



Despite the controversy and
hullabaloo, will the
government change planning
policy over the five-year land
supply and housing delivery
test?

David Brock

BrockConsulting.co.uk

Disclaimer

- Specific legal advice should be sought for specific problems
- Nothing in this talk is intended to be legal advice
- In fact it is a lecture by a retired planning lawyer talking about policy and speculating about politics
- David Brock does not accept any liability for this lecture

Where do we start?

- S.38(6) Planning and Compulsory Purchase Act 2004
 - "If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise"
- NPPF, para 11
 - "Plans and decisions should apply a presumption in favour of sustainable development", i.e.
 - "where ... the policies which are most important ... are out-of-date granting permission unless ... [clear reason to override area/asset protection policies], or adverse impacts ... significantly and demonstrably outweigh the benefits, when assessed against [whole NPPF]"

And what does out-of-date include?

- NPPF, Footnote 7
 - This includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five-year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 73); or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years. Transitional arrangements for the Housing Delivery Test are set out in Annex 1.
- NPPF para 75
 - Where the Housing Delivery Test indicates that delivery has fallen below 95% of the local planning authority's housing requirement over the previous three years, the authority should prepare an action plan ... to increase delivery

So, what has been happening?

- Pre-2017 – no detail on calculating need, different councils used different tests
- July 2017 – Sajid Javid (SofS at MHCLG) gave a speech calling for a new approach – honest and objective assessment
- September 2017 – consultation – “Planning for the right homes in the right places”

Planning for the right homes in the right places

- [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/652888/Planning for Homes Consultation Document.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/652888/Planning_for_Homes_Consultation_Document.pdf)
- It's a consultation, September 2017
- Three steps – set the baseline, adjust for market signals, cap the level of any increase
- Consultation on the draft NPPF, March 2018 – Sajid Javid announces he will introduce a standard method
- Government response – July 2018

Guidance on housing need assessment

- <https://webarchive.nationalarchives.gov.uk/20181220233634/https://www.gov.uk/guidance/housing-and-economic-development-needs-assessments>
 - 1 Set the baseline – use national household growth projections, calculate projected average household growth over 10 year period
 - 2 Adjust for affordability
 - 3 Cap the increase
- September 2018 – ONS release 2016-based household projections, revising projections downwards
- Controversy about how housing need should be calculated is reignited

Flames or fire extinguishers?

- Housing Minister, Kit Malthouse, reported as saying that, following the release, the Government was considering options for change to the standard method and would be consulting on it
- October 2018 - Technical consultation on updates to national planning policy and guidance
 - <https://webarchive.nationalarchives.gov.uk/20190103050632/https://www.gov.uk/government/consultations/changes-to-planning-policy-and-guidance-including-the-standard-method-for-assessing-local-housing-need>
- Nothing to see here?

NPPF published

- February 2019
- Standard method reiterated
- Appears in the NPPF, para 60
 - To determine the minimum number of homes needed, strategic policies should be informed by a local housing need assessment, conducted using the standard method in national planning guidance – unless exceptional circumstances justify an alternative approach which also reflects current and future demographic trends and market signals ...

Rethinking the Planning System for the 21st Century

- Policy Exchange paper – January 2020
 - Sees the planning system as restrictive
 - Sees the system as contradictory set of case law and policy
 - Says that s.106 agreements began in 1990

August 2020

- Coronavirus pandemic
- A level crisis / algorithm
- "Changes to the current planning system: Consultation on changes to planning policy and regulations"
 - https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/927157/200805_Changes_to_the_current_planning_system.pdf#page=12
- A new baseline is suggested

Changes to the current planning system: Consultation on changes to planning policy and regulations

- The new baseline – the new Standard method
- “... *whichever is the higher of 0.5% of existing housing stock in each local authority OR the latest projected average annual household growth over a 10-year period.*”
- Lichfields analyse
 - <https://lichfields.uk/grow-renew-protect-planning-for-the-future/how-many-homes-the-new-standard-method/>
- “... most of the increases [were] in the areas where the gap between house prices and incomes was greatest. This unleashed a political and media storm ...”

The mutant algorithm was born (though it's actually a formula)

“Planning for the Future”

- A White Paper on reforming the planning system
- Issued simultaneously with the new Standard Method
- Clearly based on the Policy Exchange paper
- Zoning system
 - Rules based
 - Remove discretion
 - Abolish section 106 agreements which it sees as a tax system
- What was the reaction?

The result - November 2020

- Telegraph reported that the proposed revised standard formula was being “*rebalanced*” and changes would be announced “*within weeks*”.
- Planning magazine – “*Nobody interviewed for this article doubted that the government wants to placate its backbenchers by changing the revised standard method.*”
- 16 December 2020 – ‘Government response to the local housing need proposals in “Changes to the current planning system”’

Government response

- “We do not propose to proceed with the specific changes to the standard method that were consulted on. The reasons for this are set out below. Instead we will proceed with a reformed standard method which reflects our commitment to levelling up and enables regeneration and renewal of our urban areas as we recover from the COVID-19 pandemic.”
- <https://www.gov.uk/government/consultations/changes-to-the-current-planning-system/outcome/government-response-to-the-local-housing-need-proposals-in-changes-to-the-current-planning-system>

What's the difference?

- Step 1 – set the baseline
 - Step 2 - Affordability adjustment
 - Step 3 – Cap the increase
 - Step 4 - Cities and urban centres uplift
-
- Per Lichfields – “the Government ... solution: scrap its August proposals, revert back to the method it introduced in 2018, but with a modification to top up the number in the 20 largest cities and urban areas by 35% ... “

Lichfields' analysis (extract)

	Current Local Plan requirement	Average delivery (last 3 years)	Standard Method (2017)	"Mutant Algorithm"	Standard Method (2020, with cities and urban centres uplift)
Bristol, Gloucestershire, Wiltshire and Somerset	13,766	14,295	14,795	20,818	15,623
Bath and North East Somerset	720	1,151	648	1,216	648
Wider Bristol	3,729	3,917	5,145	6,742	5,973
Bristol	1,320	1,535	2,368	2,490	3,196
North Somerset	1,049	820	1,365	1,708	1,365
South Gloucestershire	1,360	1,562	1,412	2,544	1,412
Swindon-Wiltshire	3,567	3,445	3,036	4,383	3,036
Swindon	1,467	887	1,030	1,466	1,030
Wiltshire	2,100	2,558	2,006	2,917	2,006
Cheltenham-Gloucester	1,768	1,860	1,754	2,143	1,753
Cheltenham	546	582	531	528	531
Gloucester	727	495	658	578	658
Tewkesbury	495	782	564	1,037	564
Rural Gloucestershire	1,199	1,538	1,492	2,603	1,492
Cotswold	420	676	487	1,209	487
Forest of Dean	323	287	370	608	370
Stroud	456	575	635	786	635
Somerset	2,783	2,384	2,721	3,731	2,721
Mendip	419	526	599	1,064	599
Sedgemoor	644	481	746	824	746
South Somerset	725	624	685	612	685
Somerset West and Taunton	995	753	691	1,231	691

Will the Government change the five year supply test?

- What does history tell us? Two cases:
 - Franklin v. Minister of Town and Country Planning (1947)
 - Lewis Sikin “I want to carry out in Stevenage a daring exercise in town planning. It’s no good your jeering, it’s going to be done (applause and boos), (cries of “Dictator”).
 - If people become fractious and unreasonable I shall have to carry out my duty (Voice: “Gestapo”).”
 - Foxley Wood (1989)
 - new town proposal - Chris Patten refused permission. This led eventually to s.54A TCPA, now s.38(6) PCPA 2004; the duty to take decisions in accordance with the local plan unless material considerations indicate otherwise.