Housing

Updated to reflect revised Framework (NPPF): Yes

England

What's New in this version – 26 November 2018

This chapter has been fully updated to reflect changes within the Revised National Planning Policy Framework.

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Contents

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Introduction

1. Inspectors make their decisions on the basis of the evidence before them. Consequently, they may, where justified by the evidence, depart from the advice given in this chapter.

2. Housing casework is likely to be encountered in various guises throughout an Inspector's career. This training material is based on practical experience and is intended to cover the range of issues that you will encounter both in early cases and also in more demanding work as your allocation level increases. It is primarily directed at appeals casework but will also be relevant in the conduct of development plan examinations.

3. The general advice in the ITM chapter *The approach to decision-making* applies to housing appeals as much as to any other type of appeal. The advice below should be read alongside the general advice in that chapter.

4. This training material applies to casework in England only[1] and incorporates key points from caselaw.

Legislation, national policy and guidance

5. At the outset it is important to remember that the statutory provisions in s70(1)(a) of the 1990 Act[2] and section 38(6) of the 2004 Act[3] apply to all planning appeals, including housing appeals. Those provisions are not displaced by paragraph 11 or by any other part of the (Revised) National Planning Policy Framework [the Framework], as Framework paragraph 12 makes clear. In the context of s38(6), the Framework has the status of a material consideration which (when considered together with any other relevant material considerations) may or may not indicate that an appeal should be determined otherwise than in accordance with the development plan.

6. Specific policies on housing are set out in Section 5[4] (paragraphs 59-79) of the Revised Framework. You should be familiar with those policies and also with what is said about planning for housing in Revised Framework Section 3 'Plan-making' (paragraphs 15-37).

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[1] PINS Wales produces separate material for Wales which summarises differences in policy.
[2] "In dealing with an application for planning permission or permission in principle the authority shall have regard to the provisions of the development plan, so far as material to the application." [s70(2)(a) Town and Country Planning Act 1990]
[3] "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**". [s38(6) Planning and Compulsory Purchase Act 2004 – **emphasis added**]
[4] "Delivering a sufficient supply of homes"

7. Some of the key elements of the Revised Framework's housing policies[5] are:

- To support the Government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay.

  [paragraph 59]

- 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. In addition to the local housing need figure, any needs that cannot be met within neighbouring areas should also be taken into account in establishing the amount of housing to be planned for.

  [paragraph 60]

- Strategic policy-making authorities should establish a housing requirement figure for their whole area, which shows the extent to which their identified housing need (and any needs that cannot be met within neighbouring areas) can be met over the plan period.

  [paragraph 65]

- Strategic policy-making authorities should have a clear understanding of the land available in their area through the preparation of a strategic housing land availability assessment. From this, planning policies should identify a sufficient supply and mix of sites, taking into account their availability, suitability and likely economic viability. Planning policies should identify a supply of:

  a) specific, deliverable sites for years one to five of the plan period with an appropriate buffer; and
  b) specific, developable sites or broad locations for growth, for years 6-10 and, where possible, for years 11-15 of the plan.

  [paragraph 67]

- Local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than five years old unless the strategic policies have been reviewed and found not to require updating. The supply of specific deliverable sites should, in addition, include a buffer (moved forward from later in the plan period) of:

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[5] NB these are summaries and you should refer to the Framework for the full text, relevant footnotes, and the Glossary for definitions

a) 5% to ensure choice and competition in the market for land; or

b) 10% where the local planning authority wishes to demonstrate a five year supply of deliverable sites through an annual position statement or recently adopted plan, to account for any fluctuations in the market during that year; or

c) 20% where there has been significant under delivery of housing over the previous three years, to improve the prospect of achieving the planned supply.

[paragraph 73]

- A five year supply of deliverable housing sites, with the appropriate buffer, can be demonstrated where it has been established in a recently adopted plan, or in a subsequent annual position statement which:

  a) has been produced through engagement with developers and others who have an impact on delivery, and been considered by the Secretary of State; and

  b) incorporates the recommendation of the Secretary of State, where the position on specific sites could not be agreed during the engagement process.

  [paragraph 74]

- the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies; and where a need for affordable housing has been identified, planning policies should specify the type of affordable housing required and expect it to be met on site, unless off-site provision or a financial contribution of broadly equivalent value can be robustly justified, and the agreed approach contributes to the objective of creating mixed and balanced communities

  [paragraph 61] and [paragraph 62]

- In rural areas, planning policies and decisions should be responsive to local circumstances and support housing developments that reflect local needs. Local planning authorities should support opportunities to bring forward rural exception sites that will provide affordable housing to meet identified local needs, and consider whether allowing some market housing on these sites would help to facilitate this.

  [paragraph 77]

- To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Planning policies should identify opportunities for villages to grow and thrive, especially where this will support local services. Isolated new homes in the countryside should be avoided unless certain specific circumstances apply

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[paragraph 78] and [paragraph 79]

8. You should also have regard to relevant sections of the government's Planning Practice Guidance [PPG], including:

- *Housing need assessment*[6]
- *Housing and economic land availability assessment*
- *Housing – optional technical standards*
- *Neighbourhood planning*
- *Rural housing*
- *Self-build and custom housebuilding*
- *Starter homes*
- *Build to rent*[7]

9. Some of the implications of this national policy and guidance are explored in the rest of this chapter. The chapter also reflects the extensive caselaw concerning housing appeals since the publication of the 2012 Framework. A new and extensively revised Framework was published in July 2018 ("the Revised Framework"). However, much of the caselaw referring to the 2012 Framework remains relevant, since many of its provisions have been carried forward into the Revised Framework, albeit with modifications and, in most cases, different paragraph numbers. Inspectors may need to refer back to the 2012 Framework to understand how the caselaw relates to the new edition. The footnotes to this chapter provide extracts from, and references to, key judgments.

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The implications of paragraph 11 of the Framework for housing appeal decisions

Framework paragraph 11, decision-taking section

10. Paragraph 11 of the Framework states that plans and decisions should apply a presumption in favour of sustainable development.

11. Paragraph 11 goes on to say, in its "decision-taking" section:

*For **decision-taking** this means:*

c) approving development proposals that accord with an up-to-date development plan without delay; and

d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date[7], granting permission unless:

[6] Formerly *Housing and economic development needs assessments*
[7] First published September 2018

i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed[6]; or

ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

Footnote 6 sets out an exclusive list of the policies in the Framework that paragraph 11 d) i. refers to, and makes it clear that paragraph 11 d) i. does not refer to development plan policies. Footnote 7 (to paragraph 11) is explained in paragraph 16 onwards of this ITM chapter.

12. Framework paragraph 11 c) logically applies only where there is no conflict with the development plan, there are relevant development plan policies, and the relevant policies are not out-of-date. If all these circumstances apply, the development proposal will benefit from the presumption in favour of sustainable development[8] (see paragraphs 47-52 below).

13. If the development proposal is in conflict with a development plan which contains relevant policies, and those policies are not out of date, the proposal will not benefit from the presumption in favour of sustainable development[9]. Framework paragraph 12 advises that *where a planning application conflicts with an up-to-date Local Plan permission should not usually be granted.*

14. Framework paragraph 11 d) applies where there are no relevant policies in the development plan, or the policies that are most important for determining the application are out of date. It is for the decision-maker to determine if there are no "relevant" policies or which policies are "most important for determining the application". The meaning of those phrases has not yet been considered by the courts after the publication of the Framework.

15. While cases where there are no relevant policies may sometimes be encountered, they are likely to be fairly uncommon[10]. It is more likely for the policies that are most important for determining the application to be found to be out of date for reasons which may include a significant change in circumstances, or the emergence of later national policy, including the Framework itself (see paragraphs 212-213 of the Framework)[11]. However, paragraph 213 of the Framework provides that existing policies should not be

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[8] *East Staffordshire BC v SSCLG & Barwood Strategic Land* [2016] EWHC 2973 (Admin) confirms that local plans are intended to be the means by which sustainable development is secured and that up to date plans promote sustainable development.

[9] This is clear from the judgments in *Barwood Strategic Land v East Staffordshire BC and SSCLG* [2017] EWCA Civ 893 and *Trustees of the Barker Mill Estates and Test Valley BC & SSCLG* [2016] EWHC 3028 (Admin*)* and is supported by the approach advocated in *Cheshire East BC v SSCLG* [2016] EWHC 571 (Admin) (paras 19-25).

[10] "A plan cannot be absent or silent if there is a body of policy relevant to the proposal being considered and sufficient to enable the development proposal to be judged acceptable / unacceptable in principle" – *Bloor Homes East Midlands Limited v SSCLG* [2014] EWHC 754 (Admin). See also *South Oxfordshire DC v SSCLG* [2016] EWHC 1173 (Admin).

[11] See *Suffolk Coastal DC v Hopkins Homes Ltd & SSCLG and Richborough Estates Partnership LLP & SSCLG v Cheshire East BC* [2017] UKSC 37, para 55*;* R (Wynn-Williams v SSCLG [2014] EWHC 3374 (Admin)*; Colman v SSCLG* [2013] EWHC 1138 (Admin)*; Gladman Developments Ltd v Daventry DC* [2016] EWCA Civ 1146*;* Borough of Telford and Wrekin v SSCLG [2016] EWHC 3073 (Admin).

considered out-of-date simply because they were adopted prior to its publication. Weight should be given to them depending on their consistency with the policies in the Framework.

16. In addition, footnote 7 to Framework paragraph 11 d) states that:

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 past three years. Transitional arrangements for the housing delivery test are set out in Annex 1.

17. Guidance on assessing whether either of, or both, these criteria apply is given in the next three sub-sections of this chapter.

18. In cases involving the provision of housing where you have determined that the LPA cannot demonstrate a five-year housing land supply, and/or where the delivery of housing in its area has been substantially below the requirement over the past three years, this should be clearly established and Framework paragraph 11 d) applied by virtue of footnote 7. In your decision it will be necessary to show the relevant test in the Framework has been used correctly as part of the decision-making process.

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<u>The need to determine whether or not there is a five-year housing land supply, and the extent of any shortfall</u>

19. Because of Framework footnote 7, determining whether or not there is a five-year housing land supply [5YHLS] will be an important first step in many housing appeals. If there is not a 5YHLS, it may well also be necessary to determine the extent of the shortfall in supply, in order to determine the weight to be given to the benefit of the development in providing additional housing[12]. Specific advice on assessing 5YHLS is given in the next main section of this chapter.

[12] Although the extent of the shortfall does not affect the operation of footnote 7 and its triggering of paragraph 11(d), the judgment in *Phides Estates (Overseas) Ltd v SSCLG* [2015] EWHC 827 (Admin) explains why the extent of the shortfall (and indeed other matters connected with it) must be determined so that the exercise of planning judgment is properly carried out: "Naturally, the weight given to a proposal's benefit in increasing the supply of housing will vary from case to case. It will depend, for example, on the extent of the shortfall, how long the deficit is likely to persist, what steps the authority could readily take to reduce it, and how much of it the development would meet. So the decision maker must establish not only whether there is a shortfall but also how big it is, and how significant" (para 60). The judgment in Shropshire Council v SSCLG & BDW Trading Ltd [2016] EWHC 2733 (Admin) confirms that Inspectors will generally need to make judgments on housing need and supply (see para 27 of the judgment). The Court considered that the Inspector could not properly apply paragraph 49 and paragraph 14 of the Framework without first reaching a judgment on housing need and housing supply on the evidence before him. The Court confirmed that this does not require the kind of detailed analysis that takes place at a local plan examination, nor is it always necessary to identify a specific figure – a bracket or range or approximate uplift on DCLG household projections is acceptable – but a judgment needs to be made on the evidence available despite its imperfections (para 28). See also Crane v SSCLG [2015] EWHC 425 (Admin) and *Suffolk Coastal DC v Hopkins Homes Ltd & SSCLG and Richborough Estates & SSCLG v*

20. However, in cases where one or both main parties assert that the LPA can demonstrate a 5YHLS, and there is no evidence to the contrary, it will not usually be necessary to consider the matter further.

21. Equally, if the parties agree that there is not a 5YHLS and also agree on the extent of the shortfall, you will not need to probe the matter further unless there is other evidence casting doubt on that agreed position.

22. Even when there is a dispute about whether or not a 5YHLS exists, or on the extent of any shortfall, it may not always be necessary for you to reach a decision on that question. For example:

    - If you are allowing the appeal because the proposal is in accordance with the development plan it should not usually be necessary to reach a firm conclusion on housing land supply.

    - If you are concluding that the proposal would cause harm, consider whether the adverse impacts would significantly and demonstrably outweigh the benefits (this is the test in Framework paragraph 11 d) ii. even if there were a shortfall in five-year supply to the extent argued by the appellant[13]. If you consider this to be the case, you would not need to reach a firm conclusion about 5YHLS. Instead your conclusions could be expressed along the following lines: "Even if I were to conclude there is a shortfall in the five-year housing land supply on the scale suggested by the appellant, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits …" Provided that your planning balance is made on this basis there would be no conflict with the *Phides Estates* judgment (see footnote 12), because your decision will be based on the maximum possible shortfall in five year supply that has been put to you and, therefore, on the maximum weight that could be attached to any benefit through increasing the supply of housing.

    - Conversely, you may be able to conclude that any adverse impacts of the proposed development would not significantly and demonstrably outweigh the benefits, even if the shortfall is as low as the LPA claim[14]. This is effectively the reverse of the situation described in the previous bullet point. In such circumstances you would not need to reach a definite finding on the extent of the shortfall, as the proposal would benefit from the presumption in favour of sustainable development in any event (see paragraph 47 below). This is provided that Framework paragraph 11 d) i. which protects areas of assets of particular importance is not relevant.

23. In cases where none of the parties have raised 5YHLS as an issue, it will be for you as decision-maker to determine whether or not you need to seek

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Cheshire East BC [2016] EWCA Civ 168 which confirm that the extent of the shortfall and the steps being taken to remedy it are relevant to the weight to be attached to the conflict with development plan policies in undertaking the planning balance.

[13] On the assumption that the appellant is arguing for a higher shortfall than the LPA.

[14] On the assumption that the LPA is arguing for a lower shortfall than the appellant.

further information on that issue to inform your decision. For example, where the development is small, and will not make a significant difference to the overall 5YHLS position even if there is a shortfall, it may not be necessary to do so. However, if any of the parties has raised the 5YHLS issue, you must consider it, seeking further information as necessary (see paragraphs 24-26 below).

Choice of appeal procedure

24. Where the existence of a 5YHLS or the extent of any shortfall is disputed, you may be presented with a considerable amount of evidence regarding the deliverability of particular sites. There may also be disagreement over what the 5YHLS requirement is.

25. In any such cases you will need to consider:

- Are issues relating to 5YHLS likely to be material to your decision?
- If so, does the evidence need to be tested by questioning?

26. If the answer to both these questions is yes, you are likely to conclude that the appeal should be dealt with by means of a hearing or inquiry. The same conclusion is likely to apply if the parties have not addressed the issue of 5YHLS, but you consider that it is material to your decision and that you need to hear evidence on it. Inspectors and case officers should be pro-active in identifying and discussing such cases well before the event date. The appeal may need to be re-allocated to another Inspector if you are not yet trained to deal with hearings or inquiries.

The Housing Delivery Test and the extent of any shortfall

27. Footnote 7 indicates that Framework paragraph 11 d) is also triggered in circumstances where the Housing Delivery Test [HDT] indicates that the delivery of housing has been substantially below the housing requirement over the past three years. Therefore, when dealing with housing appeals you also need to determine whether or not this criterion applies.

28. The footnote 7 criterion will apply from the day following the publication of the first HDT results by MHCLG in November 2018. The phrase "substantially below" is defined in footnote 7 as "less than 75%" of the housing requirement. However, that 75% figure only applies from November 2020. Transitional provisions in Framework paragraph 215 make it clear that the applicable figure from November 2018 to November 2019 is 25%, and from November 2019 to November 2020, 45%.

29. A rulebook setting out the method for calculating the HDT result was published alongside the new edition of the Framework in July 2018. The HDT does not apply to National Park Authorities, the Broads Authority, or to

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development corporations without full powers. The level of detail set out in the rulebook, and the fact that the results are published by MHCLG, should mean that there is little, if any, scope for dispute over whether the test is met and the extent of any shortfall in delivery. However, the advice in the previous sub-section of this chapter should be followed in any cases where there is a significant disagreement.

Structure of decisions where Framework paragraph 11 d) applies

30. The following, broad three-step structure is likely to be appropriate for appeal decisions in which the Framework paragraph 11 d) approach is to be followed, in order to properly reflect the statutory role of the development plan and the status of the Framework as a material consideration:

    Step 1: Before applying paragraph 11 d) of the Framework, assess the development proposal against your main issues and relevant development plan policies in the usual way (see the ITM chapter *The approach to decision-making*), reaching conclusions on each main issue and identifying whether or not there is a conflict with the development plan as a whole[15].

    Step 2: Make the assessment required by Framework paragraph 11 d). This will lead to a conclusion whether or not the proposal benefits from the presumption in favour of sustainable development which is a material consideration.

    Step 3: Make the final s38(6) balance, by determining whether or not the outcome of the assessment at Step 2, and any other material considerations, indicate that planning permission should be granted notwithstanding any conflict with the development plan identified at Step 1.

31. This broad decision structure will of course need to be tailored to meet the specific circumstances of each case and therefore may not need to address every matter covered in this chapter.

32. The rest of this section focusses on how to apply Step 2 – the Framework paragraph 11 d) assessment – and Step 3 – the final s38(6) balance. There is a flow-chart at Annex 2 to this chapter summarising the overall approach.

Application of Framework paragraph 11 d)

33. The first step in applying Framework paragraph 11 d) is to consider, under paragraph 11 d) i., whether there are any policies in the Framework which protect areas or assets of particular importance that are relevant to the proposed development before you. If there are, the test in paragraph 11 d) i.

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[15] Unless there are no relevant development plan policies, in which case you will not be able to reach any such conclusion.

should be applied[16]. If there are not, you should move on directly to the test in paragraph 11 d) ii.

Framework paragraph 11 d) i.

34. Framework footnote 6 provides a complete and exhaustive list of those Framework policies to which paragraph 11 d) i. refers: there are no others, and footnote 6 specifically indicates that paragraph 11 d) i. does not refer to development plan policies. Where any of the footnote 6 Framework policies are relevant to the proposed development, it should first be assessed against those relevant policies. The provisions in Framework paragraph 11 d) ii. do not apply to paragraph 11 d) i. Instead, any relevant footnote 6 Framework policies should be applied in their own terms, on an unweighted basis[17]. Where the Framework policies listed in footnote 6, such as paragraphs 195 and 196, require a balance to be struck, that balance must not be confused with the one in Framework paragraph 11 d) ii. and should be undertaken first and separately.

35. Where the outcome of the assessment against the footnote 6 Framework policies provides a clear reason for refusing the development proposed, this will be an important material consideration in the final section 38(6) balance (see paragraphs 53 to 57 below).

36. If, on the other hand, the assessment against those footnote 6 Framework policies does not indicate that permission should be refused, it will be necessary to go on and apply Framework paragraph 11 d) ii. This will also be necessary in cases where there are no footnote 6 policies that are relevant to the proposed development.

Framework paragraph 11 d) ii.

37. The test in Framework paragraph 11 d) ii. is whether any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. This test, which is commonly referred to as "the tilted balance", must not be reversed[18].

38. Note that the paragraph 11 d) ii. test refers to the policies in the Framework taken as a whole. Just as you would with development plan policies, you must consider the development proposal against those Framework policies which weigh against the development proposal as well as those that weigh in favour of it. (To take a hypothetical example, a development might comply with the Framework policies to significantly boost the supply of homes, promote economic growth and promote good design, but conflict with its

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[16] This approach, of dealing with paragraph 11 d) i. first, is informed by the judgments in *Forest of Dean DC v SSCLG & Gladman Developments Ltd* [2016] EWHC 421 (Admin), and in *Borough of Telford & Wrekin v SSCLG* [2016] EWHC 3073 (Admin).

[17] See *Forest of Dean DC v SSCLG & Gladman Developments Ltd* [2016] EWHC 421 (Admin), para 37.

[18] In *Wenman v SSCLG* [2015] EWHC 925 (Admin) the Court held that the Inspector erred in applying the wrong test when concluding that that "the overall significant benefits do not and could not outweigh the substantial harm to the surrounding area".

policies on sustainable transport and best and most versatile agricultural land).

39. As part of the paragraph 11 d) ii. test you should also assess the weight to be attributed to the proposal's conflict with relevant development plan policies, whether or not they are out of date[19], and to the adverse impacts associated with that conflict. Considering the weight to be given to conflicts with development plan policies, rather than to the policies themselves, in your decision will avoid giving the impression that you are reducing the statutory weight which the development plan carries in the final section 38(6) balance.

40. As the Courts have repeatedly emphasised, the attribution of weight in the paragraph 11 d) ii. test is a matter for the decision-maker. Framework paragraph 213 states that due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework. This requires an analysis of in what way, and to what extent, the policies in question are or are not consistent with the Framework, in order to determine the weight to be accorded to each policy conflict[20]. As part of this, footnote 7 of the Framework 'triggers' the need for a development proposal to be considered against paragraph 11 d) ii. but this, in itself, does not determine the weight to be attached to the conflict with any development plan policies relevant to that proposal. Furthermore, the fact that a particular development plan policy may be chronologically old is, in itself, irrelevant for the purposes of assessing its consistency with policies in the Framework and whether it should be considered "out-of-date".

41. The weight given to conflicts with development plan policies may also be affected by the circumstances of the case, including the particular purpose of the policy, whether there is a failure to achieve a 5YHLS and the reasons for this, the extent of the shortfall and any steps being taken to address it[21]. Thus it will usually be necessary also to consider how far the housing land supply falls short of the five-year requirement, as this could affect the weight you give to any conflict with development plan policy and to the proposal's benefit in terms of increasing the supply of housing[22]. The degree of benefit could also be affected by the number of dwellings proposed and therefore the extent of their contribution to the supply of housing. In cases where the HDT demonstrates that the delivery of housing has been below the housing requirement over the past three years, and especially where it has been

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[19] In *Suffolk Coastal DC v Hopkins Homes Ltd & SSCLG and Richborough Estates Partnership LLP & SSCLG v Cheshire East Borough Council* [2017] UKSC 37 the Supreme Court confirmed that the weight to be given to development plan policies is a matter of planning judgment for the decision maker, and that it is not necessary to label policies as "out of date" to determine the weight to be attributed to them. These findings of the Supreme Court reinforced the judgment in *Crane v SSCLG* [2015] EWHC 425 (Admin) that the Framework does not prescribe the weight to be given to policies in a plan which are "out of date", nor is the weight to be attributed to them fixed in case law. However, development plan policies must not be judged to carry no weight or be disregarded as a result of being deemed out-of-date. See also *Gladman Developments Ltd v Daventry DC* [2016] EWCA Civ 1146.

[20] See *Daventry DC v SSCLG and Gladman* [2015] EWHC 3459 (Admin), subsequently confirmed in the Court of Appeal – *Gladman Developments Ltd v Daventry DC* [2016] EWCA Civ 1146.

[21] See the Crane judgment above, and *Suffolk Coastal DC & SSCLG v Hopkins Homes Ltd & Richborough Estates & SSCLG v Cheshire East BC* [2016] EWCA Civ 168.

[22] See the judgments referenced in footnote 12 above.

"substantially below" (Framework footnote 7), the extent of the shortfall in delivery may similarly be a relevant consideration.

42. Balancing all these various considerations against one another is a matter of judgment for you as the decision-maker. In applying the paragraph 11(d)(ii) test, there is no need to attempt a quasi-scientific exercise, allocating finely-calibrated degrees of weight to each consideration. Furthermore, paragraph 9 of the Framework advises that the 3 objectives of sustainable development are not criteria against which every decision can or should be judged. But it must be clear from your reasoning why you have concluded, either that any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, or that they would not. That will require you to exercise your planning judgment and to explain clearly and succinctly how this has been done.

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Framework paragraph 14: application of the paragraph 11 d) with regard to neighbourhood plans

43. Paragraph 14 of the Revised Framework applies in situations where paragraph 11 d) is triggered and where the proposed development conflicts with a neighbourhood plan. In such circumstances, paragraph 14 advises that the adverse impact of allowing development that conflicts with the neighbourhood plan is likely to significantly and demonstrably outweigh the benefits, provided all of the following apply:

    a) the neighbourhood plan became part of the development plan two years or less before the date on which the decision is made;

    b) the neighbourhood plan contains policies and allocations to meet its identified housing requirement;

    c) the local planning authority has at least a three year supply of deliverable housing sites (against its five year housing supply requirement, including the appropriate buffer as set out in Framework paragraph 73); and

    d) the local planning authority's housing delivery, as measured by the HDT from November 2018 onwards, was at least 45% of that required over the previous three years.

44. Framework paragraph 216 makes the following transitional arrangements:

- up to and including 11 December 2018, paragraph 14 a) also includes neighbourhood plans that became part of the development plan more than two years or less before the date on which the decision is made;

- from November 2018 to November 2019, housing delivery (paragraph 14 d) should be at least 25% of that required over the previous three years, as measured by the HDT.

45. It is important to be aware that paragraph 14 does not change the footnote 7 criteria under which Framework paragraph 11 d) may be triggered. But the statement that "the adverse impact of allowing development that conflicts with the neighbourhood plan is likely to significantly and demonstrably outweigh the benefits" is a statement of Government policy, and so it will be an important material consideration in any appeal to which paragraph 14 applies. This does not mean that every such appeal must automatically be dismissed. But your decision must make it clear that the policy statement in paragraph 14 has been considered when applying paragraph 11 d) and that appropriate weight has been given to it.

46. Inspectors also need to be very aware of the fact that paragraph 14 a) makes "the date on which the decision is made" one of the criteria for determining whether or not the paragraph 14 policy statement applies. Accordingly, Inspectors and PINS need to make every effort to issue promptly decisions to which the policy statement may apply. This will avoid a situation arising in which accusations could be made that the decision had been delayed so that the policy statement did not apply.

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The presumption in favour of sustainable development

47. If you conclude that any adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole, Framework paragraph 11 d) makes it clear that the presumption in favour of sustainable development will weigh in favour of the proposal.

48. On the other hand, if you reach the opposite conclusion (that any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole), the proposal will not benefit from the presumption in favour of sustainable development.

49. Your conclusion on whether or not the proposal benefits from the presumption in favour of sustainable development will then be a material consideration to be weighed in the final balance when considering whether material considerations exist to outweigh the conflict with the development plan, in accordance with section 38(6) – see the next sub-section of this chapter.

50. The Courts have determined that paragraph 14 in the previous (2012) Framework explains in clear and complete terms the circumstances in which, and the way in which, the presumption in favour of sustainable development is intended to operate. There is no other "presumption in favour of sustainable development" in the Framework either explicit or implicit[23]. Logically this must also apply to paragraph 11 in the Revised Framework,

[23] *Barwood Strategic Land v East Staffordshire BC and SSCLG* [2017] EWCA Civ 893. This judgment of the Court of Appeal means that parties should not seek to rely on the lower (High Court) judgment in *Wychavon DC v SSCLG & Crown House Developments Ltd* [2016] EWHC 592 (Admin) to support an argument that the presumption in favour of sustainable development exists independently of Framework paragraph 11.

which carries forward the provisions of former paragraph 14 with minor modifications. In appeal casework it is not necessary or appropriate, therefore, to make a separate assessment of whether or not the development proposal constitutes sustainable development, outside the tests contained in paragraphs 11(c) and (d)[24].

51. If a development proposal conflicts with an up-to-date development plan and where none of the provisions in Framework paragraph 11 d) and footnote 7 apply, it cannot benefit from the presumption in favour of sustainable development. But planning permission may nonetheless be granted for it, if other material considerations indicate that the decision should be made otherwise than in accordance with the plan[25]. Whether or not this is the case is a matter of planning judgment.

52. In order to apply paragraph 11 correctly, it is important to be careful about the use of the term "sustainable development" when defining your main issues. For example, when considering proximity and access to shops and services it would be good practice to define the issue along the following lines: "whether occupants of the proposed development would have adequate access to shops and services" (rather than by reference to "sustainable development", "sustainable location" or "a sustainable form of development").

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The final section 38(6) balance

53. Applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise, in accordance with section 38(6) of the Planning and Compulsory Purchase Act (2004). The Framework is only one such material consideration and even where its paragraph 11 applies, it remains necessary to reach a final conclusion against section 38(6).

54. Assuming you have concluded in Step 1 of your decision that the development proposal conflicts with the development plan as a whole[26], you will therefore need to consider explicitly whether the outcome of the Framework paragraph 11 d) process indicates that your decision should be taken otherwise than in accordance with the development plan. That will not be the case if the outcome of the paragraph 11 d) process indicates that permission should be

[24] See *Cheshire East BC v SSCLG* [2016] EWHC 571(Admin), paras 20-24, in which Jay J said "In my judgment, this is not, and cannot be, a question of assessing whether the proposal amounts to sustainable development before applying the presumption within paragraph 14. This is not what paragraph 14 says, and in my view would be unworkable. Rather, paragraph 14 teaches decision makers how to decide whether the proposal, if approved, would constitute sustainable development."

[25] See Framework paragraph 12 and *Barwood Strategic Land v East Staffordshire BC and SSCLG* [2017] EWCA Civ 893, which confirmed the judgment in *East Staffordshire BC v SSCLG and Barwood Strategic Land* [2016] EWHC 2973, and also *Trustees of the Barker Mill Estates and Test Valley BC & SSCLG* [2016] EWHC 3028(Admin). Parties may seek to rely on the earlier judgment in *Reigate & Banstead BC v SSCLG & Amtrose Ltd* [2017] EWHC 1562 (Admin) as authority for the proposition that there is only scope for an overall assessment of the sustainability of a proposal in cases where paragraph 14 applies. However, Lang J's reference to this in paragraph 22(ix) of the *Reigate* judgment does not reflect other judicial authorities, including *Barker Mills* to which she refers.

[26] See paragraph 30 above. Note that if there are no relevant development plan policies you will not have been able to reach such a conclusion.

refused. But if the outcome of that process indicates that the development proposal benefits from the presumption in favour of sustainable development, that may well be a material consideration of sufficient weight to indicate that planning permission should be granted notwithstanding the conflict with the development plan. That is a matter for your planning judgment.

55. Note that in the *Barwood Strategic Land v East Staffordshire* judgment the Court of Appeal also made it clear that the presumption in favour of sustainable development is not a statutory presumption and that it is not irrebuttable. When the section 38(6) duty is lawfully performed, a development which does have the benefit of the "tilted balance" may still be found unacceptable, and equally a development which does not have the benefit of the "tilted balance" and cannot earn the presumption in favour of sustainable development may still merit the grant of planning permission. Again, this is a matter of planning judgment.

56. You must also consider whether there are any other relevant material considerations, apart from the Framework, that might indicate that your decision should be taken otherwise than in accordance with the development plan. If there are, they must also be weighed in the section 38(6) balance.

57. Your final conclusion against section 38(6) will therefore be either that the decision should be taken in accordance with the development plan, or that material considerations indicate that the decision should be taken otherwise than in accordance with it. That conclusion will determine the outcome of the appeal.

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Assessing whether or not a five-year housing land supply exists, in accordance with Framework paragraph 73, and the extent of any shortfall in supply

58. This section of the *Housing* chapter provides guidance on assessing whether or not the LPA can demonstrate a five-year supply of housing land (5YHLS). Assessing this will be necessary where the existence or otherwise of a 5YHLS, and/or the extent of any shortfall in that supply, is material to your decision (see paragraphs 19-23 above). It is likely that you will encounter such issues in smaller cases as well as larger ones.

59. The Revised Framework provides guidance on this topic. Furthermore, the PPG chapters on *Housing need assessment* and *Housing and economic land availability assessment* have been revised. These provide details on calculating housing need via the standard method, five year land supply and the HDT.

60. The PPG chapter *Housing need assessment* also contains this statement:

"A number of responses to this question provided comment on the proposed local housing need method. The government is aware that lower than previously forecast population projections have an impact on the outputs associated with the method. Specifically it is noted that the revised

projections are likely to result in the minimum need numbers generated by the method being subject to a significant reduction, once the relevant household projection figures are released in September 2018.

In the housing white paper the government was clear that reforms set out (which included the introduction of a standard method for assessing housing need) should lead to more homes being built. In order to ensure that the outputs associated with the method are consistent with this, we will consider adjusting the method after the household projections are released in September 2018[27]. We will consult on the specific details of any change at that time.

It should be noted that the intention is to consider adjusting the method to ensure that the starting point in the planmaking process is consistent in aggregate with the proposals in Planning for the right homes in the right places consultation and continues to be consistent with ensuring that 300,000 homes are built per year by the mid 2020s."

61. The process of assessing whether a five year housing land supply exists essentially consists of establishing on the one hand the **requirement** for housing land over the relevant five-year period (henceforth "the 5YHLS requirement" for short), and on the other the **supply** of deliverable sites to meet that requirement. To avoid ambiguity, it is good practice to use the terms "requirement" and "supply" consistently with these meanings. You should ensure that you and the parties are clear which five-year period is being assessed – usually it will begin with the current or the next monitoring year (a monitoring year usually runs from each April to the following March).

62. Paragraph 74 of the Framework provides LPAs with specific means by which a 5YHLS can be demonstrated (see paragraphs 65-69 below). The rest of this section (paragraphs 70-84) provides guidance on assessing whether a 5YHLS exists in cases where this has not been established in accordance with paragraph 74.

63. Be aware that any conclusion you reach on the existence or otherwise of a 5YHLS may be cited as evidence in subsequent appeals in the same local authority area. However, caselaw has made it clear that an Inspector at a section 78 appeal is not "making an authoritative assessment which binds the local planning authority in other cases"[28].

64. Where you find there is less than a 5YHLS, there is no need to go on and comment about what the position might have been had there been a 5YHLS.

65. Annex 1 contains a useful flow-chart to assist in identifying whether a 5YHLS exists.

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[27] A technical consultation *Changes to planning policy and guidance including the standard method for assessing local housing need* was launched on 26 October 2018.
[28] *Shropshire Council v SSCLG and BDW Trading Ltd* [2016] EWHC 2733 (Admin), para 30.

Demonstrating a 5YHLS in accordance with Framework paragraph 74

66. Framework paragraph 74 says that a 5YHLS can be demonstrated in either of the following circumstances:

    - The 5YHLS has been established in a recently adopted plan; or

    - The 5YHLS has been established in a subsequent annual position statement which has produced through engagement with stakeholders, has been considered by the SoS, and incorporates any recommendations made by the SoS.

67. Note that if the LPA wishes to use either provision of paragraph 74 to demonstrate that it has a 5YHLS, the 5YHLS requirement must include a minimum 10% buffer. This is made clear in Framework paragraph 73 b). A 20% buffer will be required if there has been significant under delivery of housing in the previous three years even if the plan has been "recently adopted or even if there is an annual position statement"[29].

68. For the purposes of paragraph 74, plans adopted between 1 May and 31 October in one year will be considered "recently adopted" until 31 October of the following year, and plans adopted between 1 November in one year and 30 April in the following year will be considered "recently-adopted" until 31 October in the same year. In other words, a plan adopted in December 2018 will be "recently adopted" until 31 October 2019. These timings reflect the fact that the HDT results are published in November each year (see paragraphs 27-29 above).

69. Annual position statements, as referenced in paragraph 74, are not obligatory but LPAs may choose to prepare them if they want to establish that they can demonstrate a 5YHLS. They are examined by PINS on behalf of the SoS and LPAs must make any modifications to them that PINS recommends. Further details about this are the PPG[30].

70. Provided all the relevant requirements of Framework paragraph 74 are met, a recently adopted plan or an up-to-date annual position statement will conclusively demonstrate that the LPA has a 5YHLS. In these circumstances there will be no need to investigate the matter further.

What is the 5YHLS requirement figure?

71. Framework paragraph 73 says:

    Local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need[31] where the strategic policies are

[29] PPG ID:3-049-20180913
[30] PPG ID:3-050-054-20180913
[31] As defined in the Framework Annex 2 Glossary

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more than five years old unless the strategic policies have been reviewed and found not to require updating (Framework footnote 37). The supply of specific deliverable sites should in addition include a buffer (moved forward from later in the plan period) of:

a) 5% to ensure choice and competition in the market for land; or

b) 10% where the local planning authority wishes to demonstrate a five year supply of deliverable sites through an annual position statement or recently adopted plan, to account for any fluctuations in the market during that year; or

c) 20% where there has been significant under delivery of housing over the previous three years, to improve the prospect of achieving the planned supply. Framework footnote 39 confirms that from November 2018 this will be measured against the HDT where this indicates that delivery was below 85% of the housing requirement.

72. From this it can be seen that the approach to setting the 5YHLS requirement will depend on whether or not the strategic policies that set out the LPA's housing requirement figure for the plan period as a whole are more than five years old. If those policies are five years old or less, the housing requirement figure they contain will form the basis for calculating the 5YHLS – see paragraphs 73-77 below. (This approach will also apply if those policies are more than five years old but have been reviewed by the LPA and found not to need updating – Framework footnote 37.) If, on the other hand, those policies are more than five years old, the 5YHLS requirement will be based on the figure set by the local housing need assessment for the LPA area - see paragraph 78 below. The PPG confirms that there are exceptions where the strategic policy-making authorities do not align with local authority boundaries such as National Parks and the Broads Authority. These authorities may continue to use a method determined locally[32].

73. In order to establish the 5YHLS requirement figure, it is necessary first to work out how much housing is required to be provided in the relevant five-year period, and then to determine whether a 5% or 20% buffer should be applied[33]. To avoid the danger of errors, you should aim to avoid the need to calculate the 5YHLS requirement figure, or any other figures, yourself. Instead it is advisable, wherever possible, to ask the parties to make any necessary calculations and to agree them between themselves as far as is possible.

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Calculating the 5YHLS figure based on plan policies

74. In plan policies, the housing requirement is usually expressed as an average number of dwellings that should be developed in each year of the plan period. But it is important to be aware that in some cases the annual requirement varies throughout the plan period – this is sometimes referred to as a

[32] PPG ID: 2a-013-20180913

[33] A 10% buffer is required only if the LPA are seeking to establish the 5YHLS using the method set out in Framework paragraph 74.

"stepped requirement" or "stepped trajectory". Any such variation or "stepping" in the annual requirement figure should be set out in the plan policies and you should take account of it when calculating the 5YHLS requirement figure for any given five-year period[34].

75. If the housing requirement figure in the plan policies is set out as a range, the lower end of the range should be taken as the basis for calculating the 5YHLS requirement figure[35]

76. If there has been any shortfall in housing provision since the start of the plan period, this should also be taken into account when calculating the 5YHLS requirement figure. The PPG[36] makes clear reference to shortfalls in completions against planned requirements which should be calculated from the base date of the adopted plan. Furthermore, the PPG advises that the shortfall should be added to the plan requirement for the next five-year period. Dealing with past under delivery over a longer period may be made as part of the plan-making and examination period rather than on a case by case basis on appeal.

77. Plan policies establish the full housing requirement from the plan's start date. It would not be appropriate therefore to add any under-supply (or "backlog") from before the start date of the local plan to the 5YHLS requirement, because it will already have been taken into account in setting the requirement for the plan period.

78. You may find that the terms "under-supply", "shortfall" and "backlog" are used interchangeably by the parties. The key distinction is between any under-supply occurring before the plan's start date and any occurring after it. If the terminology is unclear, seek clarification.

Calculating the 5YHLS based on the local housing need assessment

79. If the plan policies which set out the housing requirement for the plan period are more than five years old, and a review has not found that they do not need updating, the 5YHLS requirement will be based on the local housing need assessment for the plan area. The local housing need assessment uses a standard method set out in the PPG on *Housing need assessment.* The method gives an annual average requirement which will provide the basis for calculating the 5YHLS requirement. In essence this takes a baseline of national household projections and applies an adjustment to take account of affordability based on the most recent workplace-based affordability ratios. Any increase is capped at 40% above the existing annual average housing requirement figure. As it is based on known data from specific sources and an exact formula there should be less scope for disagreement about the final figure than previously.

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[34] PPG ID:3-033-20180913
[35] PPG ID:3-035-20180913
[36] PPG ID:3-044-20180913

Should the buffer be 5% or 20%?

80. Paragraph 73 of the Framework requires that an additional buffer of 5% is included in the 5YHLS requirement, to ensure choice and competition in the market for land. This additional buffer is moved forward from later in the plan period (and so it does not constitute an addition to the housing requirement for the plan period as a whole).

81. However, a buffer of 20% (also moved forward from later in the plan period) should be added where there has been "significant under delivery of housing over the previous three years". Framework footnote 39 makes it clear that from November 2018, a 20% buffer will be required if delivery has been less than 85% of the requirement over the past three years, as measured by the HDT.

Which sites can be included in the five-year supply?

82. In order for housing sites to be included in the five-year supply, paragraph 73 of the Framework requires them to be deliverable. The Framework's Glossary defines "deliverable" as follows:

> To be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years. Sites that are not major development, and sites with detailed planning permission, should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years (e.g. they are no longer viable, there is no longer a demand for the type of units or sites have long term phasing plans). Sites with outline planning permission, permission in principle, allocated in the development plan or identified on a brownfield register should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years.

83. The PPG chapter *Housing and economic land availability assessment*[37] gives advice on what might constitute the "clear evidence" referred to in the Framework for the 4 types of sites referred to above.

84. Annex 3 to this chapter sets this out and includes some other considerations that may apply when determining whether sites are deliverable.

85. You may be faced with widely-diverging assessments from the LPA and the appellant of the amount of housing that is likely to be provided during the relevant five-year period. Where circumstances permit, it is usually helpful to try to narrow the differences between them as far as possible by asking them to agree a statement of common ground.

86. LPAs sometimes apply a general "non-implementation" or "lapse" rate to the sites in their 5YHLS, to reflect the fact that some sites may not come forward as planned. In other cases, appellants may suggest that such a rate should

[37] PPG ID: 3-036-20180913

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be applied. It is referred to in the PPG in the context of the preparation of an annual position statement[38] You will need to assess the appropriateness of any suggested rate having regard to the available evidence, including any evidence on actual non-implementation rates in the past. Beware, however, that where you have reached a specific conclusion on the number of dwellings likely to come forward on an individual site, it is unlikely to be appropriate then to apply a general non-implementation or lapse rate to that site[39].

Prematurity

87. It may be argued that a development proposal would be premature because it would undermine the plan-making process. Consider any such arguments against the advice in the PPG which answers the question *In what circumstances might it be justifiable to refuse planning permission on the grounds of prematurity*[40]*?*

Affordable housing

Background

88. The Glossary to the Framework provides a definition of affordable housing, which includes affordable housing for rent, starter homes, discounted market sales and other affordable routes to home ownership. These are different to the 2012 Framework which previously excluded low cost market housing. If development plan policies are based on the 2012 definition then it may be necessary to consider whether those policies are consistent with the revised Framework or out-of-date and the weight to be given to any conflict with them (paragraph 213 of the Framework). If there is conflict with existing policies because of the type of provision proposed then the Framework will be a material consideration to weigh in the balance. Similar considerations also apply to other provisions of the Framework set out below as development plan policies may also not fully accord with them.

89. Although it also contains other references to affordable housing the Framework provides, in summary, that:

- The need for affordable housing should be assessed and reflected in planning policies.

  [paragraph 61];

- Policies should specify the type of affordable housing required applying the definitions in the Glossary and expect it to be met on-site unless both of the specified exceptions applies.

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[38] PPG ID: 3-047-20180913
[39] See the judgment in *Wokingham Borough Council v SSCLG & Cooper Estates* [2017] EWHC 1863 (Admin), which also deals with the danger of "double-counting" when applying a non-implementation or lapse rate.
[40] PPG ID 21b-014-20140306

[paragraph 62];

- Provision of affordable housing should not be sought for residential developments that are not major developments (where 10 or more homes will be provided or where the site area is 0.5 hectares or more according to the Glossary). In designated rural areas (National Parks, Areas of Outstanding Natural Beauty and other areas designated under s157 of the Housing Act 1985[41] as per the Glossary) the threshold may be set at 5 units or fewer.

  [paragraph 63];

- To support the re-use of brownfield land, any affordable housing contribution should be reduced by a proportionate amount where vacant buildings are being reused or redeveloped.

  [paragraph 63];

- Where major development includes housing at least 10% of the homes should be available for affordable home ownership unless this would exceed the level of affordable housing in the area or significantly prejudice the ability to meet the identified affordable housing needs of specific groups. There are also further other listed exceptions to the 10% requirement.

  [paragraph 64];

- The development of entry-level exception sites offering one or more types of affordable housing, as defined in the Glossary, should be supported.

  [paragraph 71]; and

- In rural areas opportunities to bring forward rural exception sites to provide affordable housing to meet identified local needs should be supported.

  [paragraph 77]

90. The Framework also allows for limited affordable housing for local community needs as an exception to inappropriate development in the Green Belt and where infilling or redevelopment of previously developed land would contribute to meeting an identified affordable housing need subject to the impact on the openness of the Green Belt (paragraph 145 f) and g)).

91. The PPG chapter *Housing need assessment* covers the calculation of affordable housing need and supply as follows and provides further detailed guidance:

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[41] The Housing (Right to Buy) (Designated Rural Areas and Designated Regions) (England) Orders 2016 (SI 2016/587) and 2018 (2018/265) have designated specific listed parishes within a number of regions (Chichester, Malvern Hills, Shropshire, Wychavon, North Kesteven and Stroud) as rural areas under s157(3) of the 1985 Act.

How can affordable housing need be calculated[42]?
How can the current unmet gross need for affordable housing need be calculated[43]?
How can the current total affordable housing supply available be calculated[44]?

92. Many development plans contain a policy requiring affordable housing in relation to all or some new housing developments. Quite often the policy accepts that the amount of affordable housing could vary depending on the financial viability of the development. There may also be a Supplementary Planning Document which sets out the LPA's approach in more detail.

93. The Written Ministerial Statement (WMS) of November 2014 dealt with the matter of thresholds beneath which affordable housing contributions should not be sought from small scale and self-build development. However, this statement of national planning policy has now been overtaken by the threshold specified in paragraph 63 of the Revised Framework. This refers to not seeking affordable housing provision for residential developments that are not major developments (less than 10 being provided) rather than 10 or less as per the WMS.

94. The thresholds in the development plan may not accord with the Framework and may seek the provision of affordable housing for schemes of less than 10 dwellings. In deciding the weight to be given to the conflict with the relevant development plan policy Inspectors should give appropriate weight to the Framework as national policy and have regard to paragraph 213 which indicates that the date of the policy is not determinative. Otherwise in deciding whether to determine an appeal other than in accordance with that policy of the development plan Inspectors should take account of the evidence put to them. Relevant factors might include when the policy was prepared in relation to the WMS, consideration given to the issue at a local plan examination, affordable housing need in the area as an overall proportion and the amount of development from small sites compared to other areas. Furthermore, the WMS refers to the "disproportionate burden" of developer contributions on small-scale developers, custom and self-builders and this may also be relevant when considering any conflict between the threshold in the Framework and that in the development plan.

95. The PPG chapter *Planning obligations* also contains relevant detailed guidance in paragraphs 013 to 017, 019 to 023 and 031[45], although this has not been updated following the new Framework and so refers to the WMS. It nevertheless confirms that the restriction on seeking planning obligation contributions does not apply to rural exception sites (as defined in the Glossary to the Framework). Further background is in the ITM chapter on Planning Obligations.

96. Paragraph 64 of the Framework sets out exceptions to the 10% requirement for affordable home ownership for major developments (where 10 or more

[42] PPG ID: 2a-022-20180913
[43] PPG ID: 2a-023-20180913
[44] PPG ID: 2a-025-20180913
[45] PPG ID: 23b-013-017-20160519, 23b-019-023-20160519 and 23b-031-20160519

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dwellings and sites over 0.5 ha). The list includes specialist accommodation for groups of people with specific needs such as purpose-built accommodation for the elderly or students. However, it is important to note that these provisions relate to affordable home *ownership* as opposed to rent. Inspectors may need to consider whether national policy is a material consideration that outweighs the provisions of the development plan in terms of either the type or amount of affordable housing to be provided and whether the exceptions apply.

97. Detailed guidance on the application of vacant building credit (VBC) is given in the PPG[46] and indicates that national policy provides an incentive for brownfield development containing vacant buildings. Paragraph 63 and footnote of the revised Framework do not specifically refer to VBC but set out the approach to be followed where vacant buildings are reused or redeveloped.

98. The PPG makes it clear that in considering how VBC should apply to a particular development, LPAs should have regard to the intention of national policy to incentivise brownfield development. In doing so, it may be appropriate to consider whether the building has been made vacant for the sole purposes of redevelopment, and whether the building is covered by an extant or recently-expired planning permission for the same or substantially the same development.

99. There is further guidance about securing affordable housing in the section on planning obligations and conditions (paragraphs 104-117 of this chapter).

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Casework issues

100. When affordable housing arises in casework consider the following:

- Should affordable housing be a "main issue" or an "other matter"? It is likely to be a main issue where the LPA contends that affordable housing should be provided but it is not – or where the LPA considers the provision being made is not sufficient or is not of the right mix – i.e. if it is a contested issue. In these circumstances, the appellant may have argued that the development would not be viable if a specific level of affordable housing were to be provided.

- If affordable housing is a main issue, could it be defined as: *whether or not the proposed development would make adequate provision for affordable housing*?

- Should the provision of affordable housing be a factor that is weighed in favour of the proposal? (This may be argued by, for example, a developer promoting residential development, including a proportion of affordable housing, in a location that does not accord with the Local Plan.) Affordable housing should generally be regarded as a benefit as it would address the

[46] PPG paragraphs 23b-021-20160519, 23b-022-20160519, & 23b-023-20160519

needs of a group with specific housing requirements. This may be particularly the case if it would help meet an identified and outstanding need even if the provision of affordable housing is already required by development plan policy.

- The need for affordable housing will have been comprehensively assessed in the preparation and examination of the local plan, including in the setting of the plan's housing requirement. Where the plan does not seek to meet the full need for affordable housing, this may be for sound reasons which have been endorsed by the Local Plan Inspector. Accordingly, if the proposed development would be in conflict with a recently adopted local plan, the decision maker should take particular care to establish why it might be justified to set aside a recently adopted plan in order to provide more affordable housing.

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Choice of appeal procedure

101. Consider whether the case is suitable for the written representations procedure:

- Is affordable housing likely to be central to your decision?
- Has substantial evidence been provided about viability?
- Have experts reached differing conclusions about viability? If the answer to these questions is yes, then a hearing or inquiry may be necessary to allow the evidence to be properly tested.

Viability

102. The Revised Framework says the following about viability at paragraph 57:

Where up-to-date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the plan and the viability evidence underpinning it is up to date, and any change in site circumstances since the plan was brought into force. All viability assessments, including any undertaken at the plan-making stage, should reflect the recommended approach in national planning guidance, including standardised inputs, and should be made publicly available.

103. The PPG chapter *Viability* gives specific guidance on viability and decision taking in terms of how it should be assessed and reviewed during the lifetime of a project[47]. This should be taken into account if viability is a contested issue and an assessment is required.

[47] PPG ID: 10-(007-009)-20180724

104. The PPG chapter *Planning obligations* pre dates the Revised Framework. It provides that where affordable housing contributions are being sought obligations should not prevent development from going forward[48]. Paragraph 007 of the Planning obligations chapter also details the evidence required to support negotiations on planning obligations and makes reference to viability.

Planning obligations and conditions

105. In order for affordable housing to be provided effectively, arrangements must be made to transfer it to an affordable housing provider, to ensure that appropriate occupancy criteria are defined and enforced, and to ensure that it remains affordable to first and subsequent occupiers. The legal certainty provided by a planning obligation (either a section 106 agreement or unilateral undertaking) makes it the best means of ensuring that these arrangements are effective.

106. The PPG advises that:

Ensuring that any planning obligation or other agreement is entered into prior to granting planning permission is the best way to deliver sufficient certainty for all parties about what is being agreed. It encourages the parties to finalise the planning obligation or other agreement in a timely manner and is important in the interests of maintaining transparency[49].

107. If the evidence in a given case indicates that affordable housing should be provided you should, therefore, normally expect that a completed planning obligation providing the affordable housing is submitted with the appeal, or at the hearing or inquiry. However, where the parties have been genuinely unable to complete the planning obligation before a hearing or inquiry closes, you may allow limited time after the close (a maximum of one or at most two weeks) for the obligation to be submitted so that you may take it into account in your decision.

108. There is a detailed checklist for planning obligations in Annex N.8 to the *Procedural Guide – Planning appeals – England*

109. In the absence of a planning obligation, it may be possible in limited circumstances to use a planning condition to secure affordable housing. However, you should be aware of the advice in the PPG that planning permission should not be granted subject to a positively-worded condition that requires the applicant to enter into a planning obligation. The PPG further advises that:

A negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases. […] However, in exceptional circumstances a negatively worded condition requiring a planning

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[48] PPG ID 23b-004-20140306
[49] PPG ID: 21a-010-20140306

obligation or other agreement to be entered into before certain development can commence may be appropriate in the case of more complex and strategically important development where there is clear evidence that the delivery of the development would otherwise be at serious risk. In such cases the 6 tests must also be met.

Where consideration is given to using a negatively worded condition, it is important that the local planning authority discusses with the applicant before planning permission is granted the need for a planning obligation or other agreement and the appropriateness of using a condition. The heads of terms or principal terms need to be agreed prior to planning permission being granted to ensure that the test of necessity is met and in the interests of transparency[50].

110. It is a matter of judgement for the decision-maker as whether all these tests in the PPG are met, so that the use of a condition to secure affordable housing is appropriate. They are quite specific and only occur in exceptional circumstances and so the reasoning to support the use of a condition should address the relevant tests directly.

111. Even if a proposed condition does not explicitly require a legal agreement, but leaves the method of securing the affordable housing vague, it will be reasonable to conclude that a legal agreement will be required and that the PPG tests regarding the use of conditions to secure obligations should still be applied. This is because the judgment in *R (on the application of Skelmersdale Ltd Partnership) v West Lancashire BC* [2016] EWCA Civ 1260 confirmed that the interpretation of a condition is based on "what a reasonable reader would understand the words to mean when reading the condition in the context of the other conditions and of the consent as a whole".

112. In particular, in *Skelmersdale*, the phrase "submits a scheme which commits to retaining their presence as a retailer" was interpreted as requiring a legally-binding obligation. Consequently, a condition such as that at Annex 4 to this chapter requiring a scheme to "ensure" that dwellings remain as affordable housing (or other similar wording) could also be reasonably interpreted as requiring a legal agreement, and so engage the PPG tests. In order for it to meet those tests, therefore, you would need to be satisfied, before imposing the condition, that the proposed development is both complex and strategically important and that there is clear evidence that the delivery of the development would otherwise be at serious risk. Furthermore, that these amount to exceptional circumstances.

113. An example condition that could be used where the PPG's exceptional circumstances are met is set out in Annex 4. Before the condition is applied, the numbered points in it should be expanded to include relevant details that have been provided as heads of terms, and in particular to set out the mechanism by which the housing will be secured as affordable. This is necessary in order to meet the PPG requirement that *the heads of terms or principal terms need to be agreed prior to planning permission being granted*

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[50] PPG ID: 21a-010-20140306

to ensure that the test of necessity is met and in the interests of transparency (see above).

114. For example, the condition might need to set out the overall percentage of affordable housing, the respective percentages of social and affordable rented and shared ownership housing, the phasing arrangements – linking delivery of affordable housing to specified stages in the commencement or occupation of the market housing – and arrangements for involvement of a registered social landlord. The level of detail required will be for you to determine, having regard to the PPG guidance on necessity and transparency.

115. If you are presented with a condition to which the PPG "exceptional circumstances" tests apply, but those tests are not met, it is unlikely that the use of the Annex 4 condition – or any other condition requiring a legal agreement – to secure affordable housing would be appropriate. In the absence of an alternative means (such as a completed planning obligation) of securing affordable housing which is required as part of the development, it may be that the appeal would have to be dismissed. This is not automatic but will depend on the level of harm caused by any shortfall in affordable housing, the development plan conflict and other material considerations.

116. If you are presented with a condition setting out a method of securing the affordable housing and you are satisfied that it does not require a legal agreement notwithstanding the *Skelmersdale* judgment, the PPG tests will not apply. However, the condition should be very carefully scrutinised to ensure that it will be effective in securing affordable housing. If there is any doubt on this matter you will need to consider whether – in the absence of a planning obligation – the appeal should be dismissed.

117. In hearing or inquiry cases where it appears to you that there will need to be discussion over the means of securing affordable housing and their compliance with guidance in the PPG, it is good practice to draw the parties' attention to the PPG in advance and give them advance notice of the questions that you will need to ask.

118. There have been a considerable number of past appeal decisions, including by the Secretary of State, in which conditions have been used to secure affordable housing even though the PPG "exceptional circumstances" tests have not been met. Many of those decisions, however, pre-date the PPG and/or the *Skelmersdale* judgment. In any event, whatever may have been done elsewhere, it is for you to satisfy yourself that, in cases where affordable housing is required, it is capable of being delivered by the method that is proposed.

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Starter Homes

119. On 2 March 2015, the Government introduced a new national starter homes exception site planning policy through a Written Ministerial Statement to provide more discounted, high quality homes for young first time buyers without burdening the tax payer. Chapter 1 of the Housing and Planning Act 2016 sets out various provisions relating to starter homes including a general

duty to promote the supply of starter homes. There is a definition in section 2 that a starter home is a building or part of a building that:

(a) is a new dwelling,
(b) is available for purchase by qualifying first-time buyers only,
(c) is to be sold at a discount of at least 20% of the market value,
(d) is to be sold for less than the price cap, and
(e) is subject to any restrictions on sale or letting specified in regulations made by the Secretary of State.

120. Starter homes are included within the definition of affordable housing in the Glossary to the Framework. This confirms that the definition of a starter home should reflect the meaning set out in statute and any such secondary legislation at the time of plan-preparation or decision-making. Where secondary legislation has the effect of limiting a household's eligibility to purchase a starter home to those with a particular maximum level of household income, those restrictions should be used.

121. Furthermore, paragraph 71 of the Framework indicates that development of entry-level exception sites, suitable for first time buyers should be supported, unless the need for such homes is already being met. Further parameters for such development are also given.

122. The National Starter Homes Register, managed by the Home Builders Federation allowing first time buyers to register their interest in the scheme, provides a valuable source of information about potential demand for starter homes and identifying who may be eligible for starter homes developments. Local planning authorities can use this as evidence when developing their Local Plan and associated documents. However, consultation on proposed *Starter Homes Regulations* took place in 2016 but the Regulations are not yet in force. Therefore, local plans are unlikely to contain policies setting detailed requirements for starter homes. But such provision may be made in future given that starter homes are now within the definition of affordable housing in the Framework.

123. Further advice on the delivery of starter homes is contained in the PPG chapter *Starter Homes*.

124. The exception site policy referred to in the PPG enables applications for development for starter homes on under-used or unviable industrial and commercial land that has not been currently identified for housing. Suitable sites are likely to be under-used or no longer viable for commercial or industrial purposes, but with remediation and infrastructure costs that are not too great so as to render Starter Homes financially unviable. The PPG also encourages local planning authorities not to seek section 106 affordable housing and tariff-style contributions that would otherwise apply.

125. It indicates that the types and sizes of site suitable for Starter Homes are likely to vary across the country, and will reflect the pattern of existing and former industrial and commercial use as well as local market conditions. Land in both public and private ownership can be considered.

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126. The guidance states that where applications for starter homes come forward on such exception sites, they should be approved unless the local planning authority can demonstrate that there are overriding conflicts with the Framework that cannot be mitigated.

127. Local planning authorities should work with landowners and developers to secure a supply of starter homes exception sites suitable for housing for first time buyers. As such homes will come forward as windfall sites, local planning authorities should not make an allowance for them in their five year housing land supply until such time as they have compelling evidence that they will consistently become available in the local area. Local planning authorities can count starter homes against their housing requirement and can use their discretion to include a small proportion of market homes on starter homes exception sites where it is necessary for the financial viability of the site. The market homes on the site will attract section 106 or Community Infrastructure Levy contributions in the usual way.

Self-build and custom housebuilding

Background

128. The Government is actively seeking to increase the supply of custom- and self-build housing[51]. In October 2014 the Government published a consultation on various measures (including a 'Right to Build') to improve the availability of suitable, serviced plots of land for custom-build. This led to the Self-Build and Custom Housebuilding Act 2015 which received Royal Assent in March 2015. The Act requires local planning authorities to establish local registers of custom-builders who wish to acquire suitable land to build their own home. It also requires local authorities to have regard to their local register when exercising their planning and other relevant functions. The detailed requirements are set out in the Self-build and Custom Housebuilding Regulations 2016 (SI 2016/950).

129. The Housing and Planning Act of 2016 added a duty to grant planning permission subject to exemptions at S2A. This provides that authorities must give suitable development permission in respect of enough serviced plots of land to meet the demand for self-build and custom housebuilding in the authority's area arising in each base period. However, there is scope for an exemption under S2B of the 2016 Act which may be applied for under Regulation 11.

130. There is further guidance in the PPG chapter Self-build and custom housebuilding including how relevant authorities can increase the number of planning permissions which are suitable for self-build and custom housebuilding. It also indicates that at the end of each base period authorities have 3 years to give permission to an equivalent number of plots

[51] Custom-build housing typically involves individuals or groups of individuals commissioning the construction of a new home or homes from a builder, contractor or package company or, in a modest number of cases, physically building a house for themselves or working with sub-contractors. This latter form of development is also known as "self-build" (i.e. custom-build encompasses self-build).

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of land and this provision will take effect from October 2019. The PPG chapter Housing need assessment also provides advice about how local planning authorities should obtain a robust assessment of demand for this type of housing in their areas[52].

Issues in casework

131. Depending on the circumstances of the case, including any relevant development plan policies, it may be necessary for planning permission to incorporate some means of ensuring that custom-/self-build proposals are constructed in this manner. As it is not clear how certain matters relating to self-build (e.g. CIL exemption and ownership for a period of 3 years) could be secured through a planning condition, a section 106 obligation is likely to the most appropriate method to secure these. This would also bind the requirement to successors in title (should the property be sold in the future). If insufficient permissions have been given to meet demand in accordance with the statutory duty then this may be cited as a material consideration in favour of granting permission.

Development of garden land and density

National planning policy

132. The revised Framework states that:

- "land in built-up areas such as private residential gardens" is excluded from the definition of previously developed land in the Glossary[53]
- Plans should consider the case for setting out policies to resist inappropriate development of residential gardens, for example where development would cause harm to the local area

  [paragraph 70]

- Planning decisions should support development that makes efficient use of land, taking into account (amongst other things) the desirability of maintaining an area's prevailing character and setting (including residential gardens)

  [paragraph 122]

- Under the heading of achieving appropriate densities and where there is an existing or anticipated shortage of land for meeting identified housing needs, it is especially important that planning decisions avoid homes being built at low densities and ensure that developments makes optimal use of the potential of each site

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[52] PPG ID: 2a-020-20180913
[53] *Dartford BC v SSCLG [2016] EWHC 635 (Admin)* confirmed that this does not extend to private residential gardens that are not located in built up-areas, e.g. in open countryside.

[paragraph 123]

- LPAs should refuse applications which they consider fail to make efficient use of land, taking into account the policies in the Framework

  [paragraph 123]

- A flexible approach should be taken in applying policies or guidance relating to daylight and sunlight which would otherwise inhibit the efficient use of a site as long as acceptable living standards would result

  [paragraph 123]

<u>Casework issues</u>

133. A significant proportion of appeal cases involve proposals to develop garden land. Such proposals often give rise to local concerns about the effect on the character and appearance of the area, the living conditions of neighbours, parking and highway safety. Consideration should be given to the arguments raised by the parties as well as relevant development plan policies and any Supplementary Planning Documents or Guidance.

134. If the effect on character and appearance is an issue you will need to assess the contribution that the garden currently makes before moving on to look at the potential effects on the streetscene and/or the wider character and appearance of the area. Depending on the circumstances and the evidence provided - consider:

    - Would the proposed development fit in locally? How would it compare in terms of plot sizes, the width of road frontages and density?

    - How would it compare in terms of distances between buildings and the spatial relationships between houses?

    - How would it compare in terms of spaciousness?

    - Would it affect the extent and nature of garden planting?

    - Would it comply with the Framework guidance on achieving well-designed places in section 12 (paragraphs 124 – 132)?

135. In some cases you may be referred to examples where the development of garden land has previously been permitted in the surrounding area. Look carefully at the evidence. Questions to consider might include:

    - How similar are the proposals and the circumstances? (if you have evidence on this)

    - Do the examples provide a local context for the appeal proposal or help define the character of the area?

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- Have such examples added to or detracted from the character and appearance of the area?

- Have there been any material changes in circumstances, including in respect of policy?

Development plan policy

136. As ever, the starting point for decision-making will be any relevant policies in the development plan. In particular:

    - Are the policies consistent with the revised Framework?

    - Does the policy specifically refer to gardens and/or previously developed land? If so, does a policy which prioritises the development of previously developed land or which precludes the development of greenfield sites offer any support in principle to the development of garden land?

    - Does the policy accept the development of unallocated land within settlements regardless of whether or not it is previously developed? If so, does it continue to offer support, in principle, to the development of garden land?

137. Some older development plans may pre-date the 2012 Framework and include reference to definitions under *Planning Policy Statement 3: Housing.* Any such policies are now likely to be out-of-date although any such judgement should be based on the provisions of paragraph 213 of the revised Framework. Paragraph 70 of the revised Framework is, however, largely unchanged from the previous version (paragraph 53) in relation to residential gardens. Nevertheless, it does not in itself, resist inappropriate development of residential gardens but rather indicates that LPAs should consider the matter for themselves. Paragraphs 122 and 123 of the revised Framework aim to achieve appropriate densities and are more specific than paragraph 47 of the 2012 Framework which referred to LPAs setting out their own approach to housing density to reflect local circumstances. These paragraphs will be important material considerations.

Definitions

138. The Framework definition of previously developed land explicitly excludes "land in built-up areas such as private residential gardens". See the *Dartford* judgment at footnote 14 which confirmed that this does not apply to private residential gardens in open countryside. A definition of "built-up" is not included in the Framework although "built-up areas" are not synonymous with urban areas and may be found in rural locations if there is development around the site or within the wider area. It will be for you to determine whether a site falls within the Framework definition of previously developed land based on the facts and circumstances of the particular case. This will include whether or not the area is "built-up", if the site should be regarded as a "private residential garden" and if the relevant part of the site is developed

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or not. However, if these matters are not central to the outcome of the appeal then it may not be necessary to reach a firm conclusion on this point.

Housing in the countryside and villages

National policy and guidance

139. Rural housing is covered at paragraphs 77 to 79 of the Revised Framework. In summary, planning decisions should be responsive to local circumstances in rural areas, support opportunities to bring forward rural exceptions sites, locate housing where it will enhance or maintain the vitality of rural communities and avoid the development of isolated homes in the countryside unless one of the five listed circumstances applies. According to the Court of Appeal in *Braintree DC v SSCLG, Greyread Ltd & Granville Developments Ltd* [2018] EWCA Civ 610 "…the word "isolated" in the phrase "isolated homes in the countryside" simply connotes a dwelling that is physically separate or remote from a settlement. Whether a proposed new dwelling is, or is not, "isolated" in this sense will be a matter of fact and planning judgment for the decision-maker in the particular circumstances of the case in hand" (paragraph 31). However, paragraph 79 does not imply that a dwelling has to be "isolated" in order for restrictive policies to apply and there may be other circumstances when development in the countryside should be avoided. So a proposed development may not be "isolated" as defined but this does not mean that it will accord with development plan policies that seek to prevent the location of new housing outside of settlements.

140. Further guidance is within the PPG chapter *Rural housing* although this pre-dates the revised Framework and simply addresses the question of how local authorities should support sustainable rural communities.

Development plans

141. You may need to consider whether or not the development plan policies can reasonably be regarded as consistent with the revised Framework. Are they distinctive local policies that promote sustainable development? Plan policies may also identify which rural settlements are appropriate to receive housing development, and at what scale. Provided they are supported by appropriate and robust evidence, such policies need not necessarily be inconsistent just because they adopt a particular approach (such as the use of settlement boundaries or development limits) which is not specifically referred to in the Framework or the PPG. In particular, there is nothing in the revised Framework to indicate that the definition of settlement boundaries is no longer a suitable policy response and therefore that such policies are bound to be out-of-date having regard to paragraph 213.

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Casework

142. Common concerns expressed by LPAs are that new housing would be located outside existing settlements and would conflict with development plan policy regarding development in the countryside. This often arises in cases where the appeal site is located at or near the edge of a settlement - whether or not defined by a settlement boundary.

143. Depending on the cases advanced by the parties - questions to consider could include:

- What is the underlying concern behind the reason for refusal? What are the objectives of the relevant development plan policies? For example, is the aim of policy to protect the character and appearance of the countryside and rural settlements, to ensure that car-reliant development is avoided or to focus development where it would support the vitality of settlements? Do any of those issues arise in your case?

- What is the relationship between the site and the settlement – visually, physically and functionally? What is the relationship between the site and open countryside surrounding the settlement? Is the site more closely related to the settlement or to the surrounding countryside?

- Is there evidence that the proposal would enhance or maintain the vitality of rural communities? Are there existing services, such as a shop, pub or school, in the settlement or in a nearby village, which residents of the new housing could reasonably be expected to use and thereby support?

- Would occupants be reliant on the use of a car? What options would there be to travel without using a car? What services are there within walking distance? Would they meet some everyday needs? Would the walk feel safe to users? Is there a bus service? Where does it go and how often? What about options for cycling?

144. In considering the issues in this last bullet point, paragraph 103 of the Revised Framework provides that opportunities to maximise sustainable transport solutions will vary from urban to rural areas and that this should be taken into account in decision-making.

145. Evidently you would not expect the same level of bus service, for example, in a village as in an urban area. It will be a matter for your judgment in each case whether there are realistic alternatives to the car for any of the journeys that future residents of the development are likely to make. Even if there are no evening bus services, for example, it may be possible to travel to and from the nearest town by bus for work or shopping. In cases where there are few or no alternatives to the car, you will need to consider the extent of any negative consequences, for example in terms of increased traffic levels or isolation for those without a car. However, locational considerations should encompass a range of relevant matters as outlined in paragraph 57 above and

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not be solely focussed on the likelihood of future occupiers being able to access services and facilities by means other than the car.

146. It will also be important to bear in mind that conflict between a proposal and a development plan policy or policies that seek to achieve a particular distribution of development across an LPA area is also likely to result in harm in achieving the planned strategy. Even if the proposed development is visually acceptable then this aspect of the scheme should be conspicuously identified and weighed in the overall balance. See High Court judgment in *East Staffordshire BC v SSCLG and Barwood Strategic Land* [2016] EWHC 2973 (Admin)[54].

Housing for rural workers

Background

147. The revised Framework allows for isolated homes in the countryside where there is an essential need for a rural worker, including those taking majority control of a farm business, to live permanently at or near their place of work in the countryside (paragraph 79).

148. The 2012 Framework replaced the detailed policy on agricultural, forestry and other occupational dwellings which was previously in Annex A to *Planning Policy Statement 7: Sustainable Development in Rural Areas.* This set out functional and financial tests for permanent and temporary dwellings. The criteria previously set out in Annex A no longer have any status as national planning policy but they are nonetheless retained in some development plans. There is nothing in the Revised Framework to preclude LPAs from devising local policies setting out how the question of "essential need" is to be judged although there is no longer any national policy requirement relating to financial considerations. Nevertheless there may be a need to consider the degree to which relevant policies are consistent with the revised Framework.

Issues in casework

149. Your framing of the main issue will depend on the circumstances of the case. However, having regard to the Framework, the following examples might be useful:

- whether there is an essential need for a dwelling to accommodate a rural worker

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[54] The Court of Appeal ([2017] EWCA Civ 893) subsequently concurred with this judgment in relation to the presumption in favour of sustainable development. But the High Court judge's comments are nonetheless pertinent and were not contradicted "But he [the Inspector] needed to address the "*cons*" inherent in his acceptance that the Proposed Development collided with these policies and did not generate exceptional benefits, in some appropriate and reasoned manner. As to the level of detail required this will be case specific and will take into account the arguments advanced. One indication of the level of detail required would be whether the Inspector has addressed the "*cons*" in a level of detail which is commensurate or proportionate with that with which he has addressed the "*pros*" (paragraph 52).

- whether, having regard to national planning policy that seeks to avoid isolated new homes in the countryside, there is an essential need for a rural worker to live permanently at or near their place of work

150. Appeals casework can often focus on one or both of the following questions:

    - Is it necessary for a worker to live at or near their place of work in order for that work/enterprise to function properly?

    - Is the work/enterprise in question likely to endure in the long term? (ie is there a significant risk that the enterprise might cease in the near future, leaving behind a new dwelling that would not otherwise have been approved?)

151. Depending on the cases put by the parties, you may need to consider the following:

    - Does a worker need to be on or near the site at most times, including during the night – ie outside regular hours of work? Have other measures been considered (eg automatic alarms in the event of power failure)? Would they be effective?

    - What adverse effects might arise if a worker were not present at most times? How serious might these effects be? Could they materially affect the functioning of the enterprise or the viability of the business?

    - If there is a need to be on site, does this require a worker to be present all year round or only at specific times of the year? If a need to be present at most times of the day is seasonal, could this requirement be accommodated without providing a dwelling? For example by providing temporary overnight facilities in an existing building?

    - If a worker does need to live at or near the site, is there any existing accommodation on the site, on the holding or in the area that might reasonably meet that need?

    - What evidence is there that the work/enterprise is likely to endure in the long term? How long has it been carried out for? What investments have been made in the enterprise? Has it been profitable?

    - If the work/enterprise has not yet been established – what evidence is there that it will be established and that it is likely to be sustained over time?

    - Would the dwelling be of a size which is appropriate to the essential need or would it be unnecessarily large? If allowing the appeal, is it necessary to restrict permitted development rights by condition?

    - If the enterprise is new or has not yet been established – would it be appropriate to provide temporary accommodation for an initial period (eg in a static caravan or mobile home)? If so, for how long?

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152. Appellants will often submit detailed evidence about the viability of an enterprise in order to demonstrate that it will be likely to endure. This might include accounts showing income/expenditure and profit/loss in recent years and/or business plans forecasting future performance. There is no one standard formula for assessing viability and you will need to consider each case on its merits looking carefully at the cases of each party. However, you may need to consider:

- Have all the costs of establishing (if relevant), running and maintaining the enterprise been taken into account and justified (for example, land, buildings, stock, feed, vets, power & utilities, maintenance, repairs, transport, marketing, insurance, wages, financing)?

- What income is (or would be) generated? Have allowances been made for wages? Are predictions realistic and justified?

153. Evidence about costs and income will often be based on industry standard reference books such as the John Nix Farm Management Pocketbook[55] or the Agricultural Budgeting and Costing Book. Have up to date versions been used? Some appellants will argue that they are prepared to accept an income that is less than the minimum agricultural wage. This is a material consideration but determining such matters against an objective standard will lead to more consistent decision-making and accords with the principle that planning permission runs with the land.

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Green Belt

154. Framework paragraph 145 states that new buildings are inappropriate in the Green Belt unless for a specified exception. New buildings for agriculture and forestry are listed as exceptions, but dwellings are not included in that category (even if they are intended to support such a use). Consequently, if the site is in the Green Belt, you should consider any established essential need as another consideration that may clearly outweigh the harm to the Green Belt (and any other harm) and so amount to very special circumstances. See ITM chapter on Green Belts.

Conditions

155. If you intend to allow the appeal, should a condition be imposed to restrict occupation? You need to consider:

- is there a proven 'essential need' for a rural worker? – and

- would permission for an unrestricted dwelling be refused because it would conflict with paragraph 79 of the Framework and/or relevant development plan policy? If so, then a restrictive occupancy condition would be necessary.

[55] Hard copy available for loan through the Library

156. If you intend to impose a condition you will need to consider if it would be appropriate to limit occupation:

- specifically to a worker in connection with the enterprise/place of work (for example, the specific farm) or
- to rural workers in the locality (ie so it could help meet a local need for rural worker accommodation if no longer needed by the original enterprise) and,
- to any dependants, widow, widower or surviving civil partner?

157. If the work or enterprise has not yet been established or is new – and depending on the evidence provided - you may need to consider whether the accommodation should be provided initially on a temporary basis to allow the work/enterprise time to get established? If so, a condition should be imposed to achieve this.

158. There may be a demonstrable need for an additional agricultural dwelling on farms where an existing farmhouse is not subject to such a condition. The Courts have held, in *Macklin and others v SSE and Basingstoke and Deane Borough Council* [27 September] 1995 that it can be appropriate to impose a condition restricting occupancy on the existing farmhouse as well as the new dwelling, if this is necessary to ensure both dwellings remain available to meet the need and to protect against the risk of further pressure for new dwellings. If you consider that such a condition may be necessary, and the matter has not been raised, then you should seek the views of the parties.

159. Sometimes an existing farm house is occupied by the farmer who proposes to retire. The proposal may be for a new dwelling for the person who is going to take over running the farm, for example a son or daughter and their family. In such circumstances it is relevant to take account of the judgment in *Keen v SSE and Aylesbury Vale DC* [12 May] 1995[56] where it was found to be unreasonable to expect a farm worker to relinquish his property on retirement to provide accommodation for the functional need on the holding. On the other hand, a retired farmer may still intend to play an active role in the management of the holding. He or she may therefore be able to undertake those tasks that require a continuous presence. In such circumstances there may not be sufficient justification to support a further dwelling.

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Choice of procedure

160. You will find that it is not unusual to be provided with detailed evidence regarding the nature and operation of the enterprise (in order to establish a need for a worker to be present at most times) and its financial viability and future business planning (to establish it will endure). As such evidence is likely to need to be tested by questioning then a hearing is often the most effective procedure.

[56] [1996] JPL 753

Deleting or varying an agricultural occupancy condition

161. In this type of case you will need to decide whether it is still necessary to continue to limit occupancy to a rural worker? (if not, the condition is unlikely to be necessary)

162. Depending on the cases put by the parties, you may need to consider:

- Is there evidence of a need for a dwelling in relation to the specific work/enterprise or in the wider area – now and/or in the longer term?
- Has the dwelling been offered for sale and/or rent for a reasonable period at a price that reflects the occupancy restriction imposed by the condition? If so, were there any offers or interest?
- Are there any assessments of the need for farm, or other work related, dwellings in the area?

163. The following legal cases dealt with issues relating to conditions. However, note that they all predate the 2012 Framework:

The Inspector was entitled to consider whether the original imposition of the condition was appropriate as this was capable of being a material consideration. However, the Inspector was also required to consider the current planning circumstances and to decide whether there was currently an (agricultural) justification. (*Sevenoaks DC v SSE & Mr & Mrs Geer [1995]*)

The Inspector was entitled to take account of the probability that the condition would not have been imposed had there been a contemporary application for planning permission. In this case the condition might not have been imposed because the site now fell within the settlement limits of the village. (*Hambleton v SSE & Others [1994])*

The Inspector concluded the principal issue was to establish if the condition had outlived its usefulness. To do this, three possible options needed to be considered – potential sale to a bona fide occupant, renting the dwelling to a bona fide occupant and continuing local need. The Court held that the possibility of letting was material and went to the heart of the issue, namely whether or not there was any demand for an agricultural workers dwelling. (*Thomas v NAW and Monmouthshire CC 1999*).

There may be disagreements over the interpretation of the words "mainly working in agriculture" and "dependants". The House of Lords has defined "dependants" as persons living in a family with the person defined and dependent on him / her in whole or in part for their subsistence and support (*Fawcett Properties Ltd v Buckingham County Council 1961).* Further information is provided in the ITM *Enforcement* chapter.

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Holiday Cottages

164. There is no definition of dwellinghouse in the Act, but in *Gravesham BC v SSE and O'Brien* [1983] JPL 306 it was accepted that the distinctive characteristic of a dwellinghouse was its ability to afford to those who used it the facilities required for day-to-day private domestic existence. It did not lose that characteristic if it was occupied for only part of the year, or at infrequent intervals, or by a series of different persons. Consequently, a holiday cottage that meets the *Gravesham* test will usually be treated as a dwellinghouse for the purposes of applying planning policies and not as a commercial leisure use, even if its occupation is restricted by condition.

Housing Standards

Background

165. A national system of housing standards commenced in 2015, following the Written Ministerial Statement (WMS) *Planning Update March 2015*. This set out the Government's policy on the setting of technical standards for new dwellings[57]. The WMS has not been replaced by the revised Framework and provides relevant background.

166. The system means that additional optional standards for water efficiency, access and internal space, over and above the mandatory minimum standards contained in the Building Regulations, can be required.

167. The system defines specific additional optional Building Regulations requirements on water efficiency and access, and a new national space standard – known collectively as 'the optional national technical standards'. The optional access standards comprise Building Regulations Requirements M4(2) (accessible and adaptable dwellings) and M4(3) (wheelchair user dwellings). The Lifetimes Homes standards (which mainly relate to accessibility to and within a dwelling) and the withdrawn Code for Sustainable Homes (CSH)[58] are not included in the system[59].

168. The way that the optional national technical standards may be applied to residential development is through condition(s) on a planning permission, in appropriate circumstances. Therefore planning permissions can lawfully trigger certain aspects of the Building Regulations.

169. Responses to common questions in respect of the national technical standards are provided in Annex 5 of this chapter.

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[57] DCLG has confirmed that "new dwellings" includes dwellings resulting from a change of use or conversion, as well as newly erected dwellings.
[58] The CSH was withdrawn in March 2015, except in the management of legacy cases.
[59] Note that Building for Life 12 remains extant. It is about urban design rather than the technical standards for new dwellings.

170. A summary of how the national technical standards should be applied is provided in Annex 6 to this chapter.

National planning policy and guidance

171. Paragraph 150 b) of the Revised Framework provides that any local requirement for the sustainability of buildings should reflect the Government's policy for national technical standards. Footnote 46 provides that planning policies for housing should make use of the Government's optional technical standards for accessible and adaptable housing, where this would address an identified need for such properties. Policies may also make use of the nationally described space standard, where the need for an internal space standard can be justified. These are concerned with plan-making rather than decision-taking.

172. There is guidance in the PPG in *Housing: optional technical standards*.

173. For decision-taking, the WMS states that:

> *Existing Local Plan, neighbourhood plan and supplementary planning document policies relating to water efficiency, access and internal space should be interpreted by reference to the nearest equivalent new national technical standard. Decision takers should only require compliance with the new national technical standards where there is a relevant current Local Plan policy.*

174. Therefore, in deciding whether to determine an appeal other than in accordance with any existing development plan policy and according to the WMS, reference should only be made to the national technical standards and compliance can only be justified when adopted policies are in place. Policies that refer to local or other standards for water efficiency, access and internal space, such as CSH or Lifetime Homes, that different from the national technical standards will not be consistent with the WMS.

175. Whilst BREEAM[60] is commonly used as a sustainability standard for non-domestic buildings, it could previously be applied to domestic conversions and change of use projects, though not newly constructed dwellings. Some local plans may also have set BREEAM sustainability standards for new housing (for instance, for mixed used developments). However, as BREEAM is a technical standard, it should no longer be applied to housing.

176. In respect of energy efficiency standards, the WMS says:

> *For the specific issue of energy performance, local planning authorities will continue to be able to set and apply policies in their Local Plans which require compliance with energy performance standards that exceed the energy requirements of Building Regulations[61] until commencement of amendments to the Planning and Energy Act 2008 in the Deregulation Bill [now Act] 2015.*

[60] Building Research Establishment Environmental Assessment Method
[61] See the *Planning and Energy Act 2008*, s1(c).

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177. The relevant amendment is not yet in force, which in practice means that for the time being LPAs can require an energy performance standard equivalent to former CSH level 4. The current mandatory Building Regulations Part L 2013 requirement is equivalent to former CSH level 3. This is consistent with paragraph 150 of the Framework.

178. There are separate legal provisions enabling LPAs to include policies in their Local Plans imposing reasonable requirements for a proportion of energy used in development in their area to be energy from renewable sources in the locality of the development, or low carbon energy from sources in the locality of the development[62].

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Casework

179. How you define the issue will depend on the specific concerns raised. You may wish to consider whether any of the following examples could be adapted to meet the circumstances of your case:

- Whether the proposed development would provide acceptable living conditions for future residents in terms of the provision of internal living space, private outdoor space and access for people with disabilities.

- Whether the proposed development would provide acceptable living conditions for future occupants with particular reference to accessibility and suitability for changing needs.

- Whether the external areas would be sufficient to meet the day to day needs of occupants for outdoor living space.

180. When assessing these issues questions to consider include:

- If a proposal falls short of a particular requirement, what harm would result? Would the living conditions of occupants be unsatisfactory? If so, in what ways? For instance, would the dwelling be sufficiently accessible? Would it continue to be accessible as occupants get older? Would there be sufficient internal or external space to meet day to day needs?

- How are the relevant policies phrased? Do they express minimum requirements as absolutes? Or do they include any caveats or exceptions (including in the supporting text), such as 'wherever it is practicable'?

181. If you intend to allow the appeal, despite a shortfall against specified requirements in a development plan or SPD, consider:

- Have you acknowledged the conflict with policy and very clearly explained why that conflict is not leading you to dismiss? Perhaps, for example, because any shortfalls are minor and you are satisfied that,

[62] *Planning and Energy Act 2008*, s1(a)&(b).

overall, acceptable living conditions would be provided, in this particular case?

Conditions

182. Please refer to the ITM chapter *Conditions* for advice on conditions in relation to housing standards. If you are imposing a condition requiring space or access standards to be met are you satisfied that the relevant criteria could be achieved without significantly amending the scheme before you?

Residential Annexes

183. This type of casework most commonly involves proposals for "granny flat" type accommodation either as an extension to the main house or as an outbuilding. Occasionally you may encounter proposals for domestic staff accommodation.

184. "Granny annexes" tend to fall into one of two categories:

- Additions to dwellings which are simply extensions in the usual sense of the word – i.e. the 'granny' would be part of the family or household and there is no suggestion (in terms of the physical layout or otherwise) that an independent planning unit would be provided. The same might apply with an outbuilding to a house.

- Annexes (either by means of an extension or an outbuilding) which would provide for independent living – for example by including a kitchen and a shower- or bathroom – and so could potentially be occupied as a separate dwelling house (so forming a separate planning unit).

185. Concerns from local planning authorities and others tend to fall into two categories:

- Where the ancillary nature of the accommodation proposed is not an issue – but there are concerns about the local effect on character/appearance, living conditions or other matters

- Where there are concerns that the accommodation would be unlikely to be ancillary and so would, in reality, be used as an independent/separate dwelling – this might give rise to concerns of principle (for instance, if countryside policies seek to prevent new dwellings) or that use as a separate dwelling might cause other problems (eg through additional traffic, noise and disturbance or an unsatisfactory relationship with the main dwelling).

186. The judge in *Uttlesford DC v SSE & White [1992]* considered that, even if the accommodation provided facilities for independent day-to-day living, it would not necessarily become a separate planning unit from the main dwelling – instead it would be a matter of fact and degree. In that case the accommodation gave the occupant the facilities of a self-contained unit although it was intended to function as an annex with the occupant sharing

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her living activity in company with the family in the main dwelling. There was no reason in law why such accommodation should consequently become a separate planning unit from the main dwelling.

187. Consequently, if it is argued that the accommodation would be used as an independent or separate dwelling, you will need to assess whether it could also be capable of being occupied as an annex. The following questions might help you decide:

- Would occupants live as part of the household in the main house? (in which case the use would be ancillary)
- Would the annex share any facilities with the main house (eg access for drivers and pedestrians, parking, garden, services/utilities)
- How would it compare in size to the main house (smaller or not)?
- What facilities would it contain (eg kitchen, bathroom, living space, bedrooms)?
- How close would it be to the main house (near or far)?

188. If you conclude that the proposed accommodation could be used as either an annex or as a separate dwelling, and there are sound planning reasons why the latter would not be acceptable, then consider:

- Could such occupation be prevented by means of a condition requiring that occupation is solely for purposes ancillary to the residential use of the main dwelling? In such circumstances, without the condition, it could be argued that it might be difficult to prevent separate occupation, even though this may not have been what was applied for, consulted upon or considered. (See the model conditions in the DRDS relating to "granny" annexes and staff accommodation.)

189. The starting point is to consider the proposal as applied for and on the basis that any planning permission runs with the land irrespective of the circumstances of the intended occupier(s). If you conclude that there would be little realistic prospect of the proposal being used as an annex, you will need to decide on what basis you should determine the appeal. If you intend to follow this approach:

- Review the evidence very carefully: are you satisfied that occupation as an annex would be so unrealistic that the inevitable effect of any permission would be to create a new planning unit/separate dwelling and that limiting the use by means of condition would not be reasonable?
- If, following this assessment, you decide to treat the proposal as being for a separate dwelling (potentially contrary to the description of development which was applied for), would your approach come as a surprise to the parties? If so, you would need to provide them with an opportunity to comment.

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Houses in Multiple Occupation and Permitted Development Rights

Background

190. Houses in Multiple Occupation (HMOs), including those which fall within Class C4[63], can benefit from the permitted development rights granted to dwelling houses by the *Town and Country Planning (General Permitted Development) (England) Order 2015* [GDPO].

Issues in casework

191. Case law[64] has established that the distinctive characteristic of a "dwelling house" is its ability to afford to those who use it the facilities required for day-to-day private domestic existence. Whether a building is or is not a dwelling-house is a question of fact and degree. A "dwelling house" does not include a building containing one or more flats, or a flat contained within such a building.

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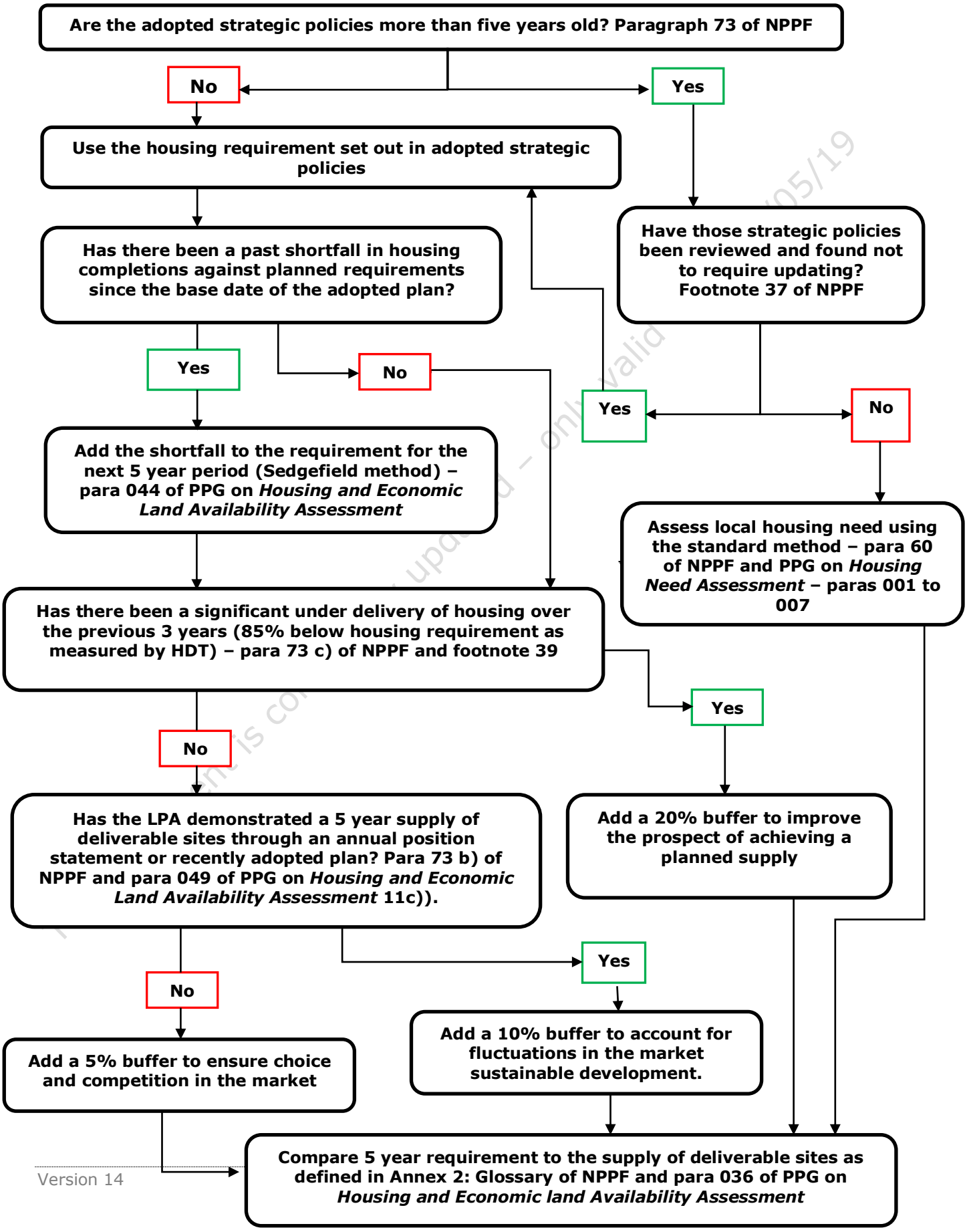
[63] The Town and Country Planning (Use Classes) Order 1987 (as amended) defines Class C4 as use of a dwelling house by not more than six residents as a "house in multiple occupation"
[64] *Gravesham Borough Council v The Secretary of State for the Environment and Michael W O'Brien (1982)*

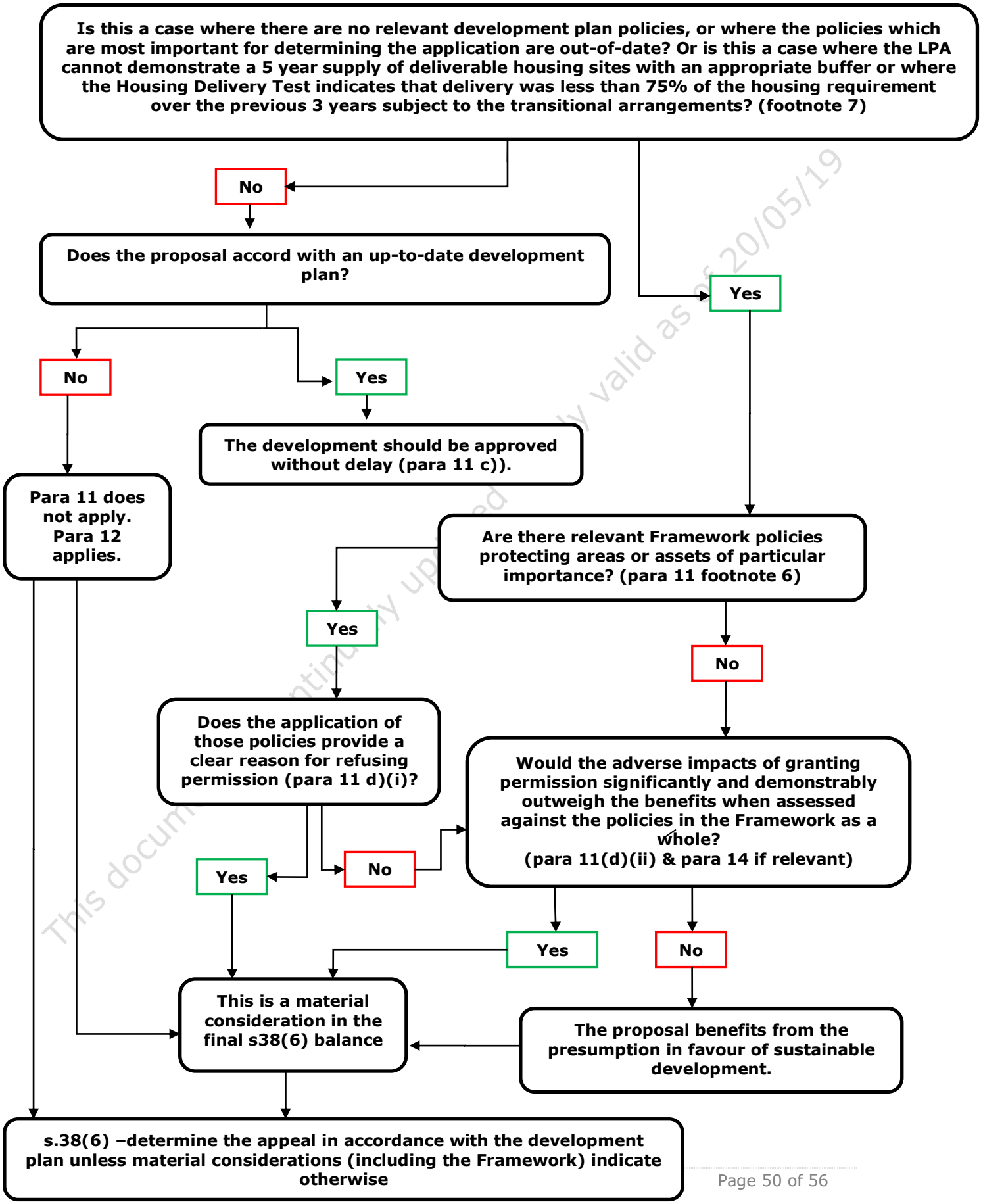
Annex 1

IS THERE A MINIMUM OF 5 YEARS' WORTH OF HOUSING?



Annex 2

APPLICATION OF REVISED FRAMEWORK PARAGRAPHS 11 C) & D)



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Annex 3
Considerations when determining whether housing sites are deliverable

Definition of deliverable in Glossary to revised Framework and guidance in para 036 of PPG on *Housing and Economic Land Availability Assessment*

Sites should be available now, offer a suitable location for development and be achievable with a realistic prospect that housing will be delivered on site within 5 years

Distinction between sites that are not major development, sites with detailed planning permission, sites with outline planning permission, permission in principle, site allocations, identified on brownfield register

Clear evidence that completions will begin in 5 years may include:

- Any progress towards submission of an application
- Progress with site assessment work
- Relevant information about viability, ownership or infrastructure
- A statement of common ground with developer confirming intentions, anticipated start and build-out rates
- Any planning performance agreement re submission and discharge of reserved matter

Other relevant considerations in establishing whether there is clear evidence may also comprise:

- If there is a resolution to grant planning permission how long has the planning obligation been outstanding? When is it likely to be concluded?
- If there is an outline permission, what progress has been made with discharging conditions?
- What have build-out rates been historically and might this be expected to change?
- How many outlets will there be on larger sites?
- How long has a site been allocated for development and why has it not come forward previously?
- Are sites in an emerging plan about to be allocated or has the examination not progressed sufficiently?

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Annex 4:
Model condition requiring affordable housing

See paragraphs 105-118 above for guidance on when it may be appropriate to use this condition to secure affordable housing.

Please note that the numbered points in this condition should be expanded to include relevant details that have been provided as heads of terms, and in particular to set out the mechanism by which the housing will be secured as affordable.

No development shall take place [65]until a scheme for the provision of affordable housing as part of the development has been submitted to and approved in writing by the local planning authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex 2: Glossary of National Planning Policy Framework or any future guidance that replaces it. The scheme shall include:

i. the numbers, type, tenure and location on the site of the affordable housing provision to be made which shall consist of not less than [**]% of housing units/bed spaces;

ii. the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;

iii. the arrangements for the transfer of the affordable housing to an affordable housing provider [or the management of the affordable housing] [if no Registered Social Landlord involved];

iv. the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and

v. the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.

The affordable housing shall be retained in accordance with the approved scheme.

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[65] See PINS Note 13/2018 for advice re use of pre-commencement conditions

Annex 5:
Responses to questions regarding the national technical standards

Question	Response
The technical requirements provide a minimum floor area for a single bedroom (7.5m2) and a double or twin room (11.5m2). If a one bedroom flat is proposed and the bedroom has a floor space of 11.5m2 or greater (and meets the minimum width for a double bedroom) is the 1 bedroom 2 person overall floor space standard in table 1 (50m2) then applied? It is possible that an applicant could claim that despite providing quite a generous bedroom the flat is only intended as a single person flat and so the 37/39m2 floor space should be applied.	The intention is that the size of the bedroom determines how occupancy is defined. So a bedroom exceeding 11.5m2 is always counted as a double bedroom and a bedroom between 7.5m2 and 11.5m2 is always a single bedroom (all subject to minimum room widths). A room less than 7.5m2 cannot be counted as a bedroom.
Whether it is acceptable if a home meets the overall gross internal (floor) area but one or more of the bedrooms does not meet the floor area set out in the Nationally Described Space Standard (e.g. large living area with bedroom(s) below the standard).	The Nationally Described Space Standard sets an overall minimum gross internal area for the home and minimum floor areas and room widths for bedrooms and minimum floor areas for storage – it does not set standards for the size of any other rooms (e.g. kitchen or living area). To meet the Space Standard the home must meet the overall minimum gross internal area AND the minimum floor areas and room widths for bedrooms AND minimum floor areas for storage, as set out in the section on Technical Requirements and Table 1 of the Nationally Described Space Standard. If the home meets the overall minimum gross internal area but a bedroom(s) does not meet the required minimum floor area and/or width then the Space Standard would NOT have been met.
Are the built-in cupboards included in the gross floor space areas in the Nationally Described Space Standard (NDSS) or are they in addition to it?	Yes, the built-in storage space is included in the gross internal floor area in the Nationally Described Space Standard.
Do the NDSS apply to permanent mobile homes?	The answers to these questions depend on whether and how the LPA chooses to apply the NDSS. The NDSS is not mandatory – it is up to authorities if they
The NDSS do not refer to bed-sits. Does this mean bed-sits are	

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not considered acceptable in principle?	want to put it in their plan and they have discretion on how to apply it. They need to justify the need for it, and whether there is any adverse effect on development viability, and affordability. The LPA has discretion over how the NDSS is applied and can choose whether or not to apply it to mobile homes or bed-sits. The NDSS can be applied to conversions as long as express planning permission is required for it (unlike the optional technical standard on access which can only be applied to newly constructed dwellings).
Do NDSS apply to new dwellings converted from existing buildings?	

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Annex 6:
The national technical standards and how they should be applied

	Planning Practice Guidance on Optional Technical Standards	Written Ministerial Statement, March 2015 and the National Planning Policy Framework 2018
Accessibility and wheelchair housing	Policies for enhanced accessibility or adaptability should refer to Requirement M4(2) and /or M4(3) of the optional requirements in the Building Regulations and it should be clear what proportion of new dwellings should comply with the requirements. Policies should also account for factors which may make a site less suitable for the standards (e.g. flood risk, topography), particularly where step-free access cannot be achieved or is not viable. Policies for wheelchair accessible homes only apply to dwellings where the local authority is responsible for allocating or nominating a person to live in that dwelling. Policies can set different requirements from the wheelchair accessibility standard to meet a specific and clearly evidenced need of an individual. The requirements should only be applied to homes where a local authority allocation policy applies (and be subject to viability considerations).	**<u>WMS</u>** Existing Local Plan, neighbourhood plan, and supplementary planning document policies relating to water efficiency, access and internal space should be interpreted by reference to the nearest equivalent new national technical standard. Planning policies relating to technical security standards for new homes will be unnecessary because all new homes will be subject to the new mandatory Building Regulation Approved Document on security (Part Q). Policies relating to the external design and layout of new development, which aim to reduce crime and disorder, remain unaffected by this statement. Where policies relating to technical standards have yet to be revised, local planning authorities are advised to set out clearly how the existing policies will be applied in decision taking in light of this statement. **<u>NPPF</u>** Planning policies for housing should make use of the Government's
Water efficiency standards	Policies can require new homes to comply with	

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	the optional standard (which is tighter than that required by building regulations), where there is a clear and justified local need.	optional technical standards for accessible and adaptable housing, where this would address an identified need for such properties. Policies may also make use of the nationally described space standard, where the need for an internal space standard can be justified.
Internal space standards	Internal space standards can only be applied if there is a relevant plan policy. Such policies can only require compliance with the Nationally Described Space Standard.	
Energy Performance		**<u>WMS</u>** Policies requiring compliance with energy performance standards that exceed the energy requirements of Building Regulations can be applied until commencement of amendments to the Planning and Energy Act 2008 in the Deregulation Bill [now Act] 2015. At this point the energy performance requirements in Building Regulations will be set at a level equivalent to the (outgoing) Code for Sustainable Homes Level 4. Until the amendment is commenced conditions should not set requirements above a Code level 4 equivalent. **<u>NPPF</u>** Any local requirements for the sustainability of buildings should reflect the Government's policy for national technical standards.

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