

## **New homes in the countryside on previously developed land**

(January 2019)

This is an informal guidance note published by Basingstoke and Deane Borough Council.

The purpose of this note is to provide advice on the interpretation of Policy SS6(a) of the Basingstoke and Deane Local Plan (2011-2029) which permits new homes in the countryside on previously developed land in certain circumstances.

1. Local Plan Policy SS1 (Scale and Distribution of New Housing) sets out a spatial strategy for the Local Authority to meet its full housing need over the Plan period. The strategy is principally based upon the development of allocated greenfield sites and the redevelopment of land in the towns and villages. Development in the countryside is generally restricted.
2. However, Local Plan Policy SS6 recognises that there will be some limited circumstances where it is appropriate to allow new housing development in the countryside (outside the Settlement Policy Boundaries, as defined on the Local Plan Policies Map). The policy therefore allows a limited number of exceptions to be made to the general policy of restraint on housing in the countryside.
3. This note has been produced by officers to provide informal guidance on how the requirements of Policy SS6(a) should be interpreted following a number of judgments from the Court of Appeal. This section therefore seeks to provide:
  - Clarity on the definition of previously developed land taking into account the Court of Appeal's judgment in Dartford BC v SSLG [2017] EWCA Civ 141 ('the Dartford case'); and
  - An update on the council's interpretation of the term isolated following the Court of Appeal's judgment in Braintree District Council v SoS CLG [2018] EWCA Civ 610 ('the Braintree case').
4. In accordance with s.38(6) of the Planning and Compulsory Purchase Act 2004, planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise. The council will need to consider whether there are material considerations that indicate that a decision should be made other than in accordance with the development plan.

## Local Plan Policy

5. Local Plan Policy SS6(a) supports the principle of new houses in the countryside on previously developed land. The policy sets out the following requirements:

### Policy SS6 – New Housing in the Countryside

Development proposals for new housing outside of Settlement Policy Boundaries will only be permitted where they are:

- a) On 'previously developed land', provided that:
  - i) They do not result in an isolated form of development; and
  - ii) The site is not of high environmental value; and
  - iii) The proposed use and scale of development is appropriate to the site's context;or

## Previously developed land

### What is previously developed land?

6. The National Planning Policy Framework (NPPF, 2018) provides a definition of previously developed land (PDL).

**Previously developed land:** Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. This excludes: land that is or was last occupied by agricultural or forestry buildings; land that has been developed for minerals extraction or waste disposal by landfill, where provision for restoration has been made through development management procedures; land in built-up areas such as residential gardens, parks, recreation grounds and allotments; and land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape. (NPPF, 2018)

7. The glossary definition of PDL in the Local Plan is not exactly the same as national policy in that it does not expressly incorporate the NPPF exclusion for "*land in built-up areas such as private residential gardens, parks, recreation grounds and allotments.*" However, in line with s.38(6) of the Planning and Compulsory Purchase Act 2004, which states that applications for planning permission are to be determined in accordance with the development plan unless material considerations indicate otherwise, the NPPF (and therefore the definitions within it) is an important material consideration and will form the basis on which the Local Planning Authority should determine planning applications.

### Are gardens previously developed land?

8. As set out above, the definition of PDL in the NPPF excludes 'land in built-up areas such as private residential gardens'. As such, gardens within the built-up areas of the borough would not be considered to be PDL and therefore the principle of development would not be supported in principle by Policy SS6a.
9. The Dartford case considered the NPPF definition of PDL and clarified that a garden outside a built-up area can be considered PDL, as long as it complies with other elements of the definition of PDL. To apply this principle to Local Plan Policy SS6(a), it is necessary to understand what constitutes a 'built-up' area.
10. In accordance with the NPPF and Local Plan, gardens within a settlement policy boundary will be regarded as being in a 'built-up' area. Whether gardens outside of a settlement policy boundary are regarded as being in a 'built-up' area will be a matter of planning judgement taking into account factors such as the number of dwellings, density and cohesion of the properties. It is unlikely that a small group of houses or a farmstead would be considered 'built up'.

### **Isolation**

#### What is an isolated form of development?

11. Policy SS6a does not support new homes on PDL where it would result in an isolated form of development. The adopted Local Plan includes a definition of 'isolated' within the glossary, however this will need to be considered in light of the interpretation of the NPPF in the Braintree case. Although the Braintree case was based upon wording in the NPPF (2012), similar wording is included in the NPPF (2018). NPPF (2018) para 78-79 states:

*'78. To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Planning policies should identify opportunities for villages to grow and thrive, especially where this will support local services. Where there are groups of smaller settlements, development in one village may support services in a village nearby.'*

*'79. Planning policies and decisions should avoid the development of isolated homes in the countryside unless one or more of the following circumstances apply: ...'*

12. The Braintree case held that isolated for the purposes of the NPPF, 'isolated' should be given its ordinary meaning as 'far away from other place, buildings and people; remote'. The judgment therefore concluded that 'isolated', in the context of the NPPF, only means 'physically separate or remote from a settlement'.
13. The Braintree definition is therefore narrower than the Local Plan definition which defines 'isolation' by both physical separation but also functional isolation in terms of proximity to services and facilities. The Local Plan definition will therefore need to be interpreted in line with the Braintree case.

14. However, although inaccessibility to services and facilities is not part of the definition of isolated for the purposes of para 55 of the NPPF, it still remains a material consideration as to whether the proposal constituted sustainable development and may therefore be taken into account as part of the overall planning balance.
15. In terms of what constitutes a settlement, in accordance with the Braintree case, this should not be limited by the glossary definition in the Local Plan and will include villages that do not have settlement policy boundaries or access to any facilities. It will be a matter of fact and planning judgement for the decision maker, as to whether a group of dwellings can be considered to be a settlement.
16. The determination of whether a site is isolated will be informed by an assessment of the particular circumstances of the site and the proximity and character of surrounding development.