The new Planning Policy: what else has changed?

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Overview

1. This paper addresses the changes brought about by the new Planning Policy, aside from issues related to the identification of the 5 year supply (ie the assessment of need and the identification of specific deliverable sites).

2. I will start by considering various interesting features of the new Planning Policy; inevitably these are of a fairly disparate nature. I will then consider how the Planning Policy will operate in various different situations – the first year (ie before paragraph 25 applies) and subsequent years if you have or have not got a 5 year supply.

Specific deliverable sites, specific developable sites and broad locations for growth

3. It is useful at the outset to consider 'specific deliverable sites', 'specific developable sites' and 'broad locations for growth'. C1/2006 said that a local planning authority had to meet the RSS pitch requirement by making allocations (paragraph 30). It did not actually contemplate that grants of planning permission for 'windfall' sites would count against the requirement – even though this is how pitch requirements tended to be met (if at all). The Planning Policy does rather the opposite: although it contemplates allocations, it does not actually say that an authority has to make them, even if there is an identified need. What it says is that it must 'identify a supply' of 'specific deliverable sites' for years 1-5 and 'specific developable sites' for years 6-10 and beyond. Specific deliverable sites and specific developable sites are defined, but not by reference to being allocated. A site which is allocated may or may not qualify as either. A site with planning permission is presumed to be deliverable (fn7) and therefore, one would assume, developable.

4. Both assume identified pieces of land. But as an alternative to specific developable sites an authority can have 'broad locations for growth'. There has never been anything like this in gypsy policy before and I think there are quite a few unanswered questions here. It is a feature of general housing policy (NPPF paragraph 47 and 157). Is an authority supposed to make allocations here? One might think so, but allocations would require another adopted DPD. Maybe the idea is that the authority is just more relaxed about granting planning permission in such areas. After all, provided that it has granted enough planning permissions at any particular time, it will probably have its 5 year supply of specific deliverable sites. Identifying a broad location for growth and then hoping that landowners will make applications might be an attractive alternative to making allocations.

5. One can readily understand a broad location for growth for significant housing development. I have tried to imagine how a broad location for growth of gypsy sites would be defined. The area between 2 settlements? The west of the district? The area beyond the Green Belt? Apart from cases where some locations within a district have a heavy concentration of gypsy sites and others none, and the others are identified as the broad locations for growth, I would have thought that it would be fairly difficult to justify picking areas of this kind. The only comparable policies I have come across are ones saying that the authority will look favourably on extensions to existing sites or sites (usually transit sites) along a particular road corridor: these do not involve very broad locations.

6. There is a final point to make about the difference with C1/2006. Sites which are specific deliverable/developable sites because they have planning permission may obviously be privately owned. I doubt whether much privately owned land ever was or will be allocated. Indeed one of the mysteries of C1/2006 was how the allocations it focussed on were actually going to produce places where gypsies could live – unless the land was publicly owned. (The matter was never really tested because so few allocations were actually made.) The assumption in C1/2006 was, frankly, that authorities would be using their own land to meet the RSS pitch requirement. Indeed paragraph 35, on how local planning authorities could identify specific sites and make land available, more or less said as much. It may be that the Government's expectation has changed.

A criteria based policy

7. A local planning authority must have a criteria based policy to guide allocations and to deal with what are no longer called ‘windfall’ sites.

8. The prohibition on certain criteria in Annex C of C1/2006 has gone. The criteria will obviously have to be consistent with what the Planning Policy says about the Green Belt, the open countryside etc.

Green Belt

9. We all know that the Government declared that it wanted to apply the Green Belt policy more strictly to gypsy sites – the Introduction to the draft PPS made the point that 60% of gypsy appeals in the Green Belt were successful as against 19% of minor housing appeals (paragraph 3.15). This was one of the reasons why C1/2006 was seen as being unfair. The only actual change is the removal of ‘normally’ from ‘traveller sites … are inappropriate development’. The suggestion in the Introduction that this change would achieve anything was completely disingenuous – gypsy sites are permitted in the Green Belt not because they are abnormally regarded as appropriate development but because Inspectors consider that very special circumstances are shown.

10. But I think that we can expect a change. I think that it is significant that protecting the Green Belt from inappropriate development is now one of the aims of the Planning Policy (see paragraph 4). The NPPF says that ‘substantial weight’ should be given to ‘any’ harm to the Green Belt - and it accepts that there will always be harm in principle. I think that a hierarchy of adjectives of heaviness is beginning to emerge - I suppose this is one of the benefits of the new comprehensive approach to formulating national policy. ‘Substantial’ is at the top, above ‘significant’ (note adverse impacts ‘significantly and demonstrably’ outweighing benefits in the presumption in favour of sustainable development; ‘significant material consideration’ in paragraph 25). Where a 5 year supply exists, I do not think that a windfall site in the Green Belt should have much prospect of success. The real issue will be the attitude towards temporary planning permissions in the Green Belt where there is no 5 year supply.

AONB and local landscape designations

11. There is nothing in the Planning Policy about protecting these from gypsy sites. But the NPPF makes it clear that 'great' weight should be given to conserving the landscape of AONBs (paragraph 115). Where does 'great' fall in the hierarchy?

12. Also I think that, once again, authorities can have local landscape designations (109 – enhance 'valued landscapes', 113 – in the context of landscape areas can have 'locally designated sites', 157 – local plans should 'identify land where development would be inappropriate for instance because of its environmental ... significance'; 'contain a clear strategy for enhancing the natural ... environment'). Paragraph 53 of C1/2006 said that local landscape designations should not be used to refuse planning permission for gypsy sites.

Open countryside

13. 'Local planning authorities should strictly limit new traveller site development in the open countryside that is [i] away from settlements or [ii] outside areas allocated in the development plan' (paragraph 23).

14. I don't think much of the drafting of this. The 'or' must mean 'and'. [i] and [ii] are not alternatives.

15. If we are talking about countryside away from settlements I do not think that 'open' adds anything.

16. What about 'outside areas allocated in the development plan'? If it simply means allocated sites, you might think that [ii] is hardly worth saying. Actually I think that this may be a roundabout way of saying that a local planning authority should not feel constrained about making *allocations* in remote open countryside: what it should not do is grant planning permission for windfall sites in such locations. Paragraph 23 is in the section headed 'decision-taking', not the section headed 'plan-making'. But if this is right

it is rather odd: an authority is free to allocate land in the open countryside for gypsy sites but must strictly limit the grant of windfall applications there.

17. Does it cover the broad locations for growth? Presumably most of these will be in the countryside. These are not allocated, but it would make sense not to apply paragraph 23 here. Will a broad location have a precise boundary?

18. Nevertheless I think that paragraph 23 could be one of the most important changes effected by the Planning Policy. C1/2006 said that gypsy sites were in principle acceptable in rural areas (paragraph 54) and in Annex C one of the banned criteria was that site should not encroach into the countryside. It seems to me that paragraph 23 is saying the opposite. I suppose that 'strictly limit' contemplates a few permissions – but we all know that *most* windfall applications relate to sites in the open countryside away from settlements.

Is there a preference for previously developed land?

19. When considering applications authorities should attach weight to the effective use of brown field or untidy or derelict sites (paragraph 24a). The NPPF says that polices and decisions should 'encourage the effective use of land' by re-using brownfield sites (paragraph 111). I think that this is supposed to signify protection for greenfield sites and therefore ordinary countryside: this is certainly what many lobby groups seem to believe. C1/2006 paragraph 55 said simply that the establishment of a gypsy site on previously developed land could positively enhance the environment: I regard this as a truism of no real significance. I think that there is a change here.

Highways

20. I have no doubt that paragraph 66 of C1/2006 ('proposals should not be rejected if they would only give rise to modest additional daily vehicle movements and/or the impact on minor roads would not be significant') was designed to discourage highway objections to gypsy applications. This has gone.

21. I now turn to consider how these policies will interact with paragraph 25.

March 2012 – March 2013

22. Paragraph 25 does not apply. In theory authorities can operate their policies according to their terms. Alot of old criteria based policies which talked about not having sites in the Green Belt or the open countryside may suddenly have become fairly up to date.

23. The problem is that authorities know that paragraph 25 is coming. If an authority is certain that it will have a 5 year supply (or that it will not need any supply) it can obviously disregard the imminent operation of paragraph 25. But if it knows that it is not going to have a 5 year supply after March 2013, it will know that a particular site is likely to get temporary planning permission thereafter. Suppose that site comes forward before March 2013. It seems obvious to me that the certainty of paragraph 25 taking effect is itself a material consideration, like the prospect of the abolition of RSS in *Cala Homes* no 2. There will come a time fairly soon when it is inevitable that any appeal against a refusal will be heard after March 2013.

24. The reality is that paragraph 25 is already casting its shadow. Logically this should mean the grant of all the kinds of temporary planning permission which seem likely after March 2013.

Post March 2013 – if there is a 5 year supply

25. The position is in theory perfectly straightforward. The authority applies its criteria based policy to any applications which happen to be made. There is no general unmet need to be taken into account because this has been assessed and the first 5 years' worth is being met. The personal needs of the applicant will be a consideration, but (in theory) the authority may be able to say that alternative sites are available to him – ie one of the specific deliverable sites.

26. Presumably the authority has to strictly limit new sites in the open countryside away from settlements etc and avoid inappropriate development in the Green Belt. This suggests to me that, where authorities have a 5 year supply, they will win in relation to many sites which are currently lost on appeal. (This is not saying a great deal: authorities would probably have won a good many appeals under C1/2006 if they had met the RSS pitch requirement.) Where will acceptable sites be found? In non-Green Belt countryside close to settlements, provided the proposals will not dominate the nearest settled community, on previously developed land and in the broad locations for growth?

Post March 2013 - if there is no 5 year supply

27. I start with a word about what I think is required for a 5 year supply. It obviously requires a definitive assessment of need over a period of time. I would have thought that nothing less than an adopted plan will really do for this. But what will really count is the supply of sites. If an authority has more specific deliverable sites than the figure for the next 5 years is likely to be, when some figures are adopted, I think it would obviously have a 5 year supply.

28. What about an allocation in an emerging plan? What matters is whether the site is 'deliverable'. The definition suggests a site specific assessment of deliverability. Depending on the stage that has been reached, I think that an allocation in an emerging plan could signify that, as far as the authority is concerned, if an application were to be made in relation to it, planning permission would be granted.

29. I make these points because the Planning Policy, and the NPPF, seem to assume that new or revised 'Local Plans' (I thought they were called Development Plan Documents) can and will be progressed to adoption frequently and in a matter of months. Apparently a Local Plan 'can be reviewed in whole or in part to respond flexibly to changing circumstances' (NPPF paragraph 153). Given actual experience over the last 30 years one wonders about this.

30. Where there is no 5 year supply the material consideration in favour of temporary planning permission is said to be 'significant'. This wording is clearly the product of

thought. The draft PPS had said that, where there was no 5 year supply, an application for temporary planning permission should be treated 'favourably' and there was specific consultation on this point. And remember that paragraph 46 of C1/2006 said that unmet need should be given 'substantial weight'. Presumably a 'significant material consideration' is less heavy.

31. Nevertheless it should be capable of outweighing other objections – eg to the fact that the site is in the open countryside away from settlements. It should also be capable of contributing to very special circumstances in relation to a Green Belt site which, taken together, will be heavier than the 'substantial weight' of the harm(s). But I am not sure about this. Protecting the Green Belt from inappropriate development is now said to be one of the *aims* of the Planning Policy (see above). I am sure that the 60% includes temporary planning permissions. Granting every Green Belt site a temporary planning permission because there is no 5 year supply is not protecting the Green Belt from inappropriate development. And which of the aims in paragraph 4 would be furthered by this? In truth the grant of temporary planning permission furthers the aim of not making gypsies homeless through 'eviction' from unauthorised sites without an alternative to move to. This *was* an aim of C1/2006 (paragraph 12(i)). It is not an aim of the new Planning Policy.

32. There is another point. The invariable reality is that temporary planning permissions are granted in response to retrospective applications. I have certainly not come across a temporary planning permission granted under C1/2006 for an empty site on a prospective, speculative application. Paragraph 2.16 of the Introduction said that the Government 'will not tolerate abuse of the planning system by the small minority of travellers who set up unauthorised developments which create … resentments against the overwhelming majority of law-abiding travellers who do not live on unauthorized sites.' Won't almost all of those who seek the benefit of paragraph 25 be part of this 'small minority'? Aren't they being encouraged rather than not tolerated?