



REPORT

A Survey of Local Authority Practices in Meeting Some Requirements of the NPPF.

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EXECUTIVE SUMMARY

Several large housing projects in the former Castle Morpeth district of Northumberland have planning permission but are held up due to the failure to sign Section 106 Agreements. None has been included in any estimates of future housing supply. There is also a lack of clarity in the criteria for adding a “20% additional buffer” to housing targets if there is a “persistent under delivery of housing.”

Since both these factors can have a significant bearing on the planned future housing supply, a Survey has been undertaken to find the practice in a number of other Planning Authorities. It is found that, for a number, these factors are not a real issue (for reasons discussed) but amongst those for whom they are important a fairly wide range of practices has been found.

Amongst those Authorities which have some commonality with Northumberland, it is found that three (60%) include some or all of planning permissions with unsigned S106 Agreements in their forward estimates whilst Northumberland excludes all of them; the remaining one has no unsigned S106 Agreements to consider.

Of the remainder which have responded, eight (45%) have no unsigned S106 Agreements whilst six (33%) include all or part and four exclude all permissions with unsigned Agreements.

A number of Authorities find themselves in the position that their past housing delivery has been either way below, or way above, the housing requirements such that they have not had to consider specifically whether there has been a “persistent under delivery of housing.” The problem arises with those Authorities who have come close to achieving their targets since no method of assessing success or failure has been specified in any detail.

Some Authorities have discovered the somewhat arbitrary results which can arise by comparing targets with achievement on an annual basis, and have adopted the criterion that if long-term targets are met then there can be no “persistent under-delivery.” Some others have introduced a Tolerance into their assessments.

It is suggested that every effort should be made to include some planning permissions with unsigned S106 Agreements into future housing estimates and also that a more logical mathematical criterion should be used in assessing a “persistent under delivery.”

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1. INTRODUCTION

An important consideration in the future housing provision to be made by Local Authorities in general, and for Ponteland in particular, is the way in which the required number of future dwellings is estimated. Factors such as employment needs and the requirements for Affordable Housing are of primary importance but procedural factors could also affect the estimates quite significantly.

Significant amongst these is the treatment of potential dwellings for which a resolution to grant planning permission has been approved but which are held up due to the lack of signing of a related Section S106 Agreement. In the case of the former Castle Morpeth district this amounts to 913 dwellings [1] corresponding to approximately 6.5 year's housing supply (based on the RSS numbers for Castle Morpeth in the period 2004 to 2012). If only a proportion of this could be included in the forward housing estimates it would reduce significantly the need for additional sites.

The *National Planning Policy Framework* (NPPF) [2] which has superseded previous guidance on such matters, contains no specific indication as to whether any allowance for such potential dwellings in this category should (or should not) be included in future housing estimates, but does lay emphasis on developments not being stalled [3] and states that sites with planning permission may be classed as deliverable. [4] This Study was undertaken to investigate the practices of various Local Authorities in this regard.

The NPPF also defines a policy whereby an "additional buffer" should be added to projected numbers in order to "boost significantly the supply of housing." Under normal circumstances this should be 5% but in cases where "there has been a record of persistent under delivery of housing, local planning authorities should increase the buffer to 20%." [5] No clear definition has been provided of what is "a record of persistent under delivery" or of how frequently such a re-appraisal may be required. This Study also includes an enquiry to determine the approaches taken by a range of Local Authorities in this regard.

A very full range of documents has been available from the Northumberland County Council and information has been obtained from a range of other Authorities by direct contacts and Freedom of Information (Fol) requests. These Authorities have, in many instances, been very helpful with additional information and have provided references to other documents in the public domain which help to clarify their position. We are grateful for this helpful approach.

2. SELECTION OF LOCAL AUTHORITIES FOR ENQUIRY

Enquiries were limited to those Local Authorities who might be reasonably considered similar to Northumberland in some significant way. These fall into three categories: (a) Unitary Authorities who were created in 2009, (b) District Authorities who were upgraded to Unitary Powers in 2009 and (c) Local Authorities in reasonably close proximity to Northumberland. These are listed below with the appropriate FoI email contacts:

2.1. UNITARY AUTHORITIES CREATED IN 2009.

Durham County Council	foi@durham.gov.uk
Cornwall County Council	foirequests@cornwall.gov.uk
Shropshire County Council	information.request@shropshire.gov.uk
Wiltshire County Council	foi@wiltshire.gov.uk

2.2. DISTRICTS UPGRADED TO UNITARY POWERS IN 2009.

Bedford Council	Freedomofinformation@bedford.gov.uk
Central Bedfordshire Council	accesstoinfo@centralbedfordshire.gov.uk
Cheshire East Council	foi@cheshireeast.gov.uk
Cheshire W. & Chester Council	foi@cheshirewestandchester.gov.uk

2.3. COUNCILS IN GEOGRAPHICAL PROXIMITY TO NORTHUMBERLAND.

Tyneside:

Gateshead Council	informationrights@gateshead.gov.uk
Newcastle City Council	freedomofinformation@newcastle.gov.uk
North Tyneside Council	foiofficer@northtyneside.gov.uk

Cumbria:

Allerdale Borough Council	foi@allerdale.gov.uk
Barrow Borough Council	foi@barrowbc.gov.uk
Carlisle City Council	information@carlisle.gov.uk
Copeland Borough Council	info@copeland.gov.uk
Eden District Council	FOI@eden.gov.uk
South Lakeland District Council	foi@southlakeland.gov.uk

North Yorkshire:

Craven District Council	contactus@cravendc.gov.uk
Hambleton District Council	info@hambleton.gov.uk
Harrogate Borough Council	foi@harrogate.gov.uk
Richmondshire District Council	equiries@richmondshire.gov.uk
Ryedale District Council	info@ryedale.gov.uk
Scarborough Borough Council	foi@scarborough.gov.uk
Selby District Council	info@selby.gov.uk

3. FoI QUESTIONS: Planning Permissions and S106 Agreements.

- 1) How many potential dwellings in your County have planning permission already granted but are presently not started or held up due to unsigned S106 Agreements?
- 2) How many of the above S106 Agreements were entered into on or prior to the 6th April 2010?
- 3) Are potential dwellings with unsigned S106 Agreements currently excluded from the total of those which are forecast by you to be completed in the current 5-year period (2012 to 2017) ?

N.B. Question 2 was asked in order to find the number of S106 Agreements which might fall under the provisions of proposed legislation which would provide an opportunity for renegotiation. [2]

4. FoI RESPONSES: Planning Permissions and S106 Agreements.

4.1. DETAILS FOR NORTHUMBERLAND – FORMER BOROUGHES

	Q1.	Q2.	Q3.
Castle Morpeth	913	797	Excl.
Tynedale	13	13	Excl.
(Present South & West Area Totals:	926	800	Excl.)
Alnwick	127	127	Excl.
Berwick upon Tweed	0	N/A	N/A
Blyth Valley	42	15	Excl.
Wansbeck	8	2	Excl.
Totals for Northumberland	1,103	944	Excl.

The following responses are listed alphabetically within the three Sections:

4.2. COUNTY AUTHORITIES WHICH GAINED UNITARY STATUS IN 2009

	Q1.	Q2.	Q3.
Cornwall County Council (c)	1,988	unknown	Part Incl. (770)
Durham County Council	955	2	Incl. (d)
Northumberland County Council	1,103	944	Excl.
Shropshire County Council	unknown (m)	34	Incl. (n)
Wiltshire County Council	0 (a)	N/A	N/A

4.3. DISTRICT AUTHORITIES WHICH GAINED UNITARY POWERS IN 2009

	Q1.	Q2.	Q3.
Bedford Borough Council	0 (a)	N/A	N/A
Central Bedfordshire Council	0 (a)	N/A	N/A
Cheshire East Council	2,318	unknown	Excl. (1329)
Cheshire W. & Chester Council	1,609	9	Part Incl. (529)

4.4. OTHER NORTHERN AUTHORITIES

	Q1.	Q2.	Q3.
Allerdale Borough Council	(249) (a)	0	N/A
Barrow Borough Council	0	N/A	Incl.
Carlisle City Council (b)	0	N/A	N/A
Copeland Borough Council	0 (f)	N/A	Incl.
Craven District Council			
Eden District Council	0 (a)	N/A	N/A
Gateshead Council	0	N/A	N/A
Hambleton District Council	0 (a)	N/A	N/A
Harrogate Borough Council	100	0	Incl.
Newcastle City Council	2 (e)	0	Incl.
North Tyneside Council	0 (a)	N/A	Excl.
Richmondshire District Council	0	N/A	N/A
Ryedale District Council	90	63	Part Incl. (82) (j)
Scarborough Borough Council	1,474 (g)	954	Excl. (h)
South Lakeland District Council	unknown (k)	unknown	Excl. (l)
Selby District Council			

4.5. NOTES: Planning Permissions and S106 Agreements:

(a) Planning Permission is only granted **after** S106 Agreements have been signed. Questions 2 thus becomes void. Question 3 also becomes void unless there is a declared policy to exclude permissions with unsigned S106 Agreements.

(b) *Carlisle City Council stated that:* "An allowance is made for windfall sites based on past experience." Note also that: "...CALA Homes challenged this decision and it was upheld that revocation (of Regional Spatial Strategies) was unlawful and RSS remains in place. In light of this it was recommended and approved by the Executive of Carlisle City Council on 18 April 2011 to continue with the RSS figure of 450 net dwellings per year to be used when assessing planning applications." Reference: *FIVE YEARS HOUSING LAND SUPPLY POSITION STATEMENT – AS OF 30 SEPTEMBER 2012. (Carlisle City Council)*

(c) *Cornwall County Council stated:* "This year for the first time the likely deliverability of sites granted planning permission but that are awaiting S106 agreements to be signed has been assessed and where there is evidence that some houses may be delivered within the next 5 years these have been included within the five year supply calculation." Reference: *Housing Land Availability Assessment 2011-2012. (Cornwall County Council)*

(d) *Durham County Council stated that:* "Sites with unsigned S106 Agreements (i.e. those with resolutions to grant planning permission) are included within the housing trajectories which anticipate completions across a period of time. As there is normally a lead in time of between 18 months and 2 years from date of consent to a house builder actually delivering completions on a site, this has to be factored into the trajectories. To illustrate, a site granted consent in 2012, will (all being well) start delivering units in 28-NOV-12 in 2014 and will build out at a rate of 30-35 dwellings per year from then on. The size of the site and rate of sales will obviously dictate how long a project will take. Most sites which have planning permission (including those with unsigned s106 agreements), but which have not yet 'put a spade in the ground'

are not expected to deliver housing until Year 3 onwards (2014/15), so it is possible that some of the larger schemes will see a significant proportion of units built in Years 6-10 (again depending on the number of units to be built)."

(e) *Newcastle City Council stated that:* "...these arise from two separate Approved Planning Applications (but with unsigned S106 Agreements) which comprise 13 'dwellings' and 329 units of student accommodation, all of which are included in the predicted totals for 2012-17.

(f) *Copeland Borough Council stated that:* "The single dwelling with an unsigned S106 agreement post-dates our current monitoring period for calculating our Five Year Housing Supply 2012-2017 (1st April 2011 to 31st March 2012) and therefore was not included within the figures for this reason. It will be picked up next year when we include permissions between 1st April 2012 and 31st March 2013. In calculating our five year supply we include sites over and under 5 units with planning permission which are viable. In the case of the under 5 sites we assume that of the total, 75% will be completed, which aims to take into account any unimplemented planning permissions i.e. 25% wastage. This can account for issues including S106 Agreements."

(g) *Scarborough Borough Council stated that:* "There are currently 1,869 dwellings in the Borough which have been agreed in principle, but are awaiting completion of a Section 106 agreement. The vast majority of these are in a single outline application which includes 1,350 dwellings (Middle Deepdale). However, it would not be entirely accurate to state that they are being held up solely due to the Section 106 agreement as there are often other factors In the case of the Middle Deepdale scheme, this has only recently been agreed and reserved matters applications would need to be made before development can proceed."

(h) *Scarborough Borough Council stated that:* "The housing trajectory includes the 1,350 dwellings at Middle Deepdale development because it is an allocated site in the adopted Scarborough Local Plan. Otherwise, sites with uncompleted Section 106 agreements are not included in the figures."

(j) *Ryedale District Council stated that:* "3. Not all – Please see that attached extract from the Council's *Strategic Housing Land Availability Assessment Part One Update 2012*. Table 3 identified 82 dwellings which it believed would come forward in a reasonable timescale. It is noted in the intervening period that permission has already been granted for 31 dwellings of the dwelling identified in Table 3."

(k) *South Lakeland Council stated that:* "1. South Lakeland District Council does not hold information relating to the number of potential dwellings in Cumbria where planning permission has already been granted but are presently not started or held up due to unsigned S106 Agreements. You may find that Cumbria County Council hold some or all of the information you have requested. Cumbria County Council can be contacted via the following - foi-dp@cumbria.gov.uk " (N.B. *Cumbria County Council state that:* only the individual Local Councils hold this information.)

(l) *South Lakeland District Council stated that:* "3. South Lakeland District Council has targets of achieving 400 residential units completed for each in the 5 year period 2012-2017 relating to the area of the district outside the Lake District and Yorkshire Dales National Park respectively. In coming to this figure the South Lakeland District Council target does not take account of resolutions to grant permission for which the related section 106 agreement has not yet been completed."

(m) *Shropshire Council stated that:* "This is a figure that fluctuates on a daily basis as S106 agreements are processed. It would also be necessary to carry out a manual

process in order to collate it. Therefore for the purposes of responding to your request, this information is not held."

(n) *Also that:* "For sites with 5 dwellings or more, with approval, unsigned S106 agreements are included in the total."

5. FoI QUESTION: Housing Land Supply - 20% buffer.

The **National Planning Policy Framework, March 2012**, states in Para. 47 that "Where there has been a record of persistent under delivery of housing, local planning authorities should increase the buffer to 20% "

Can you please say what criterion you use to identify "a record of persistent under delivery of housing."

6. FoI RESPONSES: Housing Land Supply - 20% buffer.

6.1. COUNTY AUTHORITIES WHICH GAINED UNITARY STATUS IN 2009

Cornwall County Council	No under-delivery & No Criterion (q)
Durham County Council	
Northumberland County Council	2-from-4 Criterion; No Tolerance
Shropshire County Council	Under delivery admitted; No Criterion (r)
Wiltshire County Council	No Under delivery if Cumulative OK (v)

6.2. DISTRICT AUTHORITIES WHICH GAINED UNITARY POWERS IN 2009

Bedford Borough Council	No Criterion Required (x)
Central Bedfordshire Council	No Criterion – Judgement required. (aa)
Cheshire East Council	No under performance; recession to blame (y)
Cheshire W. & Chester Council	Under delivery admitted; still under consideration (z)

6.3. OTHER NORTHERN AUTHORITIES

Allerdale Borough Council	Under delivery admitted; at least 2 years (w)
Barrow Borough Council	Under delivery admitted; No Criterion (o)
Carlisle City Council	3-from-5 Criterion with Tolerance (s)
Copeland Borough Council	Under delivery admitted; No Criterion (ee)
Craven District Council	
Eden District Council	
Gateshead Council	Awaiting Further NPPF Clarification (p)
Hambleton District Council	No Criterion, "no under-provision" (bb)
Harrogate Borough Council	
Newcastle City Council	
North Tyneside Council	Cumulative delivery is primary factor (t)
Richmondshire District Council	
Ryedale District Council	No Criterion, "no under-delivery" (cc)
Scarborough Borough Council	No Criterion yet determined (dd)
South Lakeland District Council	
Selby District Council	

6.4. NOTES: Housing Land Supply - 20% buffer.

(o) *Barrow Borough Council stated that:* "Persistent under delivery' is not defined in the NPPF and it is acknowledged that the phrase can be interpreted in different ways. In our case, however, Council Planning Officers believe that there has been a record of persistent under delivery of housing as the number of net additional dwellings completed annually in the Borough has never met the annual RS requirement. It must be noted however that whilst the Borough has never met the annual RS requirement, the RS states that the figures 'are not absolute targets...some areas will achieve lower levels in the early years, for example, during major housing renewal, which will be compensated later.'

(p) *Gateshead Council stated that:* "There is currently no clear definition from Government as to what constitutes persistent underperformance in relation to the delivery of housing (as per paragraph 47 of the National Planning Policy Framework). It also remains unclear as to how performance is to be quantified and over which specific time-period this should be measured. Gateshead Council is awaiting further clarification before making a definitive assessment of its housing delivery performance."

(q) *Cornwall County Council stated that:* "In assessing whether or not there has been a persistent record of under delivery the Cornwall Housing Land Supply Assessment 2011/12 on our website <http://www.cornwall.gov.uk/default.aspx?page=22474#Assessment> explains that this is currently assessed against the targets in the Cornwall Structure Plan. The reason for this is that the assessment is based upon past performance against the policy that prevailed at that time. As the house building rates consistently exceeded those in the Structure Plan there is no record of persistent under delivery and therefore a 5% buffer has been applied."

(r) *Shropshire County Council stated that:* "As you know there are no prescribed rules for the calculation of housing land supply. Here at Shropshire we have been observing appeal decisions across the country and noticing the trend for Planning Inspectors to take a very robust approach to housing land supply arguments. Accordingly we have accepted that persistent under-supply in our case amounts to 4 of the last 6 years (in the last 2 years significantly below) and that attempting to defend not including the additional 20% buffer at Planning Inquiries would be futile in the current climate. I've attached our latest Housing Land Supply statement which explains in more detail our current situation."

Table 1: Shropshire Housing Completions, 2006/07 to 2011/12

Shropshire		
	Net Completions	Core Strategy Policy CS10: Phasing Time Bands
2006//07	1228	1190
2007/08	1106	1190
2008/09	1265	1190
2009/10	1112	1190
2010/11	984	1190
2011/12	724	1390

(It may be noted that the total Net Completions were 6417 against a Target of 7340 which corresponds to a shortfall of 921 or -12.5%.)

(s) *Carlisle City Council stated that:* “In the absence of formal guidance the Council’s interpretation which is felt to be realistic is that when there have been 3 consecutive years of under delivery which results in an overall shortfall over the previous 5 years of 10% (2250 x 10% = 225). This will trigger a change in the Buffer Requirement to 20%.” (N.B. This gives an average annual shortfall over the 5-year period of -2%.)

(t) *North Tyneside Council stated the following:* “The Council considers its record of housing delivery, for the purposes of Para. 47 of National Planning Policy Framework, against the latest adopted development plan target. The record of housing delivery up to March 31st 2012 is therefore assessed against housing targets in the North East England Regional Spatial (RSS) Policy 28. Although annual delivery has slowed in North Tyneside over the past few years it is not felt that there is a track record of persistent under delivery. Performance since 2004/2005 (RSS Plan Period) has been above target as set out in the RSS with delivery in 2011/2012 showing an upturn in completions from the previous 2 years. The extract below from the Five Year Housing Land Supply 2012, identified as Table 2, shows the housing completions from the period 2004/2005 to 2011/2012. Meanwhile, Table 3 shows the annual housing performance against the RSS figures which shows that cumulatively the Council has exceeded its housing requirements over that same period by 592 units.

Table 2: Housing Completions 2004/05 to 2011/12									
	04/05	05/06	06/07	07/08	08/09	09/10	10/11	11/12	Total
Gross Completions	863	854	726	665	446	366	363	455	4,738
Net Completions	755	732	585	584	304	286	255	391	3,892

Table 3: Annual Housing Performance 2004/05 to 2011/12									
	04/05	05/06	06/07	07/08	08/09	09/10	10/11	11/12	Total
RSS Net Target	400	400	400	400	400	400	400	500	3,300
Net Completions	755	732	585	584	304	286	255	391	3,892
Performance	+355	+332	+185	+184	-96	-114	-145	-109	+592

Full details of the Councils Five Year Housing land Supply 2012 are available online [here](#).

http://www.northtyneside.gov.uk/pls/portal/NTC_PSCM.PSCM_Web.download?p_ID=540218

(v) *Wiltshire County Council stated that:* “Paragraph 47 of the NPPF sets out a requirement for the Local Planning Authority to identify and annually update a housing land supply of five years with an additional allowance of 5% providing contingency. In instances where there is a record of persistent under delivery this contingency should be increased to 20%. The first consideration is whether (or not) the average annual delivery to date has met or exceeded the average annual housing requirements set out within the adopted development plan. If it has then there is no under delivery let alone persistent under delivery. Where there is under delivery, the persistence of this must be assessed taking account of both the number of consecutive years in which the annual average requirement has not been met, and the extent of the under delivery.”

(w) *Allerdale Council stated that:*

‘Our planning policy section has advised that:

“There is no clear criterion to define what constitutes 'a record of persistent under

delivery of housing' as referred to in the National Planning Policy Framework (NPPF). Consequently, the issue has been the subject of intense debate. The prevailing consensus is that where an LPA has failed to meet its housing target for more than two continuous years it would be reasonable to assert that under delivery was persistent.

In our view under delivery cannot be reasonably regarded as persistent unless there is at least two years worth of continuous evidence. A dip in the number of completions over a couple of years may be due to extraordinary factors - for example, a glut of outline applications at a particular point in time.

Allerdale Borough Council has failed to meet its housing target, set out in the North West Regional Spatial Strategy (RSS), since 2003. Therefore it has demonstrated a persistent record of under delivery. As a result it is required to add a 20% buffer to its housing target, as required by Para 47 of the NPPF.'

(x) *Bedford Borough Council stated that:* "The information requested is that we do not have a criterion."

(y) *Cheshire East Council gave the following reference:*

"Extract from Agenda and Minutes

Strategic Planning Board Wednesday 30th May 2012 10.30 am

8. Housing Supply Buffer PDF 179 KB

To consider a report on the Council's approach to a housing supply 'Buffer' in the light of advice contained within the National Planning Policy Framework

Minutes:

The Board consider a report on the Council's approach to a housing supply "Buffer" in the light of advice contained within the National Planning Policy Framework (NPPF).

The NPPF advised that a five per cent buffer should be applied to the requirement to identify five years worth of specific deliverable housing sites. It was stated that the buffer was "to ensure choice and competition in the market for land". The Framework also indicated that there where there had been "a record of persistent under delivery of housing" the buffer should be increased to twenty percent.

In Cheshire East, the housing market had traditionally been prosperous and housing completions have matched or outstripped development plan targets. The current recession had changed this picture with underperformance in the past two years. This current downturn was not considered to be a record of 'persistent under delivery' but rather a reflection of pervading national trends. It was therefore proposed that a buffer of five percent be applied to the housing supply in the Borough.

RESOLVED:

That the Council apply a five percent buffer to its housing supply figure and that this figure be reviewed at least annually to take account of changes in circumstances."

(z) *Cheshire West and Chester Council stated that:* "The way in which councils are expected to assess 'a record of persistent under delivery of housing' is not set out in the National Planning Policy Framework. The Council's latest published position on this matter is contained within section 5 of its Housing Land Monitor September 2012 available at:

http://www.cheshirewestandchester.gov.uk/residents/planning_and_building_control/planning_policy/emerging_local_plan/background_documents/monitoring_reports.aspx

It shows that a buffer of 20% has been applied locally. This was derived from an assessment of housing delivery in the borough area from 2003 against the annual housing requirement set out within the North West of England Plan 2008 (Regional Strategy).

The issue of how the Council should deal with the historical under delivery of housing against the Regional Strategy target in terms of calculating its five year

supply of deliverable housing land, is currently being reconsidered. This will be informed by legal advice. The background to this is contained in a report to the Council's Local Development Framework Panel on Monday 28th January which can be viewed through the link below (see Item 8).

<http://cmttpublic.cheshirewestandchester.gov.uk/ieListDocuments.aspx?CId=452&MId=3476&Ver=4> “

(aa) *Central Bedfordshire Council stated that:* “The Council does not hold a criterion we use to identify “a record of persistent under delivery of housing.” This is a matter of judgement/interpretation and would require a comparison of actual completion rates against required rates and a determination of what time period might be considered.”

(bb) *Hambleton District Council stated that:* “We haven’t an agreed definition anywhere in our Council documents. However I have taken the view so far that we should look at supply since 2004, the start of our plan period and take a broad view over an economic cycle. As there has not been under provision in this District every year it has not been regarded as persistent, but I accept this is arguable.”

(cc) *Ryedale District Council stated that:* The National Planning Policy Framework (NPPF) does not provide a definition of what “a record of persistent under-delivery” is. The Council does not have specific criteria of what constitutes a record of persistent under delivery.

The Council is at Examination into its Local Plan Strategy and this issue was debated as part of that process. I draw your attention to paras 2.5 to 2.9 (see link below) of the Council’s justification of why it does not consider itself to be a persistent under-deliverer of housing. However I should note that the Council has now proposed to a 20% NPPF buffer for the Local Plan Strategy which is out to consultation – though I should add that this choice was made for other reasons rather than on the basis that the Council thinks it is a persistent under-deliverer.” Link to document referred to: <http://extranet.ryedale.gov.uk/pdf/BP5a%20%20Supplementary%20Housing%20Paper.pdf>

(dd) *Scarborough District Council stated that:* “The NPPF was, as you note, published in its final form in March 2012. To date this authority has not had to take a formal stance on the issue of under delivery. On 22 February 2013 the Yorkshire and Humber Plan (the regional spatial strategy for this area) was formally revoked. The Borough Council is in the process of preparing a new local plan, part of which includes the requisite ‘objective assessment of housing needs’ through which housing target will be developed and tested through the local plan process. The issue of housing delivery over recent years will be factored into this assessment, but at this stage I am unable to state the precise detail or position we will take on any perceived under delivery against regional targets, simply because this is work we are currently grappling with and have yet to complete. I apologise that I cannot therefore provide a definitive answer at this moment in time. I hope to be in a position where we will be taking a report on this issue to our Cabinet in April, by which time we should be clearer on our approach.”

(ee) *Copeland Borough Council stated that:* “Due to the high number of demolitions in recent years the Council has not met its target of 230 (net additional) completed new homes in any year since 2004-5. As such we have not needed to identify specific criteria to determine what ‘persistent under delivery’ means, which might have been the case if we had experienced some years of meeting the target and some years falling below. The issue is something we will be keeping under review and may seek to determine criteria in the future.

Full details about our annual completions figures and Housing Land Supply can be found in the Council’s Annual Monitoring Report 2011-12 (pages 36-39) at

7. SUMMARY OF RESPONSES

7.1. Planning Permissions and S106 Agreements

Of the five Counties which gained Unitary status in 2009, three of them *do* include all, or part, of the planning permissions with unsigned S106 Agreements in their forward housing estimates.

One has a stated policy of not granting any planning permissions until *after* any S106 Agreements have been signed whilst only one (Northumberland) has not included *any* planning permissions with unsigned S106 Agreements.

Of the four Councils which gained Unitary powers in 2009, one includes part of the total number of unsigned planning permissions whilst two have a stated policy of not granting any planning permissions until after any S106 Agreements have been signed.

Only one has not included *any* planning permissions with unsigned S106 Agreements.

Of the other 14 Northern Authorities which have responded, five of them *do* include all or part of the planning permissions with unsigned S106 Agreements in their forward housing estimates, whilst one has a single unsigned S106 Agreement which would have been included if it had not been excluded for other reasons.

Three Northern Authorities do not include *any* planning permissions with unsigned S106 Agreements, whilst the remainder either have no outstanding planning permissions with unsigned S106 Agreements and/or they operate a policy of not granting *any* planning permissions until after any S106 Agreements have been signed.

7.2. Housing Land Supply - 20% buffer.

Of the Authorities which have responded, it is clear that a few have regularly exceeded their RSS targets whilst a few have regularly failed to meet them; it has not (for obvious reasons) been necessary for such Authorities to consider whether they need a specific Criterion for the 20% buffer or not. There is also a small number of Authorities which have yet to determine whether they need a Criterion, what it will be, and how they are going to apply it.

Of the Authorities which have considered the matter more fully, there are various views about the period over which any annual failure to deliver should be applied. Amongst the few who would appear to have thought about it in more detail there is the view that if, over a number of years, the *cumulative* delivery housing has met or exceeded the targets then there has been *no* failure to deliver. One Authority also proposes the sensible application of a Tolerance in delivery, placed at – 2% per annum.

8. DISCUSSION

As noted earlier, in the case of the former Castle Morpeth district the unsigned Section S106 Agreements amount to **913** dwellings, which corresponds to 6.5 years' housing supply. This number is found to be uniquely large relative to the area of the County to which it applies and it would appear justifiable to explore afresh whether some proportion of this cannot be included in estimates of future housing supply.

The NPPF states that: “ Sites with planning permission should be considered deliverable until permission expires, unless there is clear evidence that schemes will not be implemented within five years, for example they will not be viable, there is no longer a demand for the type of units or sites have long term phasing plans.” [4]

The Government has also made it clear that it wishes to see voluntary renegotiation of stalled S106 Agreements wherever practicable and now wishes to take this further by introducing legislation so that “there is greater opportunity to require reconsideration of planning obligations where there is clear justification for doing so.” [6]

Some Authorities, such as **Cheshire West and Chester** already have an established methodology for including some sites with unsigned S106 Agreements, and it is suggested that Northumberland could investigate the possibilities of doing the same.

In pursuing our investigation of the various Criteria for initiating the 20% buffer, it is clear that there is a variety of interpretations – as well as much confusion – amongst those Authorities who have need to consider the matter. This, we suggest, is because the requirement as stated in the NPPF is not well-defined and might even be described as mathematically naïve.

This is because sampling the housing delivery at annual intervals (as the NPPF would seem to imply) detects short-term deviations from the ideal delivery but takes little or no account of longer-term trends. A formal proof of this is not useful and it is better illustrated by taking a *reductio ad absurdum* approach as follows:

Consider the ‘Hypothetical case A’ where a housing delivery trajectory is followed in which quite small deviations are seen on an annual basis, but the long-term housing delivery target is met:

Hypothetical case ‘A’	2004/ 05	2005/ 06	2006/ 07	2007/ 08	2008/ 09	2009/ 10	2010/ 11	2011/ 12
RSS Requirement	100	100	100	100	100	100	100	100
Housing Delivery	101	99	101	99	101	99	101	99

It will be seen that in each year of the above, there is a deviation from the target of + or – 1% but the overall delivery over 8 years is exactly correct.

There has, however, been a shortfall of 1% in four years out of eight, and therefore by taking annual figures with no Tolerance (as do Northumberland) the performance is deemed a failure.

We consider it would be more appropriate to consider first if the longer-term targets have been met (as **Wiltshire County Council**) perhaps with a Tolerance over a 5-year period such as – 2% per annum (as **Carlisle City Council**) and assess the justification for a 20% buffer on that basis.

It can further be shown in ‘Hypothetical case B’ that it is possible for the NPPF implied Criterion to be apparently satisfied whilst the cumulative delivery has not been met:

Hypothetical case ‘B’	2004/ 05	2005/ 06	2006/ 07	2007/ 08	2008/ 09	2009/ 10	2010/ 11	2011/ 12
RSS Requirement	100	100	100	100	100	100	100	100
Housing Delivery	100	100	100	0	100	100	100	0

In the above case the cumulative delivery is 200 below the target of 800 (i.e. – 25%) whilst the target has not been reached on *only* 6 years out of 8, hence this might be deemed to be **not** a failure according to the NCC interpretation.

Consider now the real case of the former Tynedale, from information supplied by NCC:

Tynedale	2004/ 05	2005/ 06	2006/ 07	2007/ 08	2008/ 09	2009/ 10	2010/ 11	2011/ 12
RSS Requirement	140	140	140	140	140	140	140	115
Housing Delivery	257	173	262	149	130	112	125	63

The RSS Requirement over the period was 1095 and the Delivery was 1271. This gives a surplus over the period of 176, i.e. **+16%**. However, since the target was not reached as many times as it was exceeded, the performance was been deemed as having failed and a 20% buffer applied. [7] Had this result been added to that for the Castle Morpeth area – so forming the new “South and West” area – the overall delivery would have been 2328 against an RSS Requirement of 2215, so giving an overall surplus of **+5%**.

NCC have stated that the “ forecast underperformance is considered to be largely attributable to the current housing and financial market conditions rather than an undersupply of housing land.” [8] Until economic conditions have significantly improved however, more “failures” like the above are likely to magnify the apparent housing shortage in the future.

It is suggested that, in the absence of specific guidance, the NPPF Criterion can be interpreted in a manner which is flawed and, prior to its being either clarified or replaced, a more suitable interpretation should be adopted.

9. REFERENCES

[1] Northumberland Five Year Supply of Deliverable Sites: 2012 to 2017

Published July 2012. Appendix C.

[2] National Planning Policy Framework *Department for Communities and Local Government, March 2012.*

[3] *ibid. Para. 205.*

[4] *ibid. Footnote 11.*

[5] *ibid. Para. 47.*

[6] Renegotiation of Section 106 planning obligations; Consultation 13 August – 8 October 2012. *Department for Communities and Local Government August 2012. Paras. 6 & 7.*

[7] Northumberland Five Year Supply of Deliverable Sites: 2012 to 2017

Published July 2012. *Para. 6.1.5.*

[8] *ibid. Para. 6.*

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