



Understanding Housing Land Supply

Context

The Scottish Government issued a Housing Technical [consultation](#) on proposed changes to Scottish Planning Policy (SPP) in July. The background to this consultation and the main proposed changes to SPP can be found [here](#). The proposals include removal of the presumption in favour of development that contributes to sustainable development as well as clarification on the methodologies used to calculate the effective housing supply and whether or not there is a shortage.

The methodologies explained:

Housing Supply Target vs Housing Land Requirement

Local Development Plans have to allocate land for housing developments. This supply has to be 'generous' and 'effective' to make sure all the housing we need over the life of the plan¹ can be built.

"generous" means 10-20% more than is expected to be needed
"effective" means free or expected to become free of development constraints i.e. ready to be built on during the life of the planⁱ

The Local Housing Strategy calculates the amount of housing that is needed; this is called the Housing Supply Target (HST). The Housing Needs and Demand Assessment (HNDA) helps to calculate this figure by providing evidence of what the current housing need is. The amount of land needed is then calculated and to ensure that enough land is provided they add 10-20%; this is the Housing Land Requirement (HLR).

When calculating whether there is a shortage of effective housing land supply, the developers prefer the HLR figure to be used, because it is a larger figure, requiring more land to be allocated.

If there is insufficient housing land to meet the HLR, development plans must allocate additional sites to meet the shortfall. These are often green belt or green field sites.

The Five Year Land Requirement

Because Development Plans are only updated infrequently, Scottish Planning Policy also makes a requirement that planning authorities must ensure that there is a five year supply of effective land at all times. If this is not achieved then the development plan is deemed to be out of date and there is then a "presumption in favour of sustainable development". This means that developers can and do bring forward sites that would not otherwise be allowed under development plan policies. It is then difficult or impossible for planning authorities to reject these proposals.

¹ Currently, Development plans look forward 17 years and this is expected to increase to 20 years



Calculating the extent of the shortfall: The Residual / Compound vs Annualised/ Averaged method

In calculating the five year housing land requirement, developers prefer an approach that accounts for any shortfall in housing completions relative to the target since the start of the development plan period. This shortfall is then added to the forward-looking land requirement. This is known as the residual or compound method. It is preferred because it tends to result in a shortfall meaning more land is required to make up the shortfall. The proposals in the Consultation recommend that the calculation is based on an averaged rate of delivery over the life of the plan. A simple example comparing the residual/compound and the averaged method is given in Appendix 1.

The Five Year Land Supply

Developers also have two other ploys designed to create an artificial “shortage” of housing land. The first is to argue that some of the sites that the planning authority considers to be “effective” are not effective. The reason can be simply that the sites have been in the land supply for a long time without being developed.

The second ploy used by developers is to argue that it is only capacity that is programmed in the housing land audit to be completed over the coming five years that is available to meet the five year requirement.

By these means of maximising demand and minimising supply, developers can engineer a wholly synthetic “shortage” of housing land. The Scottish Government’s proposed changes to Scottish Planning Policy, if they become effective, will go a long way to remove the opportunity for developers to “game” the system in these ways.

Some Recent Appeal Cases Where SPP Consultation Proposals have been Ignored.

Since the [Consultation](#) was issued, there have been **two** decisions by DPEA Reporters where the Reporter has allowed developments on sites not already in the development plan because he/she identified a “shortage” of housing land. In both cases, the Reporter ignored the proposed changes to SPP in reaching the conclusion that a shortage of housing land existed. In both cases, the opposite conclusion would have been reached if the Reporter had followed the methodology for assessing the adequacy of the housing land supply set out in the proposed changes to SPP.

The purpose of this briefing is to look at the reasons why Reporters have ignored the proposals in the Consultation, to briefly consider both of the two cases and to suggest possible arguments that could be used if other, similar cases arise before the Scottish Government finalises and implements changes to SPP.



Reasons Why Reporters may be Reluctant to Take Notice of Proposed Changes to SPP

1. The Chief Planner wrote to Heads of Scottish Planning Authorities on September 4th stating that the Consultation was not a Ministerial direction (therefore giving it significant weight in planning decisions) and further stated that no final decision on the changes had been made.
2. Reporters are applying current SPP as interpreted by the Court of Session in the recent Gladman's case, because that represents the current legal position even if the Consultation paper states (as it does) that Ministers do not consider that the interpretation is consistent with their intentions.

Appeal Cases Where Reporters Have Ignored the Proposed Changes to SPP

1. In Sept 2020 the Reporter concluded that West Lothian Council (PPA-400-2109ⁱ) could not demonstrate that it had a five year effective land supply. This was chiefly because the Reporter accepted that
 - a. The housing land requirement and not the less onerous housing supply target should be used and.
 - b. That it should include the shortfall in historic completions (since the base date for the Development Plan) and,
 - c. That only planned completions over the next five years should be considered to be effective.

The Reporter noted despite this that “The longer term housing land supply situation in West Lothian therefore appears quite healthy”. Nevertheless, because he deemed there to be a shortfall over the five year period, he allowed the appeal and granted permission for a development on brownfield land that the Council had not designated for housing.

2. The second appeal (PPA-160-2030ⁱⁱⁱ) is a long-running and complicated saga in West Dunbartonshire. In Sept 2020 the Reporter approved an appeal for a housing development on a green belt site on the basis that there was a shortage of housing land in the Clydebank area for the 2019-24 period. In reaching this conclusion, the Reporter set aside the proposed changes to SPP and calculated the five year land requirement on the “compound” method (i.e. including the historic backlog). It is also notable that the shortage identified was in Clydebank which is not a discrete sub-HMA but forms part of the Greater Glasgow North and West sub-HMA. The Reporter did not consider whether or not there was a shortfall in housing land in the Sub-HMA. It is understood that West Dunbartonshire Council intends to appeal this decision in the Court of Session. The precise grounds of the appeal are not known (at November 18th, 2020).

ⁱ Not all the land needs to be classified as effective at the start of the Plan. It can include allowance for windfall sites and “small” sites not in the HLA.

ⁱⁱ 1 Simpson Parkway, Kirkton Campus, Livingston, EH54 7BH

ⁱⁱⁱ Farm Road, Duntocher, Clydebank, G81 6LE



Appendix 1

Example of Assessment of Five Year Housing Land Requirement (HLR) Using the Average Method

Planning Authority A has set a Housing Supply Target (HST) of 12,000 units for the twelve years from 2012ⁱⁱⁱ. This is increased by 15% to arrive at the Housing Land Requirement (HLR) for the same period.

The HLR, therefore is 13,800 units ($12,000 * 1.15$) or 1,150 per annum ($13,800/12$).

Using the average method, the five year Housing Land Requirement that Authority A needs to provide at any point in time over the twelve year period is 5,750 units ($1,150 * 5$).

Example of Assessment of Five Year Housing Land Requirement (HLR) Using the Compound or Residual Method

Using the same HST and HLR figures as above, assume that by 2017 (five years after the start of the assessment period) housing completions have amounted to 4,500 units. This is less than the 5,750 units that were in the HLR. Under the compound or residual method, this shortfall of 1,250 units ($5,750 - 4,500$) is carried forward and added to the HLR for the five years from 2017 to 2022. The HLR for this period then becomes 7,000 units ($5,750 + 1,250$).