

## South East Plan: Implications of the Proposed Changes' Approach to Minimum Housing Targets

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For the first time in the South East, regional housing provision is expressed as a minimum: 'at least 662,500 dwellings 2006-2026, or an average annual figure of 33,125'. We have a number of serious concerns that such an approach:

- Does not reflect the Government's own national planning policy on regional targets.
- Is contrary to the objectives and requirements of the SEA Directive and the Habitats Directive and therefore vulnerable to legal challenge.
- Strikes at the heart of the delivery of planned and sustainable growth.
- Places at risk the very spatial strategy of which it forms a part.

### 1. National Planning Policy

1.1 Nowhere in PPS3 does Government refer to the use of minimum housing targets. There are references to local planning authorities not necessarily treating 5-year housing provision figures as ceilings which cannot be exceeded. But this is no different from previous national guidance or its practical application: strategic housing targets are not rigidly enforced as ceilings. What they have provided is a sound and tested basis on which local authorities could prepare their development plans, with infrastructure providers and other agencies planning accordingly.

### 2. Sustainability Appraisal

- 2.1 Legislation poses rigorous demands on the spatial planning process in terms of the testing of options in the context of Directive 2001/42/EC on the effects of certain plans and programmes on the environment (the 'SEA Directive') and Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (the 'Habitats Directive'). We have noted that the SA report prepared by Scott Wilson recommended that the words 'at least' be removed from Policy H1 as the housing growth over and above the regional target constitutes a further, untested option. We have therefore sought advice on the lawfulness of the Proposed Changes, and specifically the introduction of minimum levels of housing provision.
- 2.2 Our legal advice is that there is nothing inherently unlawful in the use of minimum levels of housing provision. However, their use does represent a fundamental change to the policies in the draft South East Plan. The key issue is therefore whether this aspect of the new policy has been properly assessed for its effects on the environment. Legal advice is that the environmental effects of adopting minima have not been sufficiently predicted or evaluated at the regional level. This is contrary to the SEA Directive and the Habitats Directive.

The Proposed Changes approach is to say that the effects of exceeding the minimum can be assessed through a review of the South East Plan or through individual LDFs. This is not sufficient because it is the effects of the current Plan which must be assessed, that assessment cannot be retrospective, LDF related assessments have a narrower geographical focus, and there are statutory requirements for compliance and consistency with the RSS.

- 2.3 For these reasons we are advised that the aspect of the Proposed Changes which introduces minimum levels of housing provision is contrary to the objectives and requirements of the SEA Directive and Habitats Directive and therefore vulnerable to legal challenge.

### **3. Delivery of Planned and Sustainable Growth**

- 3.1 In the South East we have worked hard to integrate planning and delivery through vehicles such as the Regional Housing and Transport Boards and our advice on funding programmes and decisions. Minimum housing targets will make this sort of integration more difficult. For example, the region's Regional Funding Advice for housing will be based on planned levels of housing provision. It will be much harder for the region to make a robust case on funding for affordable housing given the inevitable uncertainty that minima introduce in terms of the scale and distribution of housing provision. Targeting the National Affordable Housing Programme will face similar difficulties. In the South East we have developed a Regional Housing Strategy which seeks to facilitate delivery of the Plan by aligning the broad distribution of funding with the Plan's spatial strategy - a key role of the RSS under the Government's ambitions for both the current plan and future Integrated Regional Strategy. The use of minimum housing targets, and the inevitable lack of certainty they will introduce, will make this much more difficult to achieve.
- 3.2 The same general point applies to other infrastructure providers and related-agencies who require a strategic overview and certainty about the level of growth and its location and timing - eg. water companies, the Environment Agency and Highways Agency. As with housing, the Assembly and local authorities have worked hard to develop relationships with such organisations to ensure that long-term planning is at the heart of their investment plans.
- 3.3 The LDD system is proving complex, slow and resource intensive. The introduction of minimum housing targets - coupled with the requirements of Proposed Changes Policy H2 - adds another unnecessary and unwelcome layer of complexity, placing delivery at risk in the process. It is not clear how a local authority now knows what the parameters for testing should be and when it has done enough testing for its LDD to be judged 'sound'. The approach will certainly place an additional burden on local authorities, not least in terms of the assumptions made about SA and HRA of further housing growth brought forward through LDFs and / or planning applications.

#### **4. Delivery of the Spatial Strategy**

- 4.1 The introduction of minimum housing targets places at risk the spatial strategy which lies at the heart of the South East Plan. A robust spatial strategy has room for flexibility. That is why housing targets are not rigidly enforced as ceilings. But this can only be true to a point, which is why DPDs are required to be in general conformity with the RSS. Our plan-led system cannot work if the strategic framework is open to incremental bottom-up changes, at least some of which may be promoted through individual planning applications. Judged case-by-case there may be no perceived threat to the spatial strategy, but the cumulative impacts could be quite different, particularly in conjunction with the current approach to windfalls, eco-towns etc. Ultimately - and perhaps at the most extreme - the regional strategy could become unbalanced as a result of market pressures in, say, the west of the region undermining regeneration efforts elsewhere. The role of the planning process is to change outcomes and not merely be responsive; if it did not then it wouldn't be relevant. But there needs to be the certainty of a strong strategic framework.
- 4.2 Strategic housing targets are not rigidly enforced as ceilings in the South East. But they provide a sound and tested basis on which local authorities can prepare their development plans, with infrastructure providers planning accordingly. Delivery of a plan-led approach to housing provision requires that the words 'at least' be removed from Policy HI.