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## Issues Related to Housing Windfall Sites

### Report summary:

On the 3 October 2023 Strategic Planning Committee resolved to receive a report on the issues relating to windfall sites. This matter is relevant for plan-making and housing supply, and for calculating the 5 year housing land supply for current development management purposes. The strategic issues are: the role of windfall sites; compelling evidence that windfalls provide a reliable supply source; the extent to which development is to be plan-led arising from the balance between windfalls and allocations for housing; the options for a windfall allowance in forecast housing supply; the ability for local plan policies to support windfall delivery; and producing windfall evidence in a timely way.

Under national planning policy the windfall allowance must be justified by compelling evidence that windfall sites will provide a reliable source of supply. Mindful of the windfalls evidence in Appendix A to this report, Members views are sought on the options identified on how to calculate a windfall allowance, and the scale of the allowance. Option 1 is recommended for the 5 year housing land supply assessment 2023 for current development management purposes with the windfall allowance rate of 138/year as used in the Housing Monitoring Update ending 31 March 2023. It is proposed to use option 2 as set out in the report for an allowance for plan-making to take account of more garden land windfalls. We would caveat matters by stressing that the recommendations are based on current evidence and national planning policy at the time of writing this report. Should the current Government (or a future Government) amend national policy, or there be new evidence about windfall sites, then matters may change.

### Is the proposed decision in accordance with:

Budget Yes  No

Policy Framework Yes  No

### Recommendation:

1. That Members endorse the use of the evidence in Appendix A for development management and plan making purposes.
2. That Members endorse Option 1 in this report as the approach to justifying the housing windfall allowance used to calculate the 2023 East Devon 5 year housing land supply position for development management purposes.
3. That Members endorse Option 2 in this report as the approach to inform the council's plan making, its housing supply forecasts and 'rolling' 5 year housing land supply assessments which the council will rely on to justify emerging local plan policies.
4. That Members note that the current 5YLS position and the related windfall allowance for development management and for plan making will be updated in 2024 and in subsequent years when new evidence at relevant monitoring points becomes available.

5. That should Government policy and/or guidance change regarding a windfall allowance then matters should be reviewed to determine whether an alternative approach is applicable, appropriate, and desirable in the East Devon local plan.

**Reason for recommendation:**

To endorse the approach to windfalls as part of future housing supply for development management and plan making purposes, consistent with national planning policy that there is compelling evidence that windfalls will provide a reliable source of supply in the future.

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Portfolio(s) (check which apply):

- Climate Action and Emergency Response
- Coast, Country and Environment
- Council and Corporate Co-ordination
- Democracy, Transparency and Communications
- Economy and Assets
- Finance
- Strategic Planning
- Sustainable Homes and Communities
- Tourism, Sports, Leisure and Culture

**Equalities impact** Low Impact

**Climate change** Low Impact

**Risk:** Low Risk;

**Links to background information**

The East Devon Housing Monitoring Update ending 31 March 2023 (plus Appendix 2), and its companion document the Housing Monitoring Audit Trail Document (and Appendices A to E, and G) can be viewed via the following web link:

<https://eastdevon.gov.uk/planning/planning-policy/monitoring/>

Links to other background documents, if identified, are contained in the body of this report.

**Link to Council Plan**

Priorities (check which apply)

- Better homes and communities for all
  - A greener East Devon
  - A resilient economy
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**1. Background information**

- 1.1 This report responds to Committee’s resolution at the 3 October 2023 meeting that a report in respect of the issues relating to windfall sites be brought to a future Strategic Planning Committee meeting. Informed by a technical evidence paper on windfall development in East Devon (see Appendix A), this report focuses on the key issues about housing windfall sites, covering:

1. The need for compelling evidence that windfall sites will provide a reliable source of supply if the district's supply forecast includes a windfall allowance.
  2. The ongoing need for resources to monitor windfall development, to capture and analyse relevant information and to forecast future windfalls.
  3. The options about which windfall sources can be included in a windfall allowance for East Devon
  4. The scale of windfalls and options for the balance between allocations and windfalls in the plan period housing supply.
- 1.2 Having considered the options in terms of compelling evidence, risks and implications for the emerging local plan, the report sets out conclusions and recommendations for Members' consideration.

### **What are windfalls?**

- 1.3 The National Planning Policy Framework (NPPF) defines windfall sites as "*Sites not specifically identified in the development plan*".
- 1.4 This means that windfall developments are 'unidentified' developments. They are typically sites that are not allocated in an adopted local plan (currently the adopted East Devon Local Plan 2013 to 2031) or 'made' neighbourhood plans. They are unexpected in terms of their contribution to housing land supply.
- 1.5 Members are advised that for the LPA's plan-making work we do not count sites on emerging Local Plan allocations for housing as windfalls. This is because we assume the emerging plan will be adopted and become part of the future development plan. It also means we avoid double counting windfalls and allocations.

### **Windfall completions in East Devon in recent years**

- 1.6 Recent windfall completions have formed a significant part of the overall supply of residential development in East Devon, with 2,267 completions delivered on windfall sites between 1 April 2017 and 31 March 2023. These provided 39% of the total net housing completions in East Devon. Of these:
- Half were on the hundreds of sites of 20 or less dwellings (mostly sites of 1 or 2 dwellings) broadly split evenly between brownfield and greenfield sites (including garden land).
  - The other half were on 19 sites of 21 or more dwellings, about three quarters of which were non-garden greenfield sites, mostly agricultural land, and the rest were brownfield. (See Tables 10 and 11 in Appendix A).
- 1.7 Members are advised that three large sites in the West End of the district were windfalls when approved but are now in areas allocated for housing development in the subsequently adopted East Devon Local Plan 2013 to 2031. Currently, they are not defined as windfalls and so are not included in that 39% of recent supply, so they are counted in the 61% of supply from non-windfalls in the period 1 April 2017 to 31 March 2023. The three sites are:
- Redhayes (519 completions)
  - Pinn Court Farm (296 completions); and
  - Mosshayne (193 completions).

- 1.8 Appendix A to this report provides the detailed evidence about the windfall completions between 1 April 2017 and 31 March 2023. It breaks them down by site types and size. This evidence draws on information available from the council's monitoring database and additional work informed by development management data including committee reports, delegated officer reports and appeal decisions. Appendix A is available as evidence for development management and plan making purposes.
- 1.9 Completions on windfall sites between 1 April 2020 and 31 March 2023 count towards housing supply for the emerging local plan as 'completions' within the plan period 1 April 2020 to 31 March 2040.
- 1.10 Windfall sites which had planning permission that had not expired at the 2023 monitoring point (31 March 2023) and have dwellings yet to be completed at that date, are known 'commitments'. They also count towards housing supply for the emerging Local Plan, provided the dwellings are forecast to be delivered in the plan period.

## **2. Issues about windfall sites**

### **Issue 1: The role of windfall sites.**

- 2.1 National planning policy strongly supports the development of windfall sites. In seeking to achieve the overarching objective of a sustained increase in housing supply. Government planning policy (NPPF para. 69) recognises that small and medium sized sites can make an important contribution to meeting local housing requirements. NPPF promotes the development of a good mix of sites. To encourage their development, NPPF advises amongst other things that LPAs should “*support the development of windfall sites through their policies and decisions*” – “*giving great weight to the benefits of using suitable sites within existing settlements for homes.*”
- 2.2 By implication, NPPF supports the development of windfall sites at *Chapter 11. Making effective use of land,* which among other things advocates giving substantial weight to the re-use and redevelopment of brownfield sites for housing, including vacant space above shops, the re-use or development of underutilised land and commercial floorspace, and the upward extension of existing residential or commercial buildings (paras. 119 and 120). Linked to this, appropriate residential development is encouraged in town centres to support their vitality (para. 86).
- 2.3 NPPF does not preclude windfalls on residential gardens but para. 71 states that *'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'*.
- 2.4 CONCLUSION For the emerging local plan to be found sound, the council will need to be consistent with NPPF when developing policies in the emerging local plan towards housing supply and future windfall housing development. This is considered further under Issue 5.

### **Issue 2: Compelling evidence that windfalls provide a reliable supply source**

- 2.5 NPPF paragraph 71 enables the LPA to make an “allowance for windfall sites as part of anticipated supply”. A windfall allowance considers the prospect of more sites being approved that are not on allocations in development plan documents (DPDs) and are

currently without planning permission. This allowance is separate from and additional to the known and identifiable windfalls, going forward.

- 2.6 The council's forecast of housing supply can include a windfall allowance but only if there is compelling evidence that windfall sites will provide a reliable source of supply in the future. This means that we must consider which types of windfalls will be a reliable source in East Devon when justifying the 5 year housing land supply calculation for NPPF Paragraph 74 and development management purposes, and for housing supply to 2040 for the emerging local plan.
- 2.7 NPPF places the burden of proof on the council to provide this compelling evidence if we want to include a windfall allowance forecast supply for the 5 year housing land supply calculations and/or where we include a windfall allowance is part of the forecast supply for the plan period of an emerging local plan. That evidence would be part of the emerging local plan's evidence base.
- 2.8 Members are advised that in justifying a 'windfall allowance' the council is not required to predict which specific sites will be developed. Indeed, if specific sites are identified as suitable, available, and achievable, logically they would be tested through the site selection process for consideration for site allocations in the emerging local plan.
- 2.9 To avoid double counting, it is essential that windfall sites with permission at the latest monitoring point base date (1 April 2023) are not part of the 'windfall allowance'. The allowance is in addition to and separate from windfall completions and commitments. However, this does not preclude using historic windfall completion rates to help justify a future windfall allowance rate.
- 2.10 Government planning policy in NPPF paragraph 71 is clear and relevant. It states that:
- “Where an allowance is to be made for windfall sites as part of anticipated supply, there should be compelling evidence that they will provide a reliable source of supply. Any allowance should be realistic having regard to the strategic housing land availability assessment, historic windfall delivery rates and expected future trends. 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”.*
- 2.11 So, we can use our evidence from the HELAA as well as the council's housing monitoring which captures data about actual housing completions.
- 2.12 We need to use our evidence to show whether windfalls have come forward consistently in the district over a relevant and sufficiently long period. The evidence needs to show what are the clear trends in the scale, direction or rate of change, type, or distribution of windfalls.
- 2.13 We also need to consider whether there are drivers of change that could impact on the future delivery of windfall site types and change those trends. The scale of historic windfalls can be the consequence of not being able to demonstrate a 5 year housing land supply. Or it can be as the result of having fewer allocations available for development as the result of not having a recently adopted, up to date local plan. The emerging Local Plan would change that position, resulting in fewer windfalls coming forward. The type of windfalls may change type if government planning policy and/or legislation changes. For example, the amount of small windfall sites outside rural settlements increased following changes in rural planning policy and the introduction

of Class Q permitted development (conversion of agricultural buildings to dwellings). This is relevant in rural areas such as East Devon,

- 2.14 A local plan Inspector will need to conclude whether our evidence is 'compelling' in demonstrating that windfalls are a reliable source of housing supply over the plan period. If the evidence is not compelling, then either they will ask the council to provide the evidence, or they will amend the windfall allowance downward or exclude it from supply so that the plan is consistent with NPPF and can be found sound.

### **Issue 3 The extent to which development is to be plan-led arising from the balance between windfalls and allocations for housing**

- 2.15 NPPF paragraph 15 states that *"The planning system should be genuinely plan-led."* Evidence about windfalls is part of the wider picture about forecast housing supply for the plan period which we use to demonstrate whether the policy on housing requirement in the emerging East Devon local plan is deliverable and consistent with NPPF, and whether the policy is 'sound'.
- 2.16 The balance between windfalls and local plan allocations is fundamental to the ability of the local plan's policies to support the achievement of the plan's vision, objectives, and strategy.
1. **Allocations** clearly provide a plan-led approach towards development for increasing housing supply and meeting housing need. They provide greater certainty because the sites are identified and can be tested for soundness and sustainability. Allocations are also a sign that the plan is 'positively prepared' by the LPA as part of a strategy seeking to meet the district's objectively assessed housing needs, where the council has been responsible for identifying the scale, type, and location of housing growth.
  2. **Windfalls** depend on developers, house builders and landowners to identify and bring forward 'unplanned' and sometimes speculative, ad hoc development. This adds to planned supply. It would not be realistic for the council to try to predict which specific windfall sites would come forward, particularly because of the number of small sites involved (mostly for one or two dwellings) and because most windfall sites that come forward in the future are currently unknown. Windfalls provides flexibility and choice, and they occur in the context of the circumstances at the time.

- 2.17 Committee has a vital role in considering the balance between windfalls and allocations in the preparation of the housing requirement policy and housing supply policies. This balance is considered further under issue 4 about the options for a windfall allowance in the forecast housing supply.

### **Issue 4 –The options for a windfall allowance in forecast housing supply**

- 2.18 The council can only include a windfall allowance where there is compelling evidence to demonstrate that windfalls will be a reliable source of housing supply in the future. Appendix A provides detailed compelling evidence of a series of 8 technical options for calculating a windfall allowance. In brief the options fall into three categories which are the current position, increasing the windfall allowance or decreasing the windfall

allowance. The following section summarises officers' assessment of each of these broad options majoring on options 1 and 2 which are the most feasible: .

### **OPTIONS ABOUT THE SCALE OF THE WINDFALL ALLOWANCE**

- 2.19 In considering the options, Members should be aware that the allowance is used for two different purposes:
- a) As part of the calculation for the 5 year housing land supply assessment for NPPF Paragraph 74 and development management purposes;
  - b) As part of the total housing supply forecast for the plan period in the emerging local plan, and the related rolling 5 year housing land supply forecasts.

#### **OPTION 1 HMU 2023 windfall allowance of 138 dwgs/year**

- 2.20 Option 1 is based on the evidence in Appendix A and is the windfall allowance used in the 5 year housing land supply assessment in the East Devon Housing Monitoring Update ending 31 March 2023 which Committee endorsed as evidence at their meeting of 3 October 2023. There being compelling evidence that recent rates of windfall sites of 1 to 20 (excluding garden land) will be a reliable source of supply in the future. Also, there is no need to wait for decisions on the content of the emerging local plan. It is essential that the council has a 2023 base date 5 year housing land supply position where Committee continues to endorse the 5YLS assessment, including the windfall allowance within the forecast housing supply. Lack of endorsement would seriously undermine the council's ability to use and defend its 5YLS evidence for development management purposes. If windfalls were not included in forecast supply, the 5YLS would fall from 4.28 down to 3.8 years.
- 2.21 The plan period allowance under Option 1 is substantial, at 1,965 dwellings. This is about 10% of a housing requirement based on local housing need of 910/year plus a 10% supply headroom. However, it is justified by the evidence in Appendix A.
- 2.22 The basic windfall allowance rate of 138/year can be compared to the rates in other LPA areas, as shown in Appendix A. However, we would urge caution in reading too much into comparisons, as areas vary greatly in their circumstances.
- 2.23 **CONCLUSION:** OPTION 1 is recommended to Committee for use for NPPF Paragraph 74 and development management purposes.
- 2.24 The rest of this part of the report about Issue 4 focuses on the options available to the council in terms of the scale of the windfall allowance and the balance between the allowance and allocations in the emerging local plan.

#### **A- Increasing the Windfall Allowance**

- 2.25 Members may want to consider the possibility of increasing the windfall allowance for plan-making purposes. Appendix A looks at 4 options for increasing the allowance.

#### **OPTION 2 Non-strategic increase - Adding in garden land windfalls**

- 2.26 There is compelling evidence to demonstrate that garden land windfall sites of 1 to 9 dwellings would provide a reliable source of windfalls in the future. Including them would increase the allowance rate by 39 dwellings/year. However, they were not included in Option 1 because of the lack of evidence about the cumulative impact on

the density and character of local areas from this type of windfall continuing to come forward and the risk of prejudging or having to wait for the emerging local plan policy towards windfalls on garden land.

- 2.27 Including garden windfalls in the windfall allowance for plan making depends on Members' views on:
- The extent to which future development should be plan led.
  - Whether increasing the windfall allowance increases the risk that the plan could be found not sound. (e.g., if the plan is not positively prepared or effective)
  - The potential risk of a perception that adding this type of windfall into the allowance is 'messaging' a relaxation of local planning policy towards windfall development on garden land.
  - Whether they can consider this option ahead of evidence about the cumulative impact of garden windfalls through greater densification of residential areas.
- 2.28 Members have already agreed as part of the methodology for defining settlement boundaries to draw these more loosely and this is likely to lead to more windfall developments coming forward. This option would take account of this within the windfall allowance. Appendix A considers the evidence and issues related to adding garden land into the allowance in more detail.
- 2.29 **CONCLUSION:** Subject to Members' views, the recent rate of completions on garden windfalls on sites of 1 to 9 dwellings could be added to the windfall allowance from Option 1 for the whole plan period. This would add a net 548 dwellings to forecast supply for the plan period to count towards meeting the housing requirement and a degree of supply headroom. It could increase the total district windfall allowance in the plan period to 2,513 dwellings. Mindful of the objections received about the windfall allowance of 2,335 at the Regulation 18 Draft Local Plan consultation stage, we can reasonably expect to receive objections to an allowance of about 2500 dwellings.
- 2.30 Other options for adding to the windfall allowance are considered in Appendix A, however in each case there is insufficient evidence to demonstrate that they will provide a reliable source of windfalls in the future.

### **B- Decreasing the Windfall Allowance**

- 2.31 Members may also want to consider if they want the local plan to provide more certainty by changing the balance between windfalls and allocations by decreasing the windfall allowance and increasing the amount of allocations for housing development within the forecast housing supply for the emerging local plan.
- 2.32 Appendix A to this report considers three options to decrease the allowance. These options include having no windfall allowance or reducing the allowance to a greater or lesser extent and making up the required housing numbers through additional allocations. These options are not considered to be appropriate as there is a limited supply of suitable sites for allocation and so it is unclear where additional allocations would come from. In reality windfall sites will come forward and many will be acceptable and so it does not make sense to exclude these from the calculations and force ourselves into having to allocate more land than will ultimately be needed. The alternative of reducing or removing the windfall allowance and not compensating for this through additional allocations would mean that we would not be putting forward a



plan that meets the required housing need and runs the significant risk of it being found unsound. If Members were minded to reduce the windfall allowance then it is only option 8 which is considered to be feasible but this would still require additional allocations to be identified albeit a smaller number than the other options presented for decreasing the windfall allowance.

### **Issue 5 The ability for local plan policies to support windfall delivery**

- 2.33 The Regulation 18 draft Local Plan set out draft policies towards supporting future housing windfall delivery by enabling windfalls to be brought forward for development. These include:
- 3. Strategic Policy – levels of future housing development (*windfalls are listed in the supply categories to count towards meeting requirement*)
  - 6. Strategic Policy – development inside settlement boundaries
  - 7. Strategic Policy – development beyond settlement boundaries
  - 44. Policy – self build and custom build housing
  - 45. Policy - residential sub-division of existing dwellings and buildings and replacement of existing dwellings
  - 47. Policy - hostels and houses in multiple occupation
  - 49. Policy – rural exception sites and first homes exception sites
  - 50. Policy – housing for rural workers
  - 53. Policy – farm diversification
  - 57. Policy - town centre development
  - 62. Policy – design and local distinctiveness
  - 63. Policy – housing density and efficient use of land.
- 2.34 Members are reminded that to be consistent with NPPF, the emerging local plan's housing requirement policy (currently in policy Strategy 3) is a minimum target for delivering 'at least' the policy figure for net completions in the plan period. It does not preclude additional windfall development from coming forward.
- 2.35 At their meeting on 5 April 2022, Members endorsed the methodology for producing settlement boundaries for the emerging local plan. The settlement boundaries denote where different policy approaches will apply. The main principle of the work is to establish areas where development including residential windfalls is likely to be acceptable in principle. Work is currently progressing on the production of amended settlement boundaries around certain settlements to be shown on the Policies Map for the emerging local plan. The amended settlement boundaries and related evidence are scheduled to be considered by Committee in September 2024.
- 2.36 The methodology is likely to result in more areas within the boundaries with the potential for windfall development to come forward. However, development of windfalls on specific land cannot be guaranteed.
- Some land is small scale and below the 0.15 ha size threshold for HELAA and allocations. It allows for limited incremental growth in keeping with the scale of settlement and its character. Unlike the previous local plan, whole curtilages are included within the settlement boundary (ie the boundary does not cut across the garden) unless it would have the capacity to very significantly extend the built form of the settlement.

- Some areas of land that are largely contained between site allocations proposed in the emerging local plan and the main built up area of the related settlement.
- Some larger areas (more than 0.15 Ha) may not have been considered suitable for allocation, but nevertheless may provide suitable development opportunities if applicants demonstrate through the development management process that individual proposals would be acceptable. However, such windfalls are likely to be rare.

2.37 The methodology would therefore provide opportunities to enable the continuation of windfall rates within the settlements with boundaries. This supports the council's view that there is compelling evidence about windfalls as reliable sources of supply which support Windfall Allowance Options 1, 2 and 8. However, the changes to the settlement boundaries are unlikely to be of such a scale as to justify a conclusion that windfall delivery rates would increase significantly over the plan period.

**2.38 CONCLUSION** Committee will have the opportunity in 2024 to consider policies to support windfall delivery through the preparation of the Regulation 19 local plan's vision, strategy, objectives, and policies.

#### **Issue 6: Producing windfall evidence in a timely way**

2.39 One further issue is how to ensure the council continues to produce robust, up to date evidence about supply from known, identifiable windfalls, and to produce compelling evidence for a windfall allowance in a timely way. Members are advised that:

1. Each year we update the count of actual completions on known and identifiable windfall sites to the latest monitoring point base date (currently 2023). We will need to use the latest available monitoring point base date evidence (i.e. the 2024 monitoring point data) for the Publication plan (Regulation 19).
2. We can also reasonably expect to have to update the housing supply evidence, including evidence about windfalls, during the local plan examination i.e. to the 2025 monitoring point (and beyond, depending on the length of the Examination), as Inspectors require housing evidence that is 'up to date'; and
3. In addition to historical counts of actual completions, we also forecast the residue of completions going forward based on known and identifiable sites. They are part of the 5 year housing land supply and part of the local plan housing trajectory. Forecasting future supply for major sites is onerous, particularly for sites with only outline planning approval. It is an evidential 'burden of proof' placed on the council by NPPF. The 2023 Housing Monitoring Audit Trail report shows the information and clear analysis needed to justify a site trajectory.

2.40 There are considerable demands on Planning Policy team resources for evidence and plan preparation. Work is intense between March and October/November each year when we undertake housing monitoring and analysis. This will be particularly so in 2024 as we prepare for the Regulation 19 Local Plan, and in 2025 during Examination. This includes engaging with developers, then producing the HMU, the monitoring audit trail document, the local plan housing trajectory (including a rolling 5YLS), and the housing topic paper update. All rely on or relate to the windfall allowance.

2.41 **CONCLUSION** It is vital that sufficient resources are available each year to ensure we produce the housing delivery evidence in a timely way. Members will be regularly updated about the progress of housing evidence production, to ensure evidence is available in time to inform plan making and Committee decisions.

**Financial implications:**

There are no direct financial implication resulting from the report.

**Legal implications:**

There are no substantive legal issues to be added to this report