



## **Advice produced by The Planning Inspectorate for use by its Inspectors**

### **PPS3: HOUSING - REMOVAL OF GARDEN LAND FROM DEFINITION OF PREVIOUSLY DEVELOPED LAND AND REMOVAL OF INDICATIVE MINIMUM DENSITY**

1. On 9 June 2010 Greg Clark MP, Minister for Decentralisation, made a [Ministerial Statement](#) announcing the reissue of [PPS3](#) with the following amendments from that date:

- the definition of previously developed land in Annex B now excludes private residential gardens (see Annex A of this PINS Note); and,
- the national indicative minimum density of 30 dwellings per hectare is deleted from paragraph 47.

2. On 15 June 2010 Steve Quartermain, CLG Chief Planner, wrote to Local Authority Chief Planning Officers alerting them to the revised PPS3. The letter is available [here](#).

3. Inspectors should be aware of the Ministerial Statement and of the amendments to Annex B and paragraph 47 of PPS3. The changes to PPS3 announced in the statement should be taken into account as material considerations where relevant to casework involving the proposed development of garden land or of housing development in general. In the absence of a definition, it will be for the decision-maker to determine what constitutes a private residential garden. This will be a matter of judgment based on the facts and circumstances of the particular case (in the same way they have to decide on whether or not land falls within the curtilage of a building).

4. Advice on handling casework involving garden land or the national minimum indicative density is in Annex B for appeals and call-ins, and in Annex C for DPDs.

**NEW DEFINITION OF PREVIOUSLY-DEVELOPED LAND IN PPS3 ANNEX B**

**Previously-developed land (often referred to as brownfield land)**

'Previously-developed land is that which is or was occupied by a permanent structure, including the curtilage of the developed land and any associated fixed surface infrastructure.'

The definition includes defence buildings, but excludes:

- Land that is or has been occupied by agricultural or forestry buildings.
- Land that has been developed for minerals extraction or waste disposal by landfill purposes where provision for restoration has been made through development control procedures
- Land in built-up areas such as **private residential gardens**, parks, recreation grounds and allotments, which, although it may feature paths, pavilions and other buildings, has not been previously developed.
- Land that was previously-developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape in the process of time (to the extent that it can reasonably be considered as part of the natural surroundings).

There is no presumption that land that is previously-developed is necessarily suitable for housing development nor that the whole of the curtilage should be developed.

**APPEALS, CALL-INS, GARDEN LAND AND HOUSING DENSITY**

1. The key test for an Inspector considering the potential relevance of the Government's emerging policy position on garden land and housing density to a piece of casework will be to identify whether the case turns on or refers to garden land or housing density policy, and if it does what action to take in the interests of fairness to the parties.
2. Development on garden land and housing density (including the issue of whether or not there is a five-year land supply) are matters that arise reasonably frequently in casework. Measures are in place to identify casework with garden land and housing density relevance that has not yet been dispatched to Inspectors and to inform our approach to its management. There will inevitably already be cases with such relevance with Inspectors, and we particularly ask for your vigilance in identifying and considering those cases where these policies are relevant and the effects of the new policy position in such cases.
3. The following approach has been developed to assist in determining which cases may merit reopening, which may be dealt with by a reference back to the parties for comment and which cases may not need any additional action:
  - (a) where the new policies have no material relevance, and the cases put by the parties make no reference either to the previous version of PPS3 or to local policies reflecting it, no further action is required;
  - (b) where the parties' cases rely primarily on existing local policies which are not consistent with revised PPS3, or rely on the previous version of PPS3, then the parties should be canvassed; or if the inquiry or hearing has closed, it may need to be reopened (Chart should then be advised); and
  - (c) where there is a reference to the parties or a re-opening, the Inspector should consider whether the case can be completed following consideration of issues raised by the parties or whether a postponement, adjournment or abeyance is warranted.

**DPDs**

1. The first guiding principle in development plan work is where possible to ensure that housing and other sessions where representations may currently rely on national policy as set out in the previous version of PPS3 do not proceed immediately, or that space is provided for relevant issues to be revisited before the examination is closed.
2. **Preparation before the pre-hearing meeting (PHM)** – At the PHM, make it clear that housing and other sessions where representations may currently rely on national or local policy as stated in or reflecting the previous PPS3 will be scheduled so as to give all parties the opportunity to take into account in their representations the potential effect of revised PPS3.
3. **Preparation after the pre-hearing meeting (PHM) and housing session scheduled** – Defer discussion of housing and other policy topics where representations potentially reflect previous PPS3 until the parties have been given an opportunity to consider the potential effect of revised PPS3 as in step 2.
4. **Examination hearings in progress** - Defer discussion of housing and other policy topics where representations potentially reflect previous PPS3 until an opportunity has been given as in step 3 (if not possible go to step 5).
5. **Examination hearings in progress where housing and/or other PPS3-related issues are the current topic** - Continue on the basis of revised national policy, but, after canvassing the views of the parties, allow a suitable adjournment as in step 4.
6. **Examination hearings in progress but housing and/or other PPS3 policy-driven issues are already dealt with** - Inform examination parties that it will be necessary to re-open the issue to allow an opportunity as in step 5.
7. **Report is being prepared** - Seek the views of the parties on the implications of the Ministerial Statement. Be prepared to re-open the hearing to allow an opportunity as in step 6.
8. **Report completed but not yet sent** – On the basis that one of steps 1 to 7 has already been implemented, proceed to send it.

If none of the steps before 8 have been completed, return to step 7.