

## **EAST HAMPSHIRE LOCAL PLAN**

### **THE ASSESSMENT OF HOUSING NEED**

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#### **OPINION**

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##### **Introduction, Background and Summary of Advice**

1. I have been asked to advise East Hampshire District Council (“EHDC”) on the use of the standard method for calculating housing need in the preparation of EHDC’s new Local Plan.
2. One of the main challenges for EHDC is that its area includes part of the South Downs National Park (“SDNP”), which occupies 57% of the total area within the District and holds the highest protection status for conserving and enhancing landscape and scenic beauty. However, although this part of the SDNP remains within EHDC for most local authority purposes, planning functions in relation to it are exercised by the SDNP Authority, which is responsible for preparing its own Local Plan.
3. This separation poses ongoing difficulties for EHDC in terms of apportioning the District’s housing needs to areas within and outside the SDNP. In particular, under paragraph 61 of the National Planning Policy Framework (“the NPPF”), local planning authorities are expected to apply the “standard methodology” when assessing housing need within their area, unless there are “exceptional circumstances”. Application of the standard methodology in EHDC’s case produces

an overall need figure which encompasses those parts of the district which lie within SDNP, but the allocation of sites within SDNP to meet that need is a matter for the SDNP Authority.

4. In light of the environmental constraints imposed by the existence of the SDNP, many of the consultation responses received by EHDC have argued that exceptional circumstances exist, justifying deviation from the standard method in the preparation of EHDC's new Local Plan. However, responses from industry professionals have argued against this, and instead favour accommodating unmet needs from other areas. In this regard, EHDC is not only under pressure to consider unmet needs from the SDNP, but also from Portsmouth, and Havant.
5. Against this backdrop, EHDC seeks my advice on whether, when construing the provisions in national policy and guidance which allow departure from the standard methodology in "exceptional circumstances", the circumstances referred to must be demographic and/or housing-market related, or whether they can include physical, environmental or administrative factors.
6. For the reasons set out in greater detail below my advice is that, notwithstanding the recent changes to the NPPF, the ability to depart from the standard methodology for the assessment of housing need in "exceptional circumstances" remains linked to factors which are demographic and/or housing-market related. Environmental considerations, such as the need to avoid major development in national parks, only come into play once the "raw" need has been assessed, and the authority is deciding how much of that need it can meet. This conclusion is unaffected by the fact that EHDC does not exercise planning powers over that part of the SDNP which lies within the District.

### **Policy Framework: the NPPF and the PPG**

7. National policy on the approach to assessing housing need is found in the NPPF. For the purposes of this Opinion, the following paragraphs are particularly relevant (emphasis added):

a. Para 60:

“60. 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. The overall aim should be to meet as much of an area’s identified housing need as possible, including with an appropriate mix of housing types for the local community.”

b. Para 61:

“61. 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. The outcome of the standard method is an advisory starting-point for establishing a housing requirement for the area (see paragraph 67 below). There may be exceptional circumstances, including relating to the particular demographic characteristics of an area<sup>25</sup> which justify an alternative approach to assessing housing need; in which case the alternative approach should also reflect 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.”

c. Footnote 25 to para 61:

“Such particular demographic characteristics could, for example, include areas that are islands with no land bridge that have a significant proportion of elderly residents.”

d. Para 67:

“67. 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.”

8. Further detail on the assessment of housing need is found in the PPG, of which the following paragraphs are relevant:

a. Para 2a-001, “What is housing need?”:

“Housing need is an unconstrained assessment of the number of homes needed in an area. Assessing housing need is the first step in the process of deciding how many homes need to be planned for. It should be undertaken separately from assessing land availability, establishing a housing requirement figure and preparing policies to address this such as site allocations”

b. Para 2a-002, “What is the standard method for assessing local housing need?”

“The National Planning Policy Framework expects strategic policy-making authorities to follow the standard method in this guidance for assessing local housing need.

The standard method uses a formula to identify the minimum number of homes expected to be planned for, in a way which addresses projected household growth and historic under-supply.

The standard method set out below identifies a minimum annual housing need figure. It does not produce a housing requirement figure.”

c. Para 2a-003, “Is the use of the standard method for strategic policy making purposes mandatory?”

“No, if it is felt that circumstances warrant an alternative approach but authorities can expect this to be scrutinised more closely at examination. There is an expectation that the standard method will be used and that any other method will be used only in exceptional circumstances.”

- d. Para 2a-014 “Where strategic policy-making authority boundaries do not align with local authority boundaries, or data is not available, should the standard method be used to assess local housing need?”

“Where strategic policy-making authorities do not align with local authority boundaries (either individually or in combination), or the data required for the model are not available such as in National Parks and the Broads Authority, where local authority boundaries have changed due to reorganisation within the last 5 years or local authority areas where the samples are too small, an alternative approach will have to be used. Such authorities may continue to identify a housing need figure using a method determined locally, but in doing so will need to consider the best available information on anticipated changes in households as well as local affordability levels.”

- e. Para 2a-015, “If authorities use a different method how will this be tested at examination?”

“Where data availability does not allow the standard method to be used, consideration will be given to whether it provides the basis for a plan that is positively prepared, taking into account the information available on household formation and affordability.

Where a strategic policy-making authority can show that an alternative approach identifies a need higher than using the standard method, and that it adequately reflects current and future demographic trends and market signals, the approach can be considered sound as it will have exceeded the minimum starting point.

Where an alternative approach results in a lower housing need figure than that identified using the standard method, the strategic policy-making authority will need to demonstrate, using robust evidence, that the figure is based on realistic assumptions of demographic growth and that there are exceptional local circumstances that justify deviating from the standard method. This will be tested at examination.

## Analysis

9. In the light of the policy framework quoted above, it is apparent that national policy advocates a two-stage process for the purposes of development plan policies which are intended to meet housing need. The first stage is to assessing housing need (normally by applying the standard method), the second is to consider how much of that need can actually be met, having regard to environmental constraints.<sup>1</sup>
10. Even taken in isolation, the two stages make it clear that issues such as environmental constraints are normally only relevant at the second stage, and not at the first. The logic behind this is obvious: planning seeks to strike a balance between meeting identified needs and respecting environmental constraints. That exercise can only be done if the needs and the constraints are kept separate from one another. This point (which is confirmed by para 2a-001 of the PPG) has been recognised in the case-law<sup>2</sup> which establishes that the assessment of need is a “policy off” process which ignores environmental constraints.
11. This has a direct bearing on the construction of those passages in the NPPF and the PPG which allow local planning authorities to depart from the standard methodology in “exceptional circumstances”. Prior to December 2023, the NPPF said that the need assessment should be conducted using the standard method, unless exceptional

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<sup>1</sup> For the purpose of this Opinion, “environmental constraints” are not limited to the considerations identified at para 7 of the NPPF (habitats sites, SSSIs, Green Belt, National Landscapes, National Parks, irreplaceable habitats, designated heritage assets and areas at risk of flooding or coastal change. While (having regard to para 11(b) of the NPPF) the constraints listed in fn 7 may have a greater significance or weight than others, the assessment of what is “sustainable” for the purposes of development plan includes wider environmental constraints such as landscape.

<sup>2</sup> See e.g. *R (Hunston Properties Ltd) v. SSCLG and St Albans City and District Council* [2013] EWCA Civ 1610; *Gallagher Estates Ltd v. Solihull MBC* [2014] EWCA Civ 1610

circumstances justified an alternative approach. However, it was clear from what was then paragraph 61 that the exceptional circumstances had to relate to the demographic characteristics of the area, and not to environmental constraints.

12. Para 61 of the NPPF was amended in December 2023. The new para 61 still says that housing need should be assessed using the standard method but goes on to say that this is the “advisory starting-point for establishing a housing requirement”. However, whilst the statements made by DLUHC when the new text was introduced support the argument that the new NPPF is supposed to be less prescriptive i.e. that Councils may now have slightly greater freedom to conclude that there are “exceptional circumstances” than was previously the case, I do not consider the intention was to allow environmental constraints to influence that assessment. In this regard, I note that:

- a. New footnote 25 gives as an example of a case where there may be exceptional circumstances “areas that are islands with no land bridge that have a significant proportion of elderly residents”. Although clearly only an example, this is in my view indicative that exceptional circumstances will involve situations where demographics mean population growth is likely to differ from the standard methodology.
- b. Para 2a-001 of the PPG continues to advise that the assessment of need is to be undertaken separately from land availability;
- c. Para 2a-002 continues to point out the difference between the assessment of housing need and the “housing requirement figure”;
- d. Para 2a-015 of the PPG advises that any alternative to the standard methodology must still “adequately reflect current and future demographic trends and market signals” and that the figure is “based on realistic assumptions of demographic growth”.

13. In short, I do not consider there is anything in the December 2023 amendments to the NPPF which justifies the conclusion that the previous case-law (which established

that the assessment of “raw” need cannot take into account environmental constraints) has been reversed. Indeed, it is strongly arguable that it would be an error of law to approach the assessment of need on this basis.

14. Applying this to the present case, I start with the observation that – in the absence of the transfer of planning functions for land within the SDNP to the SDNP Authority<sup>3</sup> – the existence of the SDNP could only qualify as an “environmental constraint”. In those circumstances, there would not be any room for argument that the existence of SDNP was relevant to the overall level of need within EHDC: while it would be an environmental constraint which required EHDC to steer development away from the national park, and which might<sup>4</sup> justify setting a lower housing requirement at the second stage of the overall process, that would have nothing to do with the assessment of the “raw” need. In this sense, the existence of the national park would be no different to the designation of significant part of EHDC as Green Belt or an Area of Outstanding Natural Beauty/National Landscape.

15. The question, therefore, is whether this is altered by the fact that SDNP is administered by a separate planning authority, with its own responsibility for meeting housing need. In this regard, I note that para 2a-014 of the PPG recognises that an “alternative approach” may be necessary in circumstances where the “strategic policy-making authority” boundary does not align with local authority boundaries, or data is not available.

16. Para 2-014 is somewhat clumsily drafted,<sup>5</sup> but while it undoubtedly authorises the use of an “alternative approach” in cases (such as the present) where a local authority boundary extends into a national park, I do not think this is intended to justify a departure from the principle that the alternative approach must still be based on demographic, rather than environmental factors. In this regard, I note that:

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<sup>3</sup> i.e. if EHDC exercised planning powers over that part of SDNP which lies within the District

<sup>4</sup> If the need could not be met elsewhere within the District

<sup>5</sup> In particular, it is not as clear as it should be whether the words “where local authority boundaries have changed due to reorganisation within the last four years or local authority area where the samples are too small” qualify the previous reference to National Parks and the Broads Authority, or are intended to be further categories where an alternative approach is required.



- a. Para 61 of the NPPF states that, when assessing need, a local planning authority should take into account “any needs that cannot be met within neighbouring areas”. There is no basis for suggesting that those needs should be assessed by reference to anything other than the standard method, simply because they are the needs of an adjoining authority. I cannot see how or why that should change, simply because the adjoining planning authority is a national park. Indeed, the fact that part of SDNP remains within EHDC’s area for non-planning functions would make that distinction even less logical.
- b. Para 2a-014 of the PPG advises that any “locally determined” method must still “need to consider the best available information on anticipated changes in households as well as local affordability levels.” While this does not state that environmental/jurisdictional issues are irrelevant, it clearly continues the “theme” of basing the assessment of need on demographic/market related factors.
- c. Para 2a-015 of the PPG advises that an authority which adopts a different method will be required to demonstrate that it is “based on realistic assumptions of demographic growth and that there are exceptional local circumstances that justify deviating from the standard method”. Again, the emphasis on demographic factors is retained.

17. Accordingly, I consider there would be a significant risk of EHDC’s approach to the assessment of need being found legally unsound if EHDC were to proceed on the basis that the existence of the SDNP (or of the SDNP Authority) was itself a reason for departing from the standard methodology. However, even if it is not legally impossible, as a matter of policy it remains the case that EHDC should only depart from the standard methodology if there are “exceptional circumstances”, in circumstances where that decision will be the subject of careful and detailed scrutiny at the Local Plan Examination. In my view, it is far from certain that a Local Plan Examiner would conclude that any such departure by EHDC was justified or sound.

18. Critically, if departure was found either to be legally flawed or “unsound” as a matter of policy, the implications for the emerging plan could be catastrophic. Although the Inspector might be able to avoid finding the whole of the plan unsound if it was

possible to make up any shortfall in housing numbers by inviting EHDC to identify additional allocations which could then be recommended as modifications to the Plan, this would depend on the size of the shortfall, and there may well come a point at which the number of additional sites required called into question the overall strategic approach to the distribution of housing. If that were to happen, the entire Plan could be found unsound, requiring EHDC to “start from square one”.

19. Conversely, if EHDC were to proceed on the basis that need should be assessed by reference to the standard methodology, I consider the prospects of a successful challenge to that approach would be very low. In particular:

- a. For the reasons outlined above, I consider the law here is clear and well-established. EHDC would be able to start from the point that its approach was well-founded in law.
- b. It is clear from the NPPF and the PPG that the standard methodology is the norm, and that the burden of proof lies on any authority (or objector) wishing to justify depart from this. A decision to adopt the “standard” methodology will therefore, necessarily, be easier to defend than a decision to do something “exceptional”.
- c. Objections to the use of the standard methodology are most likely to come from those who are concerned about the proposed levels of growth in the District and believe that a “local alternative” would produce a lower level of need, leading to a reduced requirement. However, as para 2a-015 of the PPG makes clear, an alternative approach which results in a lower housing need figure than that identified using the standard method will be scrutinised much more carefully than an approach which arguably over-provides. I do not think objectors of this sort will find it easy to persuade the Local Plan Examiner that they are right.
- d. My instructions indicate that environmental constraints are unlikely to prevent EHDC from addressing the levels of need which have been identified to date. That being so, there will be less to concern the Local Plan Examiner if objectors argue that this number is too high.

- e. If the Examiner does conclude that EHDC has proceed on the basis of a need figure which is too high, and has consequently allocated more sites than are required, this is unlikely to lead to a conclusion that the Plan is fundamentally unsound. Rather, (s)he is more likely to recommend that certain sites are deleted from the Plan. This is generally far easier to do than it is to recommend that new sites are added.

20. For all these reasons, my firm advice is that EHDC should not depart from the standard methodology.

## **Conclusions**

21. Although the analysis above does not follow the precise order of the specific questions set out in my instructions, I hope the answer to each will be apparent. In summary, those answers are as follows:

***Q1. Is the scope of “exceptional circumstances” limited to those circumstances relating to the inputs (i.e. population, household or affordability data) of the standard method, or could it extend to other land-use planning (physical, environmental, administrative) considerations relevant to delivering housing needs?’***

A1. Even in cases where there are “exceptional circumstances”, the assessment of need should be a “policy off” assessment which ignores environmental constraints such as the special protection afforded to national parks. Consequently, the assessment of need should be limited to characteristics relating to local demography, population, affordability and market signals. This conclusion is unaffected by the fact that EHDC does not exercise planning powers within the SDNP.

***Q2. What are the legal risks if the Council departs from the standard method?***

A2. The main risk is that the Inspector examining the Local Plan will conclude that it is not sound. The consequences of that would depend on the extent of any consequent shortfall in housing provision: if the shortfall is small, the

Inspector may conclude it could be addressed by inviting EHDC to propose additional allocations which could become the subject of a main modification. In those circumstances, the Plan would be delayed but this would not be fatal. However, if the shortfall is significant, this could call into question EHDC's entire spatial strategy, in which case the Inspector might conclude that the problem cannot be remedied by recommending modifications, and would then be forced to conclude that the Plan cannot be adopted.

***Q3. Considering the circumstances of East Hampshire, what evidence could justify deviating from the standard methodology?***

A3. There is no definitive guide to the kind of evidence required, but the example given in fn25 indicates that it should relate to some demographic or market-based feature (such as an unusually high proportion of elderly people) which demonstrates that the assumptions which underlie the standard methodology are inappropriate.

***Q4. How high is the risk to achieving a sound plan if deviating from the standard method?***

A4. In my view, the risk is significant.

22. If there are any questions arising from the above, those instructing should not hesitate to contact me.

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**3 July 2024**

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