



Planning and Transportation Commission

Review of Residential Development on Former Domestic Gardens

1. Introduction

At its meeting on 24 September 2007 the Planning and Transportation Commission approved a scoping report which set out proposals to carry out a short review of residential development on former domestic gardens in Derby.

The review was in part prompted by public concern about the recent increase in residential development on former garden sites in a number of the more affluent suburbs of the City. The aims of the review were to:

1. Explore the implications of the existing legislation relating to developments on former domestic gardens
2. Seek to develop a set of draft criteria for acceptable developments of this type

2. Definitions

The following definitions apply for the terms used in this report

Brownfield – a broad brush term used to describe land which has already been developed, as opposed to greenfield land which may have never been developed. Brownfield land is land which is or was occupied by a permanent structure and associated fixed surface infrastructure and covers the curtilage of the development. A domestic dwelling and garden fall within this definition

Backland – land lying behind existing developed frontages which may have no suitable access of its own. Sometimes land that has been formed by aggregation of parts of former domestic gardens

3. Background

3.1 Factors affecting the demand for backland development

There is currently a high demand for new housing in England. This has been recognised by the government which has taken steps to promote the building of new housing and has identified a national target of 240,000 new homes to be built each year in the UK by 2016.

Whilst recognising the need for new houses, the government is also anxious to protect existing greenland. Its planning policies support this objective by promoting the re-use of previously developed land in preference to Greenfield sites, and there is a presumption under the guidance in favour of housing development on brownfield sites

Under current planning guidance domestic gardens are classified in planning terms as brownfield sites and any development proposed on a former domestic garden must therefore be treated in the same way as a development proposed for an old gas works or railway site (provided they are brownfield and not green field/ green belt land designations). As housing is the government's preferred option for brownfield sites it is difficult for local authorities to refuse planning applications for former domestic gardens.

Properties with gardens of a size suitable for backland development tend to be found in the more affluent, and hence more desirable, suburbs of a town or city. The construction of residential properties on these former domestic gardens is attractive to developers for two main reasons. Firstly, the cost of providing services and access and of preparing the land for development is usually much lower than it would be for a former industrial site, or even for a previously undeveloped greenfield site. Secondly, back garden development offers developers the opportunity to provide new housing in 'desirable' residential areas where because of the public's perception of the area, the new properties can command high prices.

Government pressure to build more housing and to build it on previously developed sites combined with the current demand for housing and the understandable desire of developers to maximise their profits has resulted in a national increase in the number of new houses being constructed on former domestic gardens. This was illustrated in an article (not verified for the purposes of this report) on 'garden grabbing' in the Sunday Telegraph of 30 September 2007, which alleged that residential developments on former gardens accounted for more than half of all new houses built in 28 Council areas in England, and for more than 40% in a further 25 Council areas.

3.2 Action by Derby City Council and the response of the Minister

In common with the national trend there has been an increase in the number of new houses built in Derby on former domestic gardens. As might be expected, the majority of these developments have been in long established residential suburbs where houses have larger gardens.

Recent proposals for developments of this type have given rise to considerable public objection and the matter was raised at the full Council meeting on 18 July 2007 through a Notice of Motion which challenged the intention of the legislation as it applies to domestic gardens.

In the subsequent debate members recognised the conflicting needs of providing extra housing and of protecting the character and amenity of established communities and after consideration of the Notice of Motion, the Council resolved to write to the Government and to ask for:

- More structured guidance on this issue
- The removal of domestic gardens from the brownfield category
- The ability for local authorities to resist such applications where it is clear there will be loss of amenities and consequences for quality of life
- A strengthening of the role of ward members to object to inappropriate applications.

In her response of 9 August 2007 to the Council's letter, Yvette Cooper MP, the Minister for Housing and Planning said that so long as local authorities are delivering the level of new homes the area needs, they have flexibility on how and where those new homes should be built, and she made the following specific points in respect of developments on brownfield sites:

- There is a considerable need for new housing and for too long the housing market has not responded to public demand.
- Over the past 30 years there has been a 30% increase in the number of households but a 50 % drop in the level of house building
- It is important to ensure development is in the right place and to prevent inappropriate development in residential areas where it is not sustainable and where other sites are available
- The new planning policy statement PPS3 gives local authorities flexibility to shape development according to the needs of their area and allows them to make decisions on where new housing can be located
- Local authorities can also specify targets for different kinds of brownfield site and PPS3 gives them powers to restrict garden development if they have alternative viable land available and the level of development is much higher than in their plan
- The government is keen to ensure appropriate protection of the countryside and its planning policies support this aspiration by the re-use of suitable previously developed land in preference to greenfield land. In consequence the proportion of homes built on greenfield land has fallen from 44% in 1997 to 26% today.

These comments seem to suggest that local authorities can pick and choose where they will allow new housing to be built providing they have alternative

viable land available they can easily control applications for the development of former domestic gardens. However this is not the view of the House of Commons Library who in June 2006 advised 2006, Greg Clark, the Conservative MP for Tunbridge Wells that there was enough in the guidance to justify developers appealing against any refusal of this type of application with every chance of success.

This advice was given to Mr Clark when he told the Commons that Ministers had, through PPS3, effectively changed the law to make it increasingly difficult for councils to stop developers from buying up houses with big gardens, demolishing them, and then building flats on the site. Mr Clark asked that the government change the legislation to give councils the right to reject this sort of development.

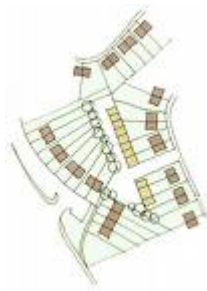
In response to Mr Clark's proposal Yvette Cooper insisted that there had been no change of policy. This view was however disputed by the House of Commons Library which said that a challenge by a developer against the refusal of permission for a backland development had every chance of succeeding.

Angela Smith, the Junior Planning Minister, signalled the government's position on developments on former domestic gardens when she responded to Land Use (Gardens Protection) Bill which has been proposed as a private members bill by Caroline Spelman MP. In her response Ms Smith insisted that primary legislation was unnecessary and told MPs that the problems the Bill attempted to address could be addressed through local development plans and by the use of PPS3. The minister rejected the point, repeated by a number of MPs during the debate, that local councils felt powerless to stop backland development and said it was important for councils to have clear development plans by which such applications were judged.

3.3 Summary of the Government's position

1. The provision of new housing is a priority target for the government. This was emphasised by the Prime Minister who at the 2007 Labour Party Conference said that by the next decade 240,000 homes would be built in the UK, and by the information from the ONS which predicts that 233,000 new households per year will be created by 2016.
2. There is an emphasis on encouraging developments within existing urban areas, and if the suggestions contained in this year's housing Green Paper are implemented, development sites may in future include public open space as well as domestic gardens.
3. The redevelopment of brownfield sites is a current government priority as it reduces the pressure on greenfield sites. As 'previously developed land' domestic gardens are considered to be brownfield sites.

4. The government is not averse to residential development on former domestic gardens and sees no need to change planning legislation to give local authorities more powers to resist such applications.
5. Under the current planning legislation and guidance, developers who appeal against a refusal of a planning application for residential development on a domestic garden have every chance of success.
6. Local authorities need clear and properly justified local plans and policies if they are to effectively control residential development on former domestic gardens within their areas



4. Objectives and Methodology of the review

For the reasons set out below, this review has been conducted in two parts.

The original objectives of the review were:

1. To consider the scope and effectiveness of existing planning controls as they apply to residential development on former garden land
2. To examine the advantages and disadvantages of residential development on former domestic gardens
3. To look at the scale and the impact on the local environment of the residential development on former gardens that has already taken place in Derby
4. To seek the views of Derby residents who have first hand experience on the effects of residential development of former gardens
5. In the light of evidence considered at the review, to develop a set of draft criteria for acceptable development within sites in urban areas that were formerly domestic gardens

These objectives were amended when, after completion of the first part of the review, it was realised that additional information would be required if the Commission was to make any practicable recommendations

As originally proposed the methodology of the review was simply to take evidence from:

1. The Council's Head of Development Control & Land Searches who it was thought could provide the Commission with information on the

legislation and its application and on the scale of any problem in Derby with backland development in Derby

2. Members of the public who were invited to attend the meeting in order to tell Commission members about situations and outcomes of which they had direct experience.

The first evidence gathering meeting of the Commission was held on 25 September 2007. At that meeting Paul Clarke provided the Commission with information on the way in which the City Council currently dealt with applications for backland developments and nine Derby residents gave the Commission their views on backland and garden developments in the City.

From this meeting the Commission gained some understanding of the limitations of the planning legislation and local planning policies and the difficulties of using them to refuse planning applications for backland development. The views of the nine residents who gave evidence to the Commission were helpful in understanding the impact of backland development on people living in its vicinity but in terms of defining a solution to the perceived problem, the comments were of only limited value.

Details of the evidence provided by Mr Clarke and the nine residents are contained in Appendix A of this report.

When it met on 5 November 2007 to consider the evidence from the 25 September meeting, the Commission concluded that it also needed to explore issues which included:

- The constraints under which development control officers must operate
- The resource implications of delivering an effective development control service,
- The arguments in favour of backland development,
- The need for new housing in Derby
- The ways in which policies could be altered to give development control officers' greater opportunities to refuse backland applications.

It was therefore decided to extend the scope of the review to consider:

1. The effectiveness of existing planning controls as they apply to residential development on former garden land
2. The grounds on which an applicant can appeal against the refusal of planning permission for backland developments
3. The resources available to the development control team and the current timescales and workloads of officers
4. The ways in which government funding is linked to the performance of the development control team
5. The national trends in backland development
6. The demand for housing in Derby and the availability of land to meet the supply
7. The costs of developing a garden compared with other brownfield sites.

8. The advantages and disadvantages of residential development on former domestic gardens

In order to obtain the additional information it was agreed to invite the following witnesses to give evidence to the Commission:

1. Paul Clarke - Head of Development Control and Land Charges (Mr Clarke had given evidence at the meeting on 25 September but the Commission thought that there were additional questions they needed to ask of him)
2. Rob Salmon – Head of Plans and Policies, Regeneration
3. A Representative of Royal Town Planning Institute
4. A Local Builder (one was invited but did not respond to the invitation)

5. Summary of the Evidence

5.1. Outcomes of the Commission meeting on 26 September 2007.

Notes of the meeting on 25 September 2007 are contained in Appendix A of this report together with a copy of the slides of Mr Clarke’s presentation.



The key points from Mr Clarke’s presentation are listed in the table below:

Table 1

PC1	PC defined backland as unbuilt land lying behind existing developed frontages and which may have no suitable access of its own, and brownfield land as land which is or was occupied by a permanent structure and associated fixed surface infrastructure. He said that domestic gardens and driveways fall within this definition.
PC2	The City of Derby Local Plan (CDLP) guides development for the next 5 years. Decisions on planning applications must be made in accordance with the CDLP unless material circumstances dictate otherwise. The CDLP contains general (GD4 and GD5) and specific (H13, E23 and T4) policies that apply to planning applications.
PC3	Government guidance consists of Planning Policy Guidance and Planning Policy statements which set out the national policy framework.
PC4	Although the Council has a five year supply of housing land it does not have excessive numbers of suitable sites and applications cannot be

	refused solely on the grounds that there are other sites available.
PC5	There could be no presumption that land which has been previously developed is suitable for housing development
PC6	In accordance with H13, planning permission for residential development will only be granted provided that the following objectives are met by the proposal: <ul style="list-style-type: none"> a) A satisfactory form of development and relationship to nearby properties can be created b) The proposal delivers a minimum average density of 35 dwellings per hectare unless there are clear environmental reasons for a lower density. c) The urban forms, designs and layouts facilitate energy efficiency and the proposed density d) The proposals create a high quality living environment and an interesting townscape. e) There are good standards of privacy and security
PC7	H13 gives priority to suitable previously developed sites within urban areas. H13 does not normally permit development that would intrude into the countryside.
PC8	Officers and members need to be aware that any decision could be challenged on appeal so any recommendation to refuse needed to be properly justified by the policy.
PC9	Use the Sustainable Design Planning Document to expand upon the guidance relating to the development of backland sites
PC10	PPG3 mitigated against the development of backland sites but that this is not the case for PPS3
PC11	Planning Policy is overarching, the CDLP puts the flesh on the bones and Policy H13 applies to specific examples

The nine residents who gave evidence to the Commission raised a number of issues, some of which were shared between several of the witnesses. The table below lists the main suggestions that were made and the witnesses who made them

Table 2

	Suggestions	Number of Witnesses making the Suggestion
1	Stop demolition in residential areas. Demolition should not be allowed without the agreement of the residents	1
2	Residents should be allowed to challenge applications Accept appeals against applications	2
3	Provide incentives for developers to build on industrial brownfield sites	1
4	Interpretation of PPS3 should not be subjective	1

5	Concerned that developers had confidential meetings with Planners – wants record of meeting to be made available Inform residents of outcome of developers' meetings with officers	2
6	More oversight needed of PCC	1
7	Should re-examine use of greenfield sites	1
8	Redefine what is meant by backland sites De-classify gardens as brownfield sites Distinguish between gardens and former industrial brownfield sites	3
9	Simplify the rules Lobby for a change in the legislation Fresh planning strategy required Need to take an untutored look at planning and empower the Council Expedite work on SPG	5
10	Take the scale of the development into account Housing should be designed to fit sites	2
11	Consider the needs of the community – do not approve developments for which there is no need	1
12	Have a system of redress	1
13	Make big developers allocate a percentage of their land bank to smaller developers	1
14	Improve notification of proposals People not aware of what happening in City Improve notification Get developers to pay for publicity	4
15	More consultation on applications Improve consultation Improve consultation	3
16	Take objectors views into account More consideration of objections	2
17	More detail on Planning reports Improve accuracy of officer reports and provide opportunity for objectors to challenge them Challenge misleading information to PCC	3
18	Improve accountability and openness and record votes at PCC	1
19	Planning officers should advise objectors	1
20	Better protection for trees with TPOs	1

The Commission's response to these points is contained in the table in Appendix B of this report

A letter received by the Chair from one the Vice Chairman of the Allestree Preservation Group on 27 November 2007 contained details of a survey carried out by the Allestree Preservation Group outside a drop in Session held by Sandstone Group to advise the residents of their proposals for

development of Kings Croft. The table below summarises the findings of the survey.

Table 3

Do you think Kings Croft is a suitable location for a care home?		Do you think Allestree is overdeveloped?				
Yes	No	Yes (total 126)				No
		Medical Services overstretched	Schools oversubscribed	Too much traffic	Other	
2	124	60	69	104	20	1

The information provided in the table is useful in that it demonstrates the views of a particular sector of Allestree residents. It must however be remembered that the group that took part in this survey was self selected and consequently unlikely to be representative of public opinion as a whole.

5.2 Outcome of the Evidence gathering meeting on 28 November 2007.



The key points of this meeting are listed in the table below:

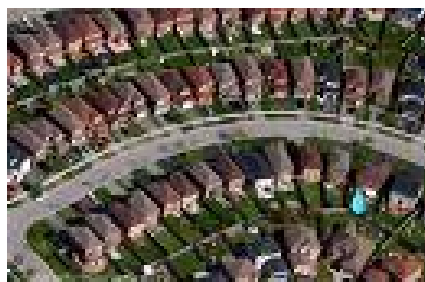
Table 4

PC12	The message (from government) is that PPGs and PPSs were the overarching guide and that local authorities do not need to do more.
RS1	The Secretary of State seemed to be pursuing a top down quantitative approach to housing provision.....the new LDF system is intended to provide a vision for how the housing quota might be delivered locally and to consider the options as to how this might be done.
RS2	Demand for new houses was growing and the forecast was for more need.the drivers for the increased need are factors such as increased immigration, smaller households, and people living longer.
RS3	With the current trend to smaller households, a small increase in the population of an area could result in a significant increase in the demand for housing in the area. Consequently the demand for housing is outstripping the supply.
RS4	To meet the increased demand the government are looking for 240,000 new houses to be built each year by 2016.

RS5	The contribution of 'windfall' sites in recent years had been bigger than expected as developers had come up with more innovative ways of developing land. Schemes had come forward that would not have happened ten years ago.
RS6	The number of (windfall) residential developments has allowed the Council to hold back on the development of some conventional sites. This would not have been possible without the windfall contribution.
RS7	Under the new LDF system the government expected greater identification of potential development sites so there would not be such a need to rely on windfalls.
RS8	The housing allocation process, while ultimately approved by Government, is initially done through the Regional Assembly which allots numbers to districts. These numbers are broken down first to the Housing Market level which are groupings of local authorities and these are then in turn broken down further and allocated to individual local authorities.
RS9	In the Derby area the proposed PUA requirement was for 980 houses/year with 700 of these being inside the City boundary. These are all needed for the growing population of Derby.
RS10	The demand for new houses comes from people already living in the area, or who have moved into the area because of employment.
RS11	Some of the requirement can be delivered through the Local Plan which provides enough land to about 2013.the Cityscape Master Plan also offers longer term opportunities and there is land likely to become available on the former RR sites in the Osmaston area.
RS12	About seven years worth of land is immediately available for development. there could be problems if the numbers that Cityscape was expected to provide were not achieved. what was now required to ensure continuity of supply was the preparation of new style LDF plans covering the whole period to 2026, including a 'Core Strategy for the City.
RS13	Local requirements for housing mix can be introduced provided that there is evidence to justify them. if the evidence is available then requirements can be written into LDF plans.
PC12	Local authorities have to manage the demand through core structure and by assessing the suitability of sites.
RS14	The Council could develop a policy on housing mix provided that it could demonstrate the need for a particular mix.
RS15	Control of the development of windfall sites could currently be done through Development Control using the Local Plan. There will be the opportunity to develop new policies through the LDF. The current Local Plan does not include a policy for garden land, only for windfall sites. there is an opportunity to develop more finely tuned policies in the LDF Core Strategy for different sorts of brownfield sites but firm evidence would be needed to justify any new policies.
PC13	The Planning Inspectorate would apply a test of soundness to the Core Strategy and therefore all new policies have to be evidence

	based in order that they can be justified.
PC14 for developments over 9 units on one site Section 106 money could be sought to compensate for their impact however it was not cost effective to ask for S106 funding for smaller developments and therefore the small, piecemeal nature of backland development often meant that no S106 funding was secured on these developments unless it could be proved that the smaller site was part of and contributed to a much larger site.
RS16	The LDF can stipulate the areas the Council wants to protect from backland development as long as there is evidence as to why houses should not be built in that area and that there is space for development elsewhere in the city.
PC15	Applications can be refused if they go against the Council's other planning policies e.g. green belt land.
RS17	If the Council had a detailed plan which enabled officers to demonstrate that there were satisfactory sites for development elsewhere in the area, and there were policy based reasons for protecting the land concerned, then a refusal could be defended with those policies
RS18some work on this had already been done with urban renewal areas which provided developers with incentives to develop particular sites
PC16	Garden land is often a clean safe attractive site which is likely to sell for a premium.
RS19	The planning department and committee would be in a far stronger position to refuse high density developments when it could be proved that housing need could be met without a particular development as there was sufficient space for development elsewhere.
PC17	If there was a policy that a refusal could be hung upon it was less likely that a decision to refuse would be overturned at appeal.
RS20	The core strategy or other LDF documents would perhaps be able to give greater clarity and weight to the concept of protecting the character of an area provided there was evidence to back this up.
PC18	A site could have any allocation as long as there was evidence of a need for that allocation.
PC19	During the period 2004/07 the total number of completions on garden land in the whole City was 279
PC20	It would be impossible to tease out how many applications had been refused on Garden sites as this information was not currently kept.
PC21	The planning department has a statutory obligation to contact all residents within 4 metres of an application but the Planning Committee has extended this to 10 metres.
PC22	Further permission would be required for any development for which planning permission had not already been granted.
PC23	The government's recommendations were that a planning officer should deal with 150 applications per year. One Derby development control officer has dealt with 320 this year.
RS21	The government is putting a greater emphasis on planning

	departments' 'place shaping' role. All areas of the planning function will require greater capacity and support if 'place shaping' is to be done proactively.
RS22	Fees for determining planning applications can be reviewed in April, but this will be when the Planning Development Grant funding will stop..... government advice was that as fees increase the 'surplus' should be used to compensate for the loss of the PDG so that the PDG improvements can continue to be resourced from the increased revenue.



5.3 Outcome of the Evidence gathering meeting on 29 November 2007.

The notes of the Commission's meeting with Phil Grant of the Royal Town Planning Institute are contained in Appendix A of this report. The key points of this meeting are listed in the table below:

Table 5

PG1	The information contained in Planning Policy Statement PPS3 is very relevant and important so far as developments on former gardens are concerned.
PG2	The objectives of the Planning Policy Statement PPS3 are the delivery of high quality housing and the effective use of land, and there is a presumption that previously developed land is a preferred option.
PG3	The government's target is to build three million new homes by 2020
PG4	The government's intention is that most of the new houses will be built on previously developed sites, and these of course include former domestic gardens.
PG5	A Private Members Bill which was intended to remove gardens from the classification that included brownfield sites has not been successful.
PG6	The focus on brownfield sites is intended to contain urban sprawl and protect greenfield sites.
PG7	In some cases the quality of former industrial brownfield sites is such that the remediation work needed to prepare the land for housing will be prohibitively expensive.
PG8	Any strategies to control the building of housing need to have a strong evidence base, there needs to be a good understanding of need and good communications between a Council's development management and planning policy teams.

PG9	If there is evidence to support it, there might be justification for the argument that if a Council's housing delivery quota is being met there is no need for backland development.
PG10	Asked if there were any ways in which Council planners could legitimately refuse applications for backland developments, PG explained the approach that had been taken by East Hampshire District Council which, whilst permitted the development needed to deliver its housing quota, had protected certain areas from backland development by creating areas of 'Special Housing Character' where backland development was prohibited or restricted in order to ensure that the particular character of the areas was maintained.
PG11	The new policy is included in East Hampshire's adopted plan and will be included in their LDF. the intention is to provide a means for rejecting proposals that are out of place or out of scale and so adversely affected the character of the areas
PG12	Householders are not forced to allow building in their back gardens. They do this because they have presumably decided to accept the financial incentives offered by the developers.
PG13	Another way of controlling backland development in gardens that backed on to a green open space would be to redefine the boundary of the space so that it fell within the gardens adjacent to the open space. This would change the designation of part of the gardens from brownfield to greenfield, which would preclude development on them.
PG14	The intensification of some areas could actually support local businesses and help build communities.

6. Discussion of the evidence heard by the Commission

In his letter dated 26 November 2007 the Vice Chairman of the Allestree Preservation Group said that 'it is apparent that there is a huge degree of concern within Allestree as to the effect that the continued development of the area is having. Of the other reasons quoted, by far the greatest concern was the loss of garden habitat and the subsequent effect on the environment'.

The Vice Chairman goes on to say that the Group consider that infill development adds to the load on the infrastructure, without adding to the infrastructure itself and have suggested that the Council must take a long hard look at the use of in-fill development, and must not shirk from declaring an area as non-brownfield status where it is apparent that overdevelopment is causing massive overstretch of the infrastructure. The Group urges the Council to respond to the questions asked by Councillor Webb at the last council meeting, and place a hold on further development of Allestree until a full assessment of the problem has been properly undertaken.

The comments made by the residents who gave evidence to the Commission meeting on 25 September 2007 and the outcome of the Allestree Preservation Group's recent survey serve to illustrate how strongly some Derby residents feel about backland development. This strength of feeling is completely understandable as are the comments about traffic congestion and pressure

on schools and local services that were made in the Allestree Preservation Group's letter. However the information provided by Paul Clarke shows that during the period 2004/07 the total number of properties in Derby that were completed on garden sites was 279. It is considered unlikely that the problems identified by residents are directly attributable to the relatively small number of these backland developments that were built in Allestree.

It is also important to remember that the issue of backland development is not a problem which is confined to Derby. Indeed if the article in the Sunday Telegraph of 30 September is correct, there are many other UK local authorities where the situation is likely to be much worse.

Allestree and the other affluent suburbs of the City are attractive to developers because people want to live there. They want to do this because there are good local shops, the schools and medical facilities are comparatively good, crime rates are relatively low, the areas are pleasant, and for all these reasons they are places in which people aspire to live.

These factors mean that this is a high demand for properties in these areas and developers can charge premium rates for the houses that they build. Unfortunately the only land available for development in areas such as Allestree is backland, former garden, land but if even if greenfield land was available for development, the resulting increase in local population would still result in pressures on schools and medical services and in increased traffic.

In order to address the residents' complaints and to attempt to formulate recommendations that are likely to be effective in addressing this issue it is necessary to consider the drivers of the situation and the options available to the City Council for responding to the situation as it exists in Derby.

The starting point for this is the demand for housing. It is clear that there is a high level of unmet demand for new housing in the UK. The drivers of this demand are factors which include increased immigration, the trend to smaller households and the overall increase in average lifespan. The Commission has been told that with the trend to smaller households a small increase in the population of an area can result in a significant increase in the demand for housing.

The demand has been recognised by the Government and they have a target to build 3 million new homes by 2020. The provision of the new housing is a priority target for the government. This was emphasised by the Prime Minister who at the 2007 Labour Party Conference said that by the next decade 240,000 homes would be built in the UK, and by the information from the ONS which predicts that 233,000 new households per year will be created by 2016.

The allocation of this new housing to areas is done by the Regional Assemblies which allocate numbers to districts. Derby's target is 700 houses/year and the Commission has been told that the demand for these

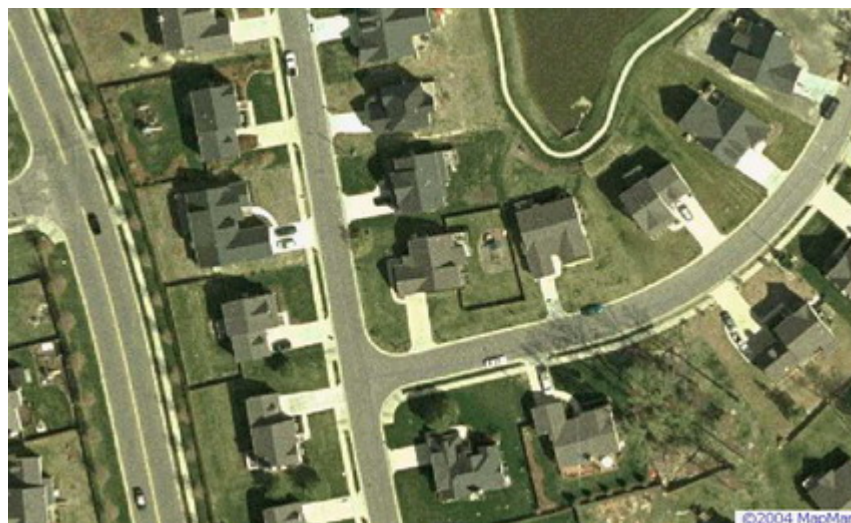
houses comes from people who are already living in the area or who have moved to the area because of employment.

In order to contain urban sprawl and protect greenfield sites, the government intends that most of the new houses will be built on 'previously developed', brownfield, sites. There is also a presumption in PPS3 that previously developed land is the preferred location for new housing developments. This makes it hard for local authorities to refuse any properly constituted applications for housing development on brownfield sites. Indeed, according to the House of Commons Library, there is enough in the guidance to justify developers appealing against any refusal of this type of application with every chance of success

Former domestic gardens are 'previously developed' land and as such currently fall within the category of brownfield sites as they are 'land which is or was occupied by a permanent structure and associated fixed infrastructure'.

Former domestic gardens are attractive to developers because they are usually clean, safe and attractive sites with easy access to services and amenities. The finished properties are also often likely to sell for high prices because of the neighbourhood in which they are located. The desire to maximise profits may well lead developers to submit initial applications that are excessive and out of character with the area, but if these contravene planning policies and procedures the Planning Control Committee can and will refuse them.

Finally, although many residents are obviously opposed to housing developments on former domestic gardens, these developments have come about because other residents of the area have voluntarily decided to exercise their rights as property owners and to sell their houses and/or gardens to the developers who have built, or wish to build, the houses on them. The Council has no powers to prevent land owners from selling their houses and/or gardens to whomsoever they wish.



6.1 Possible actions to address the current situation

It is clear from the evidence that has been considered by the Commission that there is no quick and simple solution to the problem that is perceived by some residents to exist in some areas of the City. The problem is compounded by the drive by central government to build new houses and to build those houses on previously developed land.

For Derby the main questions seem to be whether or not the current level of backland development is having a significant and quantifiable adverse effect on Derby's residential suburbs and if so, whether changes to its planning policies would provide the Council with more control over this kind of development.

The Council has well established planning policies and procedures and the Commission has been told that individual applications are considered on their merits and are refused if they do not meet the defined criteria. The Commission has also been told that decisions which are not supported by policy are likely to be overturned at appeal and that local authorities cannot refuse an application if it satisfies policies or defined criteria.

The Commission has heard evidence that the Council has current planning policies and procedures which are being applied to applications for backland development on former domestic gardens. The question is whether there is a case to amend and strengthen these policies and if so in what way. Under the new planning system, policies are set out in the various documents comprising the Local Development Framework (LDF). There is an opportunity in the coming year to influence key plans being prepared as part of the LDF in order to ensure that the issue of back garden development is addressed. These documents include the Core Strategy and the Sustainable Design Supplementary Planning Document (SPD).

There appear to be a number of policy options which could be examined in order to provide for the improved control of backland developments in Derby. These options include:

1. Use of the proposed Sustainable Design Supplementary Planning Document to expand upon existing Local Plan guidance for the development of backland sites
2. The development of new policies within the proposed LDF Core Strategy. These could include policies for different sorts of brownfield sites and policies to protect and/or improve the established character particular residential areas.
3. The identification and declaration of 'Areas of Special Housing Character'. This is the approach adopted by East Hampshire District Council.
4. Realignment of the boundary of public open spaces to include part of the gardens of adjacent residential property.

The Commission was told that evidence would be needed to investigate and justify the adoption of any of these options. This will mean that they cannot be implemented without additional work by officers of the Community and Regeneration Department.

Resources have been identified as an issue within the Development Control and Plans and Policies teams and it is suggested that extra staff resources will be needed to develop and implement any initiatives proposed by the Planning and Transportation Commission.

7. Recommendations

The recommendations are intended to address the issues identified as a consequence of the Commission's review.

Recommendation 1

That the Council Cabinet Member for Planning and Transportation ensures that the proposed Sustainable Design Supplementary Planning Document (SPD) includes appropriate detailed guidance on how existing Local Plan policies should be applied to backland garden sites.

Reasons 1

The Commission has been told that policy based reasons are needed to control planning applications for former domestic gardens and to justify the refusal of inappropriate or unsuitable applications for these sites. However, members have been informed that the current Local Plan only contains generic design policies for windfall sites.

The Commission considers that the Council is currently at a disadvantage because it has no supplementary guidance to illustrate how the principles of the Local Plan should be applied in these circumstances. The forthcoming Design SPD, scheduled for publication as a draft for comment in September 2008, is an opportunity to remedy this deficiency.

Recommendation 2

The Planning and Transportation Commission recommends that the Cabinet Member for Planning and Transportation should investigate how policies within the Core Strategy and other Local Development Framework (LDF) documents might be developed to give greater clarity and weight to the concept of protecting the established character of particular residential areas of the City. This should include examination of the following policy options:

- a. The development of distinct policies for different categories of brownfield land, distinguishing for example between garden land and former industrial land.

- b. The approach taken by East Hampshire District Council to declare 'Areas of Special Housing Character' to protect the established character of some of Derby's suburbs.
- c. The realignment of the boundary of some or all of Derby's green open spaces to include part of the gardens of adjacent residential property, thereby precluding future backland development on land adjacent to the green open spaces.

Reasons 2

Members have been advised that the new planning documents being prepared as part of the LDF, including the Core Strategy, represent an opportunity to strengthen policies to protect the character of particular areas of the City. Members consider that these options have the potential to provide the Council with the policies and controls that it requires to more effectively resist inappropriate and unsuitable applications for backland developments in the City.

Recommendation 3

It is recommended that if funding allows, particularly if income generation from planning charging exceeds expectations, the Council Cabinet Member should take action to address the current high workload of the officers of the Development Control and Plans and Policies teams and that in the medium term regard is also taken of the additional capacity and support that will be required if these teams are to effectively deliver the new 'place shaping' role that is envisaged by central government.

Reasons 3

Members of the public have criticised the quality and content of Planning Control Committee reports to the Commission. They have also commented that calls and letters to planning officers have not been answered and that the officers are not easily accessible.

Paul Clarke has informed the Commission that whilst the government's recommendation was that planning officers should deal with 150 applications per year, one of the officers in his department had dealt with 320 applications in the past year.

Members consider that the heavy workload of the development control officers must, inevitably, have an adverse impact on the quality of the officers' work on planning applications, the time that they can devote to dealing with enquiries from the public and the nature/quality of those contacts.

Members are also concerned that the heavy workload of individual officers will increase stress levels and the likelihood of mistakes. More mistakes will increase the likelihood of complaints which will further increase stress levels.

The additional complaints will need to be investigated which will take time that cannot then be used to deal with planning applications. This in turn will further increase the pressure on the officers which will increase stress levels and may lead to further mistakes. Officers who are stressed and working under pressure may, understandably, be less helpful to objectors than they otherwise might be.

The Commission considers that the only way of resolving these problems is to reduce the workload of individual officers. This can only be done by increasing the number of officers available to do the work. It is considered that this needs to be done urgently to improve the quality of service to the public and, most importantly, to protect officers from excessive work related stress.

Recommendation 4

- a. That the Cabinet member should consider how the Planning Obligations SPD, as recently approved for consultation by Cabinet, can be strengthened in its final form in order to better off-set the load on local infrastructure created by backland developments. In particular, consideration should be given to the scope for reducing thresholds for different types of contributions.
- b. That consideration be given to how planning obligations policies can be further strengthened along the lines set out in a. above through the preparation of the Core Strategy, having regard to current legislative proposals for a Community Infrastructure Levy, or 'planning charge'.
- c. The Council Cabinet Member is recommended to ensure that Local Members and Neighbourhood Boards are involved in discussions to agree the use of Section 106 monies paid to the Council by the developer, subject to planning policies.

Reasons 4

The Commission has been told that S106 contributions are currently only sought for developments of over nine units on one site. This is because it is not cost effective to ask for S106 funding from smaller developments. For some types of contribution, e.g. secondary schools, the threshold is higher still. Consequently the small piecemeal nature of backland developments often means that no funding is secured from these developments.

Residents who have given evidence to the Commission have complained that backland developments place demands on local infrastructure but contribute nothing to it. If it were possible to reduce the thresholds being applied, this would provide an additional source of funding that could be used to the benefit of the area. The Commission is also of the view that local Members and the relevant Neighbourhood Board should where possible have a greater input into determining where S106 funds are used.

The recent draft Planning Obligations SPD sets out policies for negotiating S106 agreements within the context of the Local Plan and there is an opportunity to strengthen this guidance before it is finalised. The forthcoming preparation of the Core Strategy process is an opportunity to look at this issue in more depth. However, regard will need to be had to the effect of the Government's recent proposals for a Community Infrastructure Levy. This would in effect be a form of 'roof tax', calculated on the basis of overall infrastructure requirements arising from development, and will apply to all housing schemes, leading to a somewhat reduced role for S106 agreements.

Recommendation 5

The Commission recommends that the Cabinet member examines, and where appropriate enhances, the processes for publicising and consulting on proposals for backland development.

Reasons 5

To ensure that the Council is doing everything that is reasonably practicable to inform residents of an area of the proposals that are likely to affect them and to make it as easy as is practicable for residents to give their views on what is being proposed.

Planning and Transportation Commission

Outcomes of Review meeting – 25 September 2007

The meeting was attended by:

Councillors Dhindsa, Berry, Lowe, Tittley and Care.

Paul Clarke gave evidence to the Commission on behalf of the Regeneration and Community Department.

Fifteen members of the public attended to listen to the proceedings and the members of the public who gave evidence were:

Dexter Welton (DW)
Michael Holland (MH)
Jane Temple (JT)
Carol Smith (CS)
John Russell (JR)
Penny de Abru (PA)
Cedric Faulkner (CF)
Mr Ansen ()
John Harris (JH)

The Chair explained the reason for the meeting and the objectives of the review. He said that the purpose of the evidence gathering meeting was to identify themes that could be used to offer structured recommendations to the Council. The Commission members then introduced themselves to the audience.

The Chair introduced Paul Clarke (PC) who gave a presentation on the development control process. He gave an outline to his presentation and said that he would cover:

- Background information
- Current legislation
- The Government's response
- Current criteria
- Options for the future

PC defined backland as unbuilt land lying behind existing developed frontages and which may have no suitable access of its own, and brownfield land as land which is or was occupied by a permanent structure and associated fixed surface infrastructure. He said that domestic gardens and driveways fall within this definition.

PC told members that the current legislation comprises:

- The City of Derby Local Plan (CDLP), which guides development for the next 5 years, and he said that decisions on planning applications must be made in accordance with the CDLP unless material circumstances dictate otherwise. PC said that the CDLP contained general (GD4 and GD5) and specific (H13, E23 and T4) policies that apply to planning applications.
- Government guidance consisting of Planning Policy Guidance and Planning Policy statements which set out the national policy framework.

PC said that PPG3 (housing) did include a reference to backland and tandem development but this was deleted in the newer version PPS3. He said that PPS3 built on PPS1 (delivering sustainable development) by advising that 'good design should contribute positively by making places better for people' and that designs that are inappropriate in character or which fail to take opportunities for improving the character and quality of a neighbourhood should not be accepted.

PC told the meeting that the Council has to attach weight to individual policies and apply judgement to each one. He said that this judgement is informed by officers' professional opinions and takes into account 'material relevant factors', which include appeal decisions.

PC said that last year the Council considered 210 applications for housing development and of these refused 61. He said that nine of these applications involved the development of nine or more dwelling units.

PC showed and explained two slides which illustrated acceptable and unacceptable backland schemes.

Referring to the Government's response to the points raised by the Council on this issue, PC said that in her letter of 9 August 2007 Yvette Cooper emphasised the considerable need for new housing in the right place and he said that this simply restated the position set out in current planning policy. PC told the meeting that although the Council has a five year supply of housing land it does not have excessive numbers of suitable sites and that applications cannot be refused solely on the grounds that there are other sites available. He said that each application had therefore to be considered on its own merits.

PC also said that there could be no presumption that land which has been previously developed is suitable for housing development, and he emphasised that each proposal had to be considered on its own merits in accordance with the Council's policy criteria, currently H13 Residential Development – General Criteria.

PC said that in accordance with H13, planning permission for residential development will only be granted provided that the following objectives are met by the proposal:

- f) A satisfactory form of development and relationship to nearby properties can be created
- g) The proposal delivers a minimum average density of 35 dwellings per hectare unless there are clear environmental reasons for a lower density.
- h) The urban forms, designs and layouts facilitate energy efficiency and the proposed density
- i) The proposals create a high quality living environment and an interesting townscape.
- j) There are good standards of privacy and security

PC said that with regard to residential development on windfall sites, H13 gave priority to suitable previously developed sites within urban areas. He said that H13 did not normally permit development that would intrude into the countryside.

PC told members that when considering a planning application consideration was given to advice from specialist consultees, neighbours, and local interest groups. Guidance documents were also used to arrive at a well considered design solution.

PC pointed out that effective decision making involved the correct interpretation of policy. He said that officers and members needed to be aware that any decision could be challenged on appeal so any recommendation to refuse needed to be properly justified by the policy.

PC told the meeting that there were two possible options for the future. These were to use the Sustainable Design Planning Document to expand upon the guidance relating to the development of backland sites or for the Chair and Vice Chair of the PCC to review all future applications for residential development on former garden land. However he said that in practice they largely did this anyway.

Members of the Commission then asked questions of PC on the information he had provided to the meeting.

Referring to the slides of development land that PC had shown, a Commission member asked whether the approved development had taken place on a phased basis. PC confirmed that this had been the case. Another Commission member then asked about the definition of backland. PC said that it was defined as land lying behind existing developed frontages which may have no suitable access of its own. He confirmed that the Planning Committee had granted permission for the land shown in the slide.

A Commission member asked about the differing advice on backland development given in PPG3 and PPS3. PC confirmed that PPG3 mitigated against the development of backland sites but said that this was not the case for PPS3.

Referring to a question from a Commission member about the letter from Yvette Cooper, PC said that local authorities had to identify five year's supply of housing land and seek to maintain this resource. He confirmed that local authorities had to have other reasons for refusing an application for backland development and could not just rely on having five year's supply of land.

A Commission member asked whether only the applicant could only appeal and then only if an application was turned down by the Planning Committee. The Commission member suggested that if objectors were able to challenge the granting of planning permission it might change the planning officer's view of the application. In response PC said that this would bring the whole process to a standstill as it was likely there would be either third party appeals or formal appeals from the applicant depending on the outcome of the application.

The Commission member asked whether it would be possible for the Planning and Transportation Commission to look at the proposals for the Sustainable Design Planning Document as soon as possible.

PC said that to meet the requirements of the CDLP the Council had to look continuously for new housing land. However he said that windfall sites were not included in this process and could not be planned for or taken into account.

A Commission member asked about the relative use of brownfield, windfall and greenfield sites in Derby. In response PC said that windfall sites could be greenfield sites, although these would not necessarily be considered favourably. He said brownfield sites would be given favourable consideration but pointed out that not all sites were suitable for housing.

A Commission member referred to PC's comment that most planning applications fell within a grey area and asked how this might be changed. PC said that this was covered by the Supplementary Planning Guidance. He said that Planning Policy was overarching, the CDLP put the flesh on the bones and Policy H13 applied to specific examples. PC said that developers were unlikely to go against strong policy.

A Commission member referred to Yvette Cooper's comments about inappropriate development and asked how much importance was given to the character of an area when determining applications. PC said that this amounted to a judgement call on the part of the planning officer. He said that greater emphasis was placed on getting the design right.

A Commission member asked whether it would be feasible to put density guidelines in future guidance to make them more objective. PC thought that this would be too prescriptive. He said that the inspector's views were that every site was different and needed to be treated as such.

There being no further questions from Commission member, the Chair thanked PC for his input and he then left the meeting.

The Chair then invited the members of the public who had asked to be allowed to speak to give their evidence.

1. DW

DW told the meeting that he represented the Allestree Preservation Group. He referred to John Prescott's original proposals to encourage development of former industrial brownfield sites and said that he thought PPS3 recognised this policy.

DW said that PPS3 did not encourage the demolition of houses when there were industrial brownfield sites still available and he suggested that demolition in residential areas should not be allowed without the agreement of residents.

DW told the meeting that areas such as Allestree were good to live in because the residents had made them so. He suggested that if there were 100 objections to an application the objectors should be allowed to challenge it.

DW said that an influx of new residents into an area clogged the infrastructure of the area and he said that house building was often done without adding anything to the infrastructure. He also suggested that the Council had not given any incentives to developers to build on brownfield sites.

DW said that if lots of starter homes and 2 bedroom flats were built, it unbalanced the nature of an existing area. He told the meeting that he thought the Planning Control Committee was trying to wipe out the nice houses in Derby and he said that good houses were not surviving the developers.

DW said there was a need to repair a broken planning system. He said he did not trust the Planning Control Committee and the Planning Officers. He thought the Council was running scared and should turn down applications for backland sites, not approve them. DW said that PPS3 should not be subjective and if it was it should not take Planners' views into account. He also questioned the legality of listing anonymous objections.

DW was concerned that the developer had the opportunity of confidential meetings with Planning Officers and he wanted a record of these meetings made public. He said he thought that because of such meetings the applications appeared to be pre-determined.

DW said that he went to the PCC meeting on 21 June and thought that debate there was stifled by moves to approve applications. He thought that PCC required more oversight to make sure it was acting correctly and consistently.

DW suggested there was a need to re-define what was meant by backland. He thought that infill development should not be permitted or that if it was,

outline permission should not be given for it. DW also said there was a need to protect trees that had TPOs.

DW suggested re-examining the use of greenfield sites and giving developers incentives to develop brownfield land. He also said that the Council should use PPS3 in the way it was meant to be used and that it should stop allowing the demolition of residential properties.

2. MH

MH said that he supported the points put forward by DW and said he thought it was necessary to find ways of improving current planning laws. He said he did not think it was the Government's intention that PPS3 should be used in the way in which the Council was using it and he thought that as the law does not distinguish between gardens and former industrial sites pressure should be brought to bear on MPs.

MH made five suggestions for improving the current situation. These were:

- To simplify the rules
- Take scale into account
- Have regard to the needs of the community
- Have a system of redress
- Accept appeals against applications

MH said he thought there was too much guidance and said there was a need for clarity not quantity. He thought that the impact of proposed new building on the neighbourhood should be taken into account and that new developments should be sustainable.

MH said that the need for any development should be taken into account when the application was considered and he suggested that the Council should re-assess the Council Tax band of nearby houses and reduce Council Tax or in other ways compensate owners for any loss of value of their properties. He thought that this money should come from the Council or central government.

A Commission member pointed out that any right of objection to an appeal would require changes to the legislation and was not something the PCC could introduce.

3. JT

JT said she thought there should be a proscription against developments in gardens. She said her reasons for this were that they:

- Affected the neighbourhood
- Could cause flooding
- Removed wildlife habitats
- Could adversely relate to other properties

JT suggested that the Council should lobby for a change to the legislation governing developments of this type.

JT also expressed concerns about the practice of paving front gardens to allow car parking. She said that it affected the character of the area and could also cause flooding and she suggested that it should be necessary to obtain planning permission to carry out this work.

A Commission member asked about the regional guidance on biodiversity and how this affected developments on former gardens

4. CS

CS said that she represented the Allestree Preservation Group. She said she was appalled at what was happening in Allestree and she asked to whom the terms 'inappropriate' and 'satisfactory' applied.

CS raised the issue of consultation on Nos 454/456 Duffield Road and the Kingscroft scheme. She said that neighbours did not know what was happening on these sites unless they lived very close to them. She thought that notification using the Council's website, notices and adverts in the local paper were not sufficient and meant that many people did not find out about the applications until it was too late. CS said that she realised that this was all that was legally required of the Council but she thought it was not sufficient for the development of what amounted to small housing estates.

CS said she thought;

- There was too little consultation
- Applications came to the public arena with the work already done and too late for objectors to influence them
- It was wrong that developers were allowed to discuss their applications with Planning Officers and residents were not informed of the outcomes of these meetings
- The PCC worked behind closed doors and schemes were considered secretly
- Local people were not given the same service as developers
Planning officers did not answer their calls or letters
- The whole matter was driven by the need for houses and objections were ignored
- Planners only comply with the letter of the law

CS said that Planners needed to have regard to objections, consider the City as a whole and listen to the electorate, otherwise the suburbs will be destroyed. She said that she thought the situation was being driven by the officers.

CS said she wanted early access to the whole process. She felt that there should be more and bigger notices and more site visits.

A Commission member agreed with the suggestion that objectors should be allowed on site visits and CS said that their views were often disregarded.

DW suggested getting developers to pay for publicity and that planners should be present at their open days.

5. JR – Broadway Action Group

JR said that local government had lots of targets to meet. There were lots of innovative ideas and solutions but targets were needed for high density community living.

JR said that garden grabs failed to meet these targets and he felt that big developers should be made to allocate a certain percentage of their land to smaller developers. This would avoid the current situation where smaller developers have to build in gardens because there is no other land available to them.

JR said that housing should be designed to fit sites and should not alter the character of the area.

JR referred to former garden cities and the developments that are now taking place in gardens on Penny Long Lane. He said that land banks encouraged opportunistic owners and felt that a fresh planning strategy was required as there was no simple fix to the problem. The planning strategy would need to be flexible to provide for different aspirations.

6. PA

PA said that she was a Derby HEART member. She said she did not agree with the views expressed by a planning officer at a previous meeting, that houses to be demolished were 'not special'. She said she thought that this was subjective and poorly argued.

PA said she thought that replacement buildings were often of mediocre design and she said that robust guidelines and higher standards and vision were required

PA said that planning officers' reports lacked objectivity and often omitted essential details. She referred to one report which she alleged had omitted to note that the development would be flooded by a 100 year storm, and she suggested that more use needed to be made of GD9

PA referred to efficiency targets for planning departments and to funding for the demolition of unsuitable housing stock, and said that Government initiatives were imposed without consultation of residents. She said she would like to see improved accountability and openness and recorded votes which were published in the media.

PA said that at present people were not aware of what was happening in the City

With reference to road and highway planning PA said there was a present no encouragement for pedestrians to visits the City centre and she said that she knew nothing about Connecting Derby Phase 1 until it was built without consultation or the consideration of any objections.

PA also expressed concerns that apartments were being built without gardens.

A Commission member said it was difficult for a member to object to an application if that went against the advice of the planning officer.

Another Commission member suggested that there was a need for a reserve of planning trained members so that PCC meetings always had a full complement of officers

7. CF

CF referred to the domino effect where he said that one garden is sold, others follow and it ends up with an aggregation of gardens to provide a building plot. He said that this often led to streets cluttered with on-street parking.

CF said that the effects of this were:

- Long term owners leaving – which tended to accelerate the problem,
- A shifting population as new occupiers move into an area
- House owners finding it difficult to find a suitable property
- Estates by stealth
- Erosion of the area caused by people wanting to live outside the city

CF said that proper infill could be a good thing.

CF said that there was a need to take an untutored look at planning and to empower the Council and he said there was a need to show justification for any departure from the local plan. So far as backland was concerned he thought there was a need to look at what had been done previously.

CF thought that work on the SPG should be started no as it would be too late in 2008. He also suggested looking at the size of the sdigns used to advertise planning applications

A Commission member wondered how to balance the performance required to maintain Excellent Council status against the other issues.

8. Mr A

Mr A said that he supported the comments on consultation. He said that he felt that any process that involved ticking boxes would encourage disengagement by the public and he said that this needed to be looked into.

9. JH

JH said that with regard to 456/458 Duffield Road, the adverts fulfilled the legal requirements but though he lived nearby, he knew nothing about the process. He said that he felt consultation and notification should be much better and just informing the immediate neighbours was not enough.

JH said that he felt there was a need to level the playing field. He was concerned about S106 gains and about planning officers advising developers with on applications. He thought that the planning officers should also advise residents and he said that he had received a dismissive letter from a planning officer.

JH said he thought that gardens should not be classified as brownfield sites and he also questioned the interpretation by the planners of 'satisfactory and inappropriate'

With regard to the officer reports to PCC, JH said that some of these were misleading and inaccurate and did not give weight to objections. He said there could be no appeal unless there was a decision which limited the action objectors could take. He also pointed out that there was no opportunity for the public to challenge what they considered to be biased reports before they went to PCC.

A Commission member suggested putting links to protesters web sites on the planning website.

A Commission member asked how JH thought it would be possible to improve information to residents. JH said it would help if the report was publicised earlier.

A Commission member asked if it was presumed that permission would be given unless there were reasons to refuse it.

CS asked why TPOs could be over ruled so easily.

DW asked if it would be possible to introduce a right to respond to a provisional approval of a planning application.

PA said she had an issue with PCC members leaving a venue if there was a question on a planning application. She said that this left residents with no member to represent them.

She also said that there was a need to consider ways of strengthening an original decision to stop developers from seeking a change to the conditions of their planning approval.

CF questioned what could be done to challenge misleading information that was given to PCC.

There being no further questions the chair thanked the participants and closed the meeting

Notes of meeting between Commission, Paul Clarke and Rob Salmon on 28 November 2007.

Those present:

Councillors Dhindsa, Repton and Care
Paul Clarke (PC) and Rob Salmon (RS)
EB and DR

The Chair thanked PC and RS for coming to the meeting and explained the background to the review. He suggested there was a need to try and match policies to local needs and said that the input from officers was an essential part of the review.

Opening the discussion PC referred to a presentation by the Planning Inspectorate and the Communities and Local Government Department (CLG) where the emphasis had been on the role of the planning profession putting it back into the centre local government place shaping. He said it was important for local authorities to recognise where resources were needed and in Derby's case to understand the major impact of development on the City.

A Commission member asked whether the proposed new legislation would give local authorities more powers and if they would be able to do more than just reacting to what was proposed by developers. The Commission member wondered whether there would be more options other than just turning down applications.

In response PC said that the message was that PPGs and PPSs were the overarching guide and that local authorities did not need to do more. He said the intention was that the vision should comply with the guidance.

RS said that the Secretary of State seemed to be pursuing a top down quantitative approach to housing provision. He told members that the new LDF system was intended to provide a vision for how the housing quota might be delivered locally and consider the options as to how this might be done.

Picking up on the first question PC and RS explained the national picture. They said that the Housing Green Paper was near the top of the political agenda. Demand for new houses was growing and the forecast was for more

need. PC and RS said that the drivers for the increased need were factors such as increased immigration, smaller households, and people living longer.

RS said that with the current trend to smaller households, a small increase in the population of an area could result in a significant increase in the demand for housing in the area. Consequently the demand for housing was outstripping the supply.

A Commission member referred to figures which suggested that by 2025 the population would have increased by 9% and the demand for housing by 17%.

RS told members that to meet the increased demand the government were looking for 240,000 new houses to be built each year by 2016, and he said that particular growth areas had been identified in the country.

A Commission member asked whether local authorities had any flexibility in interpreting the government's guidelines for new housing and he asked whether the assumption was that local authorities needed to look at the best ways of achieving the targets.

PC pointed out that he and RS needed to take a different approach to meeting the targets. He said that RS's concern was how the numbers might be delivered whilst he was concerned about the way in which they were delivered in terms of matters such as urban design and layout .

RS told members that the old approach had been to look at the land that was known to be available and at what might be expected to become available through 'windfalls' coming forward. He said that the contribution of 'windfall' sites in recent years had been bigger than expected as developers had come up with more innovative ways of developing land. Schemes had come forward that would not have happened ten years ago.

As an example of this PC referred to the apartments that were proposed for Palmerston Street which he said were outside the area 'traditionally' considered for apartments.

RS said that the number of such residential developments had allowed the Council to hold back on the development of some conventional sites. This would not have been possible without the windfall contribution. RS said however that under the new LDF system the government expected greater identification of potential development sites so there would not be such a need to rely on windfalls.

A Commission member asked how residential developments near the City boundary were counted into the total and the Chair enquired how UK targets applied in Derby.

In response RS said that the housing allocation process, while ultimately approved by Government, was initially done through the Regional Assembly which allotted numbers to districts. These numbers were broken down first to

the Housing Market level, which are groupings of local authorities, and these were then in turn broken down further and allocated to individual local authorities. In the case of Derby, there is an intermediate category between the district and housing market level in the form of the Derby Principal Urban Area (PUA). This is Derby City plus the immediately adjoining parts of the neighbouring districts into which the built up area is gradually expanding. RS said that in the Derby area the proposed PUA requirement was for 980 houses/year with 700 of these being inside the City boundary. These are all needed for the growing population of Derby.

A Commission member asked whether the 1000 houses reflected the growth point. RS confirmed that this was the case and said that the demand for new houses came from people already living in the area, or who had moved into the area because of employment. He said that the growth point was a useful status to have to attract Government funding but had not in itself led to more houses being proposed for the City. He told members that current proposals were for the Derby Housing Market Area to provide slightly less housing than its projection, because it was considered that Nottingham should take rather more.

RS said that the current quota for Derby, South Derbyshire and Amber Valley was 1770/year up to 2026.

The Chair asked how this number of houses could be delivered. RS said that some of the requirement could be delivered through the Local Plan which provides enough land to about 2013. He said that the Cityscape master Plan also offered longer term opportunities and there was land likely to become available on the former RR sites in the Osmaston area.

RS said that if all potentially available land was added together it provided enough for 700 houses/year for the next 15 years. About seven years worth of land was immediately available for development. However he agreed that there could be problems if the numbers that Cityscape was expected to provide were not achieved. RS said that what was now required to ensure continuity of supply was the preparation of new style LDF plans covering the whole period to 2026, including a 'Core Strategy for the City.

A Commission member asked about the provision of apartments and said that he had concerns about the affordability and suitability of what was currently available. In response RS said that so far as the numbers were concerned houses and apartments both contributed in the same way towards the total. The Commission member suggested that the use of back garden sites to build apartments was not what was needed to satisfy future demand.

RS told members that local requirements for housing mix could be introduced provided that there was evidence to justify them. He said that if the evidence was available then requirements could be written into LDF plans.

A Commission member asked how the Council could manage the demand for housing and said that larger numbers of small households resulted in an

increase in the carbon footprint. In response PC said that local authorities had to manage the demand through core strategy and by assessing the suitability of sites. RS said that the overall number of houses was the guide and that this was determined by government policy. The Chair said that the Council had an area to work in and a housing target to meet for the area. This could be achieved by any mix of properties.

RS confirmed that the Council could develop a policy on housing mix provided that it could demonstrate the need for a particular mix. He said that the outcome of a new study – the Housing Needs and Market Assessment was expected soon and would inform on housing needs and types required.

RS drew members' attention to the forthcoming LDF core strategy which would contain a statement of policy principles at local level. This will look at how the housing target would come forward, what sites would be included, the need to identify additional sites and the assumptions that had been made about windfall sites.

The Chair asked about the powers and planning processes that the Council had to control the development of windfall sites. In response RS said that this could currently be done through Development Control using the Local Plan. There would be the opportunity to develop new policies through the LDF. The current Local Plan does not include a policy for garden land, only for windfall sites. RS said that there was an opportunity to develop more finely tuned policies in the LDF Core Strategy for different sorts of brownfield sites but firm evidence would be needed to justify any new policies.

It was noted that the Planning Inspectorate would apply a test of soundness to the Core Strategy and therefore all new policies had to be evidence based in order that they could be justified.

A Commission Member queried whether lack of infrastructure to support new homes could be used as a reason for refusing a development. PC said that for developments over 9 units on one site Section 106 money could be sought to compensate for their impact however it was not cost effective to ask for S106 funding for smaller developments and therefore the small, piecemeal nature of backland development often meant that no S106 funding was secured on these developments.

A Commission member had to leave the meeting and summarised the evidence heard to this point as: The LDF can stipulate the areas the Council wants to protect from backland development as long as there is evidence as to why houses should not be built in that area and that there is space for development elsewhere in the city. The officers agreed with this summary.

The Commission Members asked whether in addition to the above there were any other powers that could be used to refuse backland development. PC said that applications could be refused if they went against the Council's other planning policies eg green belt land.

RS emphasised that if the Council had a detailed plan which enables officers to demonstrate that there were satisfactory sites for development elsewhere in the area, and there were policy based reasons for protecting the land concerned, then a refusal could be defended with those policies.

The Commission discussed how the Council could encourage developers to look to develop areas with a low density of housing. It was noted that some work on this had already been done with urban renewal areas which provided developers with incentives to develop particular sites.

The Chair asked why officers felt developers were so keen to exploit garden land for development. PC said garden land was often on a clean safe attractive site which was likely to sell for a premium.

Councillor Dhindsa felt that the issue was not to prevent all backland development across the city but to prevent inappropriate developments on backland sites that were of high density or did not fit with the character of the area.

RS felt that the planning department and committee would be in a far stronger position to refuse high density developments when it could be proved that housing need could be met without that particular development as there was sufficient space for development elsewhere.

PC said that if there was a policy that a refusal could be hung upon it was less likely that a decision to refuse would be overturned at appeal.

It was noted that the Supplementary Planning Document, (which is likely to be implemented in September 2008) could also be strengthened to have clearer information about appropriate design issues.

The Commission members asked what legislation there was currently on windfall sites. RS reported that Policy H11 in the Local Plan dealt with windfall sites but that the criteria could be strengthened in the supplementary planning document for example by defining what is meant by terms such as 'satisfactory' as referred to in the current policies.

The Chair asked how else the Commission could influence planning for backland developments. RS said the core strategy or other LDF documents would perhaps be able to give greater clarity and weight to the concept of protecting the character of an area provided there was evidence to back this up.

A Commission member asked whether it would be possible to allocate areas as having another purpose other than housing development eg allotments and was told that a site could have any allocation as long as there was evidence of a need for that allocation.

PC provided the information in the table below on the number of developments on garden land in the city:

	2004/05	2005/06	2006/07	Total 2004/07
Total completions	887	917	1104	2908
Total completions in gardens	56	93	130	279
% of all completions in gardens	6.3	11.2	11.7	9.5

PC said that it would be impossible to tease out how many applications had been refused on Garden sites as this information was not currently kept in that form.

The Chair raised the concerns residents who attended the initial evidence gathering meeting had had with regard to the publicity of planning applications. In response PC said that that the planning department had a statutory obligation to contact all residents within 4 metres of an application but that the Planning Control Committee had extended this to 10 metres.

The Chair also asked about the changes that could be made to an outline planning permission without the need for a new planning application. PC said that further permission would be required for anything for which permission had not originally been granted.

The Commission members discussed the pressures the planning department were under in terms of the resources. PC reported that government's recommendations were that a planning officer should deal with 150 applications per year and said that one officer in his department had dealt with 320 applications this year. Commission members felt that a better ratio between the number of applications being dealt with by each officer would see an improvement in the quality of decisions being taken about applications.

PC said that Council Cabinet had recognised the need for extra resources by approving funding for one further planning officer for 3 years however RS reminded Commission Members that the government was putting a greater emphasis on planning departments 'place shaping' role and that all areas of the planning function would require greater capacity and support if 'place shaping' is to be done proactively.

It was noted that whilst fees for determining planning applications could be reviewed in April, this would be the time that the Planning Development Grant funding would stop. PC said that government advice was that as fees increase the 'surplus' should be used to compensate for the loss of the PDG so that the PDG improvements can continue to be resourced from the increased revenue.

PC reported that he was exploring ways of charging developers for pre-application advice but said it was important that this fee did not deter people from seeking advice prior to submitting plans, since this was likely to result in problems later in the planning process.

There being no further questions the Chair thanked the witnesses and the meeting ended at 8.00 pm.

Notes of meeting with Phil Grant of the Royal Town Planning Institute on 29 November 2007.

Notes of meeting with Phil Grant of the Royal Town Planning Institute on 29 November 2007.

Those Present: Phil Grant (PG), Councillors Dhindsa, Care and Lowe, EB and DR

The Chair introduced the Commission members. PG said that he was the Royal Town Planning Institute's Policy Officer for England. He told members that he had recently moved to the Institute's Policy Team and that he had previously worked for Planning Aid so he had varied experience of dealing with planning issues concerning the public.

PG said that garden grabbing was an emotive term and he could see why there was such a level of public concern. PG told members that the information contained in Planning Policy Statement PPS3 was very relevant and important so far as developments on former gardens were concerned.

PG said that the government's target was to build three million new homes by 2020 and he referred to the Regional Space strategy for the East Midlands and to Derby's quota of this, which members confirmed was 700 houses per year until 2026.

PG told members that the government's intention was that most of the new houses would be built on previously developed sites, and these of course included former domestic gardens. PG referred to a Private Members Bill which was intended to remove gardens from the classification that included brownfield sites. It was noted that this Bill had not been successful.

PG said that the focus on brownfield sites was intended to contain urban sprawl and protect greenfield sites. PG pointed out that heavy utilisation of former industrial brownfield sites for housing would impact on the land available for new industrial and commercial business uses. He also said that in some cases the quality of former industrial brownfield sites was such that the remediation work needed to prepare the land for housing could be prohibitively expensive.

In response to a question from PG, members said that they were aware of the principles of PPS3. PG said that the objectives of the Planning Policy Statement were the delivery of high quality housing and the effective use of land, and there was a presumption that previously developed land was a preferred option.

PG said that any strategies to control the building of housing needed to have a strong evidence base, and he said that to do this there needed to be a good understanding of need and good communications between the Council's development management and planning policy teams. PG said that if there was evidence to support it, there might be justification for the argument that if

the Council's housing delivery quota was being met there was no need for backland development.

A Commission member asked whether the recent downturn in demand for housing was likely to have implications for the cost of housing. PG thought that the market would still be influenced by supply and affordability and said that the main factor was the availability of houses for first time buyers. He said that if houses were not available in this sector the market would stagnate.

The Chair asked if there were any ways in which Council planners could legitimately refuse applications for backland developments. In response PG explained the approach that had been taken by East Hampshire District Council which, whilst permitted the development needed to deliver its housing quota, had protected certain areas from backland development by creating areas of 'Special Housing Character' where backland development was prohibited or restricted in order to ensure that the particular character of the areas was maintained. PG provided an extract from the East Hampshire policy document which defined their Areas of Special Housing Character. He said that East Hampshire was facing problems similar to those of Derby and wanted to deliver their housing quota but at the same time maintain the housing character of certain picked areas.

PG suggested that East Hampshire's approach could be of real help to Derby in particular areas. He told members that the new policy was included in East Hampshire's adopted plan and believed it would be included in their LDF. He said that the intention was to provide a means for rejecting proposals that were out of place or out of scale and so adversely affected the character of the areas. PG did point out the concern that this approach might lead to the creation of a 'Nobs Hill' environment that and could be to the possible detriment of other areas.

A Commission member asked PG for his views on the development of large garden plots in inner city areas, for example a former vicarage garden. PG said that individual applications needed to be considered on their merits. He suggested that it was necessary to look at where people went for open space and the significance of any open space to an area. He said that spatial planning rather than just solely land use planning was the right approach to this sort of situation.

The Chair reaffirmed the need for the Council to have a policy on which to base its decisions and suggested that for inner city areas the aim should be to improve rather than to protect for development. PG agreed but said there was a need to avoid creation of '60's style sink estates' as inner city replacements.

Returning to the issue of back garden developments, PG pointed out that householders were not forced to allow building in their back gardens. They did this because they had presumably decided to accept financial gains associated with the sale of land for development as there were obvious market forces at work.

PG said that he had heard from a colleague that in some Council areas Development Management teams had been placed under a lot of pressure by developers to provide pre-application advice. When this pressure increased to the level that the provision of the advice was delayed, the number of applications for windfall sites fell because the developers were not prepared to proceed without advice that their proposals were likely to be acceptable. However it must be reiterated that this is purely anecdotal evidence.

PG suggested that another way of controlling backland development in gardens that backed on to a green open space would be to redefine the boundary of the space so that it fell within the gardens adjacent to the open space. This would change the designation of part of the gardens from brownfield to greenfield, which would preclude development on them. PG was unsure of the legal implications of this and suggested he would provide further information, before an action was taken by Derby.

PG reemphasised the importance of a local authority having well defined policy guidelines and said that local authorities should decisions outside the policy framework or their decisions could be overturned at appeal. He also pointed out that local authorities would find it difficult to refuse an application if it satisfied policies or defined criteria and all other material considerations.

A Commission member asked PG how local authorities could encourage developers to build on former brownfield sites. PG accepted that this was a balancing act and said that one option might be to encourage this sort of development through requirements for S106 contributions. If developments were build on former gardens then the developer could be asked to contribute proportionately to the provision of extra amenities for the area.

PG was asked about the potential impact of the new Housing and Regeneration Bill and about the role of the Homes and Communities Agency (HCA). He said that local authorities would be asked to provide figures and sites for the next five years and that the HCA would be able to step in and take over if they did not comply.

PG referred again to PPS3 and said that this set out the criteria for consideration but there was a need to avoid adverse impact. He referred to comment by Chris Shepperley (former RTPI President) who with regard to the impact of development on local amenities had pointed out that the intensification of some areas could actually support local businesses and help build communities.

The Chair commented on the moves that had been made to change the classification of back garden sites but noted that the pressure to provide more houses would inevitably increase demand for permission to build on these sites and green belt and green wedges. A Commission member confirmed that different policies would be needed to deal with this.

There being no further questions the Chair thanked PG for his very useful contribution to the review and closed the meeting.

Response to suggestions made by witnesses at the evidence gathering meeting on 25 September 2007

Table 6

	Suggestions	Number of Witnesses making the Suggestion	Response
1	Stop demolition in residential areas. Demolition should not be allowed without the agreement of the residents	1	The properties in question are privately owned. The Council has no powers to refuse demolition merely because the house is not unfit. Residents views cannot be taken into account when granting approval for demolition
2	Residents should be allowed to challenge applications Accept appeals against applications	2	The planning legislation does not allow appeals against applications
3	Provide incentives for developers to build on industrial brownfield sites	1	The Council does not own many of the brownfield sites and has no funds to encourage developers to build on them – even if this were legal! Developers may in any case feel that there are greater profits to be made by building in an established residential area rather than on a former industrial site
4	Interpretation of PPS3 should not be subjective	1	PPS3 is not prescriptive therefore its interpretation must to some extent be subjective
5	Concerned that developers had confidential meetings with Planners – wants record of meeting to be made available Inform residents of outcome of developers'	2	This is not practicable. Proposals only fall into the public domain once the application has been made.

	meetings with officers		
6	More oversight needed of PCC	1	The Planning Control Committee is an open meeting. The Council has a Corporate Complaints Procedure that members of the public can and do use if they think that the proper planning process has not been followed. Members of the public can also complain to the Standards Board for England if that think that Councillors have acted inappropriately
7	Should re-examine use of greenfield sites	1	PPS3 contains a presumption that previously developed land is the preferred option.
8	Redefine what is meant by backland sites De-classify gardens as brownfield sites Distinguish between gardens and former industrial brownfield sites	3	The Council cannot declassify gardens as brownfield sites. All the Council can do is to refine its planning policies and strategies to make it easier to protect domestic gardens from development.
9	Simplify the rules Lobby for a change in the legislation Fresh planning strategy required Need to take an untutored look at planning and empower the Council Expedite work on SPG	5	One of the recommendations is for the Planning Control Committee to examine the Council's existing planning policies and strategies and to amend them if this is thought necessary.
10	Take the scale of the development into account Housing should be designed to fit sites	2	This is already done – the refusal of the first 'Sandstone' application is an example of this
11	Consider the needs of the community – do not approve developments for which there is no need	1	The Council cannot refuse applications which comply with its planning policies and criteria.
12	Have a system of redress	1	Why should the Council or developers pay to compensate residents for a decision that complies with its planning policies and criteria. Residents do not 'own

			their views', only their properties
13	Make big developers allocate a percentage of their land bank to smaller developers	1	The Council has no powers to compel large developers to sell land to their smaller rivals – this suggestion would be completely unworkable
14	Improve notification of proposals People not aware of what happening in City Improve notification Get developers to pay for publicity	4	The Council already does more than it is statutorily required to do. Organisations like the Allestree Preservation Group can assist their members by circulating publicity about planning applications. The Council has no powers to compel developers to pay to publicise their proposals.
15	More consultation on applications Improve consultation Improve consultation	3	The Council already consults everybody it is required to consult. Increased consultation will add cost and time to the planning process. There are statutory targets that specify the time allowed for the processing of planning applications
16	Take objectors views into account More consideration of objections	2	The Planning Control Committee does take objectors views into account but it cannot refuse applications which comply with planning policies and criteria.
17	More detail on Planning reports Improve accuracy of officer reports and provide opportunity for objectors to challenge them Challenge misleading information to PCC	3	It is not accepted that planning reports are as a matter of course inaccurate, although mistakes may occasionally be made. Objectors can challenge officers reports at Planning Control Committee. There is a recommendation that Planning Control Committee examines the workload of the planning officers to see if more resources are required.
18	Improve accountability and openness and record votes at PCC	1	This is an issue that must be addressed by the Planning Control Committee members.
19	Planning officers should advise objectors	1	The task of the planning officers is to ensure that the applicant makes a valid application. It is not the role of

			the planning officer to assist an objector to make an objection, although there are planning consultants who could presumably do this? However if the application is properly made there should be no grounds for objection.
20	Better protection for trees with TPOs	1	This can only be considered for specific applications

DRR 5 December 2007.