

North Essex Authorities' response to EXD/076 (Note on the meaning of 'deliverable')

This response is submitted by the North Essex Authorities (NEA).

1. Paragraph 182 of the 2012 NPPF sets out the test of soundness. That test has four limbs, each of which must be satisfied if a Local Plan is to be considered sound.
2. That four limb test of soundness requires Local Plans to be:
 - Positively prepared – the plan should be prepared based on a strategy which seeks to meet objectively assessed development and infrastructure requirements, including unmet requirements from neighbouring authorities where it is reasonable to do so and consistent with achieving sustainable development;
 - Justified – the plan should be the most appropriate strategy, when considered against the reasonable alternatives, based on proportionate evidence;
 - Effective – the plan should be deliverable over its period and based on effective joint working on cross-boundary strategic priorities; and
 - Consistent with national policy – the plan should enable the delivery of sustainable development in accordance with the policies in the Framework.
3. To be effective a plan must be deliverable over its period (as per the third bullet point). The words "*the plan should be deliverable over its period and based on effective joint working on cross-boundary strategic priority*" explain what is meant by 'effective'.
4. It was suggested at the examination that 'deliverable' in the third bullet point should not be interpreted without regard to the use of the word "delivery" in the fourth bullet point of paragraph 182.
5. Lindblom LJ in *St Modwen v. Secretary of State for Communities and Local Government* [2018] P.T.S.R. 746 made clear that "deliverability" and "delivery" are two separate concepts. In *St Modwen* the appellant argued that the meaning of "deliverable" in paragraph 47 of the NPPF required a local planning authority to demonstrate that the sites it relied on were more probable than not to be delivered within 5 years. As noted in EXD/076, Lindblom LJ held that the applicant's 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 plainly a distinction between "deliverability" and "delivery". Accordingly, there is a distinction between the third bullet point of paragraph 182, which uses the word "deliverable", and the fourth bullet point, which uses the word "delivery". The two should not be conflated.
7. The term "deliverable" in the third point bullet point should be interpreted in line with the ordinary meaning of that term¹. It is not appropriate to apply any form of gloss to it. The NEA agree with the conclusion in the final paragraph of EXD/076 that the proper interpretation of the test in the third bullet point of paragraph 182 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. The application of the policy – in answering the question of whether a Local Plan is deliverable over its plan period - is then a matter of evaluative planning judgement.

¹ Footnote 11 to paragraph 47 sets out what deliverable means in the context of deliverable sites rather than deliverable Local Plans.