

LOCAL PLAN COMMITTEE

2 NOVEMBER 2017

REPORT OF THE HEAD OF PLANNING

A.2 REVISED HOUSING LAND SUPPLY POSITION

(Report prepared by Gary Guiver)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To report, to the Local Plan Committee, the revised housing supply position (the ‘five-year’ supply) following recent planning permissions and appeal decisions.

EXECUTIVE SUMMARY

The government requires Councils to maintain a five-year supply of deliverable housing sites otherwise housing policies are considered out of date and planning applications for housing have to be considered on their individual merits with a presumption in favour of sustainable development.

In June 2017, the Local Plan Committee endorsed Officers’ view that the Council could demonstrate a 5.1 year supply which meant there was no longer a need to approve housing developments contrary to the new Local Plan. However, two recent appeal decisions (at Centenary Way and Sladburys Lane) have undermined this position and the Council is once again under pressure to approve more planning applications for housing.

The Council has mounted a High Court challenge against the Centenary Way decision and lawyers are considering whether or not it should do the same for Sladbury’s Lane. However, in any event Planning Inspectors have identified a need to update assumptions made earlier in 2017 to reflect slow progress with some development sites that currently benefit from planning permission.

In taking on board some of the Inspectors’ views Officers considered it would be prudent to review the housing land supply figures in order that the Council has an updated position. Using the methodology agreed by this Committee, the revised calculations suggest the Council cannot currently demonstrate a five-year supply. Officers consider that a figure of 4.6 years supply, which reflects the Local Plan requirement of 550 homes a year; assumes that the above appeal decisions will be overturned; and places no reliance on Local Plan sites until they obtain planning permission, is a robust assessment of housing land supply that can be evidenced. The key issue underpinning this changed figure is that the pace of delivery for housing sites has been slower than expected, reflecting market conditions across the District.

The lack of a demonstrable five year housing land supply will therefore lead to a further period of time in which the Council will need to determine planning applications on their merits in line with the

presumption of sustainable development with a view to approving more housing developments.

RECOMMENDATION

That the Local Plan Committee endorses the content of this report as evidence to demonstrate an up-to-date 4.6 year housing supply, at October 2017, for the purposes of determining planning applications and contesting planning appeals.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

Maintaining and demonstrating an ongoing five-year supply of deliverable housing sites is key to the Council's ability to control the pattern of housing growth across the district and to determining planning applications in line with the policies of the Local Plan. By robustly calculating any shortfall in supply, the Council will in the best position to ascertain how large a shortfall needs to be addressed in the coming weeks and months as more planning applications for housing and planning appeals are dealt with.

RESOURCES AND RISK

The five-year housing land supply calculation has been undertaken by the Council's planning team within the agreed 'LDF Budget'.

The main risk to achieving and maintaining an ongoing 5 year supply of housing land is the housing market in the District. If the market is not buoyant, insufficient completions will be achieved, adding to the shortfall that has to be recovered. In addition, the trajectory of future housing delivery has to be adjusted to reflect longer lead-in times and/or slower build-out rates.

The main risk to the housing supply calculations is a successful challenge to the figures by third-party developers promoting their sites either through the Local Plan examination or through the planning appeal process. With this in mind, Officers have taken legal advice which has informed the methodology agreed by the Committee on 19 January 2017. Officers have generally also taken a conservative approach to the expected delivery of housing on sites to make it difficult for developers to successfully challenge the figures on the basis of them being too optimistic and provided for a buffer in the supply for non-development as recommended by local plan planning inspectors.

As demonstrated by recent appeal decisions, the figures will come under significant scrutiny through the appeal process and it is important that they are as robust as possible.

LEGAL

The NPPF requires local authorities to identify and update annually a supply of specifically deliverable sites sufficient to provide five years' worth of housing against their housing requirements, with an additional buffer of 5% to ensure choice and competition in the market (increased to 20% in cases of persistent past undersupply). In the event that a Council is unable to

demonstrate a five-year supply of deliverable housing land, its policies for the supply of housing cannot be considered up to date. Councils are then expected to grant planning permission for housing developments (even if they are contrary to the Local Plan) unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the NPPF as a whole, or specific paragraphs in the NPPF indicate that development should be restricted.

OTHER IMPLICATIONS

Area or Ward affected: All wards.

Consultation/Public Engagement: None

PART 3 – SUPPORTING INFORMATION

The National Planning Policy Framework (NPPF) requires Councils to boost, significantly, the supply of housing. Councils have to identify and update, annually, a supply of specific 'deliverable' sites sufficient to provide five years worth of housing against their housing requirements – plus a 'buffer' to ensure choice and competition in market for land. This normally means a buffer of 5%, but in areas where there has been a record of persistent under-delivery of housing (like Tendring), a larger 20% buffer has to apply.

Critically, the NPPF states that if a Council cannot identify a five-year supply of deliverable housing sites (plus the appropriate buffer), its policies for the supply of housing cannot be considered up to date and the 'presumption in favour of sustainable development' applies. This requires Councils to consider all housing development proposals on their merits, even if they are contrary to the Local Plan. There is an expectation that planning permission will be granted unless the adverse impacts significantly and demonstrably outweigh the benefits. This has led to a number of housing developments gaining planning permission over the last couple of years, either from the Council or from the Planning Inspectorate on appeal, despite being contrary to the Local Plan and often unpopular locally.

On 19 January 2017, the Local Plan Committee agreed the methodology for calculating the five-year housing supply position and, at that time, it was predicted that a 4.4 year supply would be demonstrated at 31 March 2017. On 12th June 2017, the Local Plan Committee was presented with a report containing an updated set of figures which reflected more recent grants of planning permission and that demonstrated a 5.1 year supply, following the agreed methodology.

Following the Committee's decision to endorse the updated figures, the Council's approach to determining planning applications changed. As a general rule, housing developments on land outside of the settlement development boundaries in the emerging Local Plan were refused permission in order to uphold the 'plan-led' approach with more favourable consideration being given to proposals that complied broadly with the policies in the emerging Local Plan – acknowledging that it gains greater significance and weight as it passes through the different stages of the plan making process (having recently reached submission stage).

From the Committee's decision in June, a number of appeals against the refusal of smaller housing developments were dismissed with Planning Inspectors seeming to support the Council's position. However, two recent appeal decisions for much larger developments have gone against the Council and have seriously undermined its current position on housing supply.

Centenary Way decision

On 11 September 2017, the Council received the Inspector's decision (Appendix 4) on land at Centenary Way, Clacton which had been refused by the Council in June 2016. The appeal hearing took place in May 2017 and Officers had argued, in their evidence, that the proposal was contrary to the Local Plan policy on protecting the local green gap between Clacton and Little Clacton and that because the Council could demonstrate a 5.1 year housing supply, there was no need to apply the presumption in favour of sustainable development, the development was therefore not needed and the appeal should be dismissed. Contrary to Officers' expectations, the appeal was allowed and outline planning permission for up to 175 homes was granted. In his decision letter, the Planning Inspector Mr. Jason Whitfield found that the Council had failed to demonstrate a 5-year supply.

Mr. Whitfield agreed with the Council's housing target of 550 homes a year and also agreed with the Council's assumptions about development on small housing sites. However he disagreed with the Council's figures for housing development on large sites with planning permission – feeling that the Council had been too optimistic in its assumptions. As well as suggesting that the Council needed to allow more time in its figures for 'lead-in' times (particularly on outline planning permissions that were still required to get detailed consent), he also applied a 'lapse rate' discount of 5% on sites with permission and 10% on sites subject to the signing of a s106 legal agreement to allow more flexibility for the possibility that, for one reason or another, not all sites will actually get built. Having applied his approach to the figures, Mr. Whitfield concluded that the Council could only demonstrate a 4.4 year supply, but was not entirely clear how he had come to that conclusion, seemingly opting to pick a figure somewhere between the Council's figure of 5.1 and the figure of 3.6 argued by the appellants.

The Council's barristers have reviewed this appeal decision and have advised that there are good grounds for a High Court Challenge – both in relation to how the Inspector dealt with the housing figures but also the way he disregarded the Local Green Gap (coming to a completely inconsistent view to the Inspector that dismissed the earlier Rush Green Road appeal). This challenge was submitted to the Courts in October 2017 and the Council now awaits a decision on whether the challenge will be allowed and whether or not the case will be considered by the High Court. If the decision is quashed by the High Court, the appeal will need to be re-heard by a different Inspector. Whether or not the appeal would then be allowed or dismissed is by no means certain and the considerations would include the Council's housing land supply position at the time of the fresh determination.

Sladbury's Lane decision

On 11 October 2017, the Council then received the Inspector's decision (Appendix 5) in respect of the appeal for land at Sladbury's Lane, Clacton/Holland (another Local Green Gap site) which had been refused permission in August 2016. A full Public Inquiry was held in August 2017 where Officers gave detailed evidence on housing supply and on the impact of development on the Local Green Gap and also employed the services of an experienced demographics expert to defend the Council's use of 550 homes a year as its 'objectively assessed need' (OAN), in response to the appellant's attack on that figure.

Contrary again to Officers' expectations, the appeal was allowed and outline planning permission for up to 132 homes was granted. In his decision letter, the Planning Inspector Mr. Harold Stephens also found that the Council had failed to demonstrate a five year supply. Unlike Mr. Whitfield, he disagreed with the Council and its demographics expert about the housing target – suggesting 600 homes a year was a more appropriate figure to use until the figures in the Local Plan have been scrutinised and endorsed through the examination process. This is the first appeal decision in which the Council's position on OAN has been undermined. It is officers' view that the OAN should be tested through the Local Plan examination and until this happens, early in 2018, the Council is justified in relying on the evidence and expert advice that it has gathered in relation to this matter.

Contrary to his colleague, Mr. Stephens saw no need to apply a 'lapse rate' to the figures. Instead, he accepted the appellant's argument that the Council had been too optimistic on lead-in times and that this, combined with the application of the higher housing target of 600 homes a year, would result in significantly lower figure of 4.26 year supply. At the Public Inquiry, the planning consultant working for the appellants had produced a timeline of how long it typically takes between the grant of outline planning permission and the first houses being completed. This was based on housing industry data and suggested that there is typically a year between grant of outline consent and approval of reserved matters, followed by a further year to discharge planning conditions and commence development on site. Mr. Stephens was very clear in his decision that he preferred the appellants' approach over that of the Council.

The Sladbury's Lane decision was unfortunately published during a Public Inquiry into the refusal of planning permission for a development of 49 homes in Frinton Road, Thorpe le Soken and the Council was forced to withdraw its evidence on housing supply and its main objections to the proposal. The decision on that appeal is now awaited and there is a strong likelihood that the Frinton Road appeal will also be allowed. Officers have sought external legal advice as to whether there are any grounds for a High Court challenge on the Sladbury's Lane decision. Officers will update the Committee on any progress with this.

Revising the housing supply position

Whether or not there are grounds for a High Court challenge, it is clear from both Inspectors' decisions that the Council needs to review its assumptions on development site lead-in times within its housing supply calculations. Following the Council's agreed methodology, the updated calculations of housing land supply are set out as follows:

Total housing requirement for the next five years

- The housing requirement, as far as Officers are concerned and notwithstanding Mr. Stephens' view, is 550 homes a year. For five years therefore the 'baseline' requirement is 2,750 (i.e. 550×5).
- Since 2013 (the base date of the Objectively Assessed Housing Needs Survey), this target has not been met in 3 of the last 4 years and a cumulative shortfall of 826 dwellings has been amassed which has to be added on to the requirement, increasing the required figure to 3,576 (i.e. $2,750 + 826$).
- Also, because Tendring has a persistent record of under-delivery, a 20% buffer (715) has to be added which increases to the requirement to 4,291 (i.e. $3,576 + 715$).
- The five-year requirement, based on an OAN of 550 homes a year is therefore 4,291 for which sufficient deliverable housing sites need to be identified.

Supply of housing from 'large site commitments'

- The majority of housing development over the next five years will come from large sites (for 10 or more homes) that have either gained planning permission or have a resolution from the Planning Committee to grant planning permission subject to a section 106 legal agreement.
- Currently, large site commitments have the potential to deliver 5,224 dwellings in total (excluding Centenary Way, Sladburys Lane and Frinton Road which increase the figure to 5,580), which is well above the five-year requirement, but the Council has to be realistic about how many of these are actually likely to be built in the next five years to avoid a successful challenge from developers. This is where both Mr. Whitfield and Mr. Stephens found fault in the Council's figures at the recent appeals and where Officers have needed to carefully review the position.
- In coming to a view on the likely rate of delivery, Officers have taken on board the housing industry analysis tabled by the appellants at the Sladbury's Lane Inquiry which typically shows a year between outline planning permission and reserved matters approval and a further year for discharge of planning conditions and commencement. Officers have also taken into account the fact that we are now 6 months into the first year of the five-year period. Where possible, Officers have also been contacting developers and planning agents

to obtain their views on the likely timescales for delivery.

- Following Officers' review of the figures, it is still the case that for the majority of the large site commitments, it is expected that all of the houses with planning permission will be built in the next five years, but for the very large developments (that will probably take longer than 5 years to build) and for sites with other more specific issues to resolve, lower numbers have been estimated. A thorough site-by-site assessment has been undertaken which is included as Appendix 1 to this report.
- Officers do not believe that Mr. Whitfield's suggestion of applying a 5% or 10% 'lapse rate' is justified and Officers have not included such a discount within the revised figures. This is one of the grounds of the Council's challenge to the Centenary Way appeal decision.
- A revised housing trajectory has been produced at Appendix 2 which shows how much development is expected to take place on the various sites between now and 31st March 2022 (the current five-year period). Officers have also updated the schedule to include sites that have obtained planning permission or a Committee resolution to grant permission since the last report in June 2017.
- Also included in the schedules are estimates for housing delivery on the Centenary Way, Sladbury's Lane and Frinton Road sites notwithstanding that these are either subject to either an actual or potential High Court challenge or an outstanding appeal decision. This is purely to demonstrate how the housing supply position could change if these developments were allowed to proceed.
- With the revised assumptions about delivery on some of the larger and more difficult sites, Officers estimate that large site commitments can realistically deliver **3,201** housing completions over the next five years (down from 3,625 in the June 2017 report). If the Centenary Way, Sladbury's Lane and Frinton Road schemes are included in the figures, the supply would increase by 169 to 3,370.

Supply of housing from emerging 'allocated sites'

- In June 2017, the Council had not included, within its five-year calculation, any homes that might be built on sites that are allocated for housing or mixed-use development in the draft Local Plan but are yet to obtain planning permission. There is case law that says Councils can include such sites – so long as they can demonstrate, with evidence, that they are genuinely expected to deliver homes within five years. However, the Council had received legal and professional advice that warned against making overly optimistic assumptions about such sites without sufficient evidence to inform such assumptions.
- The allocated sites in the new Local Plan include very large developments around the periphery of Clacton (Hartley Gardens, Rouses Farm and Oakwood Park), Dovercourt (Low

Road), Weeley (Thorpe Road), and the garden community proposed for the Tendring/Colchester border. All of these schemes are complex, require significant infrastructure investment and are potentially subject to change if the Planning Inspector has concerns about the Local Plan. Some, particularly the Weeley site, are also the subject of considerable local objection.

- To assume the inclusion of such sites in the five-year supply calculation ahead of the final adoption of the Local Plan or ahead of the grant of outline or full planning permission would be easily challengeable by any third-party developer looking to undermine the Council's figures on appeal. Officers therefore concluded that there was insufficient evidence to demonstrate with sufficient certainty that there will be any completions from these sites in the next five years.
- Since the June 2017 report, none of these large allocated sites have obtained planning permission, but the Council is now in receipt of planning applications for some – most notably Rouses Farm, Clacton (950 homes) and Robinson Road, Brightlingsea (115 homes). In the revised housing trajectory, Officers have made some assumptions about the potential delivery of housing on allocated sites, assuming the planning process goes smoothly and permission is granted. However, Officers still advise that these sites be excluded from the figures until permission, or a resolution to grant permission, is confirmed.

Supply of housing from 'small sites/windfall sites'

- A significant proportion of Tendring's new housing comes from development on small sites of 9 or fewer dwellings. Because there are so many of these small sites all over the district, it is not practical to simply include all of the sites with planning permission in the five year calculation and assume, without detailed analysis, that they will all be built. Instead, we include the supply of housing from small sites as a 'windfall' allowance which is a realistic, evidence-based prediction of future delivery.
- The NPPF says that Councils can make an allowance for windfall sites in the five-year supply if they have compelling evidence that such sites have consistently become available in the local area and will continue to provide a reliable source of supply. The approved methodology for calculating the five year supply demonstrates very clearly that Tendring is justified in including a windfall figure within its calculation.
- The housing completion survey for the 2016/17 financial year confirmed that at 31 March 2017, there were planning permissions in place and yet to be implemented, to deliver 974 new homes on small sites of 9 or fewer dwellings. A recalculation of the windfall allowance upon confirmation of this number suggests that it would be reasonable to increase the windfall allowance for the next five years to 770. The detailed calculation for this is included as Appendix 3 to this report. It is unchanged from the June 2017 report.

- This small sites figure of 770 was agreed by both Mr. Whitfield and Mr. Stephens and appellants in most recent appeals have generally accepted this figure as being robust.

Housing requirement vs housing supply

- The housing requirement for the next five years with an OAN of 550 homes a year, taking into account undersupply since 2013 and adding in a 20% buffer is 4,291.
- The expected supply of houses from large committed sites over the next five years (excluding Centenary Way, Sladbury's Lane and Frinton Road) is 3,201. If these three sites were included in the figures, the supply would increase by 169 homes to 3,370.
- Officers recommend not including any potential housing completions from sites allocated in the new Local Plan but yet to gain planning permission. However, some of the sites are the subject of current or imminent planning applications and there is a possibility that some completions could happen in the next five years if the planning process goes smoothly. If that is the case, Officers estimate that a further 214 could potentially be added into the calculation increasing total supply to around 3,584.
- The expected supply of houses from small sites or 'windfall' sites over the next five years is an estimated 770 dwellings. This has been confirmed as being a robust figure in recent appeals.
- In all current scenarios, the total supply of houses from the above sources falls short of the five-year requirement so the Council is not in a position to demonstrate a five-year supply of deliverable housing sites.
- The revised calculation is set out as follows:

Five Year Requirement and Supply	Scenario – OAN of 550 homes a year
Requirement 2017/18 – 2021/22	2,750 (550x 5)
Shortfall 2013/14 – 2016/17	836
Sub-Total	3,586
Plus 20% buffer	715
Total Requirement	4,291
Supply from large site commitments	3,201
Supply from emerging allocations	0
Supply from small windfall sites	770
Total supply of Homes – Units	3,971
Total five- year supply of Homes - %	92%
Total supply of Homes – Years	4.6

- Based on the Council's OAN of 550 homes a year, the revisions to the housing supply calculation reduce the figure to 4.6 years. However, this makes no allowance for Centenary Way, Sladbury's Lane or Frinton Road schemes which, if included in the figures would increase the supply to 4.8 years. If the Council was to also include supply from sites allocated in the new Local Plan, yet to obtain planning permission but expected to deliver

some homes in the next five years, the supply would narrowly achieve 5.0 years but relying on such sites would not provide a robust position.

Conclusions and recommendations

Updating the Council's housing land supply calculations to all for longer development site lead-in times has a significant impact. Whilst Officers disagree with Mr. Stephens' application of an OAN of 600 homes a year, appellants will now be arguing that the 600 figure should apply. Officers will continue however to advocate an OAN of 550, consistent with what is contained in the new Local Plan.

Even with an OAN of 550 homes a year, the revised figures still fall short of a five-year supply – ranging from 4.6 to 5.0 years supply depending on which sites are included in the calculations. Officers consider that 4.6 years can be robustly evidenced and recommend that the Committee endorses 4.6 years as the Council's housing supply position. Planning applications can then be determined and planning appeals defended on this basis. In the absence of an update by the Council, the most recent calculations of housing land supply will be those made by the inspectors in recent appeal decisions which is a material consideration.

The implications are that the presumption in favour of sustainable development will remain engaged until such time that the Council is able to demonstrate a five-year supply. This will require additional planning permissions for housing to be granted in the short term and for the sites with permission to start delivering homes in the medium term in order to bolster the supply. There is likely to be an increase in applications being recommended for approval to the Planning Committee in the coming weeks and months and a likelihood of further appeal losses.

APPENDICES

Appendix 1 – Assessment of large sites with planning permission for housing

Appendix 2 – Revised housing trajectory

Appendix 3 – Small/windfall sites calculation

Appendix 4 – Appeal decision – Centenary Way

Appendix 5 – Appeal decision – Sladbury's Lane