

NEA'S SECTION 1 LOCAL PLAN

NOTE ON THE MEANING OF 'DELIVERABLE'

OPINION

1. I have studied the opinion of Mr Charles Banner QC of 15 January 2020. Whilst noting and agreeing with him in relation to the crucial importance of context (see his paragraph 6) the purpose of this opinion is simply to assist the inspector by drawing attention to the more recent decision (12 December 2019) of the Court of Appeal in *R (on the application of East Bergholt Parish Council) v Barbergh District Council and others* [2019] EWCA Civ 2200 in which Lindblom LJ discussed and applied his decision in the *St Modwen Developments Limited* case [2018] P.T.S.R. 746. Both decisions were concerned with the concept of deliverability in the context of paragraph 47 of NPPF (2012).

2. As Lindblom LJ made clear in paragraph 46 of *East Bergholt*, the decision in *St Modwen Developments Limited* “did not create new law”. However, paragraphs 46- 54 of *East Bergholt* are pertinent. In particular, in paragraphs 53 and 54 Lindblom LJ held:
 52. It is clear then that the policy in paragraph 47, and the PPG guidance upon it, accommodate different views on a “realistic prospect” of delivery. A local planning authority can take a more cautious view on this question, or a more optimistic view, than other authorities might. If it does, it is not for that reason acting contrary to the policy, or unreasonably. Had the Government meant to impose a rigid approach, or greater consistency than the policy and guidance require, it would surely have done so. If it had wanted to define exactly what it meant by a “realistic prospect” it could and would have done that. But it has not – either in the policy it originally issued or in the two revisions, or in the PPG.

 53. As the judge recognized, “achievability” was only one of four elements that together went to the question of “deliverability”, the other three being “availability”, “suitability” and “viability” (see paragraph 38 of my judgment in *St Modwen Developments Ltd.*). All four elements must be

present if a site is to be regarded as “deliverable”. And all of them entail the exercise of planning judgment. Thus, for example, a site judged by the local planning authority not to be “a suitable location” for housing development “now” could properly be excluded from the calculation of the five-year housing land supply even if it was clearly “available now”, and also “achievable with a realistic prospect that housing will be delivered on the site within five years”, and development “viable”. In those circumstances, and despite the existence of a “realistic prospect” of the site’s development, however strong that prospect might be, the site could properly be judged by the authority not to qualify as “deliverable” under the policy.

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