

NOTE ON THE MEANING OF 'DELIVERABLE'

OPINION

1. It is well established that the *interpretation* of policy and the *application* of policy are different concepts. The proper *interpretation* of a policy (i.e. what test does it impose?) is an objective question (i.e. there is only one correct interpretation) which is to be determined in accordance with the language used, read in its proper context. The *application* of a policy (i.e. has the test it imposes been satisfied?) is a matter of evaluative planning judgment in the context of any given case.
2. This note concerns the first of these two concepts in relation to the provision in NPPF 2012 para. 182, 3rd bullet, that to be sound a local plan must be "*deliverable over its period*".
3. The ordinary meaning of the term deliverable is "*able to be delivered*" or "*capable of delivery*" (emphasis added). It does not mean "*certain to be delivered*", "*likely to be delivered*" or "*expected to be delivered*".
4. This is clear as a matter of language. The context does not require a departure from this ordinary English language meaning of "*deliverable*". Given that deliverability is to be assessed over the long timeframe of a plan period, that assessment involves inherent uncertainty and therefore requiring more than capability of delivery would be unrealistic.
5. This interpretation is consistent with the Court of Appeal's interpretation of the word "*deliverable*" in para. 47 of the NPPF 2012, in the context of the requirement to show a 5 year supply of "*deliverable*" housing sites, in *St Modwen v. Secretary of State for Communities and Local Government* [2018] P.T.S.R. 746. The Appellant in that case had argued that this required the LPA to show that the sites it relied upon were more probable than not to be delivered within 5

years. The Court of Appeal rejected that argument. At para. 35 Lindblom LJ held that this argument:

“misses the essential distinction between the concept of deliverability, in the sense in which it is used in the policy, and the concept of an “expected rate of delivery”. These two concepts are not synonymous, or incompatible. Deliverability is not the same thing as delivery. The fact that a particular site is capable of being delivered within five years does not mean that it necessarily will be.”

6. There is no basis for giving the term “deliverable” a different meaning in NPPF 2012 para. 182 from that in para. 47. The *application* of the test is obviously different in these two different contexts because the stated timeframe for assessment is different – in para. 47 it is to be applied in the context of assessing what housing sites are deliverable within 5 years, and in para. 183 it is to be applied in the context of assessing whether a proposed local plan is deliverable within its period – but the *interpretation* of the term “*deliverable*” must be consistent.
7. Therefore the proper interpretation of the test in NPPF 2012 para. 182, 3rd bullet, is whether the local plan is *capable of delivery* over its period – not whether it is *certain to be delivered, likely to be delivered, or expected to be delivered* over that period.

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Landmark Chambers

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