



Report of the Director of City Development

Executive Board

Date: 17 June 2009

Subject: Planning Appeals at Royds Lane, Rothwell and Fleet Lane, Oulton

Electoral Wards Affected:

Rothwell



Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

Eligible for Call In

Not Eligible for Call In
(Details contained in the report)

EXECUTIVE SUMMARY

1. This report considers the outcome of the recent planning appeals on greenfield sites at Royds Lane, Rothwell and Fleet Lane, Oulton and the implications, if any, for the Council's approach to greenfield developments.
2. Background context is provided which in particular draws attention to the development plan policies of RSS and the UDP. Of particular relevance are the spatial priorities of RSS which seek to direct investment to defined regeneration and growth areas and which emphasise the role of previously developed (brownfield) land. A key consideration is the RSS housing target which seeks an annual gross average increase of 4,300 dwellings per year in the period 2008-2026 compared to the previous target of 1930 p.a.. Significant weight is attached to achieving this target in national planning policy, including in the calculation of the 5 yr housing land supply.
3. While the appeals were dismissed the Inspector, in his decision letter, was critical of a number of aspects of the Council's case, particularly around the 5yr supply calculation. We do not agree with many of the Inspector's findings. A detailed review is attached as an appendix to this report.
4. The report reviews the Inspector's conclusions and considers the impact on the Council's approach to this issue. It is concluded that there are two options open to the Council.

- a) accept the need for greenfield release recognizing a deficit in the 5yr housing land supply; or
- b) conclude that greenfield release is inappropriate for the reasons given in this report.

5. Members are requested to consider the matters raised in this report and determine which of the options set out above they wish to pursue.

1.0 Purpose of this Report

1.1 This report considers the outcome of the recent planning appeals on greenfield sites at Royds Lane, Rothwell and Fleet Lane, Oulton and the implications, if any, for the Council's approach to greenfield developments.

2.0 Background Information

2.1 Members will be aware that under the plan-led system planning applications are to be determined in accordance with development plan policies unless other material planning considerations indicate otherwise. One factor to consider is whether the policies of the development plan are up to date.

2.2 In Leeds the development plan consists of the Regional Spatial Strategy – The Yorkshire and Humber Plan (issued by the Secretary of State in May 2008) and the Leeds UDP Review (adopted in July 2006).

2.3 RSS reflects at the local level the government's intention to deliver 3 million new homes by 2020, (set out in the Housing Green Paper, Homes for the future: more affordable, more sustainable (July 2007)). For Leeds, this means a housing target of an annual average of 4,300 units p.a. net (4,740 gross) in the period to 2026. This is a step change from the requirement in the previous plan of 1930 p.a. gross. Taking account of performance to date we need to deliver a further 73,500 net dwellings in this period.

2.4 This needs to be planned for through the Core Strategy (and other LDF documents), a programme for which has already been determined through the Council's Local Development Scheme (LDS) last updated and approved by Executive Board in July 2007.

2.5 One particular source of "other planning considerations" is national planning advice set out in Planning Policy Statements and Guidance. PPS 3: Housing (November 2006) is of particular relevance. PPS 3 requires local authorities to be able to demonstrate a continuous 5yr supply of sites to meet the target set in RSS. Paragraph 71 of PPS 3 advises that where local planning authorities cannot demonstrate an up to date 5 yr supply of deliverable sites, they should consider favourably applications for housing having regard to the policies of the PPS including the considerations in Paragraph 69.

2.6 To be included in the 5yr supply, government guidance advises that a site must be:

- suitable – acceptable to planning in principle
- available – no overriding constraints, willing landowner
- achievable – likely to contribute housing within the 5yr period

This supply can comprise allocations, planning permissions and emerging sites (where there is sufficient confidence that the sites pass the above tests).

- 2.7 Recent correspondence from the Chief Planner at CLG (Planning for Housing and Economic Recovery – letter attached as appendix) emphasises the importance of the 5yr supply and having deliverable sites available to support the upturn in the economy, when it occurs. There is no recognition of the impact of the recession on that supply. The letter refers to the Housing and Planning Delivery Grant which is subject to a current consultation by CLG. This does refer to the effects of the recession. In recognition of changed circumstances and reduced output the government is scaling back the planned increase in HPDG by £25 million in 2009/10 and £50 million in 2010/11. Given the more challenging conditions in the housing market it is also proposed to reduce the threshold for completions against which the grant is calculated. Given that achieving a 5yr supply is entirely dependent on a view of what the house building industry will deliver it seems perverse that the state of the economy is not also recognized in the 5yr supply calculation.
- 2.8 RSS represents a step change in delivery that in a plan-led system needs to be planned for through the development plan process (i.e. the LDF at the local level). It would seem unreasonable to expect that local authorities such as Leeds would, at the moment of publication of RSS, have a ready made 5yr supply when the scale of change is so great. RSS appears to acknowledge this position. The target set is as an annual average to be achieved over the life of the Plan, clearly anticipating delivery both above and below the annual target at different times in the period to 2026. Furthermore RSS specifically (Table 12.2 and the Core Approach) identifies Leeds as an area where delivery will move from below the annual average in the early years with compensating higher performance in later years.
- 2.9 Members will be aware of the Local Area Agreement (LAA) agreed with the Secretary of State for Communities and Local Government in June 2008. One of the agreed targets in the LAA relates to housing completions. Reflecting the RSS position on the early years approach and the need to plan for growth the LAA has a target of 3,400 p.a. net. CLG has also confirmed that the LAA figure can be used for land supply purposes.
- 2.10 To help identify sites to meet both the 5yr and longer term requirements the government has introduced the Strategic Housing Land Availability Assessment (SHLAA) process. A partnership group, including representatives of the private sector and other interests, has been established in Leeds to undertake the SHLAA. The process is still underway with about 500 sites considered to date.
- 2.11 RSS suggests (paragraph 12.21) that SHLAA's will identify sites that would otherwise have come forward as windfalls. In Leeds, this is not proving to be the case. The "call for sites" generated few new brownfield opportunities but many greenfield/Green Belt proposals. Through the SHLAA, sites are being assigned to the short (2009-2014), medium (2014-2019) and long (2019+) term. Current economic circumstances mean that brownfield potential is being pushed back while greenfield sites are constrained by current LCC policy.
- 2.12 The outcome of the SHLAA process, reflecting current market conditions, is therefore likely to be that short-term supply will diminish. SHLAA's are to be regularly updated so that as conditions change so will views on supply. The SHLAA outcome will nevertheless be an important part of the evidence base in deciding the future strategy of the LDF.

- 2.13 The views expressed on the SHLAA sites are not surprising given current conditions in the housing market, including the financial state of many housebuilders. Completions from July 2008 – February 2009 totalled about 3000 or 370/month. Extrapolated to an annual figure this would give a total of 4,400units, or about the RSS level. This reflects work in hand before the downturn really started to take effect. Stock under construction is falling but remains surprisingly high at around 3,900 units. However, more critically, new planning application numbers are falling and in the same period new starts have been around 70-80/month. If maintained, this will eventually result in completions falling to less than 1000 p.a., significantly below the RSS annual average. It is this position that is impacting on the 5yr supply and SHLAA debates.
- 2.14 The combination of the RSS target and the 5yr supply rules has encouraged the housebuilding industry to come forward with proposals on greenfield sites that would previously have been unlikely. The UDP Protected Area of Search (PAS) sites at Rothwell and Oulton, subject to the recent appeals, are an extreme example of this. Other proposals on greenfield housing allocations are already under consideration, with more in the pipeline.
- 2.15 The recent RSS Review suggested that housing targets could increase. It is unclear whether the Review will be progressed and to what timetable or whether the work will become part of the Integrated Regional Strategy. Nevertheless, the current challenging RSS targets are likely to remain as the minimum level that Leeds must plan for and against which planning applications must be judged.

3. The Rothwell and Oulton Appeals

- 3.1 The sites at Royds Lane, Rothwell and Fleet Lane, Oulton are both greenfield and are Protected Areas of Search (PAS) in the Leeds UDP Review. PAS sites are not allocations, but provide a reserve of potential development land outside the Green Belt. The UDP makes clear that whether PAS sites should come forward for development should be a matter for a future review of the development plan, now the LDF process. There is no implication that PAS designation will inevitably lead to development.
- 3.2 The Council refused the applications on a number of grounds which then formed the basis for its case at appeal. In relation to this report the particular concerns centred on the conflict with RSS and UDP policy and included consideration of the 5yr land supply position.
- 3.3 The Council argued that the proposals for housing were contrary to regional and local policy contained in RSS and the UDP Review on the following basis:
- a) RSS places an emphasis on urban transformation and regeneration focussed mainly on Leeds itself as the regional city. Development of greenfield sites, such as the appeal proposals, would prejudice development in the regeneration priority areas and on other urban sites.
 - b) The appeal sites are not located in areas identified for growth and regeneration in RSS.
 - c) The proposals would not accord with the sequence of development described in Policy YH 7 and paragraph 2.52 of RSS, which essentially give first priority to previously developed land within the main urban area, then to infill and finally to urban extensions. This is to minimise the development of greenfield land and the need to travel.

- d) Table 2.2 setting out the delivery arrangements of the Core Approach of RSS advises that in the early years of the Plan this will be existing allocations and already identified urban potential in cities and towns.
- e) The early years of the Plan will be the time to identify and bring forward 2nd phase opportunities, i.e. a plan-led approach.
- f) RSS recognises that a step-change in delivery is required and therefore indicates that delivery is permissible at less than the long-term annual average in the early years of the 2008 – 2026 period.
- g) RSS is not specific about the scale of such a lower level of provision or the period for which it should apply.
- h) The Council signed a LAA with the Secretary of State for CLG which establishes a lower target and given the importance attached to the LAA in setting targets and priorities this is the appropriate basis for considering the 5yr supply.
- i) The Council has a robust supply of housing land. The position is further enhanced considering the current state of the housing market and recognition in RSS of the continuing contribution of windfall sites.
- j) Government guidance emphasises the importance of, and commitment to, a plan-led system based on robust evidence and public engagement. To be meaningful this requires time. RSS was only published last May.
- k) The proposals are similarly contrary to the policies of the UDP which allow for a phased release of housing allocations when there is a shortfall in supply. The shortfall conditions defined in the UDP do not yet exist.
- l) The appeal sites are PAS sites. When, and if, such sites should be developed should be determined through the development plan process.

4. The Appeal Decisions

- 4.1 The appeals were dismissed by the Inspector for the reasons set out in his decision letter dated 16 March 2009. The Inspector concluded that the sites were suitable for development even though they were outside the settlement boundary and represented only the third priority for development set out in RSS policy YH7. He recognised that RSS indicates that such sites should only be considered in the later years of the Plan, if necessary. The need for them to come forward now was not established given the availability of UDP Phase 2 and 3 housing allocations. He was also concerned that the sites were unsustainably located, in particular giving rise to the need to travel by private car.
- 4.2 A copy of the appeal decision letter is appended to this report. It can be seen that while the Inspector dismissed the appeals there were a number of aspects of the Council's case with which he disagreed.

These are summarised below:

- a) LCC cannot demonstrate a 5yr land supply – the Inspector suggests we have only 3 yrs worth of land, for around 12,900 units.
- b) The UDP mechanism for releasing Phase 2 and 3 sites has been superseded by RSS and PPS3.
- c) It is suggested that even release of Phase 2 and 3 sites may not be enough.
- d) He is not convinced that Leeds can adjust gradually to the step change required by RSS notwithstanding that he acknowledges what RSS says about this and the advice of CLG.
- e) Emerging sites and infill appear to be discounted in the Inspector's calculations.

- f) The views of developers on availability and achievability are recognised as integral to the process of establishing the 5yr land supply. Such views seem virtually unassailable.
- g) The impact of the recession is given no weight in the debate. The mismatch between a recession proof target and recession depleted supply is not recognised.
- h) Student housing proposals are to be excluded from the supply calculation.
- i) Small emerging sites are discounted (in this case, sites of less than 10 dwellings)
- j) LCC estimates for the City Centre are too optimistic.
- k) Rothwell/Oulton is considered to be part of the main Regional City and thus part of the priority area defined in RSS.

5. Consideration of the Appeal Decisions

- 5.1 It is clear that the Inspector is somewhat critical of the Council's current approach to housing land supply, particularly the adequacy of the 5yr supply.
- 5.2 The Council's starting point at the appeal was based on its Housing Land Monitor which identified sites with planning permission and allocations for 32,721 dwellings of which 24,790 already had permission. About a further 5,000 dwellings were proposed in undetermined applications. These are the categories that can contribute to the 5yr supply (para 2.6). RSS also recognises that windfall contributions can be expected to continue.
- 5.3 The Council submitted updated evidence to the Inquiry contending that its 5yr supply was in the order of 18,000 net which was a significant discount on a starting position of nearly 43,000 dwellings. As indicated earlier the Inspector takes the view that the current position is about 12,900 units which, whatever the basis for the 5yr calculation represents a substantial shortfall.
- 5.4 There are a number of points to be made about this position. It is not clear how the Inspector arrives at this figure. It seems likely that he has rejected virtually all the emerging sites and probably infill also. Yet emerging sites are clearly eligible within guidance and infill recognised in RSS. The assessment must have given particular weight to the views of developers and landowners on the immediate prospects for a site rather than looking at its intrinsic merits as the Council's assessment has done.
- 5.5 The Inspector recognises that RSS allows for a stepping up in delivery given the significant increase in the housing target. However, he then goes on to say that he is not convinced that RSS allows the Council to adjust gradually to the new target. There is no reason given for this view which is surprising given his recognition of the position and no suggestion of any alternative meaning that could be attributed to it.
- 5.6 The Inspector makes no reference to the wider argument that it is the recession that is making sites undeliverable, not so much deficiencies in the land supply per se. In the Inspector's terms it is difficult to see how a 5yr land supply could be demonstrated in present circumstances. The position on falling planning applications and new starts is given in para 2.12 and clearly reflects the current state of the market. Given the approach to the 5yr supply (para 2.6), which includes achievability and the likelihood that a site will contribute new dwellings within the 5yr period, it can be seen that if the industry is not, and cannot, deliver at the required rate then a 5yr supply will not exist. Under these circumstances the Council is under pressure to release more Greenfield sites which in this recessionary context is unlikely to have a significant impact on output.

- 5.7 The Council has previously expressed its concerns about the scale of growth proposed in RSS which requires sustained housing delivery at a level not previously achieved. If the Council's concerns are realised and there is neither the market nor the capacity to achieve this scale of growth then the Council will never have a demonstrable 5yr supply. It seems perverse that this one strand of guidance could leave the Council in this position even after it has its LDF in place.
- 5.8 The Inspector's views on the inclusion of student housing are clearly at odds with those of the Council, even though his report suggests the Council's agreement with his interpretation. He bases his views on an arbitrary change of tack in CLG's 2008 Core Output Indicators update. Prior to the update student housing had always been included. No clear reason is given to support the change of stance and student housing contributions remain included in other indicators. Student requirements remain an element of the target and it is therefore difficult to understand why they should not count on the supply side also. At a practical level experience tells us that without purpose built accommodation students compete in the general housing market. New student housing thus releases property for the wider public, contributing to meeting overall housing needs.
- 5.9 On emerging sites the Inspector ignores sites of less than 10 dwellings as not making a significant contribution. This follows the suggestion of the appellant and an appeal case elsewhere where the Inspector used a 20 unit cut-off. While smaller sites individually will make a limited contribution, collectively they can produce significant numbers. It is therefore strange that they should be excluded from an exercise that is otherwise concerned to identify all possible sources of supply. It is also clear that in any event there is no clear view on what size of site makes a "significant contribution".
- 5.10 It can therefore be seen that there are a number of areas where the Inspector's views and reasoning are unclear and therefore capable of disagreement. In any event this is only one Inspector's view of the position. Nevertheless it can also be seen that however the 5yr requirement is calculated there is a marked gap between the Inspector's figure and the requirement. It has to be concluded that even if the Council can successfully argue on some of the points of disagreement, in the current climate it is unlikely to be able to demonstrate a 5yr supply; it will rather be a case of narrowing the gap.
- 5.11 Given all the other considerations such as the spatial priorities of RSS, the need for a step-change to be properly planned for and the early years approach of RSS it may be that another Inspector would not see a reduced deficit as an over-riding consideration. Though important it is still only one factor to be considered among many.
- 5.12 The Inspector's decision letter also recognises the importance of these other factors. As previously indicated RSS is a spatial plan that sets as its spatial priorities the transformation of the main urban areas of the region with particular emphasis on a number of key locations that are to be the main focus for growth and regeneration. The Core Approach and Policy YH7 see a sequence to development that reflects these priorities and which allows for plan-led decisions on any Greenfield releases that may prove necessary. There is further emphasis in the expectation that Leeds will achieve more than the regional average of 65% of its growth on previously developed land.

- 5.13 The areas identified as priorities are Easel, Aire Valley and the Leeds-Bradford corridor. There is also reference to regeneration to the south of the City Centre. The approach of the UDP Review is similar to that of RSS.
- 5.14 The Council cannot be accused of complacency in the face of the present difficulties in the housing market. It is actively pursuing initiatives in all the priority regeneration areas through the work with Bellway in Easel, the on-going dialogue with CLG, Homes and Communities Agency (HCA) and Yorkshire Forward in Aire Valley (including the emerging Urban Eco-settlement proposals) and jointly with Bradford and the HCA in the corridor. Members will be aware of further initiatives to the south of the City Centre in Beeston Hill and Holbeck and in South Leeds. The Council has established the Affordable Housing Strategic Partnership Board, which includes GOYH and the HCA as members, to advance affordable housing initiatives throughout the urban area.
- 5.15 The Inspector (paragraph 35 of the decision letter) appears to accept that the release of greenfield sites could well undermine the Core Approach of RSS. He took the view that approval of the appeal proposals would be likely to lead to other similar applications which the Council would then find it difficult to resist. He concluded that the appellant "has not demonstrated sufficient benefits to outweigh this resulting harm." That must by definition include his view on the 5yr land supply.
- 5.16 The potential impact of greenfield release on the priority regeneration areas and brownfield urban delivery more generally was a key issue in the Council's case to the Inquiry. It could be argued that in the current climate, with only limited activity within the housing market, that this be directed to the priority areas. The counter argument to this is that with limited investment only those sites in the most attractive market areas and with fewest site constraints will come forward and these tend to be the greenfield opportunities.
- 5.17 If the latter argument is pursued it could become self-fulfilling. Some activity will take place on greenfield sites, the 5yr supply will remain deficient and the argument for yet more greenfield release will remain. The brownfield sites will remain undeveloped at the back of the queue completely contrary to both the spatial priorities of RSS and those at a local level..

6 Implications for Council Policy and Governance

- 6.1 This report deals with the broad policy approach to housing land supply taking account of RSS and the UDP. Decisions on individual planning applications will be made by Plans Panels, or officers under delegated authority, on their planning merits in the context of development plan policy and other material considerations.

7 Legal and Resource Implications

- 7.1 A number of applications for housing on Greenfield sites are already before the Council and more can be expected. Appeals have already been lodged in two further cases. The advantages, disadvantages and risks associated with retaining the Council's present approach are referred to in paragraphs 8.10,8.12 and 8.13. There is the potential for an award of costs against the Council at appeal if it is found to have acted unreasonably. The Council's HPDG award partly depends on having a 5yr supply. This report highlights the differing views on the 5yr calculation and therefore the risk that this element of HPDG will not be forthcoming.

7.2 Legal advice has been obtained in relation to this report and supports the conclusion of officers that disagreement with the Inspector's findings, as set out in this report, is a reasonable stance to take.

8 Conclusions

8.1 The appeal decisions raise issues concerning the Council's approach to housing land supply and by implication to the consideration of applications for housing development on greenfield sites. As indicated in Section 5 there are many reasons to question the Inspector's conclusions. The issues will always be a matter of judgement and it is appropriate for the Council to consider whether, in the light of the appeal decisions, there is a compelling case to change its current approach.

8.2 Planning applications are determined against the policies of the statutory development plan, which in Leeds is RSS and the UDP Review, unless material considerations indicate otherwise. The development plan for Leeds is up to date, and there is no reason why anything less than full weight should be attached to the plan, which should be read as a whole.

8.3 The Inspector's decision letter will merely have the status of another "material consideration" to which some weight should be attached. It will carry added weight because it is relatively recent. However, its views are not binding and Inspectors are free to disagree with each other having to judge each case on its particular merits.

8.4 Similarly PPS 3, although national guidance, is simply another material consideration and does not have the same status in decision making as the development plan. The Secretary of State will have taken PPS3 into account in formulating the policies and proposals of RSS.

8.5 There are two principal options open to the Council in response to the decision letter and the continuing interest in the development of greenfield sites. The first is to accept that there is a shortage in the 5yr supply and that in accordance with PPS3 greenfield applications should be favourably considered (subject to them being otherwise acceptable in planning terms).

8.6 Such decision would in effect amount to the approved release of UDP Phase 2 and possibly Phase 3 sites. The Phase 2 sites are likely to accommodate less than 2000 dwellings and therefore have limited impact on the overall land supply. There are options which could involve assessment, particularly of the Phase 3 sites so that only those that are in sustainable locations and most readily fit the spatial strategy of RSS are released. It might also be possible to release Phase 2 and hold back Phase 3 so that the impact of greenfield release on brownfield development could be assessed. However, acceptance that the 5yr supply target is the over-riding consideration will bring added pressure for further release.

8.7 The alternative approach is that the Council confirms its current stance on the basis that the balance of interests is in achieving the urban transformation and regeneration priorities of RSS and that this outweighs any deficit in the 5yr land supply. The Council has also taken the view that the targets on which the 5yr supply is based are unrealistic except in the most buoyant market conditions. There is a 5yr supply taking the Council's managed release approach and clearly a substantial supply of other identified sites should the market pick up. In addition the Council is proactively seeking to bring forward a range of initiatives (para 5.14).

- 8.8 The potential impact of greenfield releases on the Core Approach of RSS, which is the focus of this Council's regeneration initiatives, has been recognised by the Inspector in the recent appeals. Release of greenfield sites is thus contrary to policy H1 of RSS.
- 8.9 In promoting this course of action it is also relevant to take into account the areas of disagreement with the Inspector's findings. These include the factors impacting on the scale of the deficit described earlier in this report. It also includes the approach to the managed requirement and managed release for which the Inspector offered no reasons for his disagreement with the Council's case.
- 8.10 While it may clearly seem reasonable for the Council to pursue this option having weighed the balance of interests it must be recognised that there are risks in such a decision. There has been much government commentary on the need for increased housing delivery but little or nothing about the impact of the recession on housing targets and the effects of economic reality on the 5yr land supply calculation. While the Council may take one view there remains the prospect that an Inspector at a future appeal will see the housing target figure as the most important and over-riding issue.
- 8.11 Thus in summary the main choices open to the Council are to:
- a) accept the need for greenfield release recognizing a deficit in the 5yr housing land supply; or
 - b) conclude that greenfield release is inappropriate for the reasons given in this report.
- 8.12 Option (a) has the advantages that: it is likely to lead to fewer appeals, with their associated costs and risks; will provide development opportunities that are likely to be easier and less costly to bring forward; and will potentially enhance the Council's HPDG award. Disadvantages are that: the Council will be immediately susceptible to pressure for further greenfield development in advance of a further report to establish the terms for greenfield release; and investment is likely to be diverted to greenfield sites and away from the regeneration and inner city priorities.
- 8.13 Option (b) has the advantages that it maintains the focus on the priorities set out in RSS and the UDP. The disadvantages are that it is likely to lead to continuing debate over the Council's housing land supply through a series of planning appeals. A series of adverse appeal decisions would be unsustainable and likely to lead to awards of costs against the Council. It would also mean planning by appeal rather than through a managed and planned approach.
- 8.12 Whichever option members choose it must be recognised that individual planning applications must each be determined on their merits. A wide range of factors, such as a site's location and accessibility to facilities, sustainability, flood risk and drainage, layout and design will all continue to be important.

9 Recommendations

- 9.1 Members are requested to consider the matters raised in this report and determine which of the options set out in paragraph 8.11 they wish to pursue.

Background Papers

None