

SOUTH EAST ENGLAND REGIONAL ASSEMBLY REGIONAL PLANNING COMMITTEE

Date: 19 March 2008

Subject: **Windfall Provision Update**

Recommendation:

It is recommended that the Committee note the contents of this report.

At the November 2007 meeting, the Regional Planning Committee requested an update on the Government's position with regards to the inclusion of housing windfall allocations in LDFs. This paper clarifies the guidance and updates our experience in the region so far.

Key conclusions:

1. There are no circumstances that would from the outset justify reliance on windfalls in housing supply trajectories.
2. The Planning Inspectorate would accept windfalls in housing supply trajectories only where it can be clearly demonstrated that alternatives have been properly tested in accordance with the requirements of PPS3.
3. It is important that all authorities in the region that have not yet completed a *Strategic Housing Land Availability Assessment* to do so as soon as is practicable.

Background

- 1.1 PPS3 introduced a step change in the identification of housing land supply, with the specific intention of both increasing supply and increasing the certainty regarding where additional housing would be provided. It requires demonstration of a 15 year rolling land supply, including identified sites and not windfalls for the first ten years in all but exceptional circumstances.
- 1.2 These objectives are particularly challenging in locations with few identifiable sites or areas of reserve land, such as large parts of the South East, which in the past have relied heavily on small windfall sites to meet housing targets.

2. Defining windfalls

- 2.1 Windfalls are commonly understood as (residential) developments on sites not allocated in a development plan/LDF. It is important to understand that PPS3 defines them slightly differently:

“Windfall sites are those which have not been **specifically identified as available in the local plan process**. They comprise previously-developed sites that have unexpectedly become available.” (PPS3 footnote 31, emphasis added).

- 2.2 It follows that under the PPS3 definition housing development on known available sites which have been considered in formulating an LDF, but not allocated, would **not** count as windfalls – because the sites had been identified already. Such consideration would take place through a Strategic Housing Land Availability Assessment (SHLAA).

3. The current role of windfalls in housing supply

- 3.1 Under PPG3 windfalls had an accepted role as a routine, up-front element of housing supply within housing capacity studies. This is no longer the case, and old-style capacity studies are no longer sufficient to meet the evidence and testing requirements of the LDF process (the main process differences are summarised at Annex A).

- 3.2 PPS3 states:

“Allowances for windfalls should not be included in the first 10 years of land supply unless Local Planning Authorities can provide **robust evidence of genuine local circumstances that prevent specific sites being identified**. In these circumstances, an allowance should be included but should be realistic having regard to the Strategic Housing Land Availability Assessment (SHLAA), historic windfall delivery rates and expected future trends. (para 59, emphasis added).

- 3.3 Before turning to what might constitute ‘robust evidence of genuine local circumstances’, a key point follows. The decision to include a windfall element within the first ten years of supply **cannot be soundly made before undertaking a thorough SHLAA**. Practice guidance clearly indicates that a decision to include windfalls is the last step of the assessment process. SHLAAs should aim to identify as many sites with housing potential in and around as many settlements as possible in the study area. Windfalls are the last resort in terms of components of housing supply, if, once all other identifiable sources of capacity have been thoroughly probed through the SHLAA process, there is still a shortfall in supply compared to RSS targets. If this situation arises GOSE suggest that the windfall matter be discussed with them.

4. Genuine local circumstances

- 4.1 PPS3 recognises that there may be genuine local circumstances where a windfall allowance is justified, and both GOSE and CLG reiterate this (see for example correspondence from MP Ian Wright to PUSH at Annex B). But it appears government will not be drawn into a statement that sets a precedent or creates any kind of presumption that windfalls may be appropriate in any given set of circumstances. Recent Planning Advisory Service advice on SHLAAs¹ (sponsored by DCLG but with no statutory weight) explicitly states:

“It is not considered safe for this advice note to offer advice on circumstances where there may be the necessary genuine local circumstances where a windfall allowance is justified. This is because the implicit test involved must turn on the **particular local situation.**” (p.14, emphasis added)

- 4.2 In other words, genuine local circumstances cannot be pre-identified, as the circumstances - essentially a lack of any identifiable alternative – have to be demonstrated through the SHLAA process. The decision will be more credible if it reflect the views of the whole SHLAA partnership, which will include market partners, and not just those of the local authority.

“Where there is a shortfall, the methodology advises that assumptions should be re-visited, or further broad locations should be considered, or possibly the authority may now seek to make a case for the use of a windfall allowance.” (PAS advice p.8)

“Coming to an informed view on a windfall allowance means reflecting how comprehensive and intensive the survey has been in identifying sites and broad locations for future growth, and the extent to which the Assessment has been informed by the industry and by market intelligence.” (SHLAA Guidance² para. 52)

- 4.3 That said, it is possible to generalise about the *kind* of circumstances where a case for windfalls *may* be easier to make. PAS advice – noting again this has no formal status - is as follows:

“It is recognised that in some areas national designations, green belt or other policy considerations will mean that there are strong planning reasons to seek to avoid or minimise the release of greenfield sites for housing. The approach set out in the SHLAA methodology will particularly suit such situations.”

“Survey can focus on identifiable sites to assess whether sufficient developable sites can be identified to meet plan targets.

¹ Strategic housing land availability assessment and development plan document preparation (PAS/IDeA Jan 2008)

² Strategic Housing Land Availability Assessments Practice Guidance (July 2007, DCLG)

Then, if the finding is that there is a shortfall in the potential supply from identifiable sites, the planning authority can consider whether to identify broad locations for future housing growth, which may involve the need to review green belt boundaries or seek to make a case to include allowance for windfalls ... ***This decision may be influenced by the nature of the areas which would need to be considered for development, and the impact their development would have.***” (pp.7-8, emphasis added).

- 4.4 In essence, windfalls are more likely to be an acceptable element of supply if following careful assessment of brown and greenfield options there is a combination of insufficient identifiable sites to meet targets and higher order planning constraints on land remaining undeveloped.

5. PPS3 interpretation in the South East

- 5.1 Annex C summarises the windfall-related aspects of six Core Strategy and one other DPD Inspectors reports, of which five rely on windfalls to some extent. There is one example where local circumstances have been clearly demonstrated through detailed evidence (Reading), and a strategy with significant but carefully analysed windfall element contributing after the first five-year band has been accepted as sound. There is another where an authority has failed to substantively address the requirements of PPS3 and was found unsound (Windsor & Maidenhead). The other three where windfalls are a factor in supply have been found sound but with clearly expressed misgivings and typically caveated by reference to need for early review and/or expectation of further supply or site assessment work in the near future.
- 5.2 Annex D summarises some other DPD-related meetings and correspondence. These indicate that GOSE is taking an active role in DPDs as they near submission, where necessary flagging housing supply soundness issues which Inspectors then tend to follow up in exploratory meetings or by correspondence. Common themes in GOSE commentary include:
- PPS3 and the plan-led approach are predicated on front-loading and certainty. This requires authorities to be proactive in actively identifying housing supply. Reliance on windfalls is essentially reactive and is likely to produce doubt not certainty.
 - Greater certainty about where and when housing will be delivered will support sustainable communities by facilitating timely provision of supporting services and infrastructure. This is not possible where there is significant reliance on piecemeal, windfall delivery, which may also consequently overburden existing facilities.
 - That windfalls may be small sites not readily identifiable, does not mean that they cannot be planned for in terms of identifying and supporting the general areas they are likely to arise in.
 - Windfalls in the traditional sense are a finite resource stimulated by the brownfield focus introduced in PPG3, and cannot be relied upon

indefinitely. Stronger policy regarding the likes of floodplains or Special Protection Areas may mean that sites that may once have come forward for housing will no longer do so.

- 5.3 GOSE advice is to contact them if having undertaken a SHLAA an authority is still short of its strategic target. In principle they will support cases where the necessary evidence has been gathered and tested.

6. Conclusions

- 6.1 There has been a transition period where Inspectors have made pragmatic decisions on DPDs supported by pre PPS3 evidence. A much firmer, PPS3-compliant line is emerging.
- 6.2 If it is clearly demonstrated through a comprehensive SHLAA that sites cannot be identified (ie there are genuine local circumstances) Inspectors have accepted a windfall element in housing supply. On the limited evidence so far, they appear more inclined to do so when:
- The windfall element is modest to start with and part of a supply package that includes sites with certainty of supply, especially in years 0-5;
 - Windfall contributions are based on detailed monitoring analysis of the components of past windfall supply eg type and location, plus evidence to show that these will continue;
 - There is evidence that future DPD work eg on site specific allocations will identify further sites to reduce the future extent of reliance on windfalls; and not least
 - There is evidence that specific sites cannot be identified.
- 6.3 It is unlikely that a lack of identifiable sites – the key element of ‘genuine local circumstances’ - can be demonstrated without first undertaking a SHLAA. Authorities that have yet to undertake a SHLAA should do so as soon as is practicable to help ensure their LDF housing approach is soundly based.
- 6.4 A secondary benefit to doing so is that SHLAAs could underpin future authority advice on housing supply and capacity as part of the anticipated review of the South East Plan.

Annex A

| Differences between an Urban Capacity Study and a SHLAA | |
|---|---|
| Urban Capacity Study | SHLAA |
| Study only covered existing urban areas | Assessment can cover all settlements with housing potential, both urban and rural, going beyond existing settlements |
| Study only covered previously-developed sites | Assessment can cover all sites or broad locations with housing potential, both previously-developed and greenfield land |
| Underpinned a sequential approach where supply within existing urban areas was assessed before considering the release of sites outside the urban areas | No requirement to follow a sequential approach to identifying supply. Aim is to find suitable specific sites and broad locations (where appropriate) for housing, which can cover urban and rural areas, and may go beyond existing settlements |
| Survey element of study was required to identify enough housing land to meet the housing target | Assessment needs to identify enough housing land so that plans can maintain continuous delivery of housing for at least 15 years. Can investigate all sites and broad locations with housing potential |
| The calculation of supply from windfalls was integral to the study and housing land supply approach | No allowance should be made for windfalls in the first ten years unless there is robust evidence of genuine local circumstances that prevent specific sites being identified |

Annex B: Correspondence between CLG and PUSH



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18 December 2007

Dear Secretary of State

Interpretation of PPS3

I am contacting you to seek confirmation over the interpretation of a key aspect of PPS3 in the context of urban South Hampshire.

I chair the Joint Committee of the Partnership for Urban South Hampshire (PUSH) which comprises the eleven authorities whose area, or part thereof, is within South Hampshire. PUSH has set itself a target of raising the rate of economic growth in South Hampshire from around 2.75% per annum now to 3.5% by 2026. PUSH is committed to delivering the new business development and housebuilding which is needed to achieve that economic growth target. This means 80,000 new homes during 2006 – 2026 which is around 20 percent above the current RPG housebuilding rate. Reflecting this, PUSH was selected last year as a New Growth Point.

The spatial strategy for South Hampshire is that around two thirds of the 80,000 new homes will be provided through existing allocations and other brownfield sites in existing urban areas. The remainder will be new greenfield allocations: two Strategic Development Areas (of 6,000 and 10,000 homes) and several smaller urban extensions. The total amount of development and the spatial distribution have been endorsed by the South East Plan EiP Panel. They also praised the soundness of the evidence base which lies behind the strategy.

The constituent PUSH authorities are now preparing their Local Development Documents (LDDs) which will enable delivery of this housebuilding. All these authorities are committed to their share of the 80,000 homes target. They also intend, in line with PPS3, to maximise the proportion of this target which is on identified sites. However, in the context of South Hampshire – with many local authorities comprising areas which are already wholly or largely developed – we believe that it will not be possible to identify every site in LDDs.

Cont/.....

Housebuilding on sites not identified in Local Plans has been a significant and sustained contributor to housing supply in South Hampshire. Unidentified sites of this sort have accounted for an increasing number of all new dwellings built in the PUSH authorities, rising from 2324 in 2000/1 to 3133 in 2005/6. The latter represents 60 per cent of all dwellings built. This gives confidence that such sites can provide for a proportion of future housing supply.

PUSH is therefore concerned by the statement in paragraph 59 of PPS3 that *"allowances for windfalls should not be included in the first 10 years of land supply unless Local Planning Authorities can provide robust evidence of genuine local circumstances that prevent specific sites being identified"*. We do not take issue with the size of such allowances having to be based on robust evidence including the Strategic Housing Land Assessment required by PPS3, but the tenor of the paragraph makes such allowances an exception to the rule.

PUSH believes that it will be possible for many South Hampshire Authorities to demonstrate through their Strategic Housing Land Assessments and other evidence that some allowance for unidentified/windfall sites is justified and appropriate in their area. The point at issue, however, is that if many – if not the majority – of the ten PUSH authorities do this, it would appear to be at odds with PPS3 regarding such allowances as exceptions to the rule. This prompts concern about how Planning Inspectors would interpret the position of South Hampshire authorities in relation to this wording, compared to a situation where similar evidence was presented by a single authority.

I understand that Ministers take the view that PPS3 does not prevent authorities from including an allowance for windfalls in their plans if they can demonstrate why they cannot identify sufficient sites for housing. I believe that Ministers do recognise that in some urban areas this is likely to be the case.

Whilst this may be a matter which my colleagues in other areas may raise with you, as Chair of PUSH I seek your re-assurance that our robust and carefully evidenced strategy for South Hampshire will not be undermined by an interpretation of PPS3 which rules out an allowance for unidentified sites in Local Development Documents, subject of course to the size of such allowances being based on sound evidence which demonstrates that authorities have taken reasonable steps to identify as many as sites as possible.

I await hearing from you.

Yours sincerely



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29 JAN 2008

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Dear Councillor Woodward, 25 JAN 2008

INTERPRETATION OF PPS3

Thank you for your letter of 18 December to Rt Hon Hazel Blears MP concerning the approach to identifying land for housing set out in PPS3. I am replying as this falls within my Ministerial responsibilities.

The Government welcomes the commitment that PUSH has shown towards housing delivery, consistent with the Government's housing ambitions. In particular, we welcome your members desire to follow a plan-led approach to housing which seeks to use suitable brownfield sites as well as getting Local Development Frameworks in place as soon as practicable.

Turning to the point you raise, PPS3 does not stop local authorities taking advantage of windfall sites to boost the delivery of housing in their areas. But it does seek to ensure that, generally speaking, housing provision is properly planned, and that local authorities develop clear and informed strategies for the location of housing development, and for the infrastructure needed to service it. This is why PPS3 asks local authorities, wherever they can, to identify specific sites in their plans where they consider homes should be built and discourages an over-reliance on windfall sites (such as garden land) that may come forward randomly and speculatively.

As you rightly state in your letter, the Government does recognise that in some circumstances it may make sense for local authorities, within a planned strategy, to include a windfall allowance in planning their land supply. This means that authorities within an area like PUSH could follow such an approach providing they can clearly demonstrate why, in the particular circumstances of their individual local areas, specific sites cannot be identified. Our objective is, however, that wherever possible, land supply and housing delivery benefit from a plan-led approach.

I hope this provides you with the reassurance you are seeking.

*Yours sincerely
Iain Wright*

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IAIN WRIGHT

Annex C: Windfall issue treatment DPD Inspectors' Reports

C1. Epsom & Ewell 16 May 2007

The strategy was found sound despite failing some tests of soundness and the inspector expressing serious misgivings about the certainty of housing supply and quality of the (PPG3-style) evidence base. This was an examination held shortly after PPS3 was published and the decision is pragmatic in that respect, so it is best considered a transitional case rather than a firm precedent.

Epsom and Ewell is a compact Borough where land is either in the Green Belt or within the built-up area. The components of supply include 2 elements of windfalls, small and medium sites, providing approximately 20% of supply in the first ten years.

The inspector's housing supply conclusion was:

"I do not have the evidence to be certain that it would be impossible for the Council to allocate sites in the urban areas to provide a 10 year supply without reliance on windfalls, but that would seem very unlikely in such a compact and generally densely developed. There are clear local circumstances which give support to reliance on windfalls....I was satisfied that the strategy will deliver in the short to medium term the housing the Borough needs to provide and there is the opportunity for the evidence base to be improved in time to take any necessary action to ensure housing provision is met in the long term."

C2. Tonbridge and Malling Core Strategy 15 August 2007

A ten-year supply of developable sites was identified, principally in four large urban extensions, and the strategy was found sound. The accompanying comment shows the positive aspect of meeting PPS3 requirements in terms of defending more sensitive locations from development pressure:

"One of the most fundamental consequences of this conclusion is that I find there is no justification for a general review of Green Belt boundaries, or a need to identify greenfield locations to meet general housing requirements."

C3. Crawley Core Strategy Inspector's Report 20 August 2007

The approach to housing land provision meant the core strategy could only be found sound on a very short-term basis, and that an early review will be required to give more certainty of provision longer-term.

In terms of context, Crawley had for some time lagged its housing targets due to safeguarding of land planned for an urban extension for the potential expansion of Gatwick airport. It was able to specify a short-medium term supply of sites to both meet targets and catch up the backlog, but longer term supply suggested a future build-up of backlog would occur. Windfalls accounted for at least 20% of supply.

The inspector concluded "...the evidential base for the Council's allowance upon windfalls is weak. It appears that windfalls have been assumed to make up whatever residual requirement remained after deduction of more certain sources of supply....I can find no basis for either [potential windfall] figure in the Urban Housing Potential Study and it is contrary to advice in PPS3 to rely upon windfalls in the absence of genuine local circumstances that prevent specific sites being identified."

C4. Windsor and Maidenhead Core Strategy Inspector's Report 3 October 2007

The core strategy was found unsound primarily due to:

"The heavy reliance on an uncertain supply of unidentified windfall opportunities to satisfy the strategic housing requirements and ensure the continuous delivery of housing completions over the plan period in accordance with PPS3 guidance..."

In terms of context, urban areas in the authority are tightly confined by longstanding greenbelt. The housing trajectory included windfalls in years 6-10, contrary to PPS3.

The inspector accepted that windfalls would continue to form a significant component of housing supply, but considered them to be a finite resource likely to diminish. He concluded no compelling evidence had been provided to demonstrate a lack of alternative supply sources and justify reliance on windfalls, and that the Core Strategy needed a more extensive review of potential housing sites not just re-cycling previously developed land within settlement boundaries.

C5. Bracknell Forest Core Strategy Inspector's Report 16 October 2007

The Inspector found the core strategy sound. Initially an 8% windfall allowance was included in years 0-10, but it also exceeded minimum requirements if PPS3 elsewhere in that it identified specific sites for 50% of requirements for the following decade. A site allocations DPD was in progress and the council confirmed during the Examination their intention therein to identify specific sites to replace the original windfall element of supply years 1-10.

C6. Mid Sussex Small Scale Housing Allocations DPD 14 November 2007

This document was submitted for examination prior to the core strategy, to identify housing supply from small sites to meet requirements in housing trajectory years 1-10. It was found sound including a windfall allowance of approximately 22%. Whilst surprising there was a clear caveat indicating this was a pragmatic decision – the DPD was only for small sites and the Inspector introduced a clear presumption that the Core Strategy (since submitted) would consider wider supply issues including larger sites, and re-state the windfall position accordingly.

C7. Reading Core Strategy Inspector's Report 3 December 2007

The Inspector found the core strategy sound despite reliance on windfalls in the forest ten years, concluding thus:

“Reading’s constrained boundaries and highly pressured urban area mean that the emergence of sites is often unpredictable and identification of deliverable sites presents difficulties. Having regard to evidence showing how windfalls have contributed in recent years, I consider that there are genuine local circumstances that support retention of an element of windfall provision in the housing trajectory.

In terms of context, Reading demonstrated that, respectively, known and emerging sites would meet a significant proportion of the 0-5 and 6-10 year requirement. These in combination with clearly evidenced windfall trends would meet and exceed the strategic housing target. Reading broke the windfall element down into a number of more specific subcategories. They showed ‘robust and up-to-date evidence’ that some of these would be replaced by large sites yet to be finalised but emerging from preparation of a Site Allocations DPD informed by an SHLAA in progress. The Inspector considered that their process of monitoring and updating information on housing land supply and delivery gave a strong indication that reliance on windfall sites would be reduced as brownfield sites are identified.

Annex D: Other DPD-related windfall and housing supply experience

D1. Spelthorne Core Strategy

Following submission of the draft Core Strategy to the Planning Inspectorate in June 2007, there has been lengthy correspondence between Spelthorne, GOSE and the Inspector, and post-submission revisions by the council. Housing supply is one key issue. Implicitly this is a windfalls issue as one of the areas of concern is the identification of housing sites and testing of capacity to demonstrate housing deliverability. The latest GOSE correspondence includes the following points, which underscore the need to have a robust housing supply evidence base in place:

“We are pleased to see the distribution table [*of development including housing between major settlements*] which with the other changes, may be sufficient to tip the balance in favour of soundness with the following provisos:

1. That the distribution is underpinned by the evidence base and sustainability appraisal and that it meets economic and social needs and at the same time is deliverable on the basis of land-availability evidence.
2. That timescales for delivery are underpinned by evidence and trajectories.
3. That reasonable contingencies are in place.

D2. Wycombe Core Strategy

Extracts from the exploratory meeting notes 28 June 2007

“The Inspector asked GOSE to comment on the issue of windfalls, particularly in the context of para 59 of PPS3. **He asked what circumstances a local planning authority would have to demonstrate to justify including a windfall allowance.** He indicated that WDC say there is a 'constant supply' of housing, and that they could provide evidence of genuine local circumstances in compliance with para 59 pf PPS3. [*emphasis added*]

GOSE outlined their main issues in relation to housing land supply. In relation to windfalls, the guidance is there to try to provide more certainty over delivery. **The exception set out in para 59 of PPS3 is not really about whether it is appropriate to include a windfall allowance, but whether it is possible to identify sites or not.** [*emphasis added*]

The subsequent GOSE examination submission stated:

“At the more detailed level, GOSE’s main concern is that the Council made, and seemingly is still making, a significant allowance (approx 33%) for windfalls in its delivery calculations. While PPS3 allows for the possibility that a local authority can provide robust evidence of genuine local circumstances that prevent specific sites being identified, GOSE believes the extent of Wycombe’s reliance is contrary to PPS3 para 59