

Scottish Government Housing and Infrastructure Consultation

Submission on Behalf of Hansteen Land Limited

March 2016

Introduction

This submission is made on behalf of draws on this practice's Directors' combined experience of almost 50 years working in the Scottish Planning system and in England.

We welcome the approach taken to housing land supply. Calculation of the housing land supply is an absolute. There is either an effective 5 year housing land supply, as required by law, or there is not. If there is not, it has implications for the planning authority's approach to housing land supply and the decisions it must take. This is already clear in appeal decisions, where Reporters are not supporting planning authorities in their arguments against development when there is not an effective 5 year housing land supply.

There cannot be a legal absolute without clear guidance on how that absolute of a 5 year land supply is calculated and without that then being applied across the country. There then needs to be a mechanism to deal with failure. We welcome the presumption in favour of sustainable development and the flexibility allowance approach to development plan allocation and again this should be applied consistently across the country so that trigger points relating to failure and the actions necessary are known across the country and consistently applied.

Finally, we believe it is essential that the housing land supply is subject to LDP hearings and that it is not left to Reporters to assess whether they believe they have sufficient information to judge the adequacy of the housing land supply. We comment below on the Stirling East Local Plan and the Falkirk LDP where in each case the Reporter failed to listen to the submissions of the development industry and the conclusions proved to be wrong and the development plan was undermined as a result.

Paragraphs 20-23 Calculating the Effective Housing Land Supply

We support the basis for calculating the housing land supply. This gives an absolute number, reviewed each year, which is either above or below the required 5 year supply. There must also be a clear approach to the necessary action if the land supply falls below 5 years in any one year and this must be consistently applied across the country. We do not think it is sufficient to rely on a Local Development Plan Review or further Call for Sites, as happened at Renfrewshire and Scottish Borders because this requires further actions that take many months to complete and review and will not solve what is an immediate problem. Instead the failure of the housing land supply should be treated as an absolute failure and it should be viewed as the exceptional circumstances that trigger the presumption in favour of sustainable development.

In England appeal Inspectors and the Courts have drawn no distinction between a land supply of say 2.5 years and a land supply of 4.5 years. Each has been treated as a failure that triggers exceptional circumstances that allow unallocated sites that are considered to be sustainable to be brought forward for development. This system has worked well and we believe that it should be uniformly applied across Scotland.

This approach is already apparent in appeal decisions and should now be applied as a matter of course by planning authorities, as well as Reporters at appeal.

Paragraphs 24 – 26 The Presumption in Favour of Sustainable Development

We welcome the presumption in favour of sustainable development but the guidance must spell out more clearly how it is to be applied.

SPP paragraph 29 identifies 13 sustainability principles. Before the sustainable development presumption can be given weight as a material consideration in the overall decision-making process the perceived benefits and dis-benefits of the proposal must be tested for sustainability against the 13 principles. This includes giving due weight to net economic benefit, supporting good design and the six qualities of "successful places", and "making efficient use of existing capacities of land, buildings and infrastructure."

The document needs to spell out that such assessment is a matter of planning judgement but SPP also suggests that in carrying out that assessment the decision-maker has to be satisfied, if it is proposed to refuse the development on the grounds that it is unsustainable, that the evidence demonstrates that its identified dis-benefits significantly outweigh its benefits. If the benefits outweigh the dis-benefits the proposal should be deemed to be capable of contributing towards sustainable development. At that point the SPP presumption in favour

of planning permission being granted requires to be given significant weight when the proposal is tested against the development plan and other relevant material considerations in accordance with the provisions of Section 25 of the Planning Act.

The decision-maker will only be entitled to conclude that development is unsustainable if the evidence demonstrates that its dis-benefits significantly outweigh its benefits when tested against each of the 13 sustainability principles. If having applied this test, the conclusion is that the proposal is unsustainable the presumption in favour of planning permission being granted will not require to be given weight when tested against the development plan and other relevant material considerations.

If the conclusion is that the proposal will contribute towards sustainable development, the decision-maker is then expected to test the proposal against the development plan and other relevant material considerations and, in doing so, to attach significant weight to the presumption that planning permission should be granted on the basis that the development is sustainable.

Paragraph 26 Flexibility Allowance

This should not be used as an alternative to the presumption in favour of sustainable development because an allowance of say 10%, which is what SPP suggests, may be wholly inadequate to address a land supply that is well short of the 5 year target.

The planning authority should not assume that non-effective sites will become effective over the plan period. Sites should not be included in the land supply unless it can be shown that they are effective. Instead, there should be an additional allowance of 30%, which is the approach that has been successfully adopted elsewhere and now advocated by the revised draft Scottish Planning Policy. In addition, a mechanism should be in place to allow sites to come forward outside the development plan process if allocated sites do not come forward.

Therefore, our client believes that the preferred strategy should be a flexibility allowance of at least 30%. This means further consideration needs to be given to:

- Overall housing land supply target
- Appropriate locations for development
- The criteria for selecting and assessing alternative sites to ensure a mechanism to allow additional land to come forward without requiring a review of the LDP.

This all needs to be tested at an LDP Hearing, not left to Reporters' discretion.

In addition, the document needs to be explicit in stating that it is a risky strategy to rely on one or several sites to deliver the majority of the housing land supply requirement, particularly in difficult economic circumstances and where those sites may not be in marketable locations or be viable. Experience over a number of years has shown that major sites have been slow to progress due to infrastructure and servicing costs. Cairngorms National Park Authority was heavily criticised by the Local Plan Reporter for predicating its housing land supply on one site at Cambusmore near Aviemore, which was required to supply 44% of the National Park's housing land supply requirement.

The flexibility approach has been successful for example in Highland Council area in facilitating the major expansion of Inverness over the last 15 years and ensuring that land supply was sufficient to meet housing need as it evolved. Such over allocation means that the LDP will have addressed the possibility that build rates may exceed projections (or more likely meet projections) which will impact on sale prices and reduce the pressure for affordable housing. In all circumstances it is important to ensure that settlement boundaries are drawn to take account of the need to allow for expansion.

Paragraphs 56 – 67 The Importance of Effectiveness

Effectiveness needs to be rigorously assessed on the basis of evidence submitted by developers and housebuilders and greater weight should be given to sites that are backed by a housebuilder because that is clear evidence of market support and the likelihood that a site will actually be developed.

The Falkirk LDP Reporter made a number of statements about effectiveness and land supply that subsequently, and in a short space of time proved to be wholly wrong:

- *'I am satisfied that sufficiently robust and appropriate evidence is available to support the judgements made for the LDP about the effectiveness of allocated sites' (issue 2, para 27)*
- *'I also note that the LDP does not cap or otherwise constrain to a minimum the supply of new housing each year....development sites are not phased and could be started at any time' (36)*

- 'to reduce the potential for uncontrolled piecemeal development while remaining consistent with the new SPP I consider that the LDP should be changed to take the possibility that the supply of 5 year housing land supply might fail into explicit account and to state a preferred sustainable development hierarchy' (37).

This was as a result of not adequately testing the submissions made by certain landowners and taking as fact the untested assumptions and submissions of the Council.

In respect of one of the LDP's major development sites at Whitecross the Reporter stated:

'I am satisfied that this background paints a clear picture of on-going developer interest and action, despite the unsigned agreement' (56).

Within 4 months this confident statement was completely undermined by events that had been predicted by a number of parties making submissions to the LDP Reporter.

This consultation exercise needs to produce a clear statement about effectiveness and how it is to be assessed. It needs to draw on the existing statements contained in paragraph 55 of PAN 2 2010 as follows:

The effectiveness of individual sites should be determined by planning authorities in the light of consistent interpretation of the following criteria and through discussions with housing providers. The aim is to achieve a realistic picture of the available effective land supply which can contribute to the housing requirement so that the level of additional housing, and therefore land needed to meet the overall requirement, can be established. To assess a site or a portion of a site as being effective, it must be demonstrated that within the five-year period beyond the date of the audit the site can be developed for housing (i.e. residential units can be completed and available for occupation), and will be free of constraints on the following basis:

ownership: the site is in the ownership or control of a party which can be expected to develop it or to release it for development. Where a site is in the ownership of a local authority or other public body, it should be included only where it is part of a programme of land disposal;

physical: the site, or relevant part of it, is free from constraints related to slope, aspect, flood risk, ground stability or vehicular access which would preclude its development. Where there is a solid commitment to removing the constraints in time to allow development in the period under consideration, or the market is strong enough to fund the remedial work required, the site should be included in the effective land supply;

contamination: previous use has not resulted in contamination of the site or, if it has, commitments have been made which would allow it to be developed to provide marketable housing;

deficit funding: any public funding required to make residential development economically viable is committed by the public bodies concerned;

marketability: the site, or a relevant part of it, can be developed in the period under consideration;

infrastructure: the site is either free of infrastructure constraints, or any required infrastructure can be provided realistically by the developer or another party to allow development; and

land use: housing is the sole preferred use of the land in planning terms, or if housing is one of a range of possible uses other factors such as ownership and marketability

The critical statement is in relation to ownership, **the site is in the ownership or control of a party which can be expected to develop it or to release it for development**. Without this statement being demonstrated to be true none of the other tests are relevant because there is no certainty that the site will come forward. In our experience where planning authorities do undertake a robust assessment they will consider the other factors but pay little attention to the crucial consideration of ownership.

It is essential that the Reporter at LDP Examination produces evidence of a systematic enquiry into the effectiveness of each site and does not simply rely on submissions made by the planning authority. This is easily achieved by requiring evidence based submissions at the Call for Sites stage of the LDP process. This will add further weight to supporting sites backed by the housebuilding industry because such sites will already be subject to scrutiny and assessment of effectiveness by the housebuilders themselves and this material used for site appraisal can be made available as part of the development plan process. This will ensure that genuinely effective sites are promoted from the outset, backed by the housebuilding industry.

In addition, this consultation should place a requirement on the planning authority in its Finalised Plan, and the Reporter in the decision on the LDP, to justify inclusion of sites that do not have detailed evidence to support effectiveness.

Development Plan Examination

Many of the problems this consultation seeks to address are the result of past bad practice and lack of rigour. In our view they are relatively simply addressed.

There should be an absolute requirement for a Reporter to hold an LDP hearing into housing land supply and the Reporter should be required to show that the evidence of all parties, not simply the planning authority, have been given proper scrutiny.

We can provide two examples of where this has not happened, with the consequence that the development plan was undermined.

The Stirling East Local Plan Reporter in 2005 choose to allocate Durieshill as a development site for 2500 units and ignore submissions in favour of distributing the allocation around the Stirling Eastern Villages. In 2016 no work has commenced at Durieshill but planning consents have been granted for schemes in the range 100-300 units in a number of the Eastern Villages, including Plean, Fallin and Throsk. Whilst the Local Plan was based on a strategy to concentrate the allocation in one location this strategy was not soundly biased and could not withstand the challenge made by planning applications in alternative locations. The Reporter failed to listen to the development industry and its submissions that the planning authority's strategy was flawed and there was a better alternative.

In 2014-15 the Falkirk LDP Reporter chose to ignore repeated requests from the development industry to hold a hearing into the adequacy of the housing land supply. Instead the Reporter chose to support Falkirk Council's assertion that its preferred development site at Whitecross was effective. The Reporter's findings were published in June 2015 and supported the Council by concluding that Whitecross would deliver 500 units in the first 5 years of the plan period and 1000 units thereafter. In July 2015, within one month of the Reporter's conclusion, the Council published its 2015 Housing Land Audit and reduced the estimate for Whitecross from 500 units to 250 units. In October 2015 the Council refused an application for a master plan for 1500 units at Whitecross that had been before it since 2010. The consequence of the Reporter not holding a hearing and considering evidence about effectiveness was an immediate reduction of 250 units in the 5 year land supply and ultimately the loss of 1500 units across the lifetime of the LDP. This was avoidable and leaves the Council with an inadequate 5 year land supply less than a year after the Reporter published his findings.

Affordable Housing

It is essential that flexibility is maintained in the mechanisms and the means of delivery of affordable housing. The new guidance should maintain the position of PAN 2 2010 and allow a range of means of delivery of affordable housing.

Grant funding is severely curtailed and the Scottish Federation of Housing Associations estimates that only 20 out of 180 housing associations are developing at present. The amount of grant has been cut from £70,000 per unit drawn down over the life time of the development; to £40,000 paid on completion; to the present situation of £58,000 per unit with draw down terms negotiable. An affordable housing unit, including the land, costs at least £120,000 to build. Therefore, there is rarely sufficient capacity to support targets of 25% provision made through the development plan if delivery is restricted to registered social landlords.

The guidance needs to stress that all the potential methods of providing affordable housing are available on a menu basis, rather than ranked in order of preference. It should reiterate that this includes:

- i. Social Rent – the traditional housing association model, homes for rent offered at below market rents to those in most need
- ii. Mid-market – built by a housing association and operated at a profit using SHIP subsidy. Rent is defined as up to 85% Local Housing Allowance, which is the amount paid in housing benefit in each housing market area
- iii. Intermediate rent – unsubsidised MMR. Built by the housing association at its expense from its reserves and borrowings
- iv. Shared equity – the tenant buys a majority share in the property. The housing association retains the remainder. The owner pays no rent and make a mortgage payment to its mortgage provider based on their percentage share of the property
- v. Shared ownership – the tenant purchases a share and pays rent on the remainder to the housing association
- vi. Discounted sale – property is sold by housing association or private house builder at 3.5 times average salary for the housing market area. In Edinburgh this equates to a maximum price of £122,000
- vii. Unsubsidised low cost home ownership – the model is the same as discounted sale but the property is built without subsidy. This is the model increasingly adopted by house builders to overcome inability of housing associations to finance development
- viii. Golden share – similar to discounted sale but with different eligibility criteria. The tenant purchases an 80% share and is required to show a local connection
- ix. Unsubsidised shared equity – again similar to discounted sale. The owner purchases a 60% to 80% share but the 3.5 times average salary contribution paid by the tenant is applied to the percentage of the property they purchase e.g. if a property is valued at £200,000 the £122,000 contribution buys a 60% share. This allows affordable housing principles to extend to higher value properties

Housing associations are increasingly establishing private sector subsidiaries in order to deliver development in a commercial rather than subsidised manner. The model that has been developed is as follows:

- Housing association as charity and parent forms subsidiary. Subsidiary is registered with Companies' House as a limited company and a separate corporate entity

- Housing association acquires land, obtains consents and builds property
- The subsidiary enters into lease (typically 30 years) and the housing association will manage property and be subject to service level agreement
- Subsidiary pays parent annual lease to parent. The cost is covered by rents. The model assumes a rental surplus that builds up overtime and can be used by the subsidiary to leverage debt. Subsidiary is responsible for:
 1. Finding tenants
 2. Managing voids
 3. Fixing rents and collecting payments
 4. Ensuring that rents are fixed at such a level that collective value exceeds lease fee
 5. Ensuring voids and bad debt is minimised so that differential between rental income and lease fee is not eroded

Without tax breaks or establishment of Residential REITs it is questionable whether a capital markets based funding solution to the lack of grant funding can be found. Many people in the market have been exploring the opportunity outlined above but the difficulty is providing investors with the level of return that they seek and a saleable investment, whilst not undermining the commitment to affordable rents and pricing that is the reason for the existence of housing associations. The Government is exploring creation of a bond that it will sell in order to create finance for the use of housing associations. In England several housing associations are considering issuing their own bonds. The market in Scotland is too small for anything other than a Government bond.

House builders are moving back to the 'partnership' model last used in the mid-90s where house builders had a social housing subsidiary. There is evidence of developers committing to use affordable housing delivery mechanisms ii) - ix) outlined above if they cannot reach agreement with a housing association to deliver a scheme.

House builders are also using the Resonance model developed by Retties. An example is Pinkhill in West Edinburgh. Resonance guidance can be summarised as follows:

- The housing association borrows against future income stream from the property. Crucially, shortfalls in that income stream are covered by Government guarantee
- The funds borrowed by the housing association are transferred to the house builder on completion
- The house builder allows its units to be used by the housing association for MMR or similar tenancy for a specified period, usually between 5 and 10 years, but retains the right to take back the properties and reimburse the housing association at any point
- At the end of the period the properties are sold and the funds passed back to the developer with the housing association retaining its original properties.

In this way 25% affordable housing is achieved for a time but not in perpetuity. The problem of the sold units is overcome in theory by other developers also adopting the Resonance model so that new supply replaces units that are sold. Resonance works if the number of units entering the model each year matches the sale commitments.

Borrowing against future income streams is risky but the risk is covered by the Government guarantee. The National Housing Trust has a similar model, the difference being at the end of 10 years all properties revert to the developer for sale.

Resonance requires sound valuation methodology. The RICS guidance on valuation identifies two approaches, comparison and residual value, but notes that the site specific restrictions on affordable housing land makes comparison method difficult. It notes that the type of tenure permitted will directly impact on values. Affordable housing also has higher costs because of the requirement to build for 'Housing for Varying Needs' which is more onerous than building regulations. If a commercial subsidiary is being used by the housing association that subsidiary is liable to stamp duty. Finally, the switch to receipt of grant funding on completion makes 'turn key' development increasingly attractive to the housing association.

An alternative model that has been adopted by some planning authorities has been to accept payment equivalent to 25% of the units being provided as serviced plots. This money, which amounts to approximately one third of the development cost, is then used by the local authority as a substitute for Government grant to either fund part of full cost of development of affordable units. This means that the money provided against affordable housing contribution can fund approximately 8% - 12% on site or offsite affordable housing. The key is that it actually delivers housing on the ground.

This practice was involved in a study of affordable housing delivery in the Lothians in 2006. This study found that despite each authority having a policy target of 25% the best delivery result between 2002 – 2004 was an average of 12% in Edinburgh. The worst result was 6% in West Lothian.

The latest development is a National Affordable Housing Loan backed by the Housing Finance Corporation, which will cover U.K., including Scotland. This will provide triple-A rated Government backed 30 year loan in £5m chunks. Work is on-going to see whether it is possible to

make this an off balance sheet loan to the non-charitable subsidiary with the loan being paid in the first instance to the housing association, and then being transferred.