

## The Holy Grail: Delivering Housing Need

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The legend of the Holy Grail may well be one of the most enduring legends in Western European literature and the search for the vessel became the principle quest of the knights of King Arthur. Just like the search for the Holy Grail, delivering an adequate supply of good quality housing has proven somewhat elusive. This article explores the search over recent years for an adequate supply of good quality housing, the policy position as set out in the NPPF, Objectively Assessed Need, affordable housing, changing housing markets and how best to correct the 'leaks and blockages' in the system.

### The Search

In 2012 Ashley Bowes concluded, in an article entitled "Delivering housing need: an assessment of the NPPF", as follows:

"The NPPF is a clear expression of two of the Government's key policies of Localism and boosting the supply of good quality housing. It is therefore the clear duty of local council to identify and then plan to deliver the full identified need for housing. A failure to do renders the council's housing policies out-of-date and engages the presumption in favour of granting consent. It remains to be seen whether the changes will deliver much needed good quality homes".<sup>1</sup>

Ashley's question was answered somewhat definitively in 2017 within the Housing White Paper published by the Department of Communities and Local Government on 7 February 2017. The White Paper set the scene in the aptly named document "Fixing our broken housing market" February 2017. The Housing White Paper recognised that since the 1970's, there have been on average 160,000 new homes built each year in England<sup>2</sup>. The consensus is that we need from 225,000 to 275,000 or more homes per year to keep up with population growth and start to tackle years of under-supply.<sup>3</sup>

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<sup>1</sup> [2012] J.P.L.1174 (the authors are grateful to Dr Ashley Bowes for his comments on earlier drafts on this article)

<sup>2</sup> DCLG Live Table 104

<sup>3</sup> for example: Barker (2004), "Review of Housing Supply - Delivering Stability: Securing our Future Housing Needs" Final Report; House of Lords Select Committee on Economic Affairs (2016), "Building more homes", July 2016; KPMG and Shelter (2015) "Building the Homes We Need"

## The Policy Position – NPPF

Housing need is often concerned with the need for affordable housing albeit in the context of the National Planning Policy Framework ‘objectively assessed’ need refers to both market and affordable housing.<sup>4</sup> Paragraph 47 of the NPPF states that;

“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.”

In *Suffolk Coastal DC v Hopkins Homes Ltd*<sup>5</sup> the Supreme Court analysed the legal status of the NPPF and its relationship to the statutory code for determining planning applications. The NPPF is a material consideration which “... cannot, and does not purport to, displace the primacy given by the statute and policy to the statutory development plan. It must be exercised consistently with, and not so as to displace or distort, the statutory scheme.”<sup>6</sup> However, national policy like the NPPF may affect the weight to attach to policies of the development plan in the planning balance.<sup>7</sup>

The Supreme Court held that a failure to deliver a five-year supply of housing sites, in accordance with paragraph 47 NPPF, is sufficient to trigger the “tilted balance” at paragraph 14 NPPF.<sup>8</sup> That begs the question against what figure is the five-year supply calculated? From the extensive case law and PPG we suggest the following principles are now clear:

- (i) The starting point will be the housing requirement in a post-NPPF local plan, unless “significant new evidence” comes to light.<sup>9</sup> New household projections do not automatically render housing requirements out of date.<sup>10</sup> A useful illustration of the situations in which a post-NPPF housing requirement may be departed from is provided in *West Berkshire DC v SSCLG*.<sup>11</sup> In *West Berkshire* the Council had adopted a post-NPPF plan but it was not based on an objective assessment of housing need and, as such, when a objective assessment became available, that provided a rational basis for the Inspector to depart from the local plan housing figure.
- (ii) Where there is no figure in an up-to-date local plan, the evidence in “*latest full assessment of housing needs*” should be used.<sup>12</sup> That might well be a SHMA or

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<sup>4</sup> However the extent to which the market housing need is uplifted to provide for some or all of the affordable housing need is a question of policy, see: *Barker Mill Trustees v Test Valley* [2017] PTSR 408 per Holgate J at [37]

<sup>5</sup> [2017] 1 WLR 1865.

<sup>6</sup> Per Lord Carnwath JSC at [21]

<sup>7</sup> See: *City of Edinburgh Council v Secretary of State for Scotland* [1997] 1 WLR 1447 per Lord Clyde at p.1458.

<sup>8</sup> Per Lord Carnwath JSC at [54]

<sup>9</sup> PPG-3-030

<sup>10</sup> PPG 2a-016

<sup>11</sup> [2016] EWHC 267 (Admin)

<sup>12</sup> PPG 3-030

HEDNA. That figure may not take account of policy considerations,<sup>13</sup> or normally consider apportionment between authorities within an HMA,<sup>14</sup> although there may be cases where apportionment can be relied upon.<sup>15</sup>

- (iii) Where there is no such full assessment available, the DCLG household projections should be used as a starting point.<sup>16</sup>

The policy requirements concerning the supply of housing are set out at paragraphs 45 and 159 of the NPPF. Lord Gill in the above judgement deals with housing at paragraph 76 to 78.

76. In relation to housing, the objective of the Framework is clear. Section 6, “Delivering a wide choice of high quality homes”, deals with the national problem of the unmet demand for housing. The purpose of paragraph 47 is “to boost significantly the supply of housing”. To that end it requires planning authorities (a) to ensure *inter alia* that plans meet 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 the Framework, including the identification of key sites that are critical to the delivery of the housing strategy over the plan period; (b) to identify and update annually a supply of specific 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 for the land; and (c) in the longer term to identify a supply of specific, developable sites or broad locations for growth for years six to ten and, where possible, for years 11-15.

77. The importance that the guidance places on boosting the supply of housing is further demonstrated in the same paragraph by the requirements that for market and affordable housing planning authorities should illustrate the expected rate of housing delivery through a housing trajectory for the plan period and set out a housing implementation strategy for the full range of housing, describing how they will maintain delivery of a five-years supply of housing land to meet their housing target; and that they should set out their own approach to housing density to reflect local circumstances. The message to planning authorities is unmistakable.

78. These requirements, and the insistence on the provision of “deliverable” sites sufficient to provide the five years’ worth of housing, reflect the futility of authorities’ relying in development plans on the allocation of sites that have no realistic prospect of being developed within the five-year period.

Further guidance has been provided by the judgment of the Court of Appeal in ***St Modwen v SSCLG***,<sup>17</sup> in which Lindblom LJ held that (i) deliverability is not the same as delivery, (ii) capable of being delivered does not mean that it will be delivered, and (iii) the test is not that delivery is certain, probable or deliverable to the fullest extent within five years.

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<sup>13</sup> ***Hunston Properties Ltd v SSCLG*** [2013] EWCA Civ. 1610

<sup>14</sup> ***Oadby & Wigston BC v SSCLG*** [2016] EWCA Civ. 1040

<sup>15</sup> ***St Modwen v SSCLG*** [2016] EWHC 968 (Admin)

<sup>16</sup> ***Jelson v SSCLG*** [2016] EWHC 2979 (Admin)

<sup>17</sup> [2017] EWCA Civ. 1643

## Objectively Assessed Need

Ashley<sup>1</sup> in the above article summarised the steps involved in establishing Objectively Assessed Need, which are reproduced and numerated at 5.28 of Planning Law Practice and Precedents as follows:

1. Prepare a Strategic Housing Market Assessment to assess their full housing needs over the plan period, including mix and tenure (Core Planning Principle 1 – NPPF para. 159)
2. Prepare a Strategic Housing Land Availability Assessment to establish enough land to meet that need over the plan period (Core Planning Principle 1 – NPPF para. 159), but may adopt a lower figure if the “adverse effects of adopting the full figure would significantly and demonstrably outweigh the benefits (core planning principle 1 NPPF para.14).
3. Identify an annually update a supply of specified deliverable sites to meet five year’s worth of housing.
4. Identify a 5% buffer to ensure choice and competition; or if there has been a record of persistent under-delivery”, identify a 20% buffer.
5. Identify specific developable sites or broader locations for growth for 6 to 10 years.
6. Where possible, identify developable sites or broad locations for growth for 11 to 15 years.
7. Set out an approach to housing density to reflect local circumstances (core planning principle 1 NPPF para. 45).

### Proposals for a local housing need figure

The Government has now released a consultation document<sup>18</sup> that sets out a standard and simplified approach to calculating local housing need (although note no mention of the needs being “objectively assessed” anymore) which is based on three key principles:

- a. Simple – there should be an easy and transparent process for local people and other interests to understand;
- b. Based on publically available data – which might include national data such as that from the Office for National Statistics, or robust local data;
- c. Realistic – to reflect the actual need for homes in each area, taking into account the affordability of homes locally. High house prices indicate a relative imbalance between the supply and demand for new homes, and makes housing less affordable. The affordability of new homes is the best evidence that supply is not keeping up with demand

The consultation document then comments that ‘In addition, we consider that any approach must allow an understanding of the minimum number of homes that are needed across England as a whole, while also reflecting the effect of our Industrial Strategy as we seek to promote prosperity in every part of the country’.<sup>19</sup>

The Government’s proposed approach to a standard methodology comprises three elements:

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<sup>18</sup> Planning for the right homes in the right places: consultation proposals

<sup>19</sup> At para.14

### Step 1: Setting the baseline

The starting point will continue to be the most recent projections of future household growth in each area. It is proposed that the demographic baseline should be the annual average household growth over a 10-year period. Household projections should be regarded as the minimum local housing figure.

### Step 2: An adjustment to take account of market signals

A proportionate adjustment is suggested using the workplace-based median house price to median earnings ratio from the most recent year for which data is available. The principle here is that assessing an appropriate level of housing must address the affordability of new homes, which means that projected household growth should be adjusted to take account of market signals.

### Step 3: Capping the level of any increase

A cap on the annual local housing need is proposed based on the status of the local plan:

- For authorities with an adopted local plan in the last 5 years, this cap is 40% above the annual requirement figure currently set out in the local plan;
- For authorities without an up to date local plan, the cap is 40% above whichever is higher of the projected household growth over the plan period or the annual housing requirement figure currently set out in their local plan.

Additionally, Councils can consider a higher local housing need figure to support, for example, a strategic infrastructure project, or increased employment (and hence housing) ambition.

It is worth touching on some of the issues which arise in defining Objectively Assessed Need, namely: tenure, existing need, newly arising need and affordable supply and how these relate to the proposed method to establish local housing need.

Dr Michael Bullock has spoken extensively on the subject of tenure mix and makes a number of observations. Figures for Objectively Assessed Need do not identify a tenure split. Baseline demographic data is not broken down by tenure. The Objectively Assessed Need does have an affordability component but this cannot be measured separately. The method Strategic Housing Market Assessments should use to identify the scale of affordable housing need is outlined in paras. 22-29 of the Planning Policy Guidance, with affordable housing referred to at para 29, which reads:

“The total affordable housing need should then be considered in the context of its likely delivery as a proportion of mixed market and affordable housing developments, given the probable percentage of affordable housing to be delivered by market housing led developments. An increase in the total housing figures included in the local plan should be considered where it could help deliver the required number of affordable homes.”

In defining affordable housing need it is worth commenting on existing need, newly arising need, affordable supply and estimate of annual affordable need.

The backlog (existing need) is identified by consulting the housing register and household surveys, albeit issues arise with scale and affordability testing including the quality of data and assumptions used.

Newly arising need can be identified by consulting the above documents and the Survey of English Housing. The issues are not just traditional household forming age groups, a key driver is relationship breakdown. It is necessary to bear in mind that gross formation rates are falling from 1.69% (2011/12 to 2013/14) to 1.55% (2013/14 to 2015/16). Furthermore, arc4 household surveys tend to show that the majority of newly forming households tend to move into the private rented and affordable rented sectors.

Affordable supply can be identified by examining the CORE lettings/sales data and Local Authority records.

### Affordable Housing

In estimating annual affordable need, it is necessary to establish the scale of affordable need and ideally how this is broken down by dwelling size, type and designation, for example: general needs and older persons accommodation. There are several factors which influence delivery of affordable housing these include: national policy (White Paper), Council policy (target linked to viability, sustainability/market restructuring/destabilizing market), HCA funding, non S106 sources such as Council Housing and affordable private renting. When calculating the affordable need, there are a number of accepted assumptions:

- Affordable housing policy figures are generally realistic and take account of viability and relative shortage of affordable housing.
- When setting policy targets, Councils should have regard to affordable housing need, as assessed in Strategic Housing Market Assessments.
- It appears to be settled that there is no requirement that the affordable housing need be met in full,<sup>20</sup> however whether an uplift in market housing to meet some or all of the affordable housing need is part of the OAN is unclear.<sup>21</sup>
- Proposed changes to affordable housing definitions may have an impact on both the range of affordable delivery options and supply, including the potential use of the private rented sector as a source of affordable housing.

It is noted that the proposed local housing need calculation includes a market signals adjustment to factor in a need for affordable housing. This is to be encouraged, although the use of median rather than lower quartile incomes may mask the degree of affordable need from lower income groups.

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<sup>20</sup> See: *Kings Lynn & West Norfolk BC v SSCLG* [2015] EWHC 2464 (Admin)

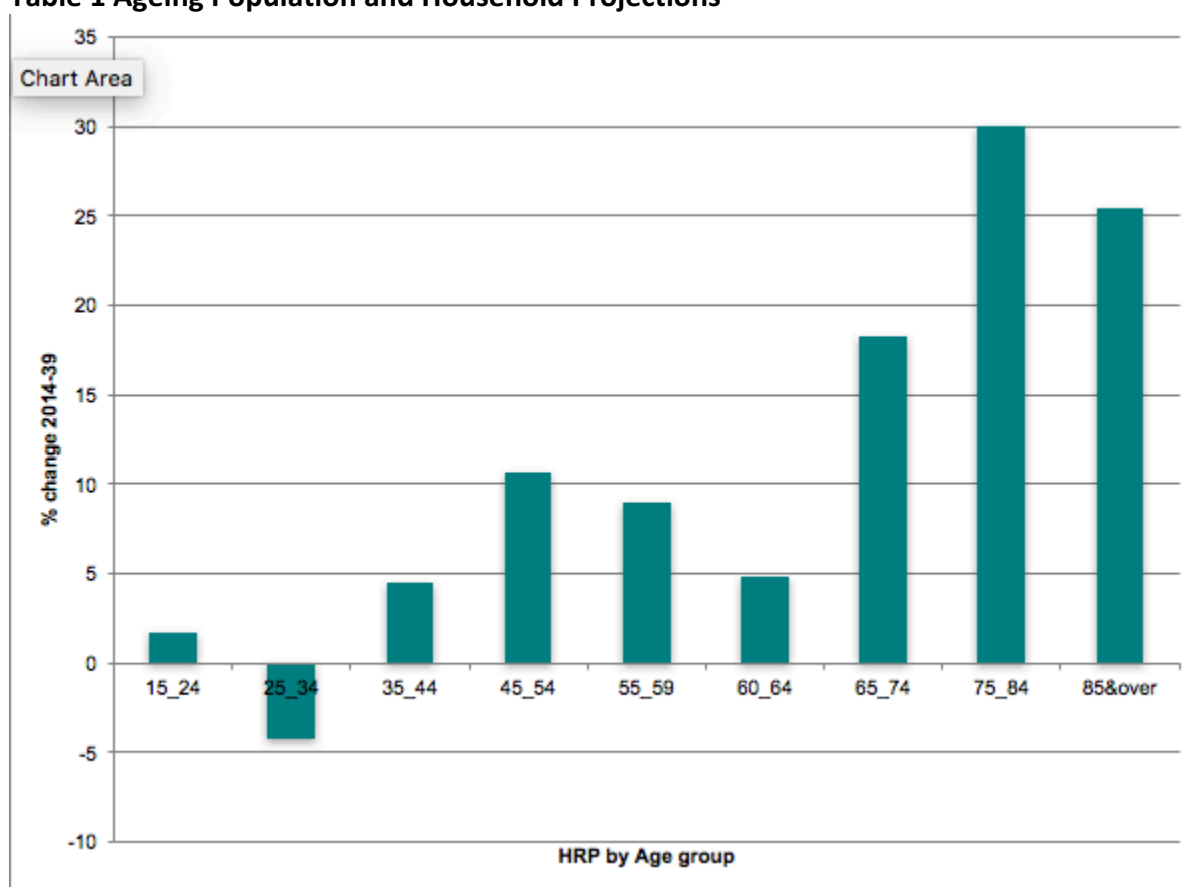
<sup>21</sup> Holgate J expressed the view that it was not part of the OAN in *Trustees of the Barker Mill Estates v SSCLG* [2016] EWHC 3028 (Admin) at [37] but did not need to resolve the issue (at [38]), and earlier cases have suggested that it was part of the OAN

## Changing Housing Markets

One of the key drivers of demographic change is our ageing population. When considering this aspect of demographic change, it is helpful to understand dwelling choices and the aspirations of older people, rightsizing and helping people to move

**Ageing Population and Household Projections:** it is important to understand the ramification of household projections included at Table 1. By way of example in the 75 to 84 age group there will be a 30% increase in households during the period 2014 to 2039. However, in the 25 to 34 age group there will be a reduction in households of 4% over the same period.

**Table 1 Ageing Population and Household Projections**



**Source: DCLG 2014-based household projections**

Of the estimated 5.3m household growth during the period 2014-2039, there will be a 3.9 million growth in households with Household Reference Person aged 65 plus, that is 74%.

Perhaps even more alarming is the fact that the households with Household Reference Person aged 85 plus will increase by 1.3 million.

When one looks at the profile of dwellings occupied by older age groups, included at Table 2, it shows that 37.4% of households in the 85 plus category are in accommodation with 3 or more bedroom accommodation. It also shows that 53.1 % of households in the 60 to 84 category are in 3 or more bedroom accommodation.

**Table 2 Dwelling Stock Profile**

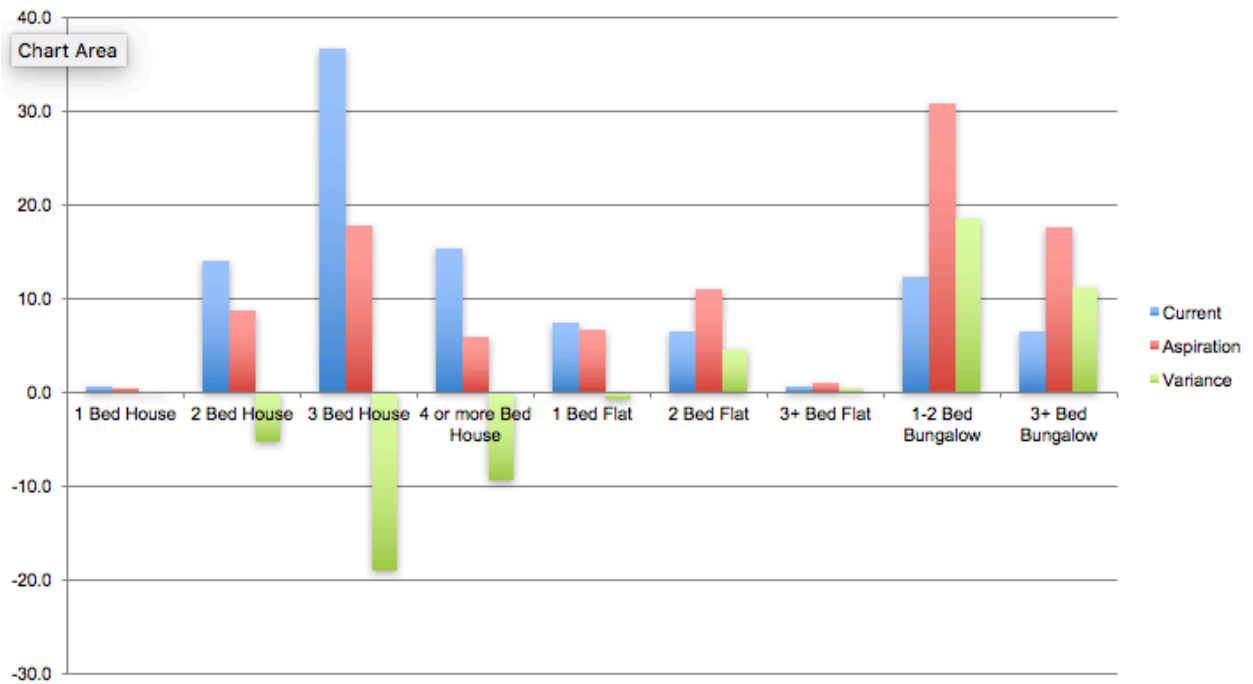
Dwelling type	Age Group			
	60-84	85+	All Older	All Age Groups
1 Bed House*	0.6	0.0	0.6	0.5
2 Bed House*	14.1	13.3	14.1	17.6
3 Bed House	37.2	30.4	36.8	39.5
4 or more Bed House	15.9	7.0	15.3	18.0
1 Bed Flat	7.1	11.9	7.5	6.7
2 Bed Flat	6.2	8.7	6.4	6.9
3+ Bed Flat	0.7	0.5	0.7	0.7
1-2 Bed Bungalow	11.6	21.7	12.3	6.5
3+ Bed Bungalow	6.5	6.7	6.5	3.6
Total	100.0	100.0	100.0	100.0
Base (weighted)	157901	11265	169166	416352

**Source:** arc4 household surveys

Table 3 evaluates older persons household aspirations, current accommodation with aspirations and variance. The table shows that there is a negative variance of almost 20% in 3 bedroom houses and just under a 10% negative variance in 4 or more bed houses. Whereas there is a positive variance of just under 20% in 1-2 bedroom bungalows and just over a 10% positive variance in 3 plus bedroom bungalows.

**Table 3 Older Persons Household Aspirations**





**Source:** arc4 household surveys

**Rightsizing:** Table 4 shows the aspirations of households with 54.7% of households aspiring to move into a smaller property, with 62.7% expecting to do so. This can be compared with 11.7% of households aspiring to moving into a larger property, albeit only 7.7% expect to do so.

Recent studies in the South East by arc4 have revealed that help to encourage people to move would be welcomed; with 65.2% of households wanting information about what types of housing are available, 54.1% help with moving to a new property and 26.7% wanted help in sorting out possessions and de-cluttering.

**Table 4 Rightsizing**

Move type	Aspiration (%)	Expectation (%)
Moving to smaller property	54.7	62.7
Staying same	33.6	29.6
Moving to larger property	11.7	7.7
Total	100	100
Base	3095	2874

Source: arc4 household survey

### Planning Policy

Clearly identifying Objectively Assessed Need / local housing need correctly is both an art and science, it involves a degree of judgement. Thereafter, it is a matter of ensuring that the policy framework is fit for purpose. In this regard it is helpful to have regard to the observations of Lord Gill in *Suffolk Coastal* :

“I regret to say that I do not agree with the interpretation of the words “relevant policies for the supply of housing” that Lindblom LJ has favoured. In my view, the straightforward interpretation is that these words refer to the policies by which acceptable housing sites are to be identified and the five-years supply target is to be achieved. That is the narrow view. The real issue is what follows from that.”<sup>22</sup>

In developing policies by which acceptable housing sites are to be identified and the five-years supply target is to be achieved; there is a concern that the nuance of housing requirements and needs of the aging population set out above are not sufficiently considered; however, delivering the nuance of housing requirement (and obvious needs such as the requirements of the aging population), may well be the difference between providing the housing we need and not.

### Comment

**New Proposals for Calculating Housing Need:** The purpose of this article is to examine whether the new proposals for calculating housing need and the Housing White Paper proposals will deliver more housing.

A move towards a standardised approach for calculating housing need is welcomed as this will help avoid considerable debate over housing numbers and provide a more transparent process to assess housing need. Within the process, there is a consideration of affordable housing need and there is scope to increase delivery to reflect broader strategic goals.

Currently there is little direction given as to how additional dwelling need will be appraised

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<sup>22</sup> At [82]

over and above the demographic projections and market signals, but an overall cap on the level of any increase in housing numbers is suggested. One of the initial outcomes of the new methodology is a skewing of development towards southern and eastern authorities. This in part is due to the impact of land value on house prices and the resulting impact this has on affordability and market signals. However, this approach runs the risk of underestimating market signal adjustments in areas with lower land values: addressing this would help to rebalance housing delivery towards the north and midlands. The consultation does not suggest that constraints (such as the Green Belts, AONBs or national parks) will cease to be relevant when arriving at an overall housing requirement.

It is an unfortunate result of the new methodology that many areas which see a large increase in their need figure are also those with acknowledged constraints, meaning that their overall housing requirement is likely to be considerably less than the consultation paper would suggest. Additionally, a number of authorities which see a large reduction in their need figures are in areas without many constraints and so would have the capacity for greater housing. Whilst the consultation paper envisages authorities adopting methodologies which produce higher figures than the standard method, it is unlikely this will occur in many areas, as the local political narrative is generally skeptical of providing housing above the minimum.

In order to boost housing supply, the Housing White Paper contemplates introducing a Housing Delivery Test, via amendments to the NPPF, which would establish a set of consequences for under-delivery. For example, by November 2020 it is said, a presumption in favour of sustainable development in the National Planning Policy framework would apply if delivery falls below 65% of the annual housing need figure.

From a developer's perspective, the Government is setting a very low bar. The concern is that for Council's resisting development 65% may become the new benchmark. If we are to deliver more houses, the aspiration must be to deliver 100% of the housing need in an area; to do otherwise means that in many parts of the country housing needs will simply not be met.

**Affordability and Affordable Housing:** It is recognised that an adjustment for affordability and affordable housing are different steps in the process. Under the new proposals there is an affordability led adjustment but a Council will still need to consider whether to uplift that figure to meet some or all of the affordable housing need (as well as other specialist needs, e.g. C2 care, student accommodation).

Step 2 of the new model relates to an affordable housing adjustment through a market signals uplift; there may be consideration of additional affordable housing as part of a strategic response to local issues but the consultation does not differentiate between the affordability adjustment and an uplift to meet some/all of the affordable housing need; which was one of the issues associated with the existing process for deriving a Housing Requirement. It remains to be seen whether affordable housing need and other specialist accommodation needs are met effectively via policy-on adjustment, or whether they are now lost in a argument about constraints.

## Leakages & Blockage:

Tim Harford, as the 'undercover economist', published an article in the Financial Times magazine entitled 'Why economists should be more like plumbers' and stated:

“After the system has been installed, both plumber and economist must tinker with it as leaks and blockages become apparent.”

FT Magazine 21/22 January 2017

The foundation of modern town planning in the United Kingdom is the Town and Country Planning Act 1947 and over the last 70 years we have had leaks and blockages which have resulted in the overhaul of the system; the latest reincarnation being the 1990 Act. Since that date we have had amendments to the system and policy guidance including with the NPPF in 2012. The White Paper and Needs Consultation are yet further reviews of the system.

It is evident from the Housing White Paper published earlier this year that the changes introduced within the NPPF in 2012 have not delivered sufficient good quality homes. It is perhaps tempting fate to restate Ashley Bowes question of 2012 as to whether the much awaited consultation, setting out a standard and simplified approach to defining Objectively Assessed Need, will provide a path to delivering the good quality housing that the country requires?

However, the starting point for any evaluation is objectively assessing requirements in a consistent manner, endeavour to strike a balance between rented and owner occupied property, provide clear guidance on assessing affordable need and taking account of demographic change in particular the needs of the elderly.

From the point of view of the property industry tinkering with leaks and blockages creates uncertainty. The planning system needs to be fit for purpose and that includes correctly identifying housing requirements. However, the system must facilitate the development of innovative solutions to existing and future challenges. It must also facilitate the reincarnation of tried and tested solutions, which includes new towns and villages.

The search for Holy Grail is a legend and the goal elusive; delivering an adequate supply of good quality housing has proven elusive albeit it is too important to the welfare of the nation to give up the search.