

# Housing Land Supply: Meaning of “Deliverable” Housing Sites

## Briefing Note

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In *St Modwen Developments v SSCLG & East Riding of Yorkshire Council* (2017) EWCA Civ 1643, the Court of Appeal has handed down a judgement affirming the High Court Decision made last year (*St Modwen Developments c SSCLG & East Riding of Yorkshire Council* (2016) EWHC 968 (Admin)).

The judgment considers the meaning of “deliverable sites” in the context of Paragraph 47 (and Footnote 11) of the NPPF which considers sites as being available if:

- They are available now;
- Offer a suitable location for development;
- Achievable with a realistic prospect that housing; will be delivered on the site within five years; and
- The site is viable.

Lord Justice Lindblom explained that each of these considerations goes to a site’s capability of being delivered within five years, not to the certainty or probability that it actually will be (Paragraph 38). Sites can be included in the five-year supply if the likelihood of housing being delivered in this timeframe is a realistic prospect. The Judge added that deliverability is not the same thing as delivery and the fact a particular site is capable of being delivered within five years does not mean that it necessarily will be. He acknowledges that there are various financial and commercial reasons outside local planning authorities control that may mean a site cannot be delivered (Paragraph 35).

The Judgement goes on to directly quote from Paragraph 3-031-20140306 of the PPG which states: “planning permission or allocation in a development plan is not a prerequisite for a site being deliverable in terms of the five-year supply. Local planning authorities will need to provide robust, up to date evidence to support the deliverability of sites, ensuring that their judgements on deliverability are clearly and transparently set out.”

This reaffirms the need for robust evidence to demonstrate the delivery of sites in the 5 year period. Where sites do not have the benefit of permission, or allocation, local planning authorities cannot simply rely on a sites inclusion in a SHLAA to adequately demonstrate deliverability.

This Judgment affirms the position of the High Court from 2016, which rejected the developer’s argument that for a site to be available now, in terms of Footnote 11, it had to have planning permission or a resolution to grant planning permission.

The Court of Appeal also emphasised the limits to the court’s role in construing planning policy, with there being no place in challenges to planning decisions for the kind of hypercritical scrutiny that the Court has always rejected. The Court also warned that an officer’s report should not be laboriously dissected in an effort to find fault.

DLP Planning Ltd and its Strategic Planning & Research Unit (SPRU) have extensive experience in assessing the five year supply position and objectively assessed housing need of local planning authorities, using the most up to date sources and modelling. Such assessments are often critical to the successful promotion of sites for residential development.

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