

Assessing Development Proposals in County Durham: Revised - March 2016

Council Policy Position Statement
(Agreed by Cabinet April 2016)

Planning Services
Regeneration and Economic Development

March 2016



Assessing Development Proposals in County Durham

Revised Council Policy Position Statement

1.0 Context and Introduction

- 1.1 Until a Local Plan is produced, the “saved” policies of our nine existing Local Plans are the starting point when considering planning applications. A number of Neighbourhood Plans are now coming forward and, depending on how advanced they are, may attract weight when assessing proposals. This Statement sets out the level of consistency of key saved policies to enable clarity in decision making.
- 1.2 This Statement is primarily aimed at addressing housing development in the period before the emerging Local Plan can attract weight. The issue of Student accommodation is dealt with elsewhere.
- 1.3 The “presumption in favour of sustainable development” under national policy requires us to assess schemes against the National Planning Policy Framework (NPPF). The housing supply policies in our Local Plans will be out of date if we do not have a five year supply of deliverable housing sites, and may be out of date for other reasons too. When Local Plan policies are out of date, the presumption usually requires that we should grant permission “unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits”.

Resisting inappropriate development whilst retaining business confidence

- 1.4 The Council is keen to encourage appropriate development at a time when a number of major investments are happening but equally we seek to resist inappropriate development.

2.0 Assessing Development Proposals

- 2.1 The principal matters to assess in considering development proposals are:

i) The status of the Adopted Local Plans in County Durham

- 2.2 The policies in Local Plans, although aged, are still the starting point for decision making. If they are not consistent with the NPPF then national policy is that they should be given reduced (or no) weight. An Officer assessment of consistency with NPPF/PPG can be viewed at: <http://durhamcc.limehouse.co.uk/portal/planning/slpnppf>. Some policies remain consistent, some are partially consistent, and others are not consistent with the NPPF. Officers will clarify the weight that should be applied to a policy when preparing reports.
- 2.3 ***Considering key policies and their status:*** Paragraph 1.3 above refers. The key questions are: which are our housing supply policies, do we have a 5YHLS and are other relevant policies out of date?
- 2.4 Most of the Local Plans use development limits/settlement boundaries as the broad demarcation of where development will and will not be permitted. They also include general policies for dealing with housing. Policies delineating settlement boundaries are housing supply policies, as they are intentionally restrictive to

development and, when based on old housing figures (as our Local Plan policies invariably are) are out of dateⁱ. How this affects key policies is set out in Appendix 1. “Settlement boundary” policies will, on their own, rarely justify refusal of edge of settlement proposals.

- 2.5 The Local Plans include general policies for protection of the countryside and more general topics (e.g. urban sprawl). To some degree these policies constitute housing supply policies and are out of date. However, they also serve purposes other than guiding the housing supply and in those respects they are not necessarily inconsistent with the NPPF and therefore can be given weightⁱⁱ. The NPPF supports resisting isolated developments, so in this context certain of the settlement boundary and countryside policies will attract weightⁱⁱⁱ.
- 2.6 Policies designed to protect particular features or designations are not normally considered to be housing supply policies for NPPF purposes, and will therefore continue to be given weight subject to a consistency analysis.

ii) The status of the County Durham Plan and its evidence base

- 2.7 The CDP has been withdrawn so is not material to decision making. Some of its supporting evidence nevertheless remains as evidence on a topic basis and may guide the assessment of proposals; for example, the Retail Study, the Employment Land Review (ELR), and the Strategic Housing Land Availability Assessment (SHLAA).

iii) The status of proposals in the Interim Inspector’s Report

- 2.8 The Interim Report has been quashed in the High Court and as such its content is not material to decision making and it carries no status.

iv) The Status of Neighbourhood Plans in County Durham

- 2.9 As of March 2016 there are 22 Neighbourhood Plans (NPs) at various stages of preparation across the County^{iv}. None are adopted but the Whorlton NP has completed its Submission Consultation, Sedgefield’s NP is in submission consultation, and Great Aycliffe and Witton Gilbert are close to draft stage. The PPG clarifies that refusal on prematurity grounds would seldom be justified unless a Neighbourhood Plan had reached the stage when it had been submitted to the County Council and been subject to consultation. It also sets out that where there is an emerging Neighbourhood Plan but no 5YHLS (see below on this matter) “...decision makers may still give weight to relevant policies in emerging neighbourhood plans, even though these policies should not be considered up-to-date”.
- 2.10 In cases when there is potential conflict between a proposal and an emerging Neighbourhood Plan, the PPG does not clarify the level of weight to be applied in cases of conflict and this would be a matter of planning judgement. Where a proposal conforms with an emerging Neighbourhood Plan, the stage of Neighbourhood Plan preparation, sustainability of the site, and the nature of representations to the site through the Neighbourhood Plan consultation process will be taken into account in recommending a decision to Members.

v) Sustainable Development

- 2.11 One of the purposes of this Statement is to guide development proposals in the period until the Local Plan becomes material. The NPPF (at para 14) makes clear that there is a presumption in favour of sustainable development that applies where the development plan is absent, silent or relevant policies are out of date.
- 2.12 Sustainability is assessed by reference to the NPPF which sets out its three dimensions of economic, social and environmental sustainability. Where these are lacking, the presumption in favour may be overturned even where there is no 5YHLS.^v
- 2.13 These three matters will be relevant when seeking to achieve the planning balance when assessing proposals in the light of NPPF para 14.
- 2.14 In considering the sustainability of a site, developers should look to Appendix 2 to this Paper, which sets out the sustainability objectives for assessing proposals.

vi) Infrastructure requirements and planning obligations

- 2.15 The Core planning principles set out in the NPPF require the delivery of sufficient community and cultural facilities and services to meet local needs. This Statement applies in advance of the adoption of a CIL Schedule.
- 2.16 The Council will negotiate with developers on a site by site basis to agree Section 106 contributions where infrastructure requirements of a development are identified.
- 2.17 **Affordable Housing** - The current requirements for affordable provision are set out in the Council's evidence base and in particular the Strategic Housing Market Assessment 2013 and the CIL viability study 2014. These remain the starting point for negotiation under saved Local Plan policies. The Council will also consider individual site viability in any discussion of affordable housing.
- 2.18 **Recreational and open space needs** - One of the general saved policy requirements for residential development is appropriate recreational and amenity space both on site and sometimes off site to meet the needs of the new residents of that scheme. The Council has an Open Space Needs Assessment (OSNA) that sets out provision levels in an area and the standards for what is required dependant on those existing level of facilities, which will be used in assessing housing proposals.
- 2.19 Whether or not a site is sustainable will not depend solely on infrastructure or meeting planning obligations, so it will not always follow that such contributions can make a site sustainable and therefore acceptable.

vii) Appropriate scale of development

- 2.20 Whether the scale of development is appropriate for a settlement is a relevant consideration. The 2012 Settlement Study developed a hierarchy of towns and villages based upon the availability of facilities and services. This provides a useful indicator of the sustainability of a settlement. The current scale of a settlement and its position in the hierarchy will help to guide this matter.

viii) How the matter of Prematurity will be addressed

- 2.21 The PPG sets out that prematurity will seldom be justified as a reason to refuse an application unless a Plan has been submitted for examination and then only when the Council indicates clearly how the grant of permission would prejudice the outcome of the plan-making process. As the CDP has been withdrawn, such prejudice could not presently be demonstrated. In relation to Neighbourhood Plans, guidance on prematurity is set out above.

ix) Five-year housing land supply

- 2.22 Local Plans are out of date for the purpose of assessing housing requirements. The housing trajectory associated with the former CDP is no longer relevant and the CDP Objectively Assessed Need (OAN - for housing) figure no longer exists. This raises the issue of what is the requirement against which the supply is to be measured in order to calculate whether or not 5YHLS exists.
- 2.23 In the period until a new Local Plan OAN figure can be established, the Council will seek to accord with advice in the PPG regarding OAN: “... *Where there is no robust recent assessment of full housing needs, the household projections published by the Department for Communities and Local Government should be used as the starting point, but the weight given to these should take account of the fact that they have not been tested (which could evidence a different housing requirement to the projection, for example because past events that affect the projection are unlikely to occur again or because of market signals) or moderated against relevant constraints (for example environmental or infrastructure)*”.
- 2.24 The Council cannot currently demonstrate a 5YHLS because it does not have an OAN but it will provide PPG compliant figures to provide guidance that will be updated as required.
- 2.25 **Conclusion:** (an assessment of the implications of this on a key policy basis is set out at Appendix 1 – available by e-mailing SpatialPolicy@durham.gov.uk):
- Policies that were fundamentally intended to guide housing proposals based on time-limited evidence are out of date (e.g. straightforward settlement boundary and specific housing supply or delivery policies).
 - Policies that could sensibly exist regardless of whether the distribution and location of housing policies are out of date should continue to be given appropriate weight, for example, hybrid settlement boundary policies addressing development in the countryside, those resisting isolated development in the countryside, or those protecting specific designation, with the level of weight dependent upon their consistency with the NPPF.

Notations referred to in text

ⁱ As clarified in the Droitwich Spa case Ref: APP/H1840/A/13/2199085 & APP/H1840/A/13/2199426 - the Secretary of State concurred with an appeal Inspector that where development plan policies were based on old housing figures which did not represent an objectively assessed need, they were "out of date" irrespective of the position on 5 year supply, and accordingly the NPPF para 14 presumption in favour applied

ⁱⁱ The case of Daventry District Council v DCLG and Gladman - CO/3447/2015 of 2-12-15- provides clarity, when it is concluded that it was wrong to treat a policy relating to development in open countryside as a housing supply policy when it was clearly intended to protect the countryside

ⁱⁱⁱ A recent appeal decision at Ebchester supports the above conclusion when a single dwelling in the open countryside was refused, the Inspector applied Derwentside DLP Policy EN1 (Protecting the Countryside) and Policy EN2 (Preventing Urban Sprawl) and noted that "Both policies have significant resonance with paragraph 17 of the Framework which recognises the intrinsic character and beauty of the countryside". The Inspector concluded that "Whilst there would be some benefits of the proposal, in terms of a small contribution to housing supply, I consider the totality of the harm which I have identified would outweigh the benefits of the proposal" - Ref: APP/X1355/W/15/3131730

^{iv} Barnard Castle, Bearpark, Cassop-cum-Quarrington, Cotherstone, Coxhoe, Durham City, Eggleston, Ferryhill, Gainford & Langton, Great Aycliffe TC, Lanchester, Middridge, Oakenshaw, Sedgfield, Sherburn Village, Stanley, Tow Law, West Auckland, Whorlton, and Witton Gilbert.

^v Ref: APP/J3720/A/14/2215276 - Gladman proposal in Warwickshire when the Inspector dismissed the appeal despite a lack of five-year supply on grounds, including that "...The proposal would be at odds with NPPF para 7 which makes clear that "contributing to protecting and enhancing our natural , built and historic environment is an aspect of sustainable development".