

# Residential Development and the NPPF

**Jenny Wigley**  
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## Topics

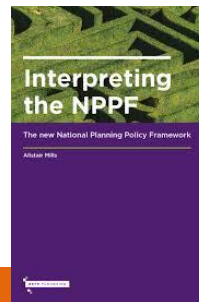
- Focus on Five Year Housing Land Supply;
  - Importance and significance;
  - Demonstrating and ascertaining the 5yhls position;
  - Assessing the Requirement figure;
  - Applying the appropriate Buffer percentage;
  - Identifying the Supply - what can be included?
- Touch on Rural Housing;
- Look at status of Residential Gardens;

## Resources and Materials

- NPPF 2018, section 5, Annexes 1 & 2 re implementation and glossary;
- PPG as updated on 13 September 2018;
- Housing Delivery Test Measurement Rulebook;
- MHCLG Technical Consultation, 26 October 2018;

And, of course,

- Alistair's Book (Chapter 6)



# Five Year Housing Land Supply – significance and importance

- Lack of 5YHLS automatically triggers ‘tilted balance’ (para 11 and fn 7);
- Calculation forms the basis of considering 3YHLS and whether ‘tilted balance’ is prevented from being triggered when a qualifying NP is in place (para 14);
- Even if ‘tilted balance’ triggered for other reasons, lack of 5YHLS adds weight to benefit of provision of housing;
- Degree of any shortfall goes to weight to accord to conflict with relevant development plan policies – e.g *Hallam Land Management v. SSCLG* [2018] EWCA Civ 1808

# Demonstrating, fixing and ascertaining 5YHLS

- Can rely on it being established in a ‘recently adopted plan’ for up to 18 months following adoption (depending on date of adoption) (para 74) but note 10% buffer then applies;
- Can produce an annual position statement produced ‘through engagement with developers and others’ and considered by Secretary of State (para 74), again 10% buffer then applies;
- Otherwise annual statement challengeable in appeal in usual way (5% or 20% buffer applies);
- SoS /Inspector on appeal must ascertain ‘broad magnitude’ of shortfall – ***Hallam Land***

# Assessing the Requirement

- Figure from adopted strategic policies if less than five years old, or if reviewed and unchanged;
- Otherwise – ‘local housing need’ (LHN);
- LHN defined as calculated by standard methodology ‘or a justified alternative approach’ (but note proposed amendment to fn 37 and glossary in Technical Consultation para 34);

# Assessing the Requirement - LHN

- 3 stages – household projection, affordability ratio and cap;
- Household projection – see Technical Consultation – ONS 2014 or lower 2016 based projections?
- Long term review of formula proposed;
- Cap criticized as bringing in a constraint at need stage rather than ‘policy on’ stage – ***St Albans v. Hunston Properties [2013] EWCA Civ 1610***

## Appropriate Buffer (para 73)

- Default – 5% ‘to ensure choice and competition in the market for land;
- 10% if fixing position – “to account for any fluctuations in the market during the year”
- 20% where there has been significant under delivery of housing over the previous three years, “to improve the prospect of achieving the planne supply;
- “Significant under delivery” as measured against the ‘Housing Delivery Test’ where below 85% of the hsg req’t (fn39);



# Supply – What can be included?

- “supply of specific deliverable sites”;
- ‘specific’ – windfalls? - not explicitly includable in 5yhl (compare old NPPF para 48 with new NPPF para 70);
- PPG amendments suggest can include student accommodation and C2 elderly accommodation ‘based on the amount of accommodation it releases in the housing market.’

# Supply – What is ‘deliverable’?

- ‘deliverable’ – defined in the glossary, with amendment proposed in the Technical consultation;
- Still ‘available now, suitable location for development now and realistic prospect achievable within 5 years’ – some continuing relevance of ***St Modwen v. SSCLG [2017] EWCA Civ 1643***.
- 2 categories with differing burdens of proof;
- Closed list precluding emerging allocations, resolutions to grant, windfalls? Recent Appeal decisions:
  - Inspector Harold Stephens, Woolpit Suffolk, 28 Sept 2018
  - Inspector Baird, Woolmer Green, 28 October 2018

# Rural Housing

- New exception to policy of avoiding development of isolated homes in the countryside – subdivision of an existing residential dwelling;
- Note recent authority on meaning of ‘isolated’, ‘settlement’ and ‘village’

***Braintree DC v. SSCLG [2018] EWCA Civ 610***

# Residential Gardens



- No longer any absolute requirement that residential gardens be excluded from windfalls (para 70 – compare para 48 of old NPPF);
- NB definition of pdl – still only excludes residential gardens ‘in’ built up areas – see *Dartford BC v. SSCLG [2017] Civ 141*

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**THE END**

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