

## Plan Making

### The housing requirement in plan-making

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5<sup>th</sup> March 2018  
De Vere Grand Connaught Rooms



### Housing requirement in plan-making



- 1) Fall-out from *Gallagher v Solihull*: ongoing uncertainty over policy off vs. policy on.
- 2) Jelson: planning judgment in fixing OAN.
- 3) St Modwen Developments: delivery vs. deliverability.
- 4) Wokingham BC: Lapse rate v. Buffer.
- 5) William Davis: Housing mix policy in SPD.
- 6) Standardised OAN methodology.

## 1) Gallagher v Solihull

### 6. Delivering a wide choice of high quality homes

47. To boost significantly the supply of housing, local planning authorities should:
- use their evidence base 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, including identifying key sites which are critical to the delivery of the housing strategy over the plan period;

#### Headlines:

- NPPF effected a “radical” change over PPS3.
- Considerable emphasis on boosting housing supply.
- 2 step approach to housing need:
  - First ascertain OAN.
  - Then apply policy constraints to produce requirement.

## 2) Gallagher v Solihull

#### 5 post-Gallagher OAN challenges:

- *Gladman Developments Ltd v Stafford Borough Council* [2015] EWHC 444 (Admin); [2015] J.P.L. 1002 (Inspector properly considered OAN in light of Gallagher).
- *Satnam Millennium Ltd v Warrington BC* [2015] EWHC 370 (Admin) (OAN to be assessed on basis of HMA, not LPA boundaries. Inspector failed to address affordable housing w/in OAN).
- *Kings Lynn and West Norfolk BC v Secretary of State for Communities and Local Government* [2015] EWHC 2464 (Admin) (allowances for 2<sup>nd</sup> homes & vacancy rates are “policy-off”, so are part of FOAN).
- *Trustees of the Barker Mill Estates v Test Valley Borough Council* [2016] EWHC 3028 (Admin); [2017] P.T.S.R. 408 (no requirement to identify separate OAN for market housing. Acceptable simply to produce overall OAN, which includes market housing).
- *Oadby and Wigston BC v Secretary of State for Communities and Local Government* [2016] EWCA Civ 1040; [2017] J.P.L. 358. (s.78 inspector not bound by housing distribution across HMA set in SHMA. That was “policy-on”).

## 2) Jelson

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Jelson Ltd v Secretary of State for Communities and Local Government [2018] EWCA Civ 24

- Issue: whether Insp. had lawfully calculated OAN.
- SHMA = 375 dpa. CS = 450 dpa. App's figure (meeting full AH) = 980 dpa.
- Lindblom LJ: approach to OAN is matter of planning judgment.
- Policy/guidance do not dictate right approach to OAN (cf. more detailed approach to e.g. deliverable sites.

  
**Jelson**  
H O M E S

## 3) St Modwen Developments

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St Modwen Developments Ltd v Secretary of State for Communities and Local Government [2017] EWCA Civ 1643

- identify and update annually a supply of specific deliverable<sup>11</sup> sites sufficient to provide five years worth of housing against their housing

- Issue: meaning of “deliverable sites” in para 47 NPPF.
- Lindblom LJ: “deliverable” ≠ certain or likely to be delivered.
- Issue is whether site is *capable* of being delivered in 5 years. Realistic prospect. PP not required. Certainty/probability not required.
- NB allegations of excessive legalism!

 **ST.MODWEN**

#### 4) Wokingham BC

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Wokingham BC v Secretary of State for Communities and Local Government [2017] EWHC 1863 (Admin)

- Issue: proper approach to historic housing shortfall
- Inspector applied 20% buffer **and** 10% lapse rate.
- Inspector must assess + give reasons on risk of **double-counting**.
- NB whether to apply lapse rate + buffer is a question of planning judgment.



**WOKINGHAM**  
BOROUGH COUNCIL

#### 5) William Davis v Charnwood BC

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William Davis Ltd v Charnwood BC [2017] EWHC 3006 (Admin)

- Issue: can SPD include “housing mix” policy – re unit size / %s of affordable and market housing.
- **No.**
- Town and Country Planning (Local Planning) (England) Regulations 2012, reg 5.
- Housing mix policy “relates to development and use of land”
  - + contains “development management and site allocation policies”
  - + “environmental, social, design and economic objectives which are relevant to the attainment of the development and use of land”

## 6) Standardised OAN

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- Widespread dissatisfaction with the OAN “industry” and time/cost added to plan-making leads to...
- LPEG, March 2016: suggests “simplified, standard common methodology” for OAN through NPPG.
- “Fixing our Broken Housing Market”, Feb 2017: promises standardised OAN consultation.
- “Planning for the right homes in the right places”, Sept 2017:
  - i. Demographic baseline (household growth #s).
  - ii. Adjust for market signals (affordability).
  - iii. Apply a **cap**.



## 6) Standardised OAN

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- 3 questions:
  - When is simple too simple? No adjustments for migration, vacancy, 2<sup>nd</sup> homes?
  - **That cap?** How is a cap consistent with principles of OAN set out in *Gallagher*? Risk of fixing OAN by reference to artificially suppressed baselines?
  - Transitional arrangements: risk of too many plans slipping under the March 2018 deadline? Requirement for regular review?



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