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Five Year Land Supply FAQ

Following our events on the 5 Year Land Supply we have produced some FAQ. The popular questions posed at the events are illustrated with recent case examples to aid you.

This page will be updated as and when new information comes to light. If you have any questions on this topic, please email: pas@local.gov.uk.

Questions (Click the question to jump down to the answer)

1. If you do not have an adopted Local Plan what housing figure should be used to assess your 5 year land supply? Would using the projections on their own be sufficient? Is it legitimate to do this for a single District within an HMA?
2. What figure do you use to assess your 5 year land supply if you are advancing your Local Plan part 2 but working on a joint SHMA/OAN figure to inform future plan reviews? Is it ok to continue to bring forward allocations on the previous target? Can you base your figure on previous evidence in the interim?
3. If OAN is reduced to a level below the target growth in a Local Plan, can the reduced OAN be used for 5 year supply purposes if the Local Plan has a higher figure and due to low levels of completion the 5 year supply cannot be met at the higher level?
4. When a local authority struggles to demonstrate a five year housing supply against constrained RSS figures, how should it go about trying to demonstrate a five year supply against (unconstrained) objectively assessed need?
5. How are PINS applying the 5 year land supply requirement? Are they allowing development where the Borough cannot identify the 5 year supply? How relevant are Local Plans if 5 year supply can't be demonstrated?
6. We are being challenged on using ONS figures to assess our 5 year housing land supply as we have yet to establish our Objectively Assessed Needs. Is this a reasonable approach? If not then what should we do?
7. If two separate LPAs are preparing a joint local plan, what if, on submission, one LPA can demonstrate a 5 YLS whereas the other LPA cannot? Does unmet need from a neighbouring authority form part of the 5 year assessment?
8. Should we continue to monitor/ publish data on our Core Strategy for the 5YLS/ trajectory when it is not the most up to date OAN but our emerging plan is still pre-submission?

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9. Where an LPA cannot demonstrate a 5YLS, what approach should it take to best protect policy non-complaint areas from housing development under pressure from developers?
10. In rural areas, where a LPA does not have a 5 YHLS, does this fact override adopted local plan policies? For example, applications being submitted for open market housing in settlements where the policy position will only permit local needs housing?
11. What weight does the PAS approach carry at the examination of a Local Plan?
12. It can be difficult to engage the public at large in conversations about need, and why a 5YLS is so important. How can the presentation of the process be best presented for the widest understanding?

Shortfall, backlog and buffer

13. How can we prevent the 5 year supply becoming a 'moveable feast'?
14. When does a 5% buffer become 20%? Is it based upon cumulative totals against the requirement or on a purely annual basis? How far into the past do you go? Is it 5 years, or Plan period, or as far back as possible?
15. How should the backlog from previous plans (e.g. RSS) be considered through the Local Plan process when using demographic models as a starting point and would Sedgfield be the only applicable approach to making up shortfall?
16. Do "persistent under delivery", and the 20% trigger relate specifically to delivery against adopted housing targets (even based on Regional Strategy) or is it appropriate to use the latest household projections, in advance of submission of a new local plan?
17. Where an authority has persistently under-delivered in recent years, at what point in the calculation should the extra 20% be added? Should it be added to the backlog or not?
18. If a plan was to be dated to run for 15+ years starting in 2014 (with an acknowledged persistent undersupply over recent years), how would the 5YLS be calculated? Would there be a backlog to address, and if so, how would this be calculated?
19. If RSS is still relevant, then will LPAs be in a position of having to plan and develop for a 5% or 20% buffer?

Answers

1. If you do not have an adopted Local Plan what housing figure should be used to assess your 5 year land supply? Would using the projections on their own be sufficient? Is it legitimate to do this for a single District within an HMA?

The most recent figures available will be used to assess five year supply. These might be your SHMA figures which set out OAN, or could be the most recent household projections, or ideally an emerging new plan figure, which will have the constraints and duty issues factored in. However, it is important to note that all these are untested and will therefore have limited weight. The figure to use will vary according to your own local circumstances and what is considered to be the most up to date and robust figure available.

In the absence of a SHMA for the whole housing market area a pragmatic approach for individual districts may need to be taken. Conversely where a SHMA covers more than one area who are working jointly and have set their figures together it may be that a combined target approach is taken. This approach has been endorsed by the Inspector in the Christchurch and East Dorset Core Strategy examination. In Wiltshire there are three housing market areas each with their own individual disaggregated five year land supply target which are used and being tested at appeal.

2. What figure do you use to assess your 5 year land supply if you are advancing your Local Plan part 2 but working on a joint SHMA/OAN figure to inform future plan reviews? Is it ok to continue

to bring forward allocations on the previous target? Can you base your figure on previous evidence in the interim?

This issue has been addressed differently by Inspectors in the last 18 months. In Harrogate the Inspector expressed concern in April 2014 that 'the submitted DPD falls considerably short of meeting the objectively assessed need' and as a consequence the plan was withdrawn. In the case of Wokingham the high court dismissed a challenge by Gladman (Gladman Developments Limited v Wokingham Borough Council [2014] EWHC 2320 (Admin) 11 July 2014).

The judge stated that 'the inspector in the present case was not required by reason of the Framework to consider an objective assessment of housing need in order to assess whether this development plan document was sound'. However, as a precedent this should be treated with great care, because the circumstances may have seemed to the Inspector to justify the approach in that case and those circumstances may or may not be transferable.

Perhaps the key difference in these decisions relates to whether or not there is an up to date OAN (in Harrogate there was, in Wokingham there wasn't). In principle it is considered that if the allocations plan is bringing forward sites which fulfil a target which is out of date and does not represent the full OAN/SHMA plan figure there is a real danger of progressing this because it does not represent the most up to date position. As such this approach is fraught with difficulties as well as being clearly at odds with the underlying thrust of the Framework.

3. If OAN is reduced to a level below the target growth in a Local Plan, can the reduced OAN be used for 5 year supply purposes if the Local Plan has a higher figure and due to low levels of completion the 5 year supply cannot be met at the higher level?

This might be the case for an area which is seeking to grow either for economic ambitions or the delivery of affordable housing, where the plan target has been increased above the OAN to achieve delivery objectives. The Plan target should be the one used for calculating five year supply, however, this obviously gives a higher annual target required to achieve that delivery. In defending an argument based on 5YLS the Council may be able to argue that the current rate is easily meeting the OAN!

4. When a local authority struggles to demonstrate a five year housing supply against constrained RSS figures, how should it go about trying to demonstrate a five year supply against (unconstrained) objectively assessed need?

The objective is to get a plan in place and that the plan target is then used as the starting point for the five year supply figure. This plan target will consider all the constraints that exist and take account of whether any neighbours within the housing market area can take any of your unmet need. Work on the SHMA and OAN should go hand in hand with constraints to enable the plan figure to be properly developed and tested so that the five year supply can be established on a robust basis.

5. How are PINS applying the 5 year land supply requirement? Are they allowing development where the Borough cannot identify the 5 year supply? How relevant are Local Plans if 5 year supply can't be demonstrated?

Local Plan policies are vulnerable where there is no five year supply because the NPPF Paragraph 14 makes very clear that there is a presumption in favour of sustainable development. This is set out in paragraph 49 which clearly says that the relevant policies for the supply of housing should not be considered up to date if the local planning authority cannot demonstrate a five year supply of deliverable housing sites.

This should also be read in conjunction with paragraph 47 which seeks a significant boost in the supply of housing. Where policies are out of date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits,

considered against the policies of the NPPF as a whole. There are numerous examples where sustainable development has been allowed overruling settlement boundaries, landscape value, employment use, affordable housing policies etc.

There are a considerable number of appeal decisions available with more emerging each month which all confirm that where an Authority 'cannot demonstrate a 5 year housing land supply, its housing supply policies should be considered out of date in accordance with paragraph 49 of the Framework'.

There have been some interesting High Court decisions about what constitutes housing supply policies, which has been applied quite widely, as shown by the Hopkins Homes v Suffolk Coastal Judgement in January 2015 (CO/3971/2014). However, the Cheshire East v Richborough Estates Judgement in Feb 2015 (CO/4217/2014) held that in this case the Green Gaps policy could not be considered a housing supply policy.

There have also been two decisions issued on 20th May which consider very differently the issue of disaggregation; whether the five year supply should be considered at a lower than district level. IN BANES (APP/F/114/A/14/2215930) the Inspector concluded that despite the lack of five year supply in the district as a whole there was an excess of supply in some areas, and further development in these rural areas would dilute the adopted plan strategy. However, in South Oxford (APPQ3115/A/14/2217931) the Inspector gave considerable weight to the need to boost supply. Concluding that despite some areas having an excess supply, there was a district wide shortage and therefore the housing supply policies were out of date.

6. We are being challenged on using ONS figures to assess our 5 year housing land supply as we have yet to establish our Objectively Assessed Needs. Is this a reasonable approach? If not then what should we do?

The NPPF is clear that a local plan should meet the full objectively assessed need for market and affordable housingas far as is consistent with the policies in the NPPF. The starting point for establishing OAN is the ONS and DCLG projections. However, if they are used for five year supply calculations it is important to understand that they do not represent the full OAN and are untested. The most up to date figures should and will be used and these are likely to be challenged by developers, who may seek to establish their own OAN.

This has been the case in the North of Hospital Lane, Blaby decision reference S62A/2014/0001 (22 July 2014) in which the Inspector expressed considerable concern that 2 different independent SHMAs come to radically different conclusions: with the applicants figure twice as much as the Councils figure. 'The very substantial difference amply serves to illustrate the statement in the PPG that establishing future need is not an exact science; and that no single approach will provide a definitive answer. It also emphasises how essential it is that evidence such as SHMAs must be rigorously tested in order to establish that it is robust'.

More recently in Darlington (Appeal Ref: APP/N1350/A/14/2217552) the Inspector was faced with up to date evidence, and an assessment of OAN, from the appellant, but not from the council. Some update had been done, but it was based on 2008 projections and subsequently caused concern around over-optimistic employment forecasts. Whilst acknowledging that a S78 appeal is not the place for determining OAN, he did have to conclude that, on the balance of evidence before him, the core strategy figure was no longer likely to represent the current OAN. As a result, the council must be falling short of a 5YLS, and so the appeal was allowed.

However, in a recent (June 2015) appeal in South Gloucestershire (APP/P0119/A/14/2220291) the Inspector considered the SHMA that had been prepared by the appellant and while considering it significant new evidence also said it was 'untested and as such cannot be considered robust,' concluding that the figure within the core Strategy provides the only credible housing requirement at the present time.

The Inspector on 22 June at an appeal in Telford and Wrekin (APP/C3240/W/15/3003907) has found that the Council's OAN study is a material consideration of significant weight.

7. If two separate LPAs are preparing a joint local plan, what if, on submission, one LPA can demonstrate a 5 YLS whereas the other LPA cannot? Does unmet need from a neighbouring authority form part of the 5 year assessment?

There are only a few different examples of joint local plans dealing with the five year land supply issue differently. In relation to the West Northamptonshire Joint Core Strategy the Inspector found the joint plan sound with each constituent Council individually responsible for its own 5 year housing land requirement. However in Christchurch and East Dorset the five year land supply is being dealt with together.

If you are taking additional development to meet another authorities' OAN, this should be included within the five year supply. If this is agreed to be on specific sites for example adjacent to their main town, then this could be shown in a separate trajectory although this is unlikely to be practicable in all cases.

8. Should we continue to monitor/ publish data on our Core Strategy for the 5YLS/ trajectory when it is not the most up to date OAN but our emerging plan is still pre-submission?

You should still monitor your supply and set out your trajectory even if your plan is at the pre submission stage. Where there is no up to date adopted plan target to use as a basis for five year supply you should be establishing your current OAN through an up to date SHMA for your housing market area. In the absence of this you will have to use projections as a starting point, however these are untested and may be subject to challenge. Since the publication of the 2012 household projections on 27th Feb 2015 the practice guide has been amended to say that "The 2012-2037 Household Projections are the most up-to-date estimate of future household growth". There is recognition that while plan should be kept up to date this does not automatically mean that housing assessments are rendered outdated every time new projections are issued.

9. Where an LPA cannot demonstrate a 5YLS, what approach should it take to best protect policy non-complaint areas from housing development under pressure from developers?

Where there is no five year land supply policies are vulnerable. While the objective should be to get an up to date Local Plan in place, in some cases, such as green belt areas it is clear that these are not being overruled. The Practice Guidance has been updated and now states at Para 34 that 'unmet housing need is unlikely to outweigh the harm to the green belt and other harm to constitute 'very special circumstances' justifying inappropriate development on a site within the green belt'.

It may be appropriate to acknowledge the lack of five year supply and seek to bring forward or encourage applications on sites which are considered preferable in sustainability and strategic terms to bolster the short term supply which will help an authority resist less sustainable locations.

However, development that is not sustainable can still be resisted, and this is being upheld on appeal.

10. In rural areas, where a LPA does not have a 5 YHLS, does this fact override adopted local plan policies? For example, applications being submitted for open market housing in settlements where the policy position will only permit local needs housing?

It may do, but not necessarily. The key issue would be whether the affordable housing policies are out of date and also whether the proposal would represent sustainable development. These issues would be considered on their individual merits.

11. What weight does the PAS approach carry at the examination of a Local Plan?

It is technical advice which has no formal weight. Numerous Council's and developers are using it to assist them in the process of establishing OAN and housing targets and Inspectors are also finding it useful. There have been S78 appeal decisions and core strategy examination reports which refer to PAS technical advice note.

12. It can be difficult to engage the public at large in conversations about need, and why a 5YLS is so important. How can the presentation of the process be best presented for the widest understanding?

This is a challenge but the advice is to keep it simple and seek to educate members in the key issues and also engage with the communities affected. Explain what housing is needed – why, where and how will this be met and delivered, how it links to employment policies and economic objectives as well as affordability issues.

Cotswold Council have run successful working sessions with members explaining the key principles and five year supply calculations.

13. How can we prevent the 5 year supply becoming a 'moveable feast'?

It is by its very nature an issue which changes with each permission given and every house built. Once the plan target has been established and tested this provides the consistent basis for the five year land supply requirement. However, this too will alter depending on the level of shortfall to be accommodated each year or surplus to be included and the buffer applied. In addition the supply side is constantly changing and needs to be robustly monitored to ensure it is as accurate and up to date as possible at all times.

14. When does a 5% buffer become 20%? Is it based upon cumulative totals against the requirement or on a purely annual basis? How far into the past do you go? Is it 5 years, or Plan period, or as far back as possible?

There is no universally applicable test and no consistency about what length of time should be considered and no exact definition of persistent under-delivery. This is epitomised by the situation in East Cheshire where 5 different Inspectors applied different buffers. However, this has now been clarified by the Local Plan Strategy Inspectors interim views (6 Nov 2014) Inspectors are considering 'under-delivery' differently and there are examples of many different approaches. In principle it is about understanding your track record by comparing your completions against your requirement over a reasonable time period as evidenced in your AMR. Something is persistent when it has continued over time. The South Worcestershire Core Strategy Inspector said that this is a matter of degree and the Judge Lewis in the Cotswold judgement ([2013] EWHC 3719 (Admin) 27 November 2013) said that 'it should not be a 'temporary or short lived fluctuation'.

The Rother Inspector said that despite low levels of completions there had not been persistent under- delivery. However, in many other cases where delivery has fallen short on a continuous basis, a 20% buffer is being applied. The Parsons Brinkerhoff housing supply research for CPRE August 2014 notes that of all appeals for residential development on greenfield land since the publication of the NPPF two thirds of the time a 20% buffer has been applied.

While some Inspectors say five years is appropriate in a S78 appeal situation, local plan inspectors are mindful that a longer period is more appropriate when considering a 15 year plan period. The Practice Guidance recognises that the local delivery record is likely to be more robust if a longer term view is taken since this has regard to the economic cycles and market conditions. While the recession should not be used as an excuse for low delivery, it is suggested that it is useful and appropriate to take a longer term view, which would probably be at least 10 years.

There are two methods which can be used, either using a straight comparison of annual rates and measuring the frequency of under delivery over a number of years, or alternatively considering the cumulative completions. The Inspector in the Broughton Appeal in Kettering (APP/L2820/A/13/2204628) agreed with the Council that 'since 2001 cumulative completions have exceeded the cumulative requirement in all but the last few years since 2010', agreeing that this was due to the economic recession rather than a failing by the Council. However the Inspector in the Tetbury appeal rightly recognised that economic circumstances form no part of national policy under paragraph 47 of the NPPF.

It is possible to have a 5% buffer and a shortfall and is the circumstance in which both Kettering and Rother are in. They have been able to successfully argue that their under delivery is not 'persistent'.

15. How should the backlog from previous plans (e.g. RSS) be considered through the Local Plan process when using demographic models as a starting point and would Sedgfield be the only applicable approach to making up shortfall?

The shortfall is the amount of units that have not been completed compared to what has been required in terms of the plan target. Any shortfall represents unmet housing need. This should be calculated from the start of the plan period. Any unmet need before that time is called backlog and should be calculated on the same basis. However, the up to date housing requirement paper or SHMA should properly take account of backlog as part of the calculation of OAN, and is therefore already factored in up to the point that the figures used run from. The projections effectively start from scratch and so give a new and up to date full assessment of need. The Zurich v Winchester High Court Judgement (2014) EWHC 758 (Admin) 18th March 2014 is clear about this and says that it would be highly contrived to add this in on top would 'mix apples and pears in a unjustified way'. For more information see paragraph 8.6 of the PAS Objectively Assessed need and Housing Targets Technical Advice Note (June 2014).

16. Do "persistent under delivery", and the 20% "trigger" relate specifically to delivery against adopted housing targets (even based on Regional Strategy) or is it appropriate to use the latest household projections, in advance of submission of a new local plan?

This is a very interesting point and has not been tested. So far old housing targets have been used as the measure for the buffer and shortfall because it is about measuring what has been delivered against what the target was. If alternative requirements are devised from the projections these would be rebased and retrospective and would not represent the policy position in place at the time. For example in areas of growth or restraint these figures would provide a different basis for the calculation which had not been tested. While it may be very interesting and useful to do the calculation and make the comparison, and to argue perhaps why the additional ambition growth had not been achieved, and this has been done in North Northamptonshire, caution is advised if this approach is being relied upon to reduce the buffer without adequate and justifiable evidence.

16. Do persistent under delivery, and the 20% trigger relate specifically to delivery against adopted housing targets (even based on Regional Strategy) or is it appropriate to use the latest household projections, in advance of submission of a new local plan?

This is a very interesting point and has not been tested. So far old housing targets have been used as the measure for the buffer and shortfall because it is about measuring what has been delivered against what the target was. If alternative requirements are devised from the projections these would be rebased and retrospective and would not represent the policy position in place at the time. For example in areas of growth or restraint these figures would provide a different basis for the calculation which had not been tested. While it may be very interesting and useful to do the calculation and make the comparison, and to argue perhaps why the additional ambition growth had not been achieved, and this has been done in North Northamptonshire, caution is advised if this approach is being relied upon to reduce the buffer without adequate and justifiable evidence.

17. Where an authority has persistently under-delivered in recent years, at what point in the calculation should the extra 20% be added? Should it be added to the backlog or not?

We believe the preferred approach is for the buffer to be applied to both the requirement and shortfall. This is the most appropriate order because it ensures the buffer is applied to the full requirement which represents all the need that exists. The idea is that for every year you underprovide the amount adds onto the requirement to be met in the next five years. In reverse any over provision which would count as completions and could be taken off the requirement, to which the buffer is then applied. The idea of the buffer is to ensure that there is flexibility to provide sites and meet the needs that exist.

The buffer is not an additional amount added on, rather it is bought forward from later in the plan period. The idea of it is to provide choice and flexibility. The five year supply is best thought of as a 7-8 year supply as only having 5 years' worth of sites will render you vulnerable within a very short period.

The Knowsley Inspector's conclusion http://www.knowsley.gov.uk/pdf/EX26_Knowsley%20CS%20Inspector's%20Interim%20findings.pdf is not consistent with the Practice Guidance issued on 6th March 2014 after his interim findings had been issued. The Practice Guidance clearly seeks to frontload any shortfall and apply a buffer. There is no consideration within the guidance of double counting and it is not posed as a choice.

There are decisions both ways in relation to the order of the calculation in terms of shortfall then buffer or vice versa. For example in February 2015 the Inspector at the Oadby and Wigston appeal (APP/L2440/A/14/2216085) considered the buffer then the backlog. However, the most recent 22nd May decision in Test Valley (APP/C1760/A/14/2222867) to address this states clearly that "But even assuming the Council's position of adding the buffer before the shortfall is correct (and it seems to me that it is not)....."

Caution should be applied to Inspectors decisions because the exact circumstances of the case may not be transferable and in some cases if the discussion about alternative approaches was not undertaken the Inspector may not have actually concluded on the issue, rather accepting what was proposed. Inspectors will expect to see evidence for the approach taken in the current and local circumstances.

18. If a plan was to be dated to run for 15+ years starting in 2014 (with an acknowledged persistent undersupply over recent years), how would the 5YLS be calculated? Would there be a backlog to address, and if so, how would this be calculated?

The current five year supply would run 2014/15 – 2019/20 and predate the plan period. The question here is what requirement figure should be used for this year. Given that the plan will be based on an up to date SHMA it should have baseline figures in it grounded in the recent past. The question is when does the SHMA start from and not when is it being applied from. It would be appropriate to take these most up to date figures as a starting point.

19. If RSS is still relevant, then will LPAs be in a position of having to plan and develop for a 5% or 20% buffer?

The RSS is no longer relevant. There are clear Inspectorate and High Court decisions on this point. The St Albans Hunston High Court judgement (2013 EWCA Civ 1610, 12 Dec 2013) effectively dismisses the status of the RSS figure which importantly was a constrained figure and not one which considered the full objectively assessed need. This was then supported by the Solihull High Court ruling (2014] EWHC 1283 (Admin) 30 April 2014), which emphasised 'extreme

caution' and concluded that it was essential to 'acknowledge the new, NPPF world, with its greater policy emphasis on housing provision; and its approach to start with full objectively assessed housing need and then proceed to determine whether other NPPF policies require that, in a particular area, less than the housing needed be provided.'

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Contact Us

Email: pas@local.gov.uk

Telephone: 020 7664 3000

Local Government House

Smith Square

London

SW1P 3HZ

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