply at 23% above target for 2006-13 (i.e. including during the economic downturn), together with 625 plots available in excess of that needed for a five-year housing land supply (plus 5% buffer). The Council therefore considers it is meeting NPPF requirements.

In preparation for a new Local Plan, the Council has published a new Strategic Housing Market Assessment, which includes a revised assessment of objectively assessed need for housing in the range 500-700 dwellings per annum. If this assessment were to substitute for the policies in the adopted plan, then the Council would move overnight from a position of having a clear surplus housing land supply to having a shortfall against housing need. In view of the large areas of Green Belt and Areas of Outstanding Natural Beauty in the District, a judgement will be required on whether the district housing supply should reflect any constraint on that identified need.

This new uncertainty has stimulated planning applications on unallocated sites. These would otherwise not have arisen at least until after the preparation of the new Local Plan, for example in Princes Risborough just beyond the edge of the Green Belt and AONB. There is a risk that Wycombe District Council will be obliged to permit housing development on sites in inappropriate locations or before there has been time to make suitable arrangements for infrastructure, financial contributions from developers, and the proper planning of whole areas.

Central Bedfordshire Council has had a similar experience: its adopted Core Strategy was based on the East of England RSS, and challenges are now arising on the adequacy of the authority's housing needs. Although a new plan is in preparation, an inquiry is scheduled for September 2014 into an appeal which will examine the issues.

Available, achievable and viable sites

5.15 For allocated sites to be considered 'deliverable' within five years, they must be available, achievable and viable (see paragraph 3.2(iv) above). The suitability of sites in these terms is broadly established by the Inspector at the time allocations are made in a plan. However, circumstances change over time, so this assessment must be kept up to date. The study found that few allocated sites were being challenged on this ground by developers at present. The problem was reported in Waveney, even though this is an authority where there is an annual enquiry by the planning department of developers about when they expect to develop houses on permitted and allocated sites.

Previously developed land in the Green Belt

5.16 Bracknell Forest Council reported that it had been forced to release sites due to the change in Green Belt policy in the NPPF. Previously, Green Belt policies applied just as much to previously developed land as greenfield sites (except on specially identified 'major developed sites'), but under the NPPF there is no longer a need to demonstrate 'very special circumstances' when development is proposed on previously developed land in the Green Belt. The only requirement is that development should have no greater impact on

the Green Belt than did the previous development. The result has been that a few Green Belt sites which the Council would not have expected to release under the old Green Belt policy now have to be released. A similar difficulty was being experienced by South Tyneside Council. There was pressure for the development of 44 houses on Green Belt land (previously developed, former MoD land), in which part of the scheme also encroached onto land that had not been previously developed. A planning application on the site, which also had ecological value, was refused by members (and there has been no appeal yet).

6. Unallocated sites permitted for housing due to NPPF housing land policies

6.1 The consequences of the NPPF's five year housing land supply policies include the granting of planning permission for housing on land that was not allocated in recently adopted development plans. The policies have caused considerable uncertainty about where housing development should take place and a continual source of disagreement between local authorities and developers. When an authority is found to have a land supply of less than five years, its development plan is held by policy to be out-of-date, and decisions on planning applications are then taken primarily against the policies of the NPPF, with the authority's own policies as subsidiary. Discussion moves to deciding applications for housing on the basis of whether they are 'sustainable' in NPPF terms. Local authorities sometimes conclude that the requirements of the NPPF are met (even if the requirements of the authority's own plan are not) and grant permission, perhaps worried that if they refuse permission there will be a planning appeal and a public inquiry which they risk losing. On other occasions schemes are refused and, very often, appealed. The following paragraphs illustrate the kinds of discussions taking place, the decisions being reached, and the difference between the implementation of local policy and the implementation of NPPF policy. The background to the need for these releases has been presented in earlier paragraphs and boxes.

South Hams

6.2 South Hams DC has granted two notable permissions. First, site for 48 houses at Leyford Close on the edge of Wembury was permitted in the South Devon Area of Outstanding Natural Beauty. The officers' report to committee was clear that "The proposed development would fundamentally conflict with the adopted Development Plan policies aimed at restricting new residential development on land which, like the application site, lies outside any development boundary of a settlement and within an AONB and undeveloped coast". However, "the Council has a shortfall in its supply of housing land, and that is a material consideration that weighs heavily in favour of allowing the proposed development...". The report argued that the proposal amounted to 'major development' for the purposes of assessment against AONB policies, and therefore had to meet 'exceptional' tests (paragraph 116 of the NPPF), but still found that these were satisfied. Sites were unlikely to become available in more suitable locations. The report stated that "It is evident that, pre-NPPF, this proposal would have likely been recommended for refusal on policy grounds." Nonetheless, permission was granted on land which the report described as "an open and undeveloped piece of land that has its own inherent natural beauty within the landscape and its loss would clearly amount to some harm albeit, in

officers' view, such harm being limited in overall extent." The site was close to village facilities, which the housing would support.

6.3 Second, a site for 40 dwellings at Moorview on the edge of the large village of Marldon near the Torbay boundary. The absence of a five-year housing land supply was again a key issue for policy purposes. In response to objections, the officers' report observed that "Although the NPPF and the South Hams Development Plan has a clear preference for previously developed land for built development, there is no sequential test sanctioned by any planning policy that means that a planning application would fail until other brownfield options were considered." This was a site which satisfied the sustainability criteria of the NPPF: officers had previously identified it as the most appropriate site to allocate in Marldon when the Rural Areas DPD was being prepared, though it had been rejected by members at the time.

6.4 More recently, the Council has resisted another planning application in the South Devon AONB, at Kingsbridge. Here a proposal for 82 dwellings extended beyond an allocated site, and it was this extension which was disputed. In an appeal decided in August 2014, the Planning Inspector's analysis of housing need for the scheme was, strikingly, based on the rural South Hams area and not on the whole district (i.e. discounting Sherford). He concluded that there was not a five year housing land supply even in this area alone, and that NPPF policies should therefore apply. Nonetheless, the Inspector supported councillors who had refused the application, arguing that this extension would cause substantial harm to the character and appearance of the local landscape and, albeit to a more limited extent, harm to that of the AONB, and it would harm the significance of a designated heritage asset. Development needs could be met in less harmful ways, and therefore the exceptional circumstances to justify major development in the AONB had not been demonstrated.

6.5 With land to meet the requirements of the district outside the Plymouth Principal Urban Area only a little short of the five year requirement (largely due a backlog in supply caused partly by the economic downturn), the district-wide requirement for release of unallocated sites is largely attributable to the shortfall in supply at Sherford. As a result, housing land releases are being dictated not by the plans which South Hams DC has prepared but by the NPPF. In the worst case, this has resulted in permission being granted for major housing development in an AONB which would otherwise have been opposed by the authority.

Breckland

6.6 Some significant planning applications have been submitted to Breckland DC on land not allocated in adopted site allocations plans. So far one large unallocated greenfield site has been permitted for housing in a location which the Council might otherwise have expected to resist. This was permitted by the authority, which did not wish to refuse it and risk a planning appeal.

6.7 The application site was for 375 dwellings at London Road, Attleborough. A similar application had been determined six months earlier, refused on policy and highway safety

grounds, and appealed. The officers recommended approval of the revised application, even though it was specifically recognised as in conflict with Core Strategy policies due to its location outside the settlement boundary of Attleborough. This conflict was advised as outweighed by the need to supply dwellings to tackle the shortage of a five year housing land supply. The site was considered suitable in principle for development for housing and employment, various difficulties could be resolved, and it was likely to be delivered. Even though the earlier application had been refused on policy grounds, officers advised that permission should be granted as a refusal would be likely to be overturned on appeal.

6.8 Officers have also advised that another site for 255 dwellings south of Dumpling Green, Dereham should be approved. The officers' report states that the application site "is located outside the settlement boundary in an area of open countryside (as defined by policies SS1, DC2, CP1 and CP14 of the Core Strategy and Development Control Policies DPD 2009), where development is heavily restricted. The application is clearly contrary to those policies... [but] The lack of a 5-year housing supply carries significant weight in the consideration of the application." The only issues remaining for significant review are whether the site is developable and whether it is 'sustainable' in the terms of the NPPF. Officers advised that it was. Little attention was given to the sufficiency of development in Dereham, which is already well on the way to fulfilling its allocation plan requirements. This was a controversial site and a decision was deferred at the Planning Committee's September 2014 meeting.

6.9 Another planning application has been submitted for 350 dwellings at Norwich Road, Attleborough, also on a site not allocated for development by the Council. This application is awaiting determination.

6.10 These applications indicate how proposals on greenfield sites outside urban boundaries which are not allocated for development are coming forward in Breckland and encounter a surprisingly favourable policy context. This is in theory to fill the gap in annual housing delivery until the major schemes come on stream. Although there is plenty of land which could be developed over the next five years on sites identified by the Council or otherwise acceptable, house builders can take advantage of the policies in the NPPF to promote unallocated sites which suit them. The pressure on the Council is to permit development on these sites primarily to feed a formula. The risk is that a house built on an unallocated site makes it less likely that a house will be built on an allocated site. This would undermine the purpose of preparing allocations plans, contrary to the first of the NPPF's twelve land use planning principles (paragraph 17) that "planning should be genuinely plan-led".

South Cambridgeshire

6.11 The effect of the statistically insufficient land supply in South Cambridgeshire has been to put pressure for development on unallocated sites in line with the 'sustainability' policies of the NPPF, which take priority over the Council's development plan. These will be beyond the Cambridge Green Belt as the relaxation of policy which the NPPF encourages when authorities have under five years' land supply does not apply within the Green Belt. The Council permitted an unallocated site for 47 dwellings at Beach Road, Cottenham in

March 2013. This was controversial: the proposal had initially been refused a few months earlier primarily on grounds of size (as Minor Rural Centres like Cottenham should have no more than 30 dwelling schemes). The officer view on the resubmitted application changed: the site was now acceptable on planning merits, not least because the emerging Plan proposed to designate Cottenham as a Rural Centre, i.e. without limit on the size of planning applications, and the Council had consulted on allocating it. Also, Cottenham is a more 'sustainable' village than many, i.e. in line with NPPF principles.

6.12 The release of the Cottenham site was largely forced upon Council by the circumstances of its insufficient housing land supply, as indicated by the earlier refusal, and the Council has simply made the best of the options available to it. An inadvertent effect of the NPPF has therefore been to encourage house building in village locations where South Cambridgeshire's planning policy is specifically trying to discourage it.

6.13 South Cambridgeshire DC opposed another pair of planning applications, for 60 houses and 90 houses, just beyond the Cambridge Green Belt on an unallocated site at Waterbeach, to the north-east of the city, believing them to be 'unsustainable'. The sites were outside the village framework and of a type not permitted under local policy, and there were other difficulties with the proposals. Following public inquiries into appeals against the refusal of these applications, the Inspector concluded in June 2014 that none of these problems would significantly and demonstrably outweigh the benefits – principally the housing supply – when assessed against the policies of the NPPF taken as a whole, given the shortfall in the Council's land supply. The two developments were striking because they occupied land which South Cambridgeshire was specifically proposing to keep free of development as a buffer between the existing Waterbeach village and a proposed new settlement immediately to the north. There is some possibility that by pushing the buffer further north the number of dwellings on the new settlement site will be correspondingly reduced. The cases illustrate the substantial weight given to the imperative of meeting housing requirements, according to the formulas and policies of the NPPF, rather than in line with plan policies at the local level.

7. Conclusions

i) This short review of housing land supply in 27 local planning authorities which have in place adopted Core Strategies and site allocations plans shows that the NPPF has often undermined the ability of authorities to implement their plans reliably. The NPPF has not provided the stability intended to enable planning decisions 'with a high degree of predictability and efficiency'. It has not reliably enabled local authorities to resist inappropriate development.

ii) The housing land supply policies in the NPPF decide whether authorities' existing land allocations are adequate. This is done through a formula, where the calculations of a 'five year housing land supply' have become more important than common sense in the real world in deciding whether an authority's land supply is satisfactory. An example of the mismatch between the conclusions from the NPPF's formulaic approach and helpful planning is illustrated in Appendix 3 with the experience of Breckland DC. The result has been that all parties debate the figures in the formula rather than good planning.

iii) The study found that weak delivery of houses during the economic downturn had significant consequences for the adequacy of local authorities housing land supplies. Efforts to address the backlog were made more difficult by unrealistic expectations that the difficulties caused by the recession would be resolved in a very short period and by unnecessarily penalising the worst affected authorities. In the way its formula operates, the NPPF in effect assumes that insufficient land explains the weak supply of housing in the economic downturn and that a greatly increased supply of land will ensure extra house building now. These misconceptions need to be addressed if the NPPF's approach to housing land supply is to be put on a more useful footing.

iv) The arithmetic on housing land supply implied by the NPPF can be particularly damaging to those authorities which accept the challenge of making long-term commitments to housing development on very large sites, as they risk having to permit other inappropriate sites if a very large site is delayed. There would be merit in revisiting the NPPF so that local authorities are not discouraged from making such commitments to meet future housing requirements on a large scale.

v) It is quite feasible for developers with a long term commitment to building houses in an area at a major allocated site to lose out competitively to other firms which can obtain planning permissions on unallocated sites as a short term expediency. The NPPF can encourage unhelpful competition to build houses in less than ideal places and increase the difficulties of building out large sites where substantial new infrastructure may be included. A more flexible approach is desirable in the NPPF to support development on large allocated sites.

vi) Local authorities can find themselves without a five year housing land supply through little or no fault of their own. The consequences can be draconian, as the policies of the NPPF take precedence over those of the local authority and as unallocated sites can obtain planning permission relatively easily. This can happen even when there are substantial unimplemented planning permissions and allocations available to builders. In short, the arrangements allow builders to cherry-pick sites instead of the good planning of using allocated sites.

vii) Housing need policy in the NPPF has been interpreted by the Courts in a way which can cause housing requirement figures in adopted plans to be set aside far too easily. Updated need figures can potentially override established policy when deciding individual planning applications. This is creating a wild west of uncertainty which the Government should rein in by restricting strategic need and supply debates to Plan reviews, when the options, constraints and consequences can all be considered together on a properly informed basis.

Appendix 1 Local authorities included in the study

	<u>Core Strategy adoption month</u>	<u>Main Allocations DPDs with adoption dates</u>
<i>South East</i>		
Ashford	July 2008	Tenterden & Rural Sites, October 2010 Urban Sites & Infrastructure, October 2012 Chilmington Green AAP, July 2013
Bracknell Forest	December 2010	Site Allocations, July 2013
Horsham	February 2007	Site Specific Allocations, November 2007
Spelthorne	February 2009	Allocations of Land, December 2009
Tonbridge & Malling	September 2007	Development Land Allocations, April 2008
Wycombe	July 2008	Delivery & Site Allocations, July 2013
<i>South West</i>		
Mid Devon	July 2007	Allocations & Infrastructure, October 2010
Poole	February 2009	Site Specific Allocations & DM Policies, April 2013
South Hams	December 2006	Sherford AAP, August 2007 Rural Area, February 2011 Dartmouth AAP, February 2011 Kingsbridge AAP, February 2011 Ivybridge AAP, February 2011 Totnes/Dartington AAP, February 2011
<i>East of England</i>		
Bedford	April 2008	Allocations & Designations, July 2013
Breckland	December 2009	Site Specific Policies & Proposals, January 2012 Thetford AAP, July 2012
Central Bedfordshire	November 2009	Site Allocations, April 2011
Chelmsford	February 2008 (revised December 2013)	Site Allocations, February 2012
Colchester	December 2008 (revised July 2014)	Site Allocations, October 2010
North Norfolk	September 2008	Site Specific Proposals, February 2011
Peterborough	February 2011	Site Allocations, April 2012
Rochford	December 2011	Allocations, February 2014 Hockley AAP, February 2012
South Cambridgeshire	January 2007	Northstowe AAP, July 2007 Cambridge Southern Fringe AAP, February 2008 Cambridgeshire East AAP, February 2008 North West Cambridge, October 2009 Site Specific Allocations, January 2010
Waveney	January 2009	Site Specific Allocations, January 2011

East Midlands

East Northamptonshire	June 2008	Rural North, Oundle & Thrapston AAP, July 2011
Newark & Sherwood	March 2011	Allocations & DM, July 2013
South Kesteven	July 2010	Site Allocations & Policies, April 2014

West Midlands

Wyre Forest	December 2010	Site Allocations & Policies, July 2013 Kidderminster AAP, July 2013
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Yorkshire and Humber

Hambleton	April 2007	Site Allocations, December 2010
Wakefield	April 2009	Site Specific Policies, September 2012

North West

South Lakeland	October 2010	Land Allocations, December 2013
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North East

South Tyneside	June 2007	Site Specific Allocations, April 2012
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Appendix 2 Court ruling on ‘objectively assessed need’ for housing

One key interpretation of the NPPF has been by the Court of Appeal in December 2013, about the housing requirements that local planning authorities should be aiming to satisfy. In the case of *City & District of St Albans v. R (Hunston Properties Ltd)*, the Court made a ruling on the meaning of paragraph 47 of the NPPF. In part, this paragraph requires local planning authorities “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”. The Court said of this: “That qualification contained in the last clause quoted is not qualifying housing needs. It is qualifying the extent to which the Local Plan should go to meet those needs. The needs assessment, objectively arrived at, is not affected in advance of the production of the Local Plan, which will then set the requirement figure.” The Court went on to rule that a planning Inspector deciding an appeal in this case had been “mistaken to use a figure for housing requirements below the full objectively assessed needs figure until such time as the Local Plan process came up with a constrained figure.” Rather, “The ultimate decision may well turn on a number of factors, as I have indicated, including the scale of the shortfall [*in housing land supply against the policy requirement to have at least five years’ land available*] but also the context in which that shortfall is to be seen, a context which may include the extent of important planning constraints in the district as a whole.”

This judgement had a number of consequences. One was that an adopted Plan can become out-of-date (and therefore not provide the ‘predictability and efficiency’ intended) if the ‘objectively assessed need’ for housing increases. This has caused a series of disputes on detailed matters such as:

- how big a change in circumstances is required before there is a case to make that the ‘objectively assessed need’ should be revisited?
- how should housing needs be assessed if the local authority’s Strategic Housing Market Assessment is out of date?
- is it possible for the local authority to prepare a Strategic Housing Market Assessment as part of the evidence base to revise its Local Plan, without the new housing need information the SHMA contains replacing the housing requirement figure in the adopted Plan and putting that adopted Plan out-of-date?
- can any interested party propose its own ‘objectively assessed need’, or should weight be given only to one prepared by the local planning authority?
- a local authority’s housing need may require adjustment before its target housing requirement can be decided (to reflect constraints on development), so how can possible constraints apply to a current planning application in advance of a new Plan to decide the issue?

The leading judge in the case appreciated problems remained and commented on the NPPF: “I have to say that I have not found arriving at “a definitive answer” to the interpretative problem an easy task, because of ambiguity in the drafting. In such a situation, where one is concerned with non-statutory policy guidance issued by the Secretary of State, it would seem sensible for the Secretary of State to review and to clarify what his policy is intended to mean.” The Planning Practice Guidance, which post-dated the Hunston decision, addressed some of these issues without fully resolving them (see paragraph 3.2(vii) above).

Appendix 3 Calculating a five year supply: a worked example from Breckland DC

The total housing requirement set out in the Breckland Core Strategy is for 19,100 houses between 2001 and 2026, or just over 760 dwellings annually. There was some shortfall in supply in the first seven years of the Plan: this was carried forward from April 2008 as a small increase in required completions to 780 dwellings annually (reflecting the East of England Regional Spatial Strategy adopted that year).

The rebasing of requirements coincided with the beginning of the economic downturn. In the six years to March 2014, just 2,636 dwellings were built against a requirement of 4,680, leaving a shortfall of 2,044. Government policy in the national Planning Practice Guidance advises that sufficient land should be made available to clear the backlog usually within five years. Spreading the shortfall over five years adds 409 to the 780 base requirement for each of those years. This makes an annual requirement of 1,189 and a five-year requirement of 5,945. The shortfall in Breckland against planned requirements in the Core Strategy has recently been increasing year by year, progressively adding to the five year requirement and appearing increasingly unrealistic to achieve.

The 2014 edition of the annual *Assessment of Breckland Council's five year supply of deliverable housing land* shows that 4,428 dwellings can be delivered within the next five years in Breckland: that is more than ten times the construction in 2013-14, but still well short of the requirement of 5,945. Paragraph 47 of the NPPF requires that "Where there has been a record of persistent under delivery of housing, local planning authorities should increase the buffer to 20% (moved forward from later in the plan period) to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land." This means that Breckland Council, which has a 'persistent under delivery' must make available 20% more land than the requirement. That is either an additional 780 plots (if taken from the base requirement) or an additional 1,189 plots (if the backlog is included), raising the five-year land supply requirement to either 6,725 or 7,134 plots (1,345 or 1,427 annually). With 4,428 plots currently deliverable within five years, Breckland has a land supply of either 3.3 years or 3.1 years. However, unless its dwelling construction rate more than trebles overnight, the Council will have a declining number of years' land supply due to the way the calculations are made. Even the 1,244 dwellings annually shown in the Council's housing trajectory for the three years from 2018-19 will not address this fully.

The figures for Breckland show how the five year housing land supply becomes increasingly meaningless over time when actual dwelling supply is significantly short of policy intentions. With land available for over ten years' supply at current building rates, shortage of land is clearly not a real problem in Breckland. The largest annual housing delivery in Breckland in the years before the economic downturn was 884 (in 2003-04), so it is fairly obvious that the five year land supply of 4,428 (885 per annum) is sufficient in the real world for the number of dwellings house builders are likely to want to supply in the next few years. Despite this, the operation of the NPPF methodology puts the Council's land allocations to one side and enables developers to choose other unallocated sites instead with a good chance that these will gain planning permission. This is the antithesis of plan-led development.