

## **A Statement of Concern**

**To Lesley Griffiths AM, Cabinet Secretary for Environment and Rural Affairs, Welsh Government**

### **Technical Advice Note 1: The Case for Review**

Flintshire County Council requests that the Minister consider the following Ten Point Statement which expresses fundamental concerns regarding the methodology for monitoring and calculated housing land supply within Technical Advice Note 1, which in the Council's view identifies significant failings of the present TAN1 and an urgent need therefore for a review of this policy.

#### **1. What is the relevance and purpose of a five year land supply in policy terms today?**

There is a fundamental disconnect between the level of housing need that LDPs assess and make provision for, and market demand which is a function of the economic conditions prevailing at the time of plan making, and the ability, willingness and capacity of the development industry to build new homes. LDPs make provision for housing, but they can't and don't deliver housing. Developers and market forces control demand and therefore also supply. It is not necessarily in the interests of developers in an area to develop housing at the rate the LDP requires and nor do they necessarily want to develop all of the sites identified by the Local Planning Authority.

There should be less of a focus in LDPs on setting housing requirements based solely on projected housing needs, and more consideration of past build rates as a measure of the capacity and ability of the development industry to build and deliver housing. If build rates consistently increase, then supply will reduce commensurately which is logical, as opposed to the residual method where, as market demand falls, the residual requirement perversely rises. Supply should therefore be measured against industry performance.

#### **2. Undermining the Plan-Led System**

Local Planning Authorities without an adopted LDP are currently penalised by TAN1: they are deemed not to be able to demonstrate a five year land supply until their LDPs are adopted (regardless of the actual supply they may have). These LPA's are prevented from formally monitoring land supply even though contradictorily, the TAN states how important it is to monitor supply for the purposes of developing an evidence base with which to inform LDPs. Equally LPAs with an adopted LDP have no guarantee of being able to demonstrate a five year supply. This is a function of

using the Residual method as a mathematical means to measure supply, which bears no direct relationship to the rate at which available land is being developed.

What is the point in investing considerable time and money in developing an LDP when, rather than engage properly in the process of plan making, developers instead can and do use the provisions within TAN1 to subvert this process. The consequence is that emerging plan strategies are increasingly being undermined as is the principle of sustainable development, particularly for LPAs without an adopted LDP as there is no prescribed mechanism in TAN1 to establish if and, when via speculative developments, a five year supply is achieved. The cumulative impact of speculative development is not considered as LPAs (and Planning Inspectors) are required to consider each speculative application 'on its merits'. PPW also advises that sites will rarely go to the 'heart' of the Plan. This undermines the process of providing certainty of what can be developed where and diminishes public and Member confidence in the Planning System as a whole. As such this is potentially contrary to the core principles of the Well Being and Future Generations Act.

### **3. Residual Method: A Mathematical Deficiency**

In 2015, 10 out of 17 LPAs with an adopted LDP did not have a five year housing land supply when applying the residual method. This is due to the fact that market demand was less than adopted LDPs had anticipated in terms of housing requirements. Are LPAs therefore setting housing requirement figures too high? Shouldn't the AMR and plan review process be the means to address land supply matters rather than the increasing trend for 'planning by appeal'?

Market demand is influenced by several factors all beyond the control of the LPA and the LDP – economic conditions; capacity of the building industry to deliver; willingness of the building industry to deliver and willingness of landowners to sell. The residual method can produce bizarre results which is a function of this disparity between housing 'need' assessed in LDPs, and actual market demand. The 2006 version of TAN1 recognised in para 7.5.2 the difficulties associated with the residual method "*In some circumstances that calculation has indicated land shortages or surpluses which do not exist in practice. In such cases, a comparison of available land with past building rates can provide a measure of the adequacy of land supply that is more relevant to the achievement of the general objectives of the development plan*". The result of the residual method is that the lower market demand for housing is, the higher the residual target, whereas high demand results in a lower target; this is the exact opposite of what is required.

The quantum of land available is key, however the residual method masks this. The direct relationship of completions to this is the logical way to both measure supply and at the same time monitor industry performance. This creates more of a direct relationship between the permissions that LPAs grant for housing, and the need to implement these in a timely manner. Too much potential development land is not being brought forward as it forms part of a landowners 'nest-egg' or developers simply use land with consent as assets to borrow against. The present TAN1

process places all of the onus on LPAs, whereas there are no controls on compulsions on developers that can induce them to build permissions. Furthermore, there is no incentive within Wales whereby developers can be rewarded for delivering completions or for LPA's to grant permissions as is the case with the New Homes Initiative in England

#### **4. Provision vs Delivery**

An LDP cannot deliver new housing as that is the role of the market and development industry. The plan can only make provision for sufficient housing, assessed on the basis of projected needs. Delivery is solely the remit of developers but there are no national or local policy interventions which place any obligation on or incentive for developers to deliver. In this sense there is no requirement for them to respond to the need identified in LDPs. They have, in effect, a free hand to not only control the rate of delivery, but as a natural extension to this the level of supply. The residual method contributes to this in that the lower the delivery rate, the higher the residual target. This creates a false picture of actual supply creating, when a sub five year supply is indicated, the conditions to use the amended TAN1 to bring forward sites not identified in the development plan. This enables landowners and developers to in effect 'have a second bite at the cherry' in the sense that sites previously rejected by the LDP are re-presented as seemingly sustainable. It also results in unsustainable and simply unacceptable sites still being put forward as applications with the resultant impact on LPA resources to deal with these.

#### **5. Government Affordable Housing Target – the Evidence?**

Much has been made by the Welsh Government of the role of the development industry in assisting with economic recovery, despite the sustained contribution this makes to the local economy being debateable. Equally, a key driver for more house building in Wales is the Welsh Government 'target' of delivering 20,000 affordable homes over the term of this Government. From this it has been stated that the Welsh Government are working with developers to deliver accelerated rates of house building. This raises a number of fundamental questions and concerns for LPAs:

- Where has this target come from, and what is the evidence supporting it?
- Does this target represent national planning policy and if so how has this been examined?
- What weight should be applied to this target in considering all applications for housing?
- Is this target additional to provision made in LDPs? If so, how has the sustainability of this been considered? If not, why are speculative sites being approved ahead of LDP sites?
- Why are LPAs excluded from the joint working between Welsh Government and developers to deliver accelerated rates of housing?

- What is the evidence that house building rates have increased since the TAN was revised?
- What is the capacity of the industry in Wales to deliver this target, and how many new homes are required overall, to deliver this affordable target?

## **6. Role and Responsibility of Developers?**

The changes to TAN1 made in 2015 have in effect removed any need or requirement for developers to play an active and positive role in the land availability process. There is no longer a measure of the performance of the industry as the past build rate method of monitoring supply was removed, yet it is this measure that provides the most direct relationship between the amount of land available relative to the rate at which it is being developed. Their role in the process is no longer one of negotiating with LPAs, in terms of the position with sites and the agreed level of supply; instead via the Home Builders Federation in Wales, it has become increasingly and deliberately adversarial in challenging the status of multiple sites. If Welsh Government are directly collaborating with the development industry, then LPAs should also be equitably represented in such a process.

## **7. Speculative Developments – Are they Sustainable?**

Whilst TAN1 requires that significant weight should be applied to the lack of (or inability to demonstrate) a five year supply in considering applications on unallocated sites, it does also require that such exceptions should “otherwise comply with national and local policies”. This is supported by Planning Policy Wales with a presumption in favour of sustainable development. What the TAN fails to do however, is adequately set out the basis on which speculative applications should be justified and submitted. This leaves the judgement on their sustainability and suitability too open to judgement that is not always based on sound planning rationale, and whilst Inspectors invariably give “significant weight” to the lack of a five year supply, they do not seem in the same way to apply equal tests to other material considerations. These include the sustainability of a site in its wider local context, the relationship of the site to the emerging development plan and previous levels of development, the genuine availability and deliverability of the site, and the cumulative impact of permitting multiple speculative sites. This means that speculative sites are not part of the LDP SA/SEA process and also that some are of a significant scale that easily exceeds the call-in threshold, and have the potential to go to the heart of the LDP, but are considered in isolation and found acceptable. The TAN should include more specific requirements on developers to fully justify speculative sites. This could include the incorporation of advice developed in the attached Developer Guidance Note (see appendix 1).

## **8. Planning by Appeal**

This is increasingly becoming a deliberate policy of developers in relation to speculative developments. Developers are neither engaging adequately with LPAs in considering such proposals, and nor are they properly justifying the compliance and sustainability of what they propose. This is left to the appeal process. Planning by appeal undermines the plan-led system as it is a way around the process, avoiding in doing so key stages in the process such as assessing the comparative sustainability of sites against a number of alternatives, and matching them to a preferred strategy. Developers and Inspectors are not considering the sustainability of such sites sufficiently and are certainly not considering the cumulative impacts of a number of such developments in an area in terms of impact on the emerging LDP, or on the back of recent development from a previous plan, or the cumulative potential for harm a number of such sites may cause. Given that the TAN removes the ability of an LPA without an adopted LDP to demonstrate a five year supply, there are no limits or controls to say when cumulatively, permitting a number of speculative sites either sufficiently provides an adequate supply, or becomes an unsustainable proposition. There are also the significant resource implications both for LPAs and PINs of dealing with an increasing number of such applications which for the LPA, deflects resources away from LDP preparation. This practice also has a significant negative community impact as despite making positive attempts to engage with communities in LDP preparation including consideration of the most sustainable locations for allocated sites, the TAN1 process negates this community engagement and side steps the process, undermining the process as well as community trust and confidence in the planning system.

## **9. Viability and Deliverability**

Both of these should be a non-negotiable part of defining the sustainability and “otherwise compliant” status of a speculative application. A lack of viability means a site is not sustainable and this should be a clear reason to refuse, rather than entertain as some Inspectors seem to be, compromises to be made to allow permission to be granted. There is some evidence to say that developers are saying one thing at application or appeal in relation to the viability and deliverability of schemes, but are seeking to challenge this once the principle is established. Equally some landowners are seeking to re-negotiate the value of sites post appeal decision which throws into question the deliverability of such schemes. Speculative proposals should be required to submit robust evidence about the viability and deliverability of the scheme including a written agreement by the landowner and developer. In some cases it appears that Inspectors are simply accepting at face value that a scheme is viable and deliverable on the basis of the developers word of mouth. It is also of concern that, in the context of a short term window to increase housing land supply, outline permissions are an appropriate way forward, considering the time lag necessary to obtain reserved matters approval and pre-commencement conditions. Although Inspector’s have accepted the value of a short term timescale for

commencement of a site, this is not considered to go far enough as developers can simply achieve a 'technical' commencement and put the site on hold. A far more robust method would be to have a phased delivery plan as part of the permission.

## **10. Land Banking**

If the principle behind current national policy embodied in TAN1 is to encourage developers to accelerate build rates, there are no controls or compulsions within the policy to facilitate this. The residual method creates a false picture of supply and the TAN is being used by developers to accumulate permissions that represent asset value on balance sheets, or collateral for borrowing against, but that do not result in the early completion of housing. Whilst time limited commencement periods can be attached to permissions, developers are doing the minimum to demonstrate commencement in order to protect the consent. This is coupled with developers submitting low completion estimates for sites already in the land supply as part of the Joint Housing Land Availability process. In this way, developers are free to determine what is developed, where, and when which is totally contrary to the principles of a plan-led system and the provision of certainty to the public and stakeholders. If the LDP process can be so easily side-stepped, what is the point of LDPs?