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Current and Future Housing Land Supply Challenges

Report summary:

This report seeks to highlight the current situation with regard to housing land supply and concerns regarding our future housing land supply position in the run up to submission of the Local Plan for examination. Members are advised that while the revised NPPF and the 4-year housing land supply requirement set out within the document provides some comfort in the short term it presents a number of challenges in the medium and long term as we need to have a 5-year housing land supply for the local plan to be found sound. In order to achieve this it is recommended that Members look to bolster our supply position and by granting more consents for housing developments which can deliver homes within the 5 year period.

Prior to the new NPPF the 'tilted balance' was in effect in the district, and this required us to give greater weight to housing land supply issues. In the absence of the 'tilted balance' advice from Kings Counsel (KC) has been sought on the weight that should be given to these issues given the current and forecast supply position. The advice suggests that although the 'tilted balance' should not be applied these issues should still be carrying significant weight in the balance of material planning considerations and are certainly capable of outweighing adopted policies in the Local Plan. Members have also received training from the Planning Advisory Service (PAS) to aid understanding of these issues.

Members are asked to note the current position and the advice that has been sought and to advise Planning Committee of the need to give significant weight to these issues in decision making.

Is the proposed decision in accordance with:

Budget Yes No

Policy Framework Yes No

Recommendation:

That Members advise Planning Committee that in considering planning applications for housing developments that would deliver homes within the next 5 years in a sustainable way, significant weight should be given to the need to bolster the council's housing land supply position. This is in order to ensure that the council has a robust housing land supply and as a result a sound local plan in respect of housing land supply for examination of the Local Plan.

Reason for recommendation:

To ensure Members are aware of the current and forecast housing land supply position and the actions that are recommended to ensure that a 5-year housing land supply position can be demonstrated by the time of submission of the new Local Plan for the plan examination.

Officer: Ed Freeman – Assistant Director – Planning Strategy and Development Management

Portfolio(s) (check which apply):

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

Equalities impact Low Impact

Climate change Low Impact

Risk: High Risk; There is considered to be a very significant risk that if action is not taken as set out in this report that we will be unable to demonstrate the required 5-year housing land supply at the time of examination of the Local Plan and therefore it would be found unsound. There is also risk of planning decisions being challenged where substantial weight is given to the housing land supply position, however these risks are considered to be significantly less than those associated with submitting an unsound local plan and are mitigated by the advice that has been sought from PAS and a KC which indicate that the proposed approach is reasonable.

Links to background information

Link to [Council Plan](#)

Priorities (check which apply)

- Better homes and communities for all
- A greener East Devon
- A resilient economy

Background

The issue of the Council's housing land supply and application of the 'tilted balance', whereby greater weight is given to housing supply issues, has been an area of concern to members for some time. This led to a resolution at Council in December 2023 which read:

"As a result of Conservative government planning policies, EDDC planning officers are under considerable pressure to recommend approval of totally inappropriate, highly unpopular, and very damaging planning applications such as that for land east of Sidmouth Road, Ottery St Mary and Land at Eastfield West Hill.

East Devon is being penalised by the government due to its lack of '5 year land supply' despite an excellent track record in recent years. 9,000 new homes have been delivered over the past decade in East Devon and more than 4,000 houses are set to be delivered in the next 5 years.

This Council is fully committed to ensuring homes are delivered for residents - particularly those who are younger and less well off. However, this Council believes that harm will be caused to the countryside and communities of East Devon under the government's approach.

That this Council will ask the Planning Advisory Service or other appropriate organisation to review its planning reports given its lack of 5 year land supply and advise how best to resist speculative

development particularly by reference to the work of other councils and decisions taken by the planning inspectorate.”

This report seeks to report back on the advice that has been sought and the actions taken since the above motion.

It should also be noted that Strategic Planning Committee on the 9th January 2024 Members received a report setting out the changes including in the latest iteration of the National Planning Policy Framework which had been published on the 20th December 2023. Among the main changes was a provision that under certain circumstances local planning authorities would only need to identify an annual supply of specific deliverable sites to provide a minimum of 4 years' worth of housing. The stated circumstances were considered to apply to East Devon but there was concern at that time as to how a 4-year housing land supply should be calculated since the published guidance only related to calculation of a 5-year housing land supply. The report set out two potential methodologies that could be applied based on the current guidance. Members resolved that this should be calculated in line with option 1 as set out in the report thus giving the authority a 4-year housing land supply. The government has subsequently published guidance confirming this interpretation as correct.

Challenges

In the months following discussion at 9th January meeting and the subsequent government clarification, the implications of these changes have become apparent. At first glance these changes put the council in a stronger position with the tilted balance no longer being applicable and the weight to be attributed to the Local Plan being restored. Although the 4-year housing land supply requirement eases pressures in terms of decision making in the short term these provisions only apply for 2 years. They also do not alter the requirement to demonstrate a 5-year housing land supply position upon adoption of the Local Plan.

An up-to-date annual housing monitoring report is in production, however the 2022/23 monitoring report noted that the housing land supply position was in decline. This and the need to bolster supply in order for the new Local Plan to be found sound was noted in the report on the changes to the NPPF reported to the January committee meeting as well. The position has been slightly eased through the annual recalculation of the housing requirement figure under the governments standard method for calculating housing need. This is done each year as new data is published for one of the variables in the calculation which relates to the affordability of housing. A modest increase in the affordability of housing in the district means that the requirement figure has reduced from 910 homes per year to 893 homes per year.

Further work undertaken by officers modelling the potential delivery trajectories of sites identified as first choice and second choice sites in the draft Local Plan indicate that demonstrating the required 5-year housing land supply in the new Local Plan is extremely challenging. This is because although the sites (if allocated) would meet the identified housing requirement, the timing of the delivery of these sites mean that there would be a significant shortfall in the early years of the plan due to delays as sites are opened up and delivered. The only way the required 5-year supply position could potentially be achieved would be to present a case for what is known as a “stepped trajectory” whereby supply is noted as being lower than 893 homes per year in the early years of the plan and then steps up to a higher than 893 figure in the later years of the plan to compensate. This is an approach that has been accepted at some local plan examinations and it is considered that there is a case for pursuing this approach in East Devon given that the second new community makes up a significant proportion of the housing land supply over the plan period and it will take time for the site to be opened up and delivered causing a delay to housing delivery in the early years of the plan. Some other sites will also be delayed due to the need for infrastructure to be delivered before the sites can come forward.

Although there is an argument to be made for this approach it would be a vulnerability at local plan examination as some parties may argue against this approach. In particular the current housing crisis and the shortage of affordable housing in the district could count against this approach and indicate the importance of delivering the homes as soon as possible. It also presents a significant future risk if the authority then becomes quite reliant on the second new community to maintain a 5-year housing land supply in the future. This is akin to the approach taken with a previous Local Plan where there was great reliance on the delivery of Cranbrook which once delayed led to the Council not having a 5-year housing land supply and having to grant consent for other major developments in the west end of the district which were not previously planned. It would therefore be best to avoid being in this same position again. More fundamentally adopting a stepped trajectory would only just deliver a 5-year housing land supply and so would be very vulnerable to sites being removed from the plan as discussions and consultations progress over the coming months or through the Local Plan examination. It is important to bear in mind that the 5 year supply is a minimum requirement and we should be aiming to have a comfortable cushion to ensure that our position is robust and resilient.

It would therefore be beneficial to boost the council's housing land supply position so that we can present at least a 5-year housing land supply position to the local plan examination. This would involve granting planning permissions for more housing sites that are capable of delivering homes within the next 5 years. Progressing the Local Plan and allocating sites within it helps towards future housing supply but it is only consents that will help to fill the more immediate shortfall.

Usually when an authority is in this position then the 'tilted balance' would apply which is designed to adjust the balance of material considerations such that housing supply issues carry greater weight thus releasing more housing sites to address under supply. With the introduction of the 4-year housing land supply requirement, the 'tilted balance' is not in force and so this has raised questions over the legitimacy of giving significant weight to future housing land supply issues in the absence of the application of the 'tilted balance'. This is an issue that only arises because of the changes in the new NPPF. Housing land supply is ordinarily a material planning consideration but it would not usually carry such substantial weight as to outweigh policies in the Local Plan in the same way that it would when the 'tilted balance' is in effect.

There have been developers challenging whether the draft local Plan has reached the stage of preparation referred to in the new NPPF and therefore whether we can benefit from the 4-year housing land supply provisions. Some parties have questioned whether the references to sites as first and second choice sites within the plan means that it does not include allocations. The position has been further muddied by some recent appeal decisions in other parts of the country where inspectors have given greater weight to housing land supply issues than might usually have been expected even where the authority in question had an adequate supply at present under the NPPF.

To try and clarify the position officers have sought advice from Kings Counsel. We have also sought assistance from the Planning Advisory Service (PAS) who are part of the LGA (Local Government Association) to help to address the concerns raised by the council resolution above and aid Members understanding of the current issues relating to housing land supply. A training session was held with PAS on the 15th May in which these issues were discussed in detail. PAS are also undertaking a desk-based assessment of our housing monitoring reports and reports assessing planning applications where the tilted balance was applied.

Kings Counsel was asked to advise on a number of issues relating to these matters. The KC opinion has confirmed that in their opinion the Local Plan has progressed to such a point that it satisfies the requirements of the NPPF for when the 4-year housing land supply can be applied. The KC is satisfied that it includes site allocations as required and so it is considered that we are in a strong position to respond to any challenges to this position and can conclude that the 'tilted balance' should not be applied. The KC however highlights that regardless of the 'tilted balance' and while the planning system is plan-led, the council is required to consider other material considerations in its decision making. The KC has confirmed that future housing land supply issues are capable of being a material consideration to be weighed in the balance when considering a planning application. He particularly highlights the weight that is being given in appeal decisions to affordable housing needs highlighting that the identified affordable housing need significantly exceeds the numbers being delivered and that this would carry significant weight in the eyes of an inspector when considering a development that is sustainable development even if not compliant with the adopted Local Plan.

In his conclusion the KC advises that the Council should note that the government has a long-standing approach of seeking to boost the delivery of housing and in particular affordable housing. He states that in his opinion the Council ".....needs to take steps to seek both to boost its current supply of both market housing and affordable housing and also take steps to seek to bring forward a development plan which will provide sufficient homes with a realistic prospect of delivery over the future plan period". He considers that concerns about the housing land supply position and the soundness of the Local Plan are well founded. With regard to bolstering supply by granting consent for more housing sites he states that "I recognise that the approach that will need to be taken should be bespoke and have careful regard to the circumstances of each site. Although the tilted balance may not fall to be applied, in my view that should not preclude officers from recommending suitable sites for approval, having regard to the weighty considerations of housing and affordable housing need identified above".

Options

There are a number of applications held in the system that were submitted when the 'tilted balance' was to be applied where officers were minded to recommend approval of the applications having weighed up the material considerations as required. Due to the changes to the NPPF and uncertainty regarding the weight to be given to these issues in the absence of the 'tilted balance' officers were unable to make a recommendation on these applications. There were also some applications which had a resolution to grant following application of the 'tilted balance' prior to publication of the new NPPF which have also been held up because of these issues. These applications were subject to Section 106 agreements and so were not issued prior to the changes to the NPPF. Those decisions now need to be reconsidered in light of the changes to the NPPF and without the 'tilted balance' being applied. This is because the decision has to be made based on the policy position at the time of the decision which is the date the decision is actually issued rather than the date of the committee resolution. Wherever possible these applications have been held under agreed extensions of time with the applicant so that they do not impact on the council's performance against government performance indicators. However, the affected developers are understandably keen to have a decision on their applications.

In light of the clarity of the weight to be given to these issues through the KC opinion; Officers will need to review their consideration of the relevant applications in light of this opinion and draft reports so that these can be taken to Planning Committee for a decision. Clearly the approach will have to be tailored to the merits of each individual application, but it is considered that significant weight should be given to the housing land supply issues highlighted in this report.

It is not the role of Strategic Planning Committee to consider individual planning applications and so this report deliberately does not refer to the specific applications to avoid such references being misconstrued. It is however written in the terms of reference for Strategic Planning Committee as set out in the constitution for the committee to:

- (i) To provide advice to the Planning Committee on the interpretation of the policies of the Development Plan if requested to do so by either officers or the Planning Committee.

In this case Members could seek to advise Planning Committee that although the 'tilted balance' is not to be applied significant weight should still be given to the housing land supply position as set out in this report and the need to bolster the housing land supply position over the coming year in the run up to submission of the Local Plan for examination. Planning Committee therefore could be asked to have significant regard to these issues when considering applications for housing development where they are considered to constitute sustainable development.

It is important to bear in mind that it is not a simple case of granting enough homes to make up the immediate shortfall. Although the current shortfall is estimated at about 0.5-years housing land supply which equates to 447 homes (when rounded up), it is not simply a case of granting consent for this number of homes. In order to positively impact on the housing land supply position, they would need to be homes that we can be reasonably sure will be delivered in the 5-year period. It often takes time for sites to actually commence on site and there will be limitations on the number of homes that any site is likely to deliver in any given year. In order to fully address the shortfall, it will therefore be necessary to grant consent for a number of sites which in total will be well in excess of 447 homes in order to deliver at least this number of homes within the 5-year period with the remainder to be delivered in later years. Members are also reminded that a 5-year housing land supply is a minimum requirement and we should be seeking to bolster supply to well above this level if we are to present a robust supply position.

An alternative approach to that set out above would be for the committee to not issue any new advice to Planning Committee regarding the weight to be given to housing land supply matters. In reality as officers are required to give their professional opinion and set out all material considerations, the committee would still be advised of these matters but on a case-by-case basis and without the benefit of a strategic perspective on the issue from Strategic Planning Committee. This approach may lead to an inconsistent application of the weight to be given to housing land supply issues and make it more challenging for the Planning Committee to fully consider the wider impacts of their decision for the plan making process. It may also increase the likelihood of applications for housing developments that depart from the strategy in the adopted Local Plan being refused by the committee and then subsequently allowed on appeal if housing land supply matters are given greater weight by inspectors when considering appeals. This could also have implications for costs to the council in defending those decisions which would be likely to involve public inquiries and the costs associated with that including legal representation.

Members may choose not to take any actions to address these issues both through Strategic Planning Committee and Planning Committee. As a result, there would be a significant risk that come the examination of the Local Plan the council is unable to present a 5 year housing land supply position, even with the stepped trajectory approach referred to above, or that the position only narrowly meets the 5 year requirement and is vulnerable to challenge. Such an approach would risk the local plan being found unsound at examination and much of the work in its production being wasted. By this time the 2 years protection provided under the 4-year supply position would either have expired or been lost as a plan would no longer be at an advanced stage of production and so the tilted balance would need to be applied again. There is a significant risk

in this scenario that the undersupply would be substantial by that point and with plan production needing to start again, under a new system, there would be a lot of work needed in terms of plan production and a lot of consents needed to be granted to readdress the situation. In all likelihood it would be a number of years before a 5-year housing land supply could be demonstrated.

A more optimistic but unlikely scenario would see supply bolstered through sites coming forward in accordance with the current local plan strategy such that a 5-year housing land supply position can be demonstrated at local plan examination without the need for a change in the weight to be attributed to such issues. In an ideal world this would be the case but there are not considered to be any significant known sites within the current strategy that are likely to come forward and deliver new homes within the timescale to adequately address the situation. The housing requirement figure has however fallen in the last two years due to improvements in the affordability ratio and if this trend were to continue or accelerate then this would help to improve the supply position. It should also be noted that faster than expected build out rates on large scale sites such as the Cranbrook expansion areas would also help to improve the position without a need to change the current approach. Although outline consents have now been granted for two of the main expansion areas totalling over 2500 homes in the absence of reserved matters consents work cannot start on site. There are significant costs and challenges to open up these sites which mean it is appropriate to be conservative about when these sites may start delivering new homes and how many they would deliver in the early years of build out. In reality their build out is likely to take many years.

Conclusion

From the above analysis it is considered that action is needed to address the future housing land supply issue and ensure that we can demonstrate a 5-year housing land supply upon adoption of the new Local Plan. Although individual applications will need to be determined on their own merits it is considered important that Planning Committee understand the importance of this issue for progression of the Local Plan and delivery of wider strategic planning objectives in the district which are the purview of the Strategic Planning Committee. Members are therefore recommended to issue advice to the Planning Committee on this issue to aid their consideration of applications that could help to address the housing land supply challenges that we face.

Financial implications:

There are no direct financial implications raised in the report.

Legal implications:

The legal implications are set out within the report.