



# Garden developments: understanding the issues

## An investigation into residential development on gardens in England



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issues

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gardens in England**

Department for Communities and Local Government  
Eland House  
Bressenden Place  
London  
SW1E 5DU  
Telephone: 030 3444 0000  
Website: [www.communities.gov.uk](http://www.communities.gov.uk)

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January 2010

ISBN: 978 1 4098 2159 5

# ACKNOWLEDGEMENTS

This document is the final report of a study into the planning issues surrounding development on back gardens undertaken by a Research Team at Kingston University on behalf of the Department of Communities and Local Government.

The Research Team would like to acknowledge the help and cooperation of all those who assisted with the research by responding to the questionnaire survey and/ especially to those who took part in follow up interviews. All views have been fully taken into account in the preparation of this final report. It is hoped that the findings and conclusions present a fair and objective interpretation of the views expressed to the Team who nevertheless take full responsibility for the contents of the report.

The Team wish to express their thanks to CLG for their support of the work

Prof. Sarah Sayce (Director)  
Dr. Peter Garside  
Charlotte Harris  
Tony Vickers  
Nicola Villars  
Prof. Nigel Walford  
Billy Clements

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# 1 Executive summary

## 1.1 Background and aim of the study

1.1.1 In recent years, and especially during the recent housing boom, the issue of back garden development (sometimes known as ‘garden grabbing’) has become a politically contentious issue. Private gardens currently have no special status in planning law, other than as part of private amenity space and their development is treated, in principle, like any other land. Despite the recession which has muted demand for housing land, fundamental concerns about the supply of land to meet housing targets, are still ongoing. In many cases, development on gardens may be regarded as entirely appropriate and there are many clear, definable benefits to such development. They reduce the need to extend development into the countryside, create new homes without the need for increased infrastructure provision, provide better utilisation of land in areas where people no longer demand large gardens due to life style changes and they may provide small sites appropriate for local developers who employ local people. For these reasons garden land development may add significantly to the housing stock in ways that are sustainable and which meet identified local housing needs.

1.1.2 However, there are arguments against developing on gardens. They may lead to increased building mass, loss of character, increased population density and associated demand on service provision and traffic generation. Environmentally, garden development can result in a loss of green space and soil sealing/paving over gardens; ultimately leading to loss of habitats and biodiversity and increased risk of flash flooding due to increased run off.

1.1.3 Garden sites are normally regarded as ‘brownfield’ under the government’s land classification of previously developed land (PDL) and are often favoured sites for developers as they are situated in established residential areas and often present less physical issues than brownfield sites that are, for example, old industrial and contaminated sites.

1.1.4 Concerns have been expressed that the type and quantum of developments on back gardens has increased, but there is no firm data to refute or support this contention. **This study is intended to investigate both the scale of such developments within a national context and in particular whether local planning authorities (LPAs) regard it as a ‘significant’ issue within their areas.** Further, the purpose is to explore if the legislative planning framework, as supported by local and central government policies, offers a sufficiently robust system to ensure that local determinations of applications for garden land development are based on appropriate planning arguments, meet local needs and support agreed housing targets.



1.1.5 Specific objectives set for the project can be summarised as to:

- determine both the quantum and type of development of back gardens over a five-year period from 1 April 2003 to 31 March 2008 and to assess the geographical spread of such developments
- establish what contribution back gardens make to housing supply provision
- assess the effectiveness of PPS (Planning Policy Statement) 3 which sets out the national guidance in relation to determining such applications and the existence or otherwise of local policies to support interpretation of PPS 3 and
- investigate the situation both at first instance decision-making and on appeal

## 1.2 Methodology

1.2.1 Work was undertaken in two discrete phases:

1.2.2 **Phase 1** comprised an extensive questionnaire designed and distributed by CLG and sent in May 2009 to every (363) local planning authority seeking information on the number of applications, the refusals and appeal records and the amount of housing that has resulted from garden development over the period from 1 April 2003 to 31 March 2008. Additionally, authorities were asked to provide a commentary on the development plan policies that they relied on in determining applications. They were also asked to self-determine whether or not garden developments were “*an issue for their authority*”. A total of 127 responses were received and passed to the Kingston University Research Team for analysis. This response rate was high considering the complexity of information requested and the tight timeframe for completion. A satisfactory cross-section was achieved in terms of location, category of authority (large urban, significant rural etc.)

1.2.3 **Phase 2** comprised two rounds of follow-up interviews to selected authorities chosen on the basis of a need to ensure a cross section based on location, population density, level of development activity and on whether back gardens were perceived by the authority to be an issue or not. Thirty-four authorities were approached and within the timeframe available (July- to mid August) 27 authorities took part in either face-to face or telephone interviews. The interviews comprised a mixture of closed-ended and open-ended questions carefully worded to ensure objectivity. The questions were framed to provide a deeper understanding of the issues including the definition of garden ground, the decision-making processes and the content of local policies developed to ensure that back garden developments do not have significant negative impacts. The questions also were designed to reveal and explore areas of good practice which might be shared.

## **1.3 Key findings**

### ***The definition of garden sites for development***

1.3.1 There was found to be no universally agreed definition of garden land. Whilst some authorities identified them as brownfield sites, others do not; similarly some LPAs include garden sites within their strategic housing land availability assessments (SHLAA) whilst others do not and very few respondents stated that they have specific local policies on garden development. This means that, in practice, there is a lack of clarity to support effective tracking of garden developments.

### ***Is garden development a national concern?***

1.3.2 Of the Phase 1 respondents just over one-third considered it to be an issue. However, analysis by region and authority type revealed that the situation is extremely variable across the country. In terms of location, the south east is the area where the greatest concern was expressed, but for two other regions, London and the west midlands, the majority of respondents considered the issue to be of significant concern.

1.3.3 Further analysis revealed that the type of authority is equally important. Of those authorities who reported an issue, 'major urban' and 'significant rural' had the highest incidence of concern, whereas a regional analysis points to the matter being of greater concern in the more rural areas. Overall it is concluded that the issue is one that occurs within pockets of settlements and often in authorities which have little other brownfield land available for development.

### ***Reasons for concern by some local planning authorities***

1.3.4 The matter is of concern to LPAs where there are high development pressures, and low numbers of windfall sites. In such situations, a workload issue emerged as a concern.

1.3.5 Some authorities face many more appeals against refusals than others and similarly there is a variation in the degree of success that LPAs achieve in defending appeals. This is particularly the case in significantly rural authorities which have a small planning staff dealing with a high volume of applications and appeals. In particular some authorities reported that members go against officers' recommendations to grant consent and this in turn leads to an inability of officers to successfully defend appeals.

1.3.6 Where robust local policies have been developed and implemented both the incidence and success of appeals is reduced.

### ***The contribution of garden developments to the housing stock***

1.3.6 Within the south east garden developments make the greatest contribution to housing stock where, on the basis of the returns, it contributed close to 30 per cent of all new dwellings; in other regions no figure significantly exceeds 10 per cent. However for the authorities who declared an issue, the contribution was closer to 50 per cent. In some mainly rural authorities in the south east most of the developable sites have been built out and so even garden land is in short supply.

1.3.7 Tracking the level of development over a five-year period revealed no significant change in the amount of housing provision on brownfield land although it has increased slightly.

1.3.8 No question regarding the terms of type of dwellings provided on gardens was asked initially, but those authorities who were interviewed reported that the dominant type of development was houses, and within this category, detached dwellings. Only in London were flatted developments reported to represent a greater proportion. An initial concern that there had been a trend from houses to flats over the five-year study period was not borne out by respondents. In all cases LPAs indicated that contextual fit, scale and design were of paramount importance in deciding applications.

### ***The impact and effectiveness of planning policies and targets***

1.3.9 Planning Policy Statement (PPS 3) is the over-arching policy to which LPAs refer in considering garden site applications. Interviews explored the extent to which this statement supported their ability to conserve gardens. At a ratio of 2:1 LPAs deemed it not to help them with some authorities expressing the view that the criteria for decision-making contained in PPS 3 favoured the desire to increase density over other criteria and that the presumption in favour of brownfield development was used by developers to push for acceptance of proposals. Some LPAs provided suggestions for possible clarification of additional guidance to help interpret PPS 3, such as cross referencing to other policy statements; these are listed in the full report.

1.3.10 It was clear from the interviews that there is a very mixed practice in terms of what other national guidance LPAs use as reference points for deciding applications. Some make extensive use of PPS and of their regional spatial strategy; other very little. Aside from these, the Wildlife Acts and design publications from organisations such as CABI (Commission for Architecture and the Built Environment) were referred to by some respondents. The London Plan was also used by some authorities.

1.3.12 Meeting housing targets is a major concern for most authorities. Among interviewees the view was expressed by several that the requirement to meet their housing targets had influenced decision-making. The same was not the case for meeting brownfield targets, except among those authorities with very little brownfield

land left; such authorities tended to be those who lacked any significant land for development due to, e.g. green belt proximity.

1.3.13 The 2004 planning legislation had anticipated that by 2008, LPAs would have their local development frameworks (LDFs), particularly their core strategies, in place. In reality, among respondent authorities, progress has been very mixed. Whilst some reported good progress and have developed not just their LDF but also a range of supplementary policy documents (SPD), others have not. What was revealed through the research was that those authorities who had developed a robust range of local policies were more likely to face fewer appeals and be more likely to successfully defend their decisions at appeal. Whilst the sample of authorities in Phase 2 was small, it appears that larger LPAs with larger manpower resources were more likely to have developed local guidance. Conversely it is in small rural authorities with low levels of professional manpower, that the number of applications is greatest.

#### ***The decision-making process***

1.3.14 The matter of back garden development is politically sensitive; accordingly LPAs were asked during the interviews a range of questions relating to the application process and in particular the level of involvement of local councillors and members of the public within the process.

1.3.15 In no case had LPAs developed a different protocol for decisions of garden site applications; however for every authority interviewed the percentage of applications determined at committee is higher than for other applications – often far higher and approaching 100 per cent. This incidence decreases where there are robust local policies in place.

1.3.16 Interviewees also reported that public objections were frequent with some LPAs admitting that committee business could become dominated by objectors. In investigating the reasons why objections are received, interviewees reported that this is likely to be on grounds of overdevelopment and impact although frequently it can be just on principle. In these cases, decisions are sometimes taken against officer recommendations, leading to a higher incidence of appeals which cannot be defended on planning grounds. Where applications are refused, and any appeals upheld, this is likely to be where developers are seeking higher density development out of keeping with the locality.

#### ***The relationship with affordable housing***

1.3.17 The principle of a requirement to provide affordable housing within housing development schemes is now a widely accepted part of government policy. However, such a requirement is not normally applied to small sites. Accordingly interviewees were

asked what contribution garden developments made to the provision of affordable housing within their area.

1.3.18 Most authorities within the sample operate a threshold number of dwellings or site area beneath which there is no requirement placed on the developer. What became apparent from the research is that most garden sites do not attract the requirement to provide affordable housing as part of garden developments and respondents reported that it was very rare for developers to offer significant levels of affordable housing within small schemes leading to a potential, or in some cases, an actuality of under-provision of affordable housing. However, in some authorities the threshold has been removed, thus allowing a tariff to be imposed.

## 1.4 Conclusions

1.4.1 **The overall conclusion is that the matter of garden development, which has proved to be contentious over recent years, is not of national scope.** For some authorities it is of major importance; for others it simply is not. The geographical distribution of LPAs who self-report that it is an issue is concentrated in London, the south east and the west midlands, with the south east reporting the highest level of significance. Analysis of the results by type of authority revealed that the significance is greatest in significantly or semi rural areas and least in large urban authorities, although London does provide the exception. Within London, the boroughs under stress are those in outer suburban areas where garden land can still be found.

1.4.2 What became evident is that this is a complex, multi-faceted matter relating in particular to:

- the amount and characteristics of the local land supply, in terms of density availability of gardens and levels of brownfield land
- the level of manpower resources in LPAs both to develop policies and handle applications and appeals and
- the extent to which officers are enabled to take decisions and the extent to which these are referred to full committee who may or may not follow established planning policies, together with some evidence of inconsistent decisions by the Planning Inspectorate

1.4.3 Specific conclusions are:

- there has not been a significant increase nationally over the period 2003-2008 in the amount of garden developments; nor has there been a significant shift from the development of houses to flats
- however, overall gardens, particularly in some areas of very constrained supply, are an essential part of the supply of housing land and may be the only way

some authorities can meet housing targets. This is particularly so in high value, highly affluent, low density neighbourhoods

- the inclusion of gardens within the definition of brownfield land leads in many cases to developers arguing a presumption in favour of development despite the fact that they normally constitute small sites which fall outside an LPAs brownfield target
- in areas where LPAs have had the manpower to make headway towards developing their LDFs and robust local guidance, appeals are less likely to succeed
- where appeals take place, there is some evidence that this may be the result of relying on councillor-led decisions irrespective of officer advice. Where there is training of elected members this is of help in reducing the incidence of indefensible decisions and assists councillors to defeat frivolous objections based on non-planning grounds
- PPS3 provides a strong and appropriate agenda of factors to be taken into account when determining garden applications. However, there was little evidence that PPS 3 has made a positive difference to the ability of LPAs to resist garden development - and some evidence that it has made it harder. It is concluded that PPS 3 by itself is not proving sufficiently robust to ensure decisions which optimally meet local planning situations. For this, defined and locally-orientated specific policies are required
- garden grounds are normally small sites; they are thus normally treated as 'windfall' sites within their SHLAAs; for some authorities where garden ground makes very significant contributions to their housing supply the ability to include them would assist in planning their future provision
- the lack of a systematic mechanism for ensuring that small garden sites contribute to affordable housing both increases their attractiveness to developers and places strain on the authority to deliver against their own targets. A practical solution of removing thresholds and imposing tariffs has been seen to assist some authorities but this was not seen by all interviewees as a way forward that they could implement
- there are very few authorities which monitor and hold information on types of housing development, despite the information being readily available from planning applications. This makes both providing data but also truly tracking the characteristics of garden development in the local area problematic
- the sporadic nature of garden development means that LPAs have no clear understanding of the cumulative effect this process has on the social or physical environment and the resultant future sustainable implications

## 2 Introduction and purpose of study

2.1 Private gardens currently have no special status in planning law, other than as part of private amenity space. Therefore, the development of such areas is treated, in principle, like any other land. As a result, during the recent housing and property boom, the issue of the development of garden land (sometimes referred to as ‘garden grabbing’) became highly topical and politically sensitive. Whilst during the recession, the demand for land for residential development has decreased, fundamental concerns about the supply of land, identified in the Barker Report<sup>1</sup> and written into local authority housing targets, are still ongoing. Developers may have land banked sufficient for current low levels of activity, but in the medium term, pressures on land for development in many regions and towns will inevitably return. This pressure is likely to be much greater in some regions than in others.

2.2 In many cases, development on gardens may be regarded as entirely appropriate and there are many clear, definable benefits to such development. They reduce the need to extend development into the countryside, create new homes without the need for increased infrastructure provision, provide better utilisation of land in areas where people no longer demand large gardens due to lifestyle changes and they may provide small sites appropriate for local developers who employ local people. For these reasons garden land development may add significantly to the housing stock in ways that are sustainable and which meet identified local housing needs.

2.3 However, there are arguments against developing on gardens. It could be argued that such development leads to increased building mass, loss of character, increased population density and associated demand on service provision and traffic generation. Environmentally, garden development can result in a loss of green space and soil sealing/paving over gardens; ultimately leading to loss of habitats and biodiversity and increased risk of flash flooding due to increased run off.

2.4 From a developer’s perspective, garden development can be desirable as small site developments often present less complex land use issues than other development opportunities and generally, they do not attract a requirement to supply affordable housing. Garden sites, which are normally regarded as ‘brownfield’ under the government’s land classification of previously developed land (PDL)<sup>2</sup> are often situated in areas where large sites are not available. Additionally, as they are located in established residential areas, units produced may sell more easily than homes in large new sites in locations not previously identified in the public mind with residential use.

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<sup>1</sup> Barker, K (2004) *A Review of Housing Supply: Final Report* HM Treasury

<sup>2</sup> Brownfield land is defined and categorised in Annex B to Planning Policy Statement 3 and is discussed later in this report.

However, they can generate a lot of opposition locally and may require land assembly. By definition, they are often situated in areas of comparatively low density development, where the physical opportunity can exist for densification. In high density inner urban areas, significant garden land is less likely to exist.

2.5 As a result of the contentious nature of this type of development, strong views have been held both for and against. Many concerns have been raised and it is now a high profile policy area. Whilst the Department for Communities and Local Government (CLG) already publishes data on the number of new dwellings on previously developed land as part of the land use change statistics, these data cannot be broken down to provide accurate information on how much of this development has taken place on garden land only. This means that there is no robust data to inform central or local government on whether the amount of development on gardens is increasing, nationally, in some areas, or not at all. Accordingly Government has determined that better evidence is needed on the amount of residential development on gardens, so that a proper debate can be had on whether or not it is a problem and, if it is, what can or should be done about it. This research adds to the evidence base.

2.6 The primary purpose of this research is not to evaluate, *per se*, the arguments for and against garden development, but to investigate the scale of such development within the national context and in particular investigate whether or not local planning authorities (LPAs) regard it to be a 'significant' issue within their areas. Further the purpose is to explore whether the legislative planning framework, as supported by central and local government policies, offers a sufficiently robust system to ensure that local determinations of applications for garden land development are based on appropriate planning arguments, meet local needs and support agreed housing targets.



## 3 Aims and objectives

3.1 The overall aim of the project is to advise Government on the extent to which garden development is making an effective and positive contribution to the delivery of local housing objectives, also to investigate how the scale of such developments impacts on the success or otherwise of achieving development on land that is truly previously developed.

3.2 The specific objectives of the research are as follows:

- to establish, via analysis of data collected by Government, the amount of housing development in gardens from 1 April 2003 to 31 March 2008, and the reasons for any change
- to determine the most common types of dwellings provided by development in gardens during the study period, and the change over time
- to assess the impact of the brownfield definition and brownfield target set out in government policy, specifically in Planning Policy Statement 3 (PPS 3) on any increase or decrease in development in gardens
- to establish whether development on garden land is widespread, or confined to a handful of authorities or certain areas of the country or types of authorities
- to determine the types of residential area and existing dwellings which are most commonly the subject of garden development
- to determine what contribution this type of development makes towards local housing delivery objectives and the impact that any restrictions on development on garden land would have
- to establish what, if any, effect decisions by the Planning Inspectorate on appeals against refusal by local planning authorities of development on garden land has on the above, especially where those local planning authorities have developed specific policies or guidance on gardens development
- to assess the extent and significance to the above of local planning authorities that have developed local policies specifically in line with advice from Government and the policy in PPS 3, and in particular whether local policies on garden developments are being put in place and
- to determine whether local policies developed in accordance with PPS 3 are effective in supporting local authorities' decisions on garden development at appeal, and to establish the common reasons for local objections to development on garden land

## 4 The policy background

4.0.1 The main planning framework is set out in controlling legislation but this is augmented by national, regional and local policy frameworks, which aim to provide clarity to all users of the planning system and reduce the level of uncertainty that developers and landowners face if they are considering undertaking any development. The purpose of having three-tier policies is so that national planning strategic objectives can be set, for example, sustainability and flooding and in respect of particularly types of development, such as retail and housing, whilst allowing appropriate autonomy at more local levels in implementing national policy.

### 4.1 National guidance

4.1.1 National planning policy is set out primarily in a series of Planning Policy Statements. The Government's statements of planning policy are material considerations which must be taken into account, where relevant, in decisions on planning applications. Where such statements indicate the weight that should be given to relevant considerations, decision-makers must have proper regard to them.

4.1.2 In relation to garden development the two most relevant Planning Policy Documents are:

- Planning Policy Statement (PPS) 1: *Delivering Sustainable Development*, together with an annex on climate change; and
- Planning Policy Statement (PPS) 3: *Housing* and prior to that, Planning Policy Guidance (PPG) 3.

These are now considered in relation to the matter of garden development.

#### ***Planning Policy Statement (PPS) 1: Delivering Sustainable Development***

4.1.3 PPS1 sets out the overarching planning policies on the delivery of sustainable development through the planning system. The planning system should facilitate and promote sustainability by:

- making suitable land available for development in line with economic, social and environmental objectives to improve peoples' quality of life
- contributing to sustainable economic development
- protecting and enhancing the natural and historic environment, the quality and character of the countryside, and existing communities
- ensuring high quality development through good and inclusive design, and efficient use of resources, and
- ensuring that development supports existing communities

4.1.4 The aim is to provide a plan-led system that allows certainty and predictability. Where the development plan contains relevant policies, applications for planning permission should be determined in line with the plan, unless material considerations indicate otherwise.

4.1.5 In delivering sustainable development, in terms of the general approach in preparing development plans, PPS1 states that *“local authorities should seek to: promote the more efficient use of land through higher density, mixed use development and the use of suitably located previously developed land and buildings. Planning should actively seek to bring vacant and underused previously developed land and buildings back into beneficial use to achieve the targets the Government has set for development on previously developed land”*<sup>3</sup>.

4.1.6 From this policy it is clear that higher density is a key strategic objective of government, as is the re-use of land. In areas where there are large under-utilised or unused sites in urban areas, it is possible that land sufficient to meet housing needs and provide high density development is available. However, in areas of low density residential developments, and where there are few, if any, major brownfield sites available, garden land developments may provide the best, or indeed only, means of delivering on this key objective.

4.1.7 PPS 1 has an accompanying document, published in 2006, which sets out the government’s strengthened policies towards ensuring that planning considers matters related to climate change. Whilst this, too, has no specific reference to garden development it states among its objectives that all policies developed at regional or local level should seek to place developments where they minimise the need for travel by car, promote the best use of existing infrastructure, promote social cohesion whilst supporting the needs for biodiversity. All these factors are relevant to the consideration of proposals for development on garden land.

### ***Planning Policy Guidance (PPG) 3: Housing***

4.1.8 PPG 3 was published in March 2000 and included a statement of the government’s housing objectives based on a ‘plan, monitor and manage’ approach to housing provision. It emphasised the need to make the best use of land and re-use urban land and buildings. It also referred to the need for good design. PPG3 was replaced by PPS 3 which was published in November 2006. PPG 3 was essentially just that: guidance, and there was not a formal requirement to compliance although local plans were interpreted with respect to it.

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<sup>3</sup> Planning Policy Statement 1: *Delivering Sustainable Development* (2005) p.12 (27. viii)

### ***Planning Policy Statement (PPS) 3: Housing***

4.1.9. PPS 3, which was published in 2006, is the major statement reflecting the Government's current commitment to improving the affordability and supply of housing in all communities. A principal aim is to provide a responsive approach to land supply for housing at the local level, by identifying a rolling five-year supply of deliverable land for housing, for example through the plan, monitor, manage approach and the strategic housing land availability assessment (SHLAA).

4.1.10 The planning system needs to deliver high quality housing in suitable locations with good infrastructure, of sufficient quantity and providing a range of both market and affordable housing. Currently there is a widely accepted view, first researched by Barker<sup>4</sup> (2004) that sufficient housing is not coming forward to meet needs. Some of the key considerations within PPS 3 are set out below.

#### ***Achieving high quality housing***

4.1.11 Whilst it is considered to be strategically important that sufficient housing is delivered, it is made clear in the policy that this should not be at the expense of quality. Paragraph 13 of PPS 3 states that *"Design which is inappropriate in its context, or fails to take the opportunity available for improving the character and quality of an area and the way it functions should not be accepted"*.

4.1.12 Further, paragraph 14 states that *"LPAs should develop design policies that set out the quality of development that will be expected for the local area aimed at:*

- *Creating places with their own distinctive identity that improve and maintain the local character*
- *Promote designs that make efficient and effective use of land"*.

4.1.13 In determining applications for design quality, the PPS makes it clear that the following matters are relevant to good design:

- accessibility and efficient use of space
- access to outdoor space
- integration in terms of scale, density, etc
- efficient use of resources
- design led approach to car parking
- creation or enhancement of a distinctive character
- provision or protection of biodiversity and
- provision of safe play areas for children when providing family housing

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<sup>4</sup> Barker K (2004) *A Review of Housing Supply: Final Report* HM Treasury

4.1.14 To support the ambition of good quality provision, the PPS makes reference to a range of design guides, village design statements and site briefs which are recommended to be used.

4.1.15 Within the guidance there is no suggestion that garden development is either to be preferred or otherwise. However, the requirement for the design of a development to enhance distinctive character, protect biodiversity and enable access to safe play areas for children could be interpreted as potentially in conflict with garden developments. Conversely such developments can be argued to lead to efficient use of resources and enable good integration.

#### ***Assessing an appropriate level of housing***

4.1.16 PPS 3 makes it clear that the level of housing provision should be determined taking a strategic, evidence-based approach. At local and regional level it should take account of evidence of the availability of suitable land for housing using SHLAA and current and future levels of need for housing and affordability, as well as the overall ambition of the Government to improve affordability and increase housing supply. regional spatial strategies (RSS) set out the level of overall housing provision and the approach to co-ordinating housing provision across the region.

#### ***Providing housing in suitable locations which promote effective use of land***

4.1.17 The priority for residential development is clearly stated in PPS 3 as favouring the use of previously developed land (PDL). Paragraph 36 states *“The priority for development should be previously developed land, in particular vacant and derelict sites and buildings”*. Further, paragraph 38 identifies options for accommodating new housing growth, which includes additional housing in established residential areas, thus supporting the ambition of higher density development which reduces reliance on private (car) transport.

4.1.18 In support of the key objective of housing development policy; that LPAs should continue to make effective use of land, PDL, at least 60 per cent of new housing should be provided on previously developed land. No maximum target is given and by implication, if PDL could supply 100 per cent of housing need in an area then it should. As part of the database to enable LPAs to plan, government collect statistics on the amount of brownfield land available - the National Land Use Database of Previously Developed Land (NLUD-PDL). However, whilst this gives an overall picture, it is not comprehensive or fully accurate, partly as there is some scope to interpret differently precisely what comes within the definition of brownfield.

4.1.19 The definition of previously developed land (PDL) is set out in Annex B of PPS 3. It makes no specific reference to gardens but states that it includes land within the curtilage of developed land. If garden land is determined locally to be land that lies

within the curtilage of developed land, it can be regarded as brownfield; if it is not, by implication it is not brownfield land.

4.1.20 The notion of 'curtilage' has long been regarded as problematic. The Oxford Dictionary defines it as "*a small court, yard, garth, or piece of ground attached to a dwellinghouse, and forming one enclosure with it, or so regarded by the law; the area attached to and containing a dwellinghouse and its outbuildings*". However, this definition is not conclusive in planning or legal terms and the issue of what is, or is not, the curtilage of a building remains difficult. Guidance by Harrogate Council<sup>5</sup> provides clear indication that it is not a fixed and agreed term but rather one that requires interpretation according to circumstances. Case law would lead to the presumption that garden land is deemed to be within the curtilage of a dwelling, but where the garden is extensive, for example where it includes a small paddock, the matter is less clear.

4.1.21 Brownfield land is categorised into five sub-groups ranging from Category A to E. The first three of these (A-C) are based on actual observable use and condition of the land, but two (D-E) contain land that is currently in use but with potential for redevelopment, either already explicitly recognised through the planning approval process (D) or more speculatively (E). Categories D and E are therefore not strictly current land use definitions and category E in particular may be capable of interpretation. **Table 1** below outlines the categorisation of brownfield land. The issue of whether gardens which have the potential physically for development are included within Category E was revealed last year to be interpreted by different authorities in different ways.<sup>6</sup> Therefore it is unclear from the guidance as to whether garden land development would fall to be encouraged under this provision. This point is important given that local planning authorities (LPAs) have requirements to obtain minimum percentage of development on brownfield land. If there is limited land in their area which is Category A-D they will have to look to Category E land to meet housing targets.

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<sup>5</sup> Harrogate Borough Council *Landscape Design LDG 2.3* available at <http://www.harrogate.gov.uk/pdf/DS-P-Ldg2.3.pdf>

<sup>6</sup> Kingston University (2008) *Brownfield Data: can we do better?* A research report for English Partnerships and CLG

**Table 1: NLUD-PDL: Categories of brownfield land**

<b>COLLECTIVE REFERENCE</b>	<b>NLUD CATEGORY</b>	<b>DEFINITION</b>
Derelict and Vacant Land and Buildings	A	Vacant land
	B	Vacant buildings; unoccupied for at least 12 months
	C	Derelict land and buildings; needing work to make suitable for redevelopment
'In Use' or Latent Brownfield Land	D	Land and buildings in use and allocated in local plan or with planning permission
	E	Land and buildings currently in use with redevelopment potential

Source: Brownfield Guide, English Partnerships (2006)

### ***Efficient use of land***

4.1.22 Part of the policy framework within which LPAs operate is to be found within the regional spatial strategy. This document should set out the region's housing density policies. Whilst a LPA can set out a range of density targets, 30 dwellings per hectare is a minimum nationally until local density policies are in place. It is also clear from PPS 3 that the adoption of any density below this figure would need to be justified.

Accordingly, garden land development in areas of low density housing could be regarded as in line with national policies. Further, paragraph 50 states that density of existing development should not dictate that of new housing, as imaginative design and layout of new development can lead to a more efficient use of land without compromising the quality of the environment.

4.1.23 From this, it can be concluded that garden land development may well meet the key objectives for housing as set out in PPS 3, provided that it is of good design and does not compromise the character of a neighbourhood or lead to a significant loss of biodiversity. It can lead to more effective and efficient use of land, help prevent urban sprawl and reduce greenfield land take.

### ***Other relevant planning policy statements***

4.1.24 The planning system is in a transitional period as the provisions of the Planning and Compulsory Purchase Act 2004 and more recently the Planning Act 2008 come into effect. Whilst some of the national policy statements pre-date the structural changes introduced by the 2004 Act, the new framework, which is being incrementally brought into effect, influences the designation of sites for development.

4.1.25 One of the aims of the 2004 Act was to strengthen regional planning. This it did by introducing regional spatial strategies (RSS) to replace the previous regional guidance. PPS 11: *Regional Spatial Strategies* sets out the procedural policy on regional spatial strategies and PPS 12: *Local Spatial Planning* explains local spatial planning and the procedural policy in preparing the local development framework. The Act envisaged a four year transition period for the introduction of the new local development frameworks.

4.1.26 RSS are statutory documents produced by the regional assembly, which corresponds to the eight English regions outside London. In London the equivalent document is the London Plan which is the responsibility of the Greater London Authority, led by the Mayor.

4.1.27 The RSS provides a broad development strategy for the region for a 15-20 year period. The key objectives of any RSS are to identify:

- the scale and distribution for provision of new housing
- priorities for the environment, such as countryside and biodiversity protection
- priorities for transport, infrastructure, economic development, agriculture, mineral extraction and waste treatment disposal

4.1.28 The RSS can include policies relating to the whole of its area, or part of the area and it can make provision for sub-regional planning. Each RSS must conform and build on policies at national level and in turn the local development frameworks must conform to the RSS.

4.1.29 Within the RSS, there is the ability to deal with issues such as garden developments or to provide additional guidance on the interpretation of, for example, the brownfield definition and the draft London Plan does address this.

4.1.30 PPS 25: *Development and Flood Risk* is also relevant to garden developments, setting out the provisions to ensure that flood risk is considered at all stages of the planning process and that development is directed away from high risk areas. With objectors to garden development often citing increased run-off due to loss of soft landscaping, PPS 25 has a potentially key role, particularly in some high risk areas, in the decision-making process for garden developments.

4.1.31 Planning Policy Guidance Note (PPG) 17: *Planning for Open Space, Sport and Recreation*, which was published in July 2002, sets out the framework for local authorities to assess the need for open space, now and in the future, in their area. It recommends that authorities undertake open space audits and that these can in turn provide the basis for strategy and policy development. The accompanying companion



guide notes that PPG 17 “relates to both publicly accessible and private spaces.”<sup>7</sup> The policy therefore provides the potential to resolve some of the potential conflicts involved in garden development and, if a space audit is undertaken which includes private, as well as public open space, would enable a local authority to assess the potential impacts, in amenity and bio-diversity terms, of garden developments .

## **4.2 Local development framework**

4.2.1 Local planning authorities have to prepare a local development framework (LDF) for their area, which comprises a folder of documents for delivering the spatial planning strategy. The core strategy is the key plan which should align with the authority’s sustainable community strategy and be consistent with both national and regional policy.

4.2.2 The core strategy must be founded on a robust and credible evidence base, and must be the most appropriate strategy when considered against the reasonable alternatives. The core strategy provides an overall vision and sets out how the area and places within it should develop. It should include:

- strategic objectives for the area focusing on the key issues to be addressed
- a delivery strategy for achieving these objectives. This should set out how much development is intended to happen where, when and by what means it will be delivered. Locations for strategic development should be indicated on a key diagram and
- clear arrangements for managing and monitoring the delivery of the strategy

4.2.3 Generic development control policies are contained in the development plan document (DPD). The LPA must prepare a local development scheme (LDS) which sets out a programme for the production of local development documents (LDDs) which include DPDs and supplementary planning documents (SPD) which are prepared to provide more detailed guidance. Under PPS 12, there is no requirement for LPAs to consider the question of garden land in terms of their specific LDFs, though there is also nothing to stop them preparing a policy in respect of this type of development. What is important is that LDFs address local needs and that a SHLAA is prepared which indicates how they will meet their housing targets over a five-year pipeline.

### **Saved policies**

4.2.4 All the policies contained in local plans and unitary development plans (UDP) were saved for three years after adoption by virtue of the Planning and Compulsory Purchase Act 2004. Until the LDF for their authority is adopted, LPAs are able to retain specified policies beyond this period, with the agreement of the Secretary of State

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<sup>7</sup> *Assessing Needs and Opportunities: A Companion Guide to PPG 17 (2002)*

through a direction. However, only policies that are consistent with current national policy and the principles of the LDF will be saved. Whilst a number of LPAs may have adopted their core strategy, many will still be working with 'saved' policies as currently authorities are at different stages in terms of implementation.

### ***Determining planning applications***

4.2.5 In considering a planning application, national guidance must be taken into consideration and the application must be determined in accordance with the published development plan unless other material considerations indicate otherwise.<sup>8</sup> Further, S70(2) states that *"in determining applications, the authority shall have regard to provisions of the Development Plan, so far as material to the application and to any other material considerations"*. The effect is to introduce a presumption in favour of development which is in accordance with the plan. However the plan policies need to be relevant and up to date. The 2004 Act provides that if there is a conflict between policies in an RSS or policies in a DPD, the most recent policy will take precedent. However, where there is no development plan policy, the LPA will have to have regards to the merits of the individual application, in the context of national policy and emerging local policy and other material considerations.

### ***Other material considerations***

4.2.6 Material considerations must be genuine planning considerations, i.e. they must be related to the development and use of land in the public interest. The considerations must also fairly and reasonably relate to the application concerned.<sup>9</sup> In the event of an appealed refusal on the grounds of what constitutes material considerations, the Courts are the arbiters. All the fundamental factors involved in land-use planning are included, such as the number, size, layout, siting, design and external appearance of buildings and the proposed means of access, together with landscaping, impact on the neighbourhood and the availability of infrastructure.

## **4.3 Summary**

4.3.1 In summary, the policy framework within which the issue of proposed garden land development are to be considered is complex and currently, in a state of transition. PPS 3 is the most relevant of national policies, but whilst it defines brownfield land, of which garden land is an implied part, it does not provide discrete guidance to LPAs.

4.3.2 LPAs under the current framework should have completed development of their LDF, however, given timescales, it is expected that many may not have completed their LDDs and in particular specific policies.

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<sup>8</sup> S.38(6) Planning and Compulsory Purchase Act 2004

<sup>9</sup> R v Westminster CC ex-parte Monahan (1989)

## 5 Implications of policy: the need for research

5.1 The planning policy framework is fundamental to the way in which LPAs determine planning applications. However, whilst the framework is driven by central Government through primary and secondary legislation and associated statements, it is viewed as important by Government that local planning authorities (LPAs) have some discretion in how they deliver on housing targets and this is written in to current policy.<sup>10</sup> In this way, LPAs have the ability to consider and incorporate the requirements of their local inhabitants and businesses to lead in the delivery of sustainable communities in ways which meet local needs. Therefore, they will need to balance the often competing stakeholder demands and seek to ensure the preservation of character together with environmental protection whilst allowing growth of housing stock where and in what form they determine to be appropriate.

5.2 The robustness of this approach to achieve the ambition of local determination to protect garden land has been brought into question, notably by the attempts of a succession of Private Members Bills in the past three years aiming to protect urban gardens from developers.<sup>11</sup> These Bills have attracted cross-party support and campaigning by pressure groups such as GardenOrganic.<sup>12</sup> It was in response to this campaign against ‘garden grabbing’ that led Government, during the passage of the Planning Act 2008, to undertake to “*review the evidence on the extent and impact of housing development on garden land*”.<sup>13</sup> As part of this review it is of fundamental importance to consider whether, or not, private gardens should be given any special consideration in planning law and policy or whether the policies as set out above are sufficiently explicit to enable LPAs to achieve consistency in decision-making, resist challenges to their decisions and ensure that such decisions do contribute to the overall planning policy objectives.

5.3 The ‘problem’, according to the promoters of the Private Members Bills, is that the definition of previously developed land (PDL) includes all land within the curtilage of residential properties, even where the land has never been subject to building cover<sup>14</sup>. This leads to some local planning authorities (LPAs) readily accepting applications to develop existing properties with large gardens at higher densities, because it helps achieve targets as to overall new housing consents and in particular the proportion of new homes built on what is categorised as PDL. The Bills have all sought to provide special protection for “*urban green space*” that “*benefit wildlife and biodiversity*”, in

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<sup>10</sup> Planning Policy Statement 3: *Housing* (PPS3)

<sup>11</sup> See for example the Land Use (Garden Protection) Bill 2007 & Protection of Garden Land (Development Control) Bill 2009

<sup>12</sup> [www.gardenorganic.org.uk/saveourgardens](http://www.gardenorganic.org.uk/saveourgardens)

<sup>13</sup> Written answer by Margaret Beckett MP (Minister for Housing and Planning) to Parliamentary Question by Paul Burstow MP, 2 April 2009. (Hansard Column 1500W)

<sup>14</sup> *The Brownfield Guide* English Partnerships, December 2006

addition to that which, in the Town and Country Planning Act 1990, is protected by virtue of being *“laid out as a public garden”* or *“used for public recreation”*.<sup>15</sup> Yet, as can be seen from the policy framework, PPS 3 does require LPAs to have consideration for the need to protect natural habitats through appropriate green infrastructure and to ensure social spaces are protected.

5.0.4 Therefore if the policy is sufficiently robust, further primary legislation should not be required and this is the Government’s stance to date. When PPS 3 was published the minister states that it gave *“new emphasis on family homes”*<sup>16</sup> and went on to say that LPAs *“will be required to consider the housing needs of children, including gardens”* and *“ensure larger homes are being developed alongside”* smaller homes and flats, with *“separate targets for different kinds of brownfield land”*.

5.0.5 In order to establish whether or not the ambitions of PPS 3 to protect gardens and secure a balance of housing provision are being achieved, it is necessary to understand the extent to which gardens are being developed and the impact of such developments on local communities. However there is no data collected by most LPAs specifically on garden developments, almost all of which are included within ‘Category E’ of their NLUD returns, if at all. Category E is politically the most sensitive of the five NLUD categories, because it includes all land in use but without any plan allocation or planning permission<sup>17</sup> and its identification in any public documents as having development potential can attract adverse attention.

5.0.6 Despite being technically ‘brownfield’ sites, gardens are rarely, if ever, regarded as regeneration sites. The ministerial announcement of this review acknowledges this by stating *“we will exclude ... details of regeneration or renewal schemes”*...<sup>18</sup> It is concluded that NLUD returns from LPAs, which are in any case voluntary, can provide no reliable evidence as to the extent of any ‘garden grabbing’ problem. Nor can the map-based CLG LUCS (Land Use Classification System), which only records changes after they are physically evident and is unable (until now) to distinguish between gardens that are ‘green space’, and hence have habitat qualities and hard surfaced areas in private residential curtilage. Hence there is a need to specifically clarify both the extent to which garden development is taking place and to assess whether the current framework is sufficient to enable this to occur in ways which meet both local need and overall planning objectives.

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<sup>15</sup> Land Use (Garden Protection) Bill 2007-08.

<sup>16</sup> Ministerial statement on PPS3 by Yvette Cooper MP, 29 November 2006

<sup>17</sup> *The Brownfield Guide* English Partnerships, December 2006

<sup>18</sup> Written answer by Margaret Beckett MP (Minister for Housing and Planning) to Parliamentary Question by Paul Burstow MP, 2 April 2009. (Hansard Column 1500W)

## 6 Methodology and constraints

The empirical work for this project has been in two phases:

### 6.1 Phase 1

6.1.1 Phase 1 has been carried out in part by CLG and in part by the Kingston Research Team. It comprised a questionnaire sent by e-mail from CLG to every local planning authority (questionnaire attached as **Appendix A**) seeking information on the amount of housing that has resulted from garden development over the period. In particular the questionnaire asked respondents for:

- data on the number of planning permissions granted and refused, including those granted and refused on appeal, from 1 April 2003 – 31 March 2008, for housing development within the curtilage of an existing dwelling house, but only where these applications would result in a net increase in dwellings within the existing curtilage and specifically excluding land in regeneration or renewal areas and conversions as these do not generally lead to a loss of land. A five-year period was taken in order that a trend result could be established, but it also coincided with a period during which significant changes to national policy and to planning frameworks had taken place; and
- quantification of the amount of housing allocated through planning permissions, and that would have been allocated via refusals. This information would provide information on the scale of garden development and whether such allocations were generally seen initially as an acceptable means of meeting housing targets

6.1.2 Authorities were also asked to provide a commentary on the development plan policies they rely on to determine these type of applications, and information on whether they have identified gardens or other sites in residential areas (either individually or through the identification of a broad location), through the plan led system, for future development. Finally they were asked specifically whether if development on gardens is, or is not, an issue for their authority with reasons why, if they answered yes.

6.1.3 The questionnaire was sent to all 363 local planning authorities (LPAs) in England, including nine National Parks (with the exception of the newly created South Downs). The overall purpose of the questionnaire therefore was to establish the extent to which garden development has taken place, both in total and as a percentage of the housing stock, whether such development was granted at first instance as part of planned development or whether it resulted from appeal. By asking authorities whether it was an issue, the questionnaire sought a qualitative interpretation of the authority's

own *perception* as well as data on which statistical analysis could be undertaken. Finally, authorities were asked to supply any further general comments that they considered to be relevant to the question of garden developments.

6.1.4 The questionnaire responses were coded and entered onto a spreadsheet by CLG and subsequently analysed using SPSS by the Kingston team. The results are set out in the next section of the report.

6.1.5 A total of 127 authorities responded, in a timely way to the survey, though not all supplied answers to every question. A complete list of respondents included in the analysis is contained in **Appendix E**. Two additional responses were received after the deadline and as such are not included in the statistically analysis. However, the Research Team reviewed the responses and they were found to present no change to the overall findings.

## **6.2 Phase 2**

6.2.1 Phase 2 has comprised a series of both face-to face and telephone interviews with selected LPAs, carried out in two separate time periods. A copy of the interview questions, which were agreed with CLG, is appended (**Appendix B**). The questions, which were a mixture of closed-ended and open-ended, were carefully worded to ensure that objectivity was assured at all times. The interviews sought to deepen some of the information that had been gathered in the first questionnaire but also to probe other areas which would enable a deeper understanding of the issues surrounding developments on garden land including definitions, decision-making processes and the presence and contents of any local policies to ensure that such developments do not have significant negative impacts in their areas. The questions also were designed to reveal and explore areas of good practice which might be shared.

6.2.2 In selecting authorities for interview, it was considered essential to present a national picture. It was also important that the authorities represented a good cross section in terms of population density, level of development activity and care was taken to interview a number of authorities who had replied to the questionnaire that backland development was not an issue as well as some who indicated that it was. By this process of sampling, a total of 34 authorities were selected in discussion with CLG and asked to participate. Seven authorities were unable to participate in the study due to time constraints and workload pressures. The chosen authorities were sub-categorised into Tier 1, for which face-to-face interviews were sought and Tier 2 where telephone interviews were arranged. The Tier 1 authorities were those who, based upon those that have responded to Phase 1, appear to (a) offer the most valuable experience of garden development and associated policy development, (b) are examples of good practice and (c) represent a range of different area types nationally. They accounted for 14 authorities. The remaining 20 approached were chosen to ensure compliance with the

need for general representation and to include authorities whose responses revealed some unusual aspects or who had differing views and experiences of backland development.

6.2.3 In total 27 interviews were conducted. Of these 13 were face-to-face and 14 were telephone interviews. All were conducted over a three week period from June to early August. In each case draft questions were circulated in advance. A list of authorities who took part in the Phase 2 work is contained in **Appendix F**. Where interviews took place face-to-face, a member of the Kingston team normally met with two senior planning officers to ensure a full and informed discussion. Telephone interviews were with either head of service or a senior planner. In each case the notes of the interviews were sent to the authority to confirm that they were an accurate record of what was said.

6.2.4 An interim report was submitted in July 2009 and in light of this the study was extended at the request of CLG to consider the type of development occurring on garden land and to enable more detailed analysis of some of the matters raised in the original questioning. This supplementary work was conducted by returning to Phase 2 authorities and administering a further set of agreed questions via self-completion questionnaire or telephone interview. The questions, contained in **Appendix C**, were again circulated in advance. Of the Phase 2 authorities who participated originally, not all were able to assist but 17 did provide responses to the supplementary work. The findings from the supplementary questions and analysis have been integrated with the findings from the original interviews.

6.2.5 It was decided early in the work not to interview other stakeholders but to restrict the primary data collection to officers working for planning authorities, as they are the gatekeepers to new developments and have the best overall view of the subject. They are also impartial, whereas most other stakeholder organisations or individuals might be regarded as having a more pre-determined stance.

## 7 Findings

### 7.1 The sample

7.1.1 The intention was to have as representative a sample as possible in order that the national picture could be understood. The initial questionnaire evoked response rates as follows:

**Table 2: Respondents by region to Phase 1 (questionnaire in Appendix A)**

	SENT	RETURNS	NO DATA	PARTIAL DATA	TOTAL % RETURN	% RETURN COMPLETE
North East	24	7	1	2	29.2	16.7
North West	44	15	3	2	34.1	22.7
Yorkshire & Humberside	23	14	5	2	60.9	30.4
East Midlands	41	12	2	2	29.3	19.5
West Midlands	34	9	0	1	26.5	23.5
East of England	49	16	1	2	32.7	26.5
London	33	13	2	3	39.4	24.2
South East	68	33	2	3	48.5	41.2
South West	47	8	0	1	17.0	14.9
<b>Totals</b>	<b>363</b>	<b>127</b>	<b>16</b>	<b>18</b>	<b>35.0</b>	<b>25.6</b>

\* No Data - just comment

\*\* Partial Data - meaning missed out certain data sections

7.1.2 This response rate is considered to be high for a complex questionnaire and overall leads to confidence that the analysis is likely to be a fair representation of the national picture. One caveat on this is for the south west which is underrepresented, whilst Yorkshire and Humberside had an exceptionally high response rate and may be overrepresented. The response rate was particularly good given that some authorities, including some respondent authorities, were still going through a process of re-organisation as a result of moves to unitary authorities in some areas in April 2009.

7.1.3 In terms of density and settlement type, the respondents have been analysed according to type, using the classification prepared by DEFRA<sup>19</sup>. A summary of the definitions of each settlement type is given in **Appendix D**.

7.1.4 The results are as set out in **Table 3** below.

<sup>19</sup> <http://www.defra.gov.uk/rural/ruralstats/rural-definition.htm>



**Table 3: Respondents to Phase 1 by local authority category**

	<b>SENT</b>	<b>RETURNS</b>	<b>NO DATA*</b>	<b>PARTIAL DATA**</b>	<b>TOTAL % RETURN</b>	<b>% RETURN COMPLETE</b>
Major Urban	82	33	3	2	40.2	34.1
Large Urban	52	16	3	4	30.8	17.3
Other Urban	53	24	4	3	45.3	32.1
Significant Rural	55	27	2	3	49.1	40.0
R50	45	13	3	3	28.9	15.6
R80 (including 9 National Parks)	76	14	1	3	18.4	13.2
<b>Totals</b>	<b>363</b>	<b>127</b>	<b>16</b>	<b>18</b>	<b>35.0</b>	<b>25.6</b>

\* No Data - just comment

\*\* Partial Data - meaning missed out certain data sections

7.1.5 It was expected that urban areas would be more likely to respond than very rural areas where there is normally low development pressure and a small planning staff, but it was revealing that 'significantly rural' areas had the highest return rate.

7.1.6 As can be seen of the respondent authorities, 16 provide no quantifiable data (just comments on policy or significance of the issue) and 18 provided partial quantifiable data. This varied depending on the area, some omitted appeals information, some omitted housing totals and some omitted dwelling information. One explanation for this could be that there are many LPAs who do not operate an integrated spatial database of planning information, making it difficult to produce such data, particularly at short notice. This was confirmed by findings from the supplementary questions in Phase 2 which revealed that, whilst a few authorities systematically held and managed information in a searchable database, the majority did not and therefore providing accurate statistical responses in the timeframe proved difficult if not impossible. However where information was missing on the main variable that particular area is not included in the statistical analysis.

7.1.7 The second phase authorities were drawn from among the 127 respondents and they can be categorised as:

**Table 4: Interviewee authorities by region – Phase 2 interviews**

<b>REGION</b>	<b>NUMBER OF LOCAL PLANNING AUTHORITIES</b>	<b>NUMBER OF INTERVIEWS</b>	<b>% INTERVIEWED</b>
London	33	4	12%
South East	68	4	6%
East of England	49	3	6%
South West	47	4	9%
Yorkshire and Humberside	23	3	13%
North West	44	2	5%
East Midlands	41	2	5%
North East	24	2	8%
West Midlands	34	3	9%
<b>TOTAL</b>	<b>363</b>	<b>27</b>	<b>7%</b>

**Table 5: Interviewee authorities by local authority category**

<b>REGION</b>	<b>NUMBER OF LOCAL PLANNING AUTHORITIES</b>	<b>NUMBER OF INTERVIEWEES</b>	<b>% INTERVIEWED TO NEAREST%</b>
Major Urban Areas	76	9	12%
Large Urban Areas	45	5	11%
Other Urban Areas	55	4	7%
Significantly Rural Areas	53	4	8%
Rural 50	52	4	8%
Rural 80	82	1	1%
<b>TOTAL</b>	<b>363</b>	<b>27</b>	<b>7%</b>

7.1.8 A list of Phase 2 authorities is contained in **Appendix F**.

7.1.9 In conclusion, the number and type of authority who have supplied information either by written responses or by interview, provide a wide spread both in geographical spread and by type of area (e.g. rural or urban).

## 7.2 What is garden development?

7.2.1 The definitional issue of garden sites and development is central to this study. Whilst there is no formal definition of garden development, it was deemed important to determine understanding of the matter amongst LPAs and planning officers. Although this was not tested in Phase 1, understanding of what constituted a garden site and how it was included within local policies, NLUD returns and housing land assessments was tested by interview in Phase 2 and a range of results emerged which can be summarised in the table below:

**Table 6: Understanding of garden sites**

QUESTION	SUMMARY OF RESPONSES
What is your understanding of a garden site?	<p>Answers varied. Common responses were:</p> <ul style="list-style-type: none"> <li>• a single site</li> <li>• land within the curtilage – but that is hard to define</li> <li>• private amenity land</li> </ul>
Does it include multi-property backland?	<p>Almost all authorities agreed that garden sites include multi-property backland.</p>
Are such sites included in SHLAA?	<p>No standard pattern emerged. With a mixture of responses between ‘no’, ‘not yet’ and ‘yes’. Those who did not include them offered reasons such as:</p> <ul style="list-style-type: none"> <li>• unknown deliverability and size</li> <li>• difficult to identify separately</li> </ul> <p>Most of the authorities who stated they were included applied certain conditions such as:</p> <ul style="list-style-type: none"> <li>• a threshold size ranging from &gt; 0.4 hectares or &gt; 0.25 hectares to number of potential units e.g. &gt; 10 units.</li> <li>• only if planning permission in place</li> <li>• only if put forward by owner or have known developer interest</li> </ul> <p>Several authorities noted that garden sites were merely identified as ‘windfall allowance’.</p>
Are they identified as brownfield Category E?	<p>Answers were almost evenly split between ‘yes- subject to a threshold size of, say, ‘&gt; 0.25 hectares’ and ‘no’ and ‘don’t know’. Many authorities interviewed were unfamiliar or had little knowledge of NLUD category E or indeed the composition of the NLUD-PDL database.</p>
Do you have a definition of garden in your policies?	<p>Very few authorities interviewed have a definition of ‘garden’ in their local policies. Subsequent questioning confirmed that in fact, very few authorities have specific garden policies.</p>

7.2.2 This lack of clarity indicates that indeed there is no agreed definition of gardens for the purpose of planning allocations amongst planning authorities. Whilst professional planners may fully understand the issue of ‘garden development’, without any explicit definition it is likely that public confusion and disquiet will remain. Similarly, there is no uniform approach to including garden sites in SHLAA and as such the potential size of the problem in future becomes difficult to determine. Unfamiliarity with the NLUD-PDL database and categories is a further barrier to fully understanding the issue of development on garden sites and also tracking its impact.

### 7.3 Is garden development an issue and if so is it a national concern?

7.3.1 This question is at the heart of the research. LPAs were asked whether garden development was a significant issue for them. Of the total respondent group, 127 responded to the question. **Table 7** shows that of those who responded, some 39 per cent considered that it was; for the rest it was not declared to be a significant issue. However, this overall figure masks a wide regional and settlement type variation, with the distribution of 39 per cent who considered it to be an issue confined to a few regions. These results also beg the question: What constitutes an ‘issue’ and for whom is it an issue?, which could only be investigated in Phase 2 interviews and is not clear from the graphs below.

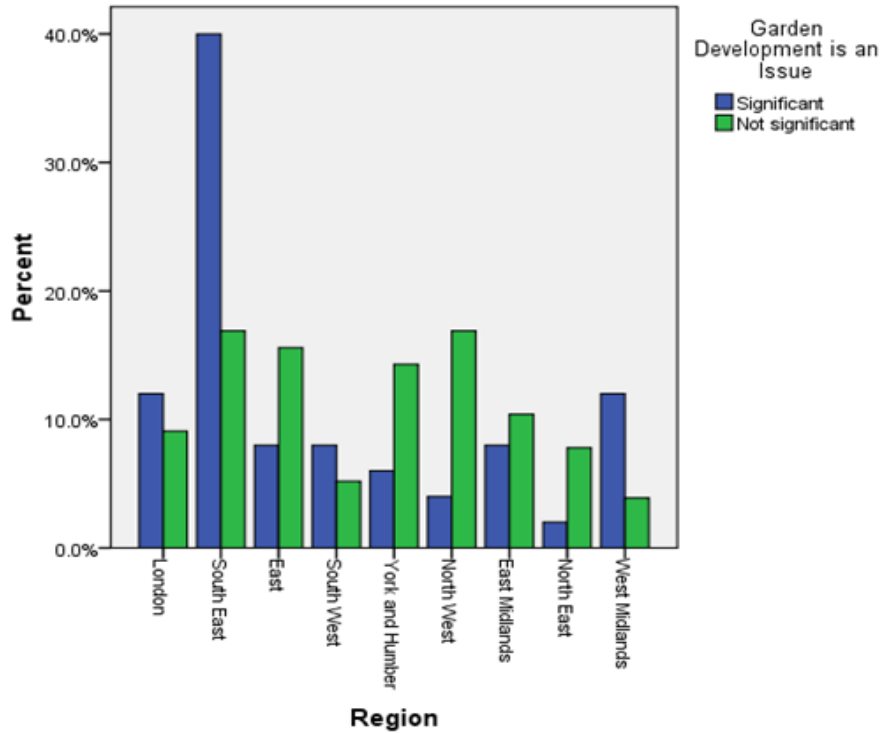
**Table 7: Percentage of authorities that thought garden development is an issue**

		FREQUENCY	PERCENT	VALID PERCENT
Valid	Significant	50	39.4	39.4
	Not significant	77	60.6	60.6
	Total	127	100.0	100.0

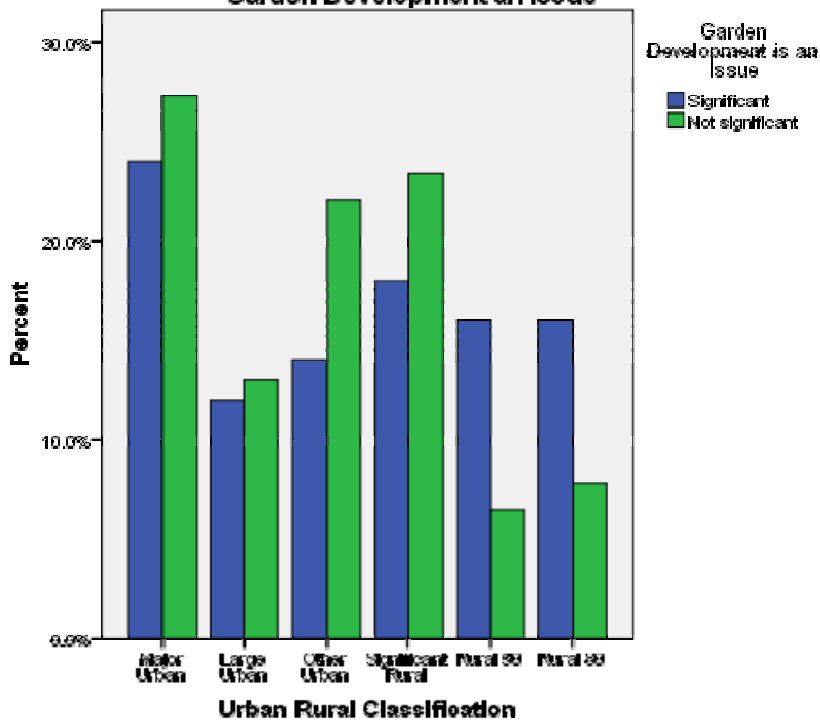
#### ***By region and level of urbanisation***

7.3.2 Further analysis of the data; shown in **Chart 1**, clearly demonstrates the regional specificity of the issue and points to garden development being of significance primarily in London, the south east and the west midlands. Other areas such as the north and east of England and Yorkshire & Humberside reported little significance. It was also apparent that the clustering of those that thought it was an issue was also influenced by the level of urbanisation in the authority. **Chart 2** clearly shows that from the total respondent group those with a rural character feel it more of a significant issue than the more urban authorities.

**Chart 1: Regional Distribution of Respondents Who Considered Garden Development an Issue**



**Chart 2: Urban Rural Distribution of Respondents Who Considered Garden Development an Issue**



7.3.3 However, by cross tabulating the regional and urban characteristics, these general spatial patterns take on a more localised representation, as shown in **Table 8**.

**table 8: Garden development is an issue\* rural urban\* region crosstabulation**

			RURAL URBAN						
			MAJOR URBAN	LARGE URBAN	OTHER URBAN	SIGNIFICANT RURAL	RURAL L 50	RURAL L 80	TOTAL
REGION									
London	Garden Development	Issue	46.2%						46.2%
		Not Issue	53.8%						53.8%
		Total	100.0%						100.0%
South East	Garden Development	Issue	9.1%	9.1%	12.1%	15.2%	12.1%	3.0%	60.6%
		Not Issue	6.1%	3.0%	9.1%	12.1%	6.1%	3.0%	39.4%
		Total	15.2%	12.1%	21.2%	27.3%	18.2%	6.1%	100.0%
East	Garden Development	Issue	6.2%				6.2%	12.5%	25.0%
		Not Issue	6.2%		25.0%	31.2%		12.5%	75.0%
		Total	12.5%		25.0%	31.2%	6.2%	25.0%	100.0%
South West	Garden Development	Issue		25.0%			12.5%	12.5%	50.0%
		Not Issue		12.5%	25.0%	12.5%			50.0%
		Total		37.5%	25.0%	12.5%	12.5%	12.5%	100.0%
York and Humber	Garden Development	Issue	7.1%			7.1%		7.1%	21.4%
		Not Issue	7.1%	21.4%	14.3%	14.3%	7.1%	14.3%	78.6%
		Total	14.3%	21.4%	14.3%	21.4%	7.1%	21.4%	100.0%
North West	Garden Development	Issue			6.7%	6.7%			13.3%
		Not Issue	46.7%	6.7%	13.3%	13.3%		6.7%	86.7%
		Total	46.7%	6.7%	20.0%	20.0%		6.7%	100.0%
East Midlands	Garden Development	Issue			16.7%			16.7%	33.3%
		Not Issue		25.0%	16.7%	16.7%	8.3%		66.7%
		Total		25.0%	33.3%	16.7%	8.3%	16.7%	100.0%
North East	Garden Development	Issue		14.3%					14.3%
		Not Issue	42.9%	14.3%	14.3%		14.3%		85.7%
		Total	42.9%	28.6%	14.3%		14.3%		100.0%
West Midlands	Garden Development	Issue	11.1%			22.2%	22.2%	11.1%	66.7%
		Not Issue			11.1%	22.2%			33.3%
		Total	11.1%		11.1%	44.4%	22.2%	11.1%	100.0%

7.3.4 Drawing out some key examples, the south east, displayed the greatest proportion of authorities that consider garden development to be an issue (over 60 per cent). This figure was comprised primarily of authorities classed as other urban, significant rural and rural 50. This clearly supports the notion that those settlements which have a deficiency in Category A-C PDL sites rely heavily upon this type of development for their housing supply.

7.3.5 The table shows that it is also an issue in London, however as all authorities in the region are major urban, there is no distinction to be made at this level from Phase 1 data. Finally, the west midlands show a spread right across the urban rural spectrum where it is considered an issue. This is, perhaps, reflective of the more diverse and accessible housing markets in this region.

7.3.6 In analysing by local authority settlement type, it might have been expected that 'other urban areas' which comprise lower density urban settlements might have been the areas most subject to this type of development pressure but this proved not to be the case. Instead density analysis, shown in **Chart 2** pointed to significance being polarised into two main categories of settlements:

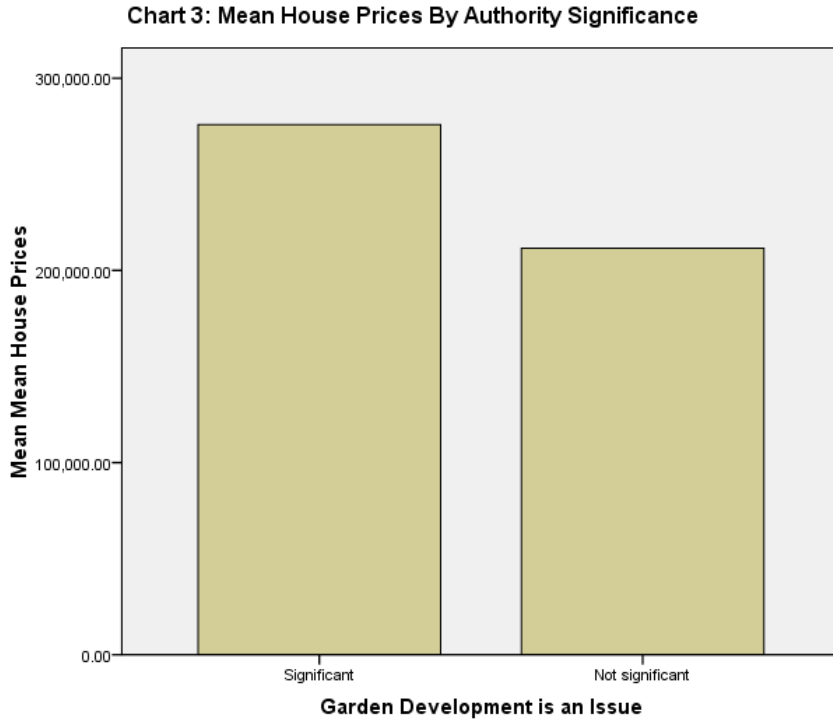
- major urban and
- significantly rural, which areas often include 'sought after' rural settlements

7.3.7 From the scrutiny of evidence, the types of area reporting concerns about garden development is revealed as being within pockets of settlements, rather than being a national issue, or even, as Phase 2 confirmed, an authority-wide issue. What the data did not provide was any detail as to average house price increase by authority over the period to which it related. It is suggested that, if further work is to be undertaken, the collection and analysis of this data might give further richness to the understanding of where it is seen to be of concern.

#### ***By mean house price***

7.3.8 In order to gain a deeper understanding of the type of localities in which garden development was most likely to occur, the decision was taken to investigate, at authority level, the relationship, if any between average house prices and those authorities who reported the maximum amount of such development. Accordingly, the Research Team cross-referenced the responses from Phase 1 with mean house price data (based on Land Registry information) to determine the impact of house price on the prevalence of garden development.

This analysis clearly indicates a link between average house prices and the issue of garden development. **Chart 3** shows that authorities who perceive garden development to be an issue have, on average, higher mean house price values.



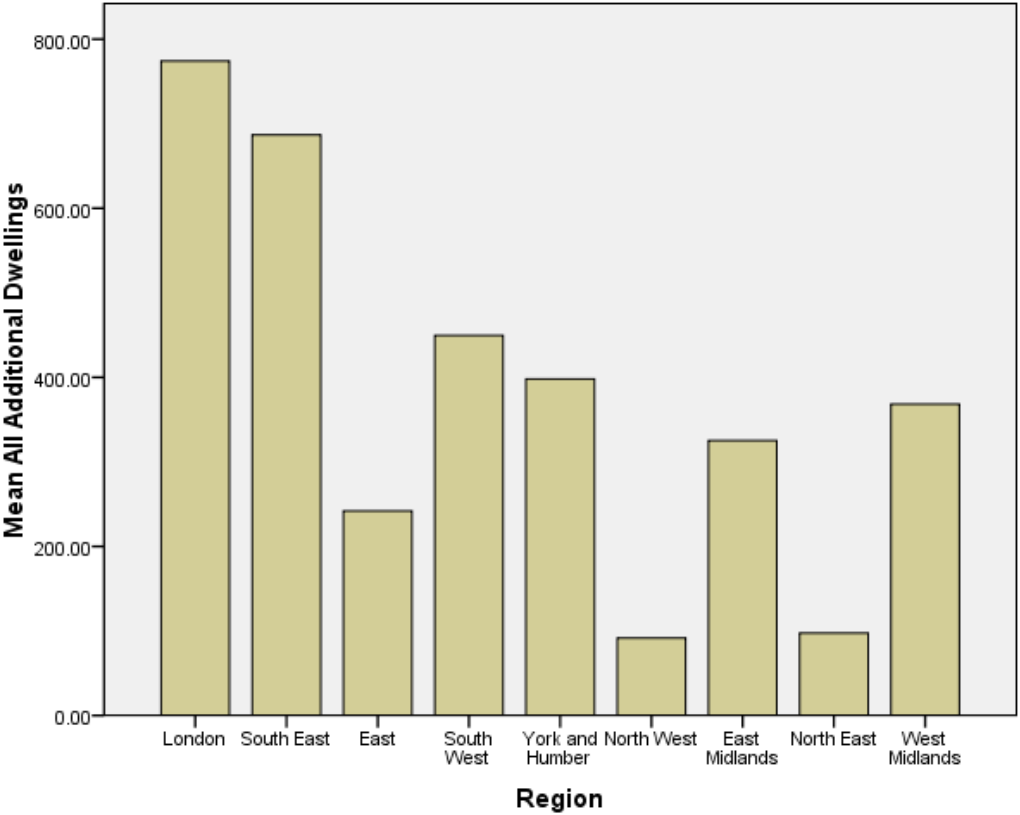
The relationship between house price and the prevalence of garden development is further considered in **section 7.4**.

***By contribution to housing stock***

7.3.9 When what an ‘issue’ might mean is investigated, the main consideration will be the actual number of dwellings that this type of development contributes to the total number of dwellings in the authority. **Chart 4** shows the percentage of dwellings that garden development had contributed to each region. This includes the dwellings initially granted and those granted on appeal. From the chart it is obvious that it is only in London and the south east where the contribution is greatest.



**Chart 4: The mean number of additional dwellings on garden ground as a result of planning permissions granted over the last five years by region**

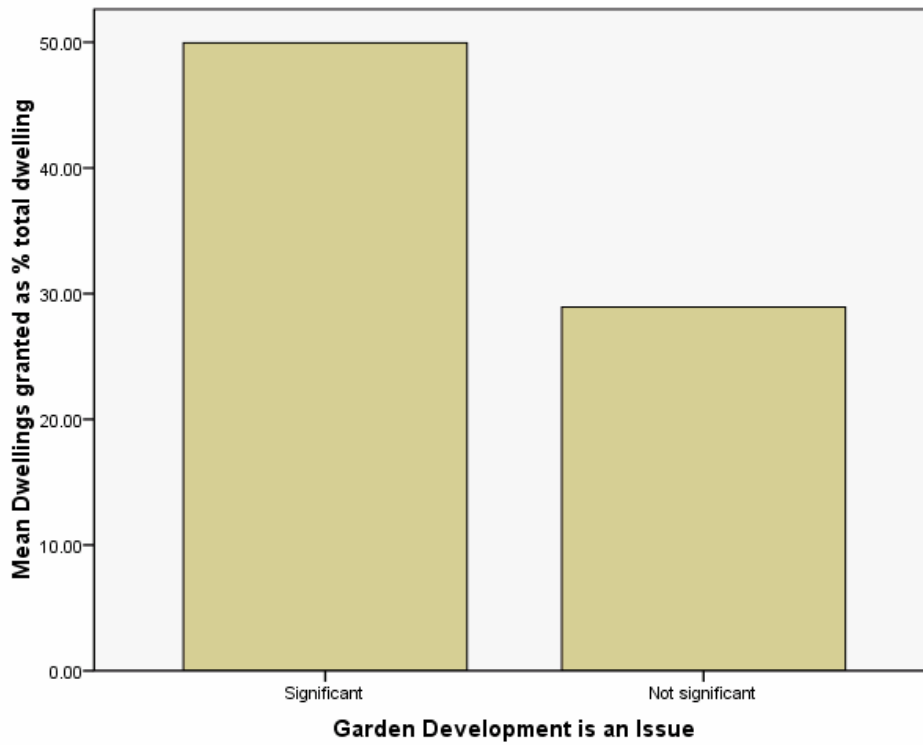


7.3.10 The questionnaire had, by asking authorities to state whether or not the matter was of significance, effectively sought potentially subjective data. Accordingly the Research Team sought to link this self-categorisation to the data presented in terms of numbers of dwellings provided by garden development in order to establish whether authorities who viewed it as a significant matter in their area were indeed those who had provided much of the increased housing stock via this means and further whether such increase was as a result of permissions granted at first instance or on appeal.

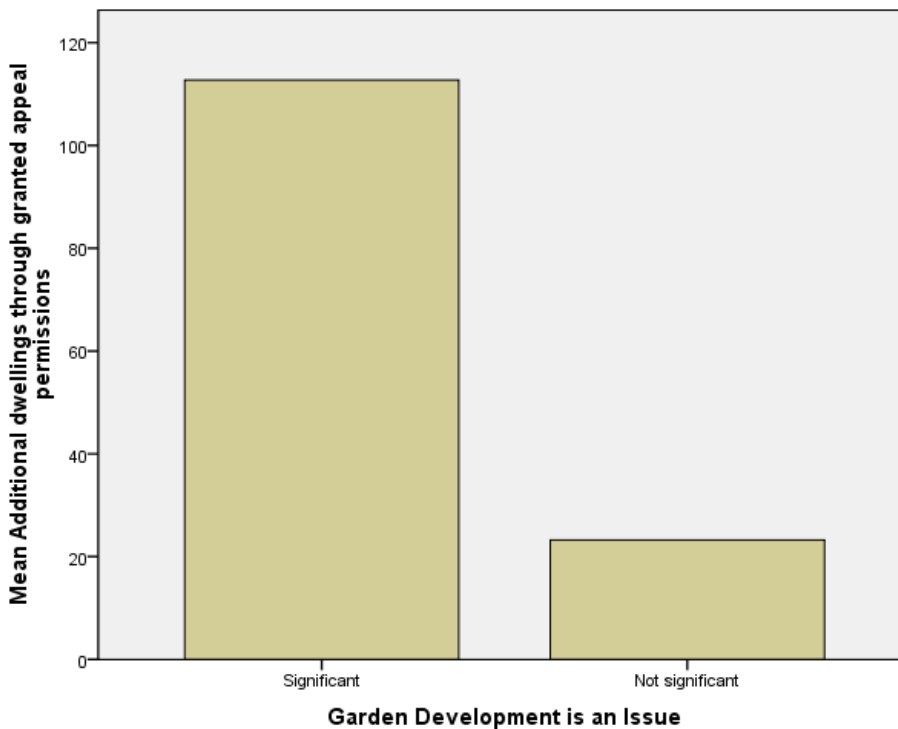
7.3.11 **Charts 5 and 6** clearly show that the regions in which it was considered to be a significant issue in their authority were, generally, more likely to derive a greater supply amount of housing stock from this type of development opportunity.

Further from chart 6 it can be seen that, where the issue is of significance, greater numbers of consents for developments on garden grounds resulted from appeals.

**Chart 5: Additional Garden Development Dwellings as a Percentage of All Dwellings Granted By Authority Significance**



**Chart 6: The mean number of additional dwellings on garden ground as a result of permissions granted on appeal split between those authorities that reported significant issues and those that did not**



7.3.12 From the data it is not easily apparent to qualify the reasons for this, but it is fairly reasonable to assume, based upon the types and location of the authorities that indicated it was a significant issue that the following factors are potential contributors:

- a lack of large scale PDL sites categorised as priority sites by PPS3
- a presence of suitable, large scale residential plots with opportunity for increased density
- during the recent period, small scale development opportunities are most viable due to market conditions
- recognition by LPAs of the significant contribution that garden development makes towards targets and in some areas such development is the only or most effective way of meeting their SHLAA
- local and national policies are allowing change management in politically sensitive local areas

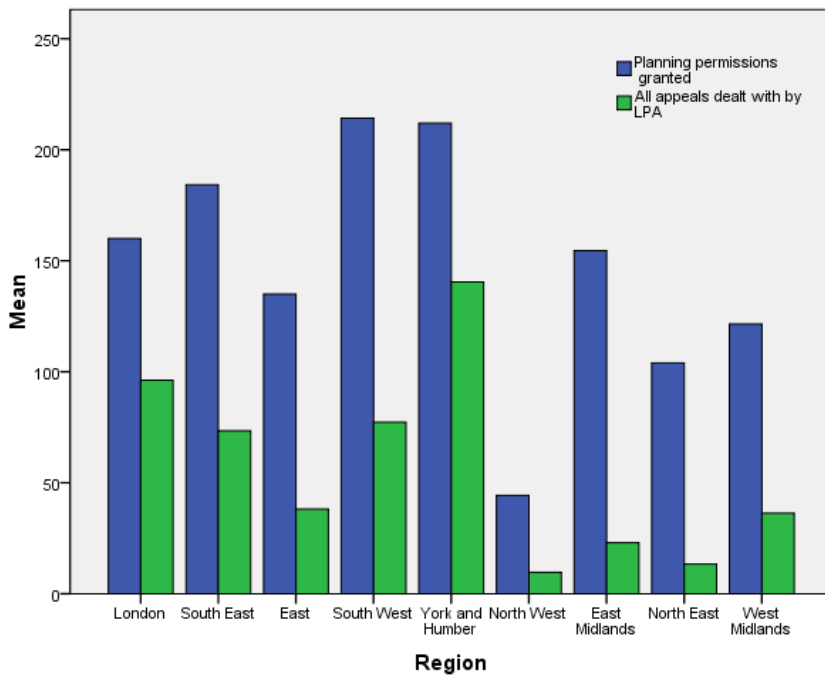
7.3.13 In light of these findings, supplementary research was undertaken to determine the type of stock developed in garden sites. This, along with more detailed analysis of the trend of garden development over the five-year period, is considered in the following section.

#### ***By appeals and workload***

7.3.14 The other key type of 'issues' that can be discerned from this data set is the volume of work each authority has to manage with in terms of applications and, particularly, appeals and the extent to which the decisions of the authorities are being upheld by the Planning Inspectorate.

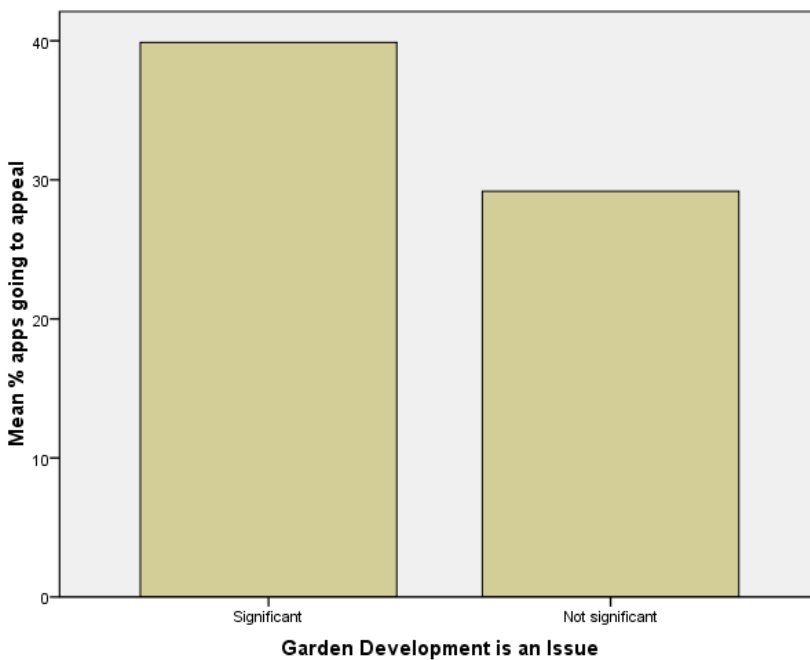
7.3.15 **Chart 7** shows the actual average volume of applications by region and the actual average volume of appeals that the authorities have to deal with. This demonstrates that once again, the south east is clearly under pressure from not just the amount of applications but, more importantly, the weight of appeals being dealt with. However, in other areas, apart from the south west, appeals are less numerous. The issue of the resource base required to deal with both application numbers and appeals was explained in more detail in Phase 2, when it was revealed to be of significant concern to some authorities and a link to the approach taken by elected members of the council was shown to impact on both the numbers and likely outcome of appeals. The matter is referred to again in **section 7.6**.

**Chart 7: The Issue of Workload By Region**



7.3.16 **Chart 8** below clearly demonstrates that those authorities who perceived garden development to be an issue in their area derived a much greater workload from garden applications with a much higher percentage going to appeal.

**Chart 8: Percentage of Applications Going to Appeal By Authority Significance**



7.3.17 **Table 9** shows the overall correlation between planning permissions refused by all the respondents and the number of appeals refused by the Planning Inspectorate. The correlation is both high and significant at the 99 per cent level. This clearly shows

that in the vast majority of cases the Planning Inspectorate is in agreement with the LPAs and has interpreted policies and the nature of the development in a consistent manner.

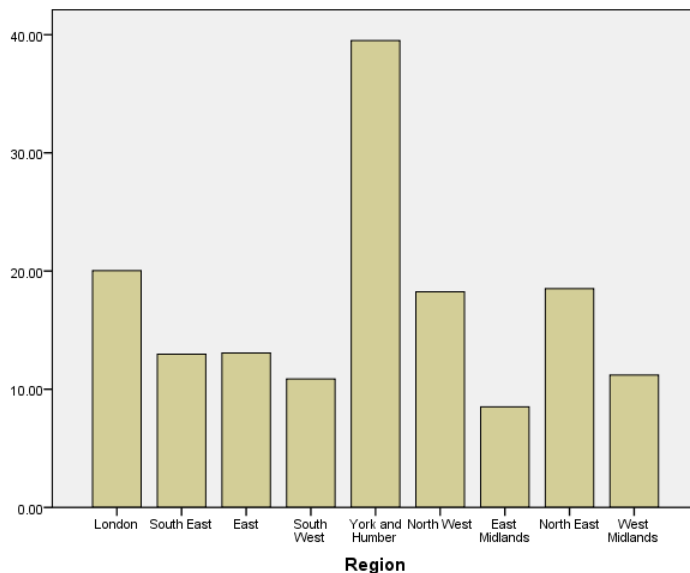
**Table 9: Correlations between permissions refused by LPA and Inspectorate**

		PLANNING PERMISSIONS REFUSED	PERMISSIONS REFUSED BY APPEAL
Planning permissions refused	Pearson Correlation	1.000	.836**
	Sig. (2-tailed)		.000
	N	91.000	83
Permissions Refused by appeal	Pearson Correlation	.836**	1.000
	Sig. (2-tailed)	.000	
	N	83	84.000

\*\* . Correlation is significant at the 0.01 level (2-tailed).

7.3.18 This indicates the robustness of the sample population in terms of its ability to apply its policies and defend its planning decisions. **Chart 9** shows the regional variation of this ability by plotting the percentage of appeals that were granted permission by the Planning Inspectorate set against the number of permissions refused by the LPA, i.e. those overturned on appeal.

**Chart 9: Average Appeals Granted as a Percentage of Permissions Refused by LPAs (Overturns)**



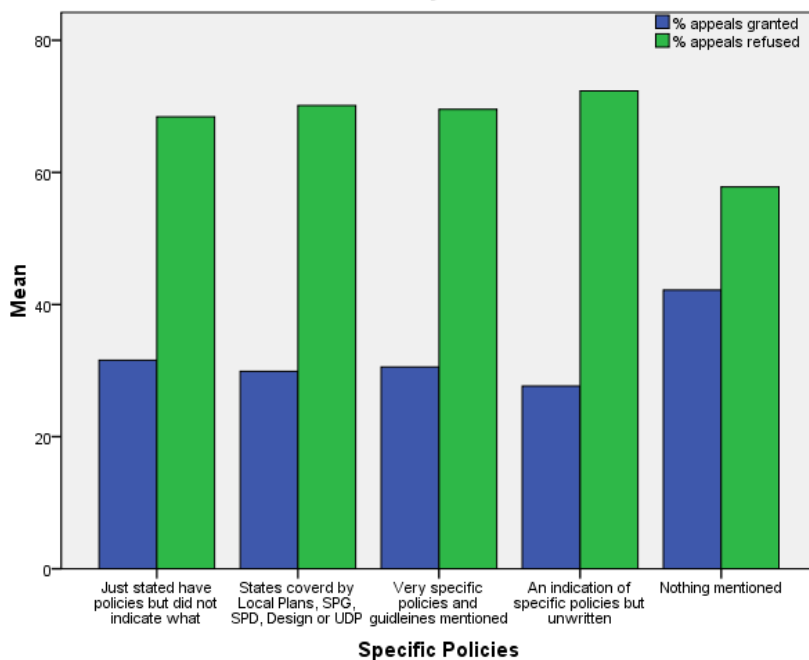
7.3.19 It must be noted here that the sample size at this level for regions such as Yorkshire and Humberside, partial returns and the overall low number of applications, will be the reason for the skewed distribution.

7.3.20 If LPAs are therefore reasonably successful at defending their decision-making process, particularly in this sensitive area of planning decisions, it is necessary to consider why this might be and to ask the question to what extent this is dependent upon the nature of the policies in place.

7.3.21 The respondents were asked to what extent they had developed special policies to deal with garden development. However, this was a highly subjective question which was interpreted dramatically different by each authority. Some simply replied with a 'Yes', some indicated they employed a range of saved UDP policies or more contemporary supplementary documents or design guidance or conservation areas or development control criteria. As a result, there was very little consistency in the responses and these had to be interpreted and reclassified to provide a general interpretation for this analysis. This area was explained further through Phase 2 and more detail is provided in section 7.5 - **The impact and effectiveness of planning policies and targets.**

7.3.22 As can be seen from **Chart 10**, and based upon the level of different interpretations of the question, it appears to make very little difference to the appeal process, irrespective of whether LPAs consider they have specific policies or not, or whether they rely upon a raft of existing and saved district wide policies.

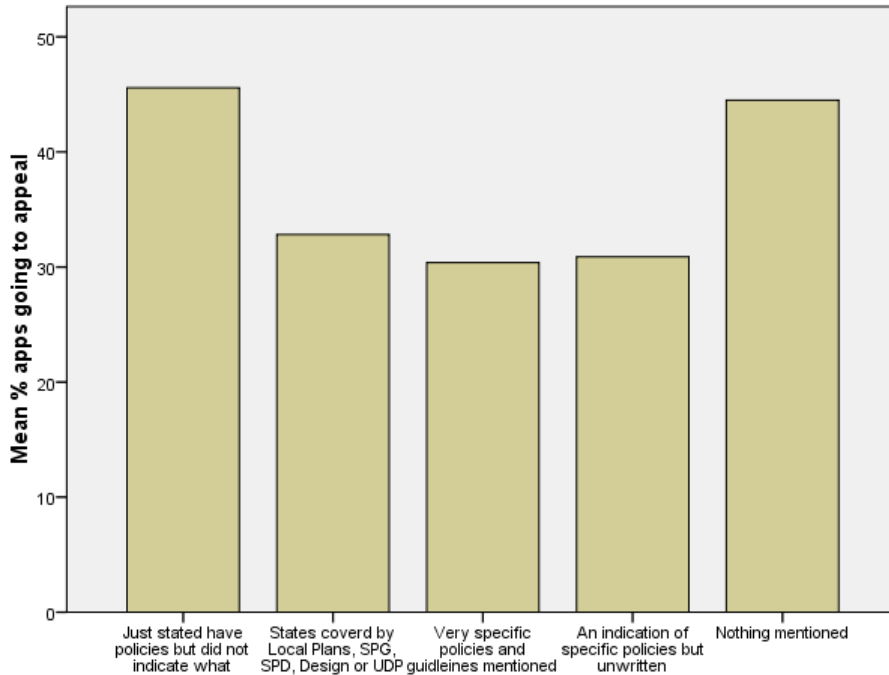
**Chart 10: Average Percentage of Appeals Granted and Refused By Level of Policy**



7.3.23 **Chart 11** indicates that where detailed local policies were mentioned, which mostly included specific saved UDP guidance and development control criteria, along with SPG and SPD, there is a tendency for less of the total applications submitted to go to appeal. This would support the notion that the greater the detailed guidance; locally,

regionally or nationally, the less of an appeal burden is placed on the LPA. These results are supported by findings from Phase 2, with several authorities noting that “it has been worth” developing local policies because as a result, appeals have been less frequent and better defended. This is discussed in more detail in subsequent sections.

**Chart 11: Percentage of Garden Applications Going to Appeal By Level of Policy**



7.3.24 Finally, from Phase 1 analysis, **Table 10** shows the relationship between those LPAs that thought garden development was an issue and those that had specifically identified sites. However, it must also be noted here that the responses were extremely varied and some indicated future identification as a possibility or considered broad allocation as identification. Taking this into account it is noticeable though that in the main, it is those that did not consider it an issue and had not identified sites that made up the greatest percentage, whilst those that did consider it an issue were mostly those that would, and have included, in some kind of broad allocation. This ties in with the interview findings: specific garden sites are not included in SHLAAs because they are either too small or are considered to be ‘windfall’ (or both) and, as such, not worthy of inclusion. Some authorities indicated they will try to do this as it is an essential part of their future housing supply and they indicated during questioning that PPS 3 should allow this.

**Table 10: Identified sites\* garden development is an issue crosstabulation**

			GARDEN DEVELOPMENT IS AN ISSUE		
			SIGNIFICANT	NOT SIGNIFICANT	TOTAL
Identified Sites	Yes	Count	14	12	26
		% within Identified Sites	53.8%	46.2%	100.0%
		% within Garden Development is an Issue	28.0%	15.6%	20.5%
		% of Total	11.0%	9.4%	20.5%
	No	Count	14	45	59
		% within Identified Sites	23.7%	76.3%	100.0%
		% within Garden Development is an Issue	28.0%	58.4%	46.5%
		% of Total	11.0%	35.4%	46.5%
	Possible might in future or broad indication	Count	19	13	32
		% within Identified Sites	59.4%	40.6%	100.0%
		% within Garden Development is an Issue	38.0%	16.9%	25.2%
		% of Total	15.0%	10.2%	25.2%
Would change policy to stop it happening	Count	3	1	4	
	% within Identified Sites	75.0%	25.0%	100.0%	
	% within Garden Development is an Issue	6.0%	1.3%	3.1%	
	% of Total	2.4%	.8%	3.1%	
Nothing mentioned	Count	0	6	6	
	% within Identified Sites	.0%	100.0%	100.0%	
	% within Garden Development is an Issue	.0%	7.8%	4.7%	
	% of Total	.0%	4.7%	4.7%	
Total	Count	50	77	127	
	% within Identified Sites	39.4%	60.6%	100.0%	



	% within Garden			
	Development is an Issue	100.0%	100.0%	100.0%
	% of Total	39.4%	60.6%	100.0%

**Why is garden development an issue for some LPAs**

7.3.25 When conducting the interviews, both authorities who had self-declared an issue and those who had not were approached in order to develop a deeper understanding of why this might be the case. The interviews provided such detail with an almost equal split between those who found it to be of concern and those who did not. The main reasons can be summarised as follows:

**Table 11: Why garden development is/is not problematic**

<b>REASONS DECLARED WHY IT IS A PROBLEM</b>	<b>REASONS DECLARED WHY IT IS NOT</b>
Development pressure in a green belt area and local lack of true brownfield sites	Intensification is needed but it must be managed
Little land available so ‘windfall’ sites are contributing a lot of the new houses	It is more a political issue and a matter of members and public perception than a planning matter
A workload issue during times of high development pressure	Sufficient Category A-D land to meet housing needs
Members go against officers’ recommendations to refuse without sound planning reasons, resulting in costly appeals	Robust local policies and policy-based decision-making make appeals unlikely
Inspectors are not consistent in interpreting national or local policy and guidelines and there is a lack of certainty for Authority or stakeholders.	Appeal decisions confirm local policy and developers do not go to appeal on this type of site

7.3.26 This provides a very clear picture. Where there is sufficient other types of brownfield land, it is not a matter of significant concern; however it does require to be managed and the view of some authorities was that the development of local policies had been helpful. Even in areas where there is no professional concern however, it is sometimes viewed by members, if not officers, as an issue.

7.3.27 However, in areas of very tight housing land availability, for example in areas within or abutting green belt land, garden land may represent the single major source of additional housing stock and this raises the significance of the issue. Given the data

revealed in Phase 1, what can be concluded is that the matter is very real - but only in some high development pressure areas, such as significantly rural areas within the south east and in the west midlands. Indeed one authority indicated that they are simply running out of any sites, even including garden land.

## 7.4 Contribution of garden development to housing stock

### *Is garden development providing a significant addition to the housing stock?*

7.4.1 It is a matter of national acceptance that the current rate of house building is below the identified level of need, especially since the economic downturn began. Whilst changes to planning regulations have been brought in both to speed up the decision-making process and to encourage development on brownfield sites, new provision has not kept abreast of need, although since the economic downturn it is outstripping effective demand. The government are therefore keen to know what contribution garden development is making to the overall provision.

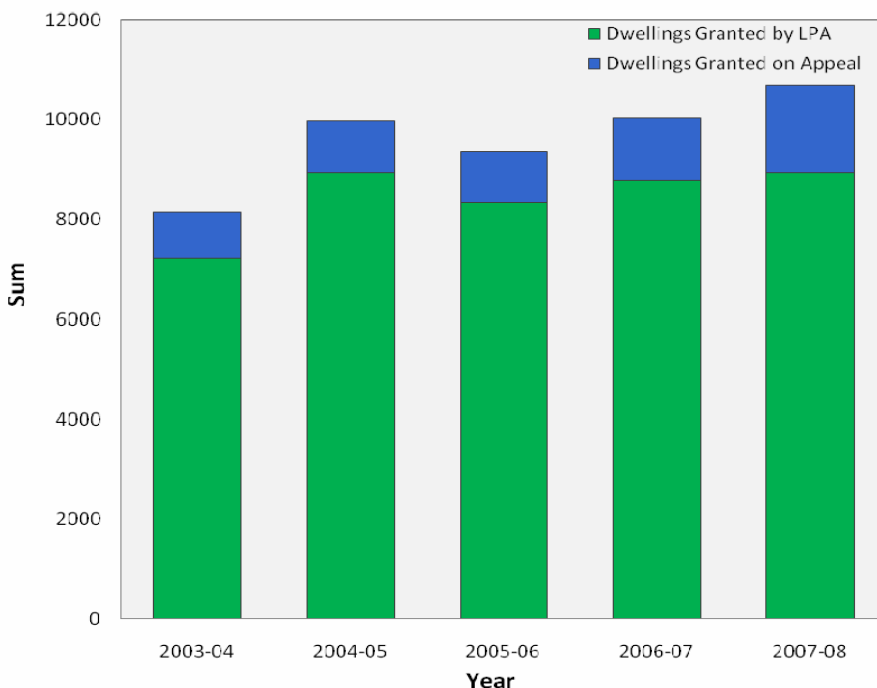
7.4.2 The finding among the Phase 1 respondent authorities is that development on gardens is adding very significantly to the stock (as indicated in **Charts 5** and **6**). This is particularly in the south east semi rural locations, London fringe and certain other regions such as the west midlands across a range of areas.

7.4.3 However, not all this development is supported by the LPAs as some 7 per cent of all dwellings located on garden development sites have been granted permission on appeal.

7.4.4 The view of selected LPAs of the contribution of garden developments to the overall housing provision was explored through the interviews. The interviews confirmed that for some authorities garden development was a very significant part of their housing increase, but this did not necessarily link with it being a major concern. The important point raised was the need to understand the local pressures and manage them accordingly, in particular through developing local policies in partnership with relevant local stakeholders and with support from elected members.

7.4.5 Further analysis of the Phase 1 data shows that, over the five-year period, there has been no significant change in the amount of housing provided on garden land. **Chart 12** shows the actual contribution that garden development has made to the housing stock has increased slightly over the study period. **Table 12** presents the underlying data and also shows the number of dwellings refused at appeal over the period. The data also shows that whilst the number of dwellings actually provided by garden land developments has increased, so has the number of dwellings refused.

**Chart 12: How Much Have Gardens Added to the Housing Stock**

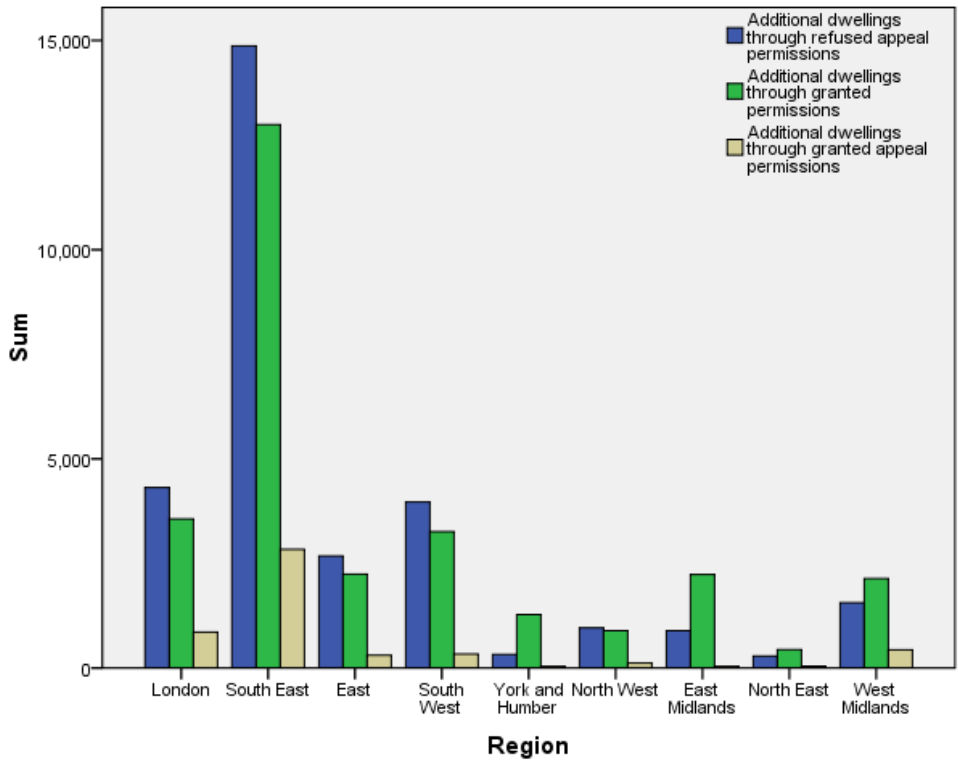


**Table 12: Additions to the housing stock**

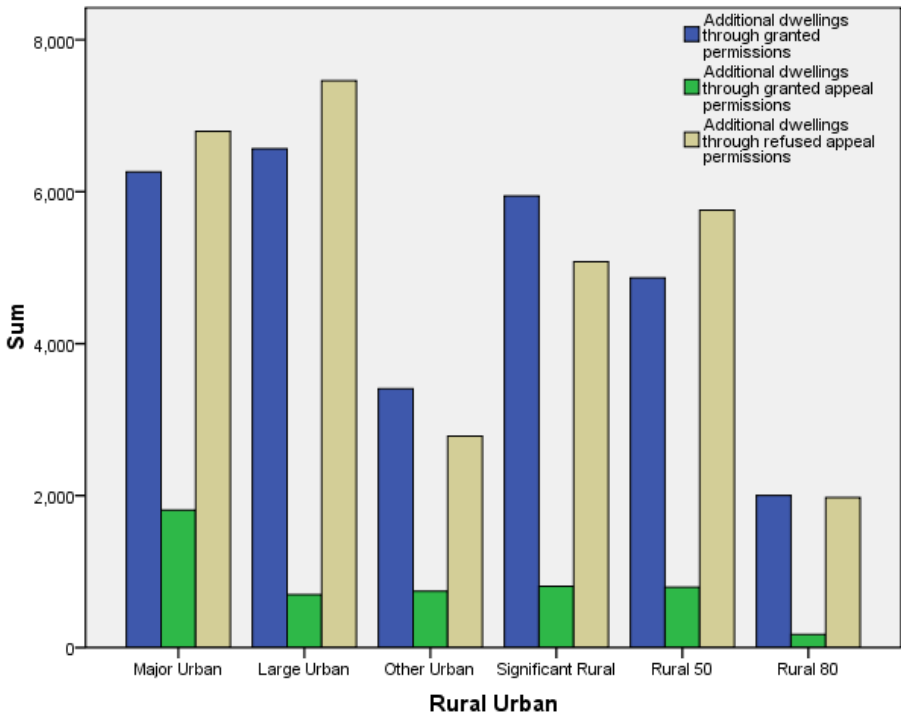
YEAR	DWELLINGS GRANTED	DWELLINGS GRANTED ON APPEAL	DWELLINGS REFUSED ON APPEAL
2003-04	7208	930	4459
2004-05	8949	1019	5917
2005-06	8346	1015	6744
2006-07	8782	1252	6643
2007-08	8948	1739	6892

7.4.6 Analysing the data regionally and by authority classification across the entire period, **Charts 13** and **14** clearly shows that garden development is a major contributor to housing stock primarily in the south east but also the south west and London. Whilst there is less of a distinction, **Chart 13** shows that garden developments provide a more significant contribution to housing stock in large urban, major urban and also significantly rural authorities. What is also apparent is that in the majority of regions applications refused at appeal could have potentially contributed a similar amount on top of those actually granted.

**Chart 13: Dwellings Contributed to the Housing Stock By Region**

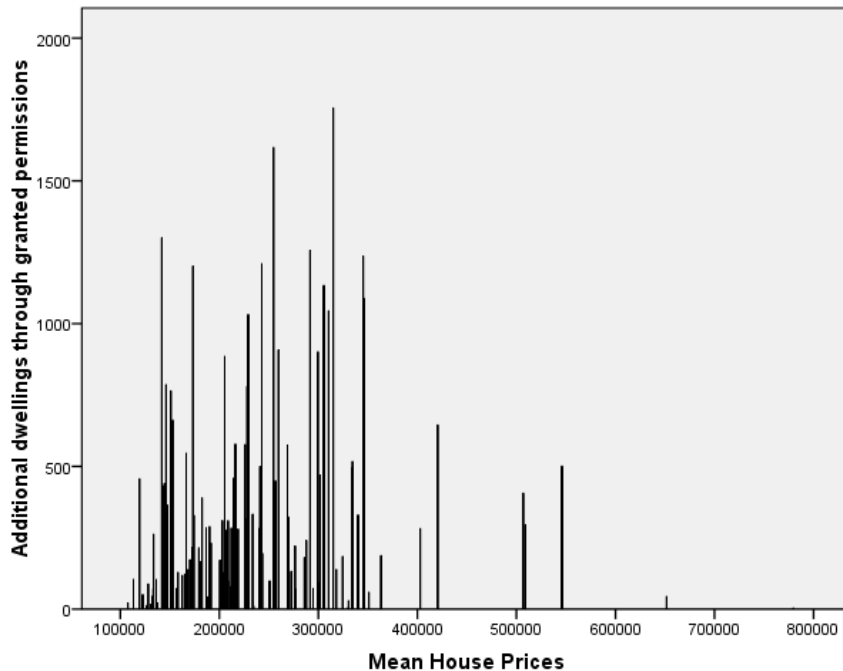


**Chart 14: Dwellings Contributed to Housing Stock by Rural/Urban Classification**



7.4.7 From the analysis in **Chart 15**, it is clear that garden developments contribute most to the housing stock in areas where house prices are in the region of £300,000, which is well above the national average house price. However, the results show a distinct skew. There is a considerable contribution made where prices are in the region £150,000 - £300,000 but towards the top end of the housing market, where average prices exceed £500,000, the contribution made is almost non-existent. Similarly there is little activity within the bottom price section.

Chart 15: Dwellings Contributed to the Housing Stock By Mean House Price



7.4.8 Although no firm conclusions can be drawn from such aggregated data, when taken in conjunction with the data revealed in **Chart 3**, it suggests that:

- where there are pockets of very high value housing, little land comes forward although it is recognised that dwellings in these areas may have large gardens except where situated in dense urban environments. In such areas it could be that planning policies are resistant of density increase in such areas as these would have a detriment on character or that house owners do not wish to exploit such development potential, regardless of the price that they could achieve
- the greatest level of both housing demand and developer profit occurs within this upper-mid price bracket
- houses within this upper-mid price region may tend to have sufficient plot sizes to allow subdivision and owners may have a less protective attitude towards their gardens than is the case in very high value areas
- within low value areas, the density of dwelling may preclude such developments or, if density is not the issue, the house values reduce or eliminate any significant levels of development profit

It follows that, in establishing where pressures for development of back gardens may exist or may increase in the future, average house prices may provide some form of indicator of likely pressure points.

7.4.9 Whilst this data provides a detailed picture of the contribution that garden development makes, both actually and potentially to the housing stock, further research in Phase 2 sought to identify the types of dwelling it contributes; analysis of which is set out below.

***What is garden development adding to the housing stock?***

7.4.10 In addition to the Phase 1 CLG data regarding dwellings provided, the Phase 2 work was extended to determine the types of dwelling commonly provided on garden sites. It was considered unlikely that many authorities would be able to provide accurate data and to accommodate this, the questions were framed to allow authorities to provide detailed data where possible and if not, indicate trends in the development of particular dwellings. Whilst not comprehensive, the results provide an indication of what types of dwelling garden sites are contributing to the housing stock and the nature of this stock compared to existing dwellings.

7.4.11 With regards to dwellings granted at first instance, in almost all responses houses were the most common dwelling type on garden land and in a few authorities, houses constituted 100 per cent of the provision on garden sites. Within this, detached dwellings were seen by almost all authorities as the most prevalent. This picture is echoed by those dwellings granted on appeal and refused by both the LPA and on appeal, suggesting that the majority of applications for development on garden land are indeed for housing as opposed to flats. Responses identify that, by and large, these percentages have remained stable over the 2003-2008 period.

7.4.12 However, a few respondent authorities, almost exclusively within London, identify a much higher provision of flats on garden land. In one such authority, this trend had decreased over time and particular so since the adoption of their design and accessibility SPD. Only two authorities indicated an increasing trend towards flatted development with one deriving a significantly larger number of flats than houses on garden sites.

7.4.13 In almost all cases, authorities indicated that in determining whether garden development was allowed, 'contextual fit', design and scale were pre-eminent considerations and for this reason, within the sample authorities there does not appear to be any issue of gardens being developed with units which are inappropriate in scale, design and type to their surrounding area. In the majority of cases, detached and semi-detached properties were the 'host' dwellings, often due to the fact they had the largest gardens, and were most commonly developed with detached dwellings as indicated above.

## **7.5 The impact and effectiveness of planning policies and targets**

7.5.1 The policy framework for control of development is critical to planning determinations. The current three-tier approach has developed over a period of time but the current national guidance (PPS 3) has only been in place for some five years whilst the LDF system, is in some authorities very new. Therefore it was expected that the research would show that whereas some LPAs might have developed extensive local policies in relation to garden land others would not. This issue was explored in two ways. First the CLG-administered questionnaire asked if any local policies had been developed in relation to garden developments. The results, shown previously in **Charts 10** and **11**, reveal a mixed picture.

7.5.2 Whereas some LPAs have developed policies, many have not. The Phase 1 analysis; conducted by region and type of authority (urban, rural etc) and differentiated between those authorities who declared an issue with garden development and those who did not, reveals no clear relationship. However, as indicated, it is possible to infer that those who indicate that some form of local policy is in place, specific or not to the issue, are more likely to be able to defend their decisions through the appeals process.

7.5.3 Because the overall Phase 1 results showed a very wide range in responses, the question was explored within the interviews in order to develop deeper understanding and an explanation for the mix of views. The interviews explored three main areas:

- the perceived effectiveness of national policies and (mainly Planning Policy Statement (PPS) 3; and s.106 Planning Obligations)
- the perceived impact of national brownfield and housing targets
- the development of local development frameworks and specific local policies aimed at garden developments

### ***Effectiveness and application of national policies***

7.5.4 Interviewees in Phase 2 and the supplementary work were questioned as to the impact of national policies on garden development and their effectiveness in helping to manage garden development. Authorities were asked directly regarding Planning Policy Statement 3, which is viewed as the most important and contentious in relation to garden development. The brownfield definition contained within Annex B of PPS 3 is designed to augment the use of PDL in local planning. Local authorities were questioned as to the perceived impact of this particular definition on garden land development within their local area.

7.5.5 Authorities were also asked to identify other PPS considerations which they relied upon for garden development applications.



**Table 13: Impact of PPS 3 and brownfield definition**

QUESTION	SUMMARY OF RESPONSES
<p>In your opinion, has PPS 3 affected your ability to conserve garden space?</p>	<p>At a ratio of approximately 2:1 PPS 3 was deemed by the LPAs <b>not</b> to have helped to conserve. However many interviewees expressed ambivalence towards PPS 3, typically: <i>“It has both helped and hindered a bit”</i>. Whilst some authorities welcomed the requirement to conserve character, where there is real pressure to develop, then, as one authority said: <i>“density trumps character”</i>. The point was also made that PPS 3 led to the supposition that all gardens were brownfield and this made it harder to resist applications and thus <i>“made it easier for builders”</i>. Those who found PPS 3 had helped (but also some who said it had <b>not</b> helped or were ambivalent) generally had relevant local policies <b>before</b> it was published. The brownfield definition contained within the annex was perceived as a significant issue towards development in all cases.</p>
<p>To what extent does the definition help (or not help) maintain garden space where it is considered to be of value to the local environment and why?</p>	<p>Of those who responded to the supplementary work, all agreed that the definition did not help to maintain garden land. Authorities offered a range of reasons, stating that it:</p> <ul style="list-style-type: none"> <li>• encourages intensification</li> <li>• breeds an assumption that garden development is acceptable and will receive consent</li> <li>• fails to acknowledge the ecological/environmental value of private suburban gardens</li> <li>• puts too much emphasis on the preference of development on PDL throughout and</li> <li>• causes particular problems for areas with generous gardens where the vast majority of curtilage is ‘green’ and undeveloped</li> </ul>
<p>What impact does the brownfield definition have on local decisions on garden development?</p>	<p>The majority of respondents deemed that the definition was <i>“hugely influential”</i> in local decision-making and the point was raised that when used as a defence by applicants, it made approval difficult to resist.</p>
<p>How would you wish to change the PPS 3 definition in order to better manage housing delivery and defend against garden development where necessary?</p>	<p>Almost all authorities offered changes to the PPS 3 definition with most agreeing that the definition needs clarification and refining to specifically address gardens. Most agreed that, in some form, garden land should be included within the exclusions with several choices proposed:</p>

	<ul style="list-style-type: none"> <li>• PDL to relate only to parts of garden land that have building on them i.e. garages or hard-standing</li> <li>• exclude residential curtilage entirely</li> <li>• exempt gardens where building footprint forms less than a set percentage of the curtilage (with 40-50% offered)</li> </ul> <p>Some authorities felt that the definition should be changed in order to be more protective of the ecological/environmental value of private gardens. One authority offered that the closing sentence should be extended to say:</p> <p><i>“Indeed, councils should not grant planning permission for housing development on previously-developed land where the land in question individually or as part of a larger street block, makes an important contribution to the character and appearance of the area or is considered to be of ecological value”.</i></p> <p>Other suggestions include:</p> <ul style="list-style-type: none"> <li>• cross reference to the other important national policy and to local policies to strengthen their role</li> <li>• include a preference to combined, cohesive garden sites as opposed to single, ad hoc developments</li> </ul>
<p>To what extent do you take into account other PPS considerations and other guidance?</p>	<p>Many authorities expressed a reliance on PPSs other than PPS 3 including:</p> <ul style="list-style-type: none"> <li>• PPS 1 – design, sustainability and climate change issues</li> <li>• PPS 9 – concern for biodiversity</li> <li>• PPS 25 – where flood risk an issue</li> <li>• PPG 15 – particularly in conservation areas</li> <li>• PPG 17 – in particular the open space audit (one authority even extended this to private open space)</li> </ul> <p>Other guidance relied upon includes:</p> <ul style="list-style-type: none"> <li>• regional spatial strategies</li> <li>• Wildlife Acts</li> <li>• CABE design guidance</li> </ul>
<p>In your opinion can Planning Obligations be used more effectively since Circular 05/05 to help make garden development acceptable?</p>	<p>Almost all respondents commented that Circular 05/05 had not helped in the context of garden development. Most noted that it remained ineffective because most are small scale sites. One authority indicated that contributions are regularly challenged at appeal due to a lack of evidence. It was also felt by one authority</p>

	members would be “concerned at the suggestion that a Planning Obligation could make garden development acceptable.”
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7.5.6 The responses provided by the authorities give a comprehensive insight into the effectiveness and application of national policies and guidance. Although the sample size is too small to be truly representative, the consistency of responses does give confidence to the understanding achieved. Most perceive that, whilst provisions to maintain character help in some respect, this can and often is outweighed by the emphasis on preference for previously developed land. The particular issue with PPS 3 is seen to be the brownfield definition which is regarded as very influential in decision making. In particular it does not promote the protection of garden land and breeds an assumption that garden sites are PDL and therefore leads to a presumption that consent will be forthcoming. The consensus appears to be that the definition could usefully be refined to specifically address garden land. Comment was also made that the definition in the London Plan<sup>20</sup> was more robust.

7.5.7 It also became clear that there is no uniform approach adopted by LPAs to the national policies (PPSs) used for garden development applications. A variety of policies are used for different aspects and angles of garden development without any real cohesive or joined up approach. The need for cross-referencing of policies was advocated by one authority to tackle this. PPG 17: *Planning for Open Space, Sport and Recreation* was identified by a number of authorities, however even within this, their application of the open space audit was variable; with one including private space and others not, and as such its perceived usefulness varied.

7.5.8 Notwithstanding, LPAs do use a range of measures to ensure that their decisions are well founded. Some of these good practices and sources of information are supplied in **Appendix G**.

7.5.9 With regards to planning obligations, it is apparent that authorities perceive the provisions under Circular 05/05 to be an ineffective framework for dealing with small scale development. The difficulty with evidencing the impact of an individual site and demand arising from it means that contributions for small garden developments are regularly challenged at appeal. The issue of contributions, particularly with regards to affordable housing, will be explored further in **section 7.6**.

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<sup>20</sup> London Plan (2004) pg A60

**Brownfield and housing targets**

7.5.10 Whilst Government preference for development on PDL is elucidated in PPS 3, it is played out through brownfield targets, currently requiring 60 per cent of housing development on PDL. Additionally, the Government has ambitious house-building targets, all of which potentially contribute to and influence garden development. Phase 2 interviews sought to establish the extent to which these targets inform and impact upon decision-making by local authorities on garden sites. The results are summarised below.

**Table 14: Impact of brownfield and housing targets**

QUESTION	SUMMARY OF RESPONSES
What impact does brownfield target have on local decisions on garden development?	With regards to targets, responses suggested that brownfield targets were not a significant issue, although those with particular PDL shortages and green belt constraints tended to view a slightly more significant impact. One authority did comment that it felt <i>“emphasis on targets has a detrimental impact.”</i>
Would you say that garden development is a problem for your authority and how does this relate to your housing targets?	It was clear that meeting housing targets is an important driver in decision-making. One authority noted that appeals have been lost due to a shortfall in housing targets. Whilst among interviewees, only some authorities noted that garden sites are a significant contributor to housing targets, even authorities that exceeded targets felt that the emphasis on targets had an impact on decision-making.

7.5.11 It is clear that the role and impact of brownfield targets is dependent upon local circumstances. Responses show that its impact is amplified in areas with a shortage of other brownfield sites or bounded by green belt, whereas those with suitable brownfield land elsewhere perceived no pressure now or into the future.

7.5.12 The picture is similar with regards to housing targets with some authorities perceiving a greater impact from housing targets, particularly those for who are struggling to meet housing targets and for whom garden development makes a significant contribution. In one case this led to appeal decisions being lost due to a shortcoming in housing targets. However, even some of the authorities who were not under pressure from targets felt that the emphasis was detrimental to decision making and that particularly those who routinely exceed targets should be given greater local discretion to deal with these matters.

**Local development framework (LDF), local policies and guidance**

7.5.13 Under the Planning and Compulsory Purchase Act 2004, LPAs should have completed their LDFs by 2008. However, the Research Team were aware that not all authorities had succeeded in achieving this target. They were therefore concerned with establishing from the interviewee authorities whether or not they had core strategies and an LDF in place and whether they had developed specific policies in relation to garden developments.

7.5.14 A summary of the results is shown below in **Table 15**.

**Table 15: Progress towards LDF**

<b>QUESTION</b>	<b>SUMMARY OF RESPONSES</b>
Have you a draft or approved Core Strategy?	By a ratio of some 10:3 approved core strategies were not yet in place, although almost every authority had made strides towards their introduction and in some case they were nearly there.
What stage are you at with your LDF?	No authority had everything yet in place: many were still working with saved policies; all but one had made some progress. Significantly very few have yet been able to review existing or develop new local or detailed planning guidance: the 'big picture' LDFs have had to take priority.
Has the way you deal with garden sites changed as you develop your LDF?	The responses contained a mixture between an absolute 'no', qualified 'no/not yet' and yes. Some authorities indicated that provisions relating to garden land had been included within their core strategy and that it had strengthened the protection of character and amenity. Some indicated that the issue may be addressed at a later point in the LDF process. Those who said 'no' commonly had policies and guidance on garden land in place prior to LDF process.
Do you have guidance documents, such as supplementary policy documents or guidance (SPD, SPG) or local design statements?	Approximately half of those interviewed had some design statements, ranging from almost complete for every village, to just beginning. Many authorities related their answers to PPS 3 which, they stated, had not made a lot of difference to the presence or otherwise of specific design statement documents. Several had relevant documents adopted before the new LDF process began, which have generally been 'saved'.

7.5.15 The responses to these questions reiterate the fact that LPAs across the country are at varied stages within the development of LDFs. It would appear however, that the LDF process has had a mixed effect in changing the way garden sites are dealt with, with some identifying that it had been specifically addressed in core strategy, whereas some felt that it may be addressed at a later point. It is also clear that authorities have varying degrees of supplementary guidance or local design statements, potentially resulting from differential manpower. However, whilst a few felt PPS 3 had aided such documents, many felt that PPS 3 had not significantly altered their use and effectiveness.

### ***Role of local specific policies***

7.5.16 As the previous section identifies, LPAs have varying degrees of supplementary guidance and design statements. To supplement this, authorities were asked whether they had any local policies which were specifically designed to give private garden land special protection from development. The following table aims to synthesise the responses from the interviews, presenting an overview of the types of policies used and how they deal with garden development with best practice examples explained in more detail in **Appendix G**.

**Table 16: Local policies adoption**

<b>QUESTION</b>	<b>SUMMARY OF RESPONSES</b>
Do you have any local policies that are intended to give private garden land – as opposed to other kinds of ‘brownfield’ land - special protection from development?	The answers to this were equally split. Where they have no specific policies, LPAs are using policies related to (e.g.) preservation of local character to help determine applications. In one case the boundary of the green belt was amended to incorporate the long gardens of dwellings adjacent to the green belt, to protect against garden development. Several local policies would seem to offer robust potential solutions to other authorities.
SPG/SPD and policies covering local/residential design	Policy and guidance promoting high quality design in line with existing local character was the most common type of local policy development and many of the LPAs interviewed had succeeded in so doing.
Character policies	Only two of the interviewed LPAs had specific policies in relation to character. Of the others there is reliance on the provisions within PPS 3.
Individual areas policies	Most LPAs have defined particular areas where they wish to defend the current position and resist garden site development. These are where the where issue is more prevalent or where existing residential sites are more conducive to approaches by developers.

7.5.17 In examining whether there was any relationship between those authorities who *had* developed policies and authorities who had reported the matter to be an issue, no clear picture emerged (**Table 17**). However, a more central matter is the effectiveness of such local policies. As previously noted, those who were aware of their policy strategy and were able to comment upon it in the response, whether it be related to what they considered to be a specific area approach or a more district wide strategy, were more successful at defending their refusal decisions than those who were unaware of policy strategy in relation to garden development. (**Charts 10 and 11**)

**Table 17: Specific policies\* garden development is an issue crosstabulation**

			GARDEN DEVELOPMENT IS AN ISSUE		
			SIGNIFICANT	NOT SIGNIFICANT	TOTAL
Specific Policies	Just stated have policies but did not indicate what	Count	6	2	8
		% of Total	4.7%	1.6%	6.3%
	States covered by Local Plans, SPG, SPD, Design or UDP	Count	30	47	77
		% of Total	23.6%	37.0%	60.6%
	Very specific policies and guidelines mentioned	Count	7	7	14
		% of Total	5.5%	5.5%	11.0%
	An indication of specific policies but unwritten	Count	6	6	12
		% of Total	4.7%	4.7%	9.4%
	Nothing mentioned	Count	1	15	16
		% of Total	.8%	11.8%	12.6%
Total		Count	50	77	127
		% of Total	39.4%	60.6%	100.0%

## 7.6 Decision-making

7.6.1 Several questions contained within the interviews were designed to discover whether the involvement of local councillors and members of the public in decision-making on garden site applications made a difference to the outcome. The Government initiated the Study as a result of pressure from MPs and council resolutions, indicating a strong political element to the subject, which it was agreed should be explained.

**Table 18: Process for determining garden site applications**

QUESTION	SUMMARY OF RESPONSES
Are procedures determining which applications go to committee any different in the case of 'garden sites'?	In no case had LPAs interviewed developed a different protocol for garden sites. However in several authorities it was admitted that the terms of the delegated agreement had been changed as a result of pressure on the system of delegation purely from this type of site. In one case, where previously any public written objection had triggered a committee decision, now only Members or officers can decide whether an application goes to committee.
What percentage of garden applications go to committee?	In every authority interviewed, the percentage determined at committee is higher than for other applications – often far higher and approaching 100%. However where robust local policies and delegation procedures are in place a low percentage is referred to be determined by committee.
What impact do public objections have?	In almost every authority, officers repeated that either directly or indirectly (by lobbying councillors) public objections influence the decisions made by LPAs on this kind of site as so many go to full committee. Most LPAs have an automatic trigger (no. of objections received) for committee decisions. Most also have public speaking rights at committee. However there is considerable variation in the way committees work, which may affect how the public influences decisions. Several LPAs admit that committee business is often dominated by this kind of application – even when it is <i>“not an issue for the authority itself”</i> .



7.6.2 It is clear from the responses that authorities have generally not developed a different protocol for dealing with garden sites. However, all authorities recognised that a higher proportion of garden development applications are decided by committee. Although understandable due to the highly political and sensitive nature of the issue, it is notable that most authorities perceive that the decisions which go against officer recommendations most commonly result in costly appeals and are subsequently overturned.

7.6.3 As stated above, almost all authorities indicated that they operate public speaking rights at committees. However the process differs greatly with some allowing only one representative from each party and some allowing any number, potentially dramatically increasing public influence in decisions. Most authorities noted that these rights were "*used a great deal*".

### **Requirements for affordable housing contributions**

7.6.4 With the need for affordable housing growing, it was considered important to determine the potential contribution of garden development to this cause and how this is captured by local authorities. Interviewees provided information on the process of securing affordable housing contributions and the effectiveness of this related to garden sites.

**Table 19: Requirement for affordable housing contributions**

<b>QUESTION</b>	<b>SUMMARY OF RESPONSES</b>
What is your authority's threshold below which no contribution is required from developers towards affordable housing?	Most authorities indicated a threshold dependent on dwellings or site area; most commonly 10-15 dwellings or <0.5ha, with sites above this subject to a contribution of 25%+ in most cases.
In your opinion, does this threshold encourage developers not to assemble larger sites in existing residential areas?	The vast majority of respondents indicated that the threshold encouraged applications for "contrived" sites just below the threshold. Others felt that due to the nature of garden sites, they generally failed to reach the threshold anyway. In one case, the impact was profound with the authority identifying a "massive under-provision of affordable housing" in a recent review.
Have you considered lowering the threshold – or taking a smaller % contribution from smaller sites?	Responses were evenly split between 'yes' and 'no'. Some authorities indicated that it will be reviewed in core strategy whilst others were actively looking into the issue. However, a barrier noted by several authorities is proving viability of any proposed changes.
How common is it for developers to offer smaller schemes (below threshold) with 100% affordable housing?	Most authorities felt that this was extremely rare; however, the trend has increased a little due to the economic conditions. Some authorities identified a few instances, particularly with small developers as it is more likely these will be taken by RSLs.

7.6.5 It is clear from this that, regardless of the potential garden sites have to offer to affordable housing needs, very little is actually being captured by local authorities and in some cases this is having a significant and detrimental effect on affordable housing provision. Policy frameworks, nationally (as seen previously) and locally do not support capturing contributions from small scale sites and often encourage developers to avoid assembling larger developments.

7.6.6 Whilst some authorities are looking to address the situation through changes to thresholds and contribution levels, it would appear that progress may be hindered by difficulties in proving viability.

***Why are applications rejected?***

7.6.7 Local authorities were questioned as to the main reasons behind rejections for garden land developments. Whilst dependent on the individual circumstances of each case, LPAs recognised some key considerations which generally contribute to the refusal of an application.

**Table 20: Reasons for rejecting garden site applications**

<b>QUESTION</b>	<b>SUMMARY OF RESPONSES</b>
Does the character of particular garden sites influence your decisions on applications?	There was no significant indication that character of particular garden sites influenced decision-making. Whilst a number of authorities indicated that it influences decision-making, most clarified that only certain isolated issues such as trees, biodiversity and streetscape shape decisions. However, a few respondents indicated that character of particular garden sites does not or rarely influences decisions.
Garden developments have been associated with a range of potential dis-benefits and advantages. Which factors are taken into account when making decisions on garden applications?	Almost all respondents indicated that both insufficient private amenity space and visual impact were key considerations in the decisions and subsequent refusal of garden developments. Whilst loss of trees was seen as relatively high on the agenda, it was felt that this could be avoided by early negotiation between officers and applicants and through conditions. With the creeping increase in small garden developments, the cumulative impact meant that increased run-off and pressure on facilities were heralded as emerging issues for the future. An important point that became apparent was that the defensibility of these points of rejection depended heavily on the Inspectorate if appealed. The loss of open space and biodiversity was also quoted, but even where an audit of open space (under PPG 17) had been carried out, this was difficult to defend. One authority indicated that it could be useful to <i>“look at the cumulative impact of loss of gardens.”</i>
Is your authority more likely to resist a particular type of development on garden land?	Responses were evenly split between ‘yes’ and ‘no’. Those who did not resist a particular type of development took <i>“each application on its own merit”</i> .

	<p>Of those who did resist a particular type, flatted development was most commonly resisted. Other types of development resisted in principle included:</p> <ul style="list-style-type: none"> <li>• development proposing higher densities than the surrounding area and</li> <li>• tandem developments</li> </ul>
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7.6.8 Whilst the results present a variable picture depending on local circumstances, insufficient amenity space/overdevelopment and visual impact were the most commonly cited reasons for rejection. It would appear a link is established between local policy areas used to address garden development and reasons for refusal. It was additionally suggested by some authorities that if the matter continues to grow, issues relating to pressure on infrastructure, and flooding risk are likely to become an increasing basis for rejection.

7.6.9 Loss of open space was recognised by a number of authorities as one which will become more prevalent, as with pressure on infrastructure, so the cumulative impact of garden development mounts. However, it was felt that the loss of open space was particularly difficult to monitor and track and even with the use of open space audits, it was seen as an indefensible point of rejection.

7.6.10 Responses indicate that, with regards to the type of development, authorities were more likely to resist high density, flatted development on garden sites.

***Why people object***

7.6.11 Local residents, and through them councillors, will often object to garden development. PPS 3 is very clear as to the range of factors that are relevant to decision-making and in particular the desire to balance densification with the need to preserve character. As the methodology discussed, the study did not directly question local residents to avoid a pre-determined stance; however, the interviews provided information regarding the grounds most commonly cited by objectors. Whilst some authorities felt that objectors were opposed to garden development *per se*, regardless of characteristics, the main reasons for objection are listed below:

- overdevelopment (scale and density)
- impact on character/poor contextual fit and
- overshadowing and loss of privacy

7.6.12 Loss of bio-diversity and green infrastructure were also cited, however these were matters raised less frequently and it was the people impact that featured most highly among objectors, not wider environmental concerns. The type of proposed dwelling was seen as a point of objection by some authorities, with recognition of “a

*significant objection to flats*". A few authorities also felt that residents objected to affordable housing in gardens; particularly where it is uncommon in the area, with proposed market/occupation seen as "*the elephant in the room*", that is very real but an issue not considered appropriate to raise.

7.6.13 These findings were reinforced by questions to LPA Officers asking them whether objectors were well-organised. In many cases they are; particularly in affluent areas, where residents may be both time and resource enabled.

7.6.14 Overall, the responses collectively point to a situation where some authorities are dealing with a significant amount of vexatious objections based on a number of reasons; and if the local process means these trigger a committee decision, there is the real possibility of officers having to defend appeals which are very likely to be overturned by inspectors following PPS 3.

### ***The effect and importance of appeal decisions***

7.6.15 The results from all stages of the research suggest that a significant number of garden land applications are decided at appeal and as such, the decisions made have a significant impact in the matter.

7.6.16 One of the common criticisms is that LA decisions are routinely overturned by Inspectors on appeal. Whilst this was identified in some responses, there were many reasons cited for successful appeals:

- committees poorly managed or advised (basing decisions on residents' concerns rather than articulated policy) often ignoring officers' recommendations and hence producing indefensible decisions
- weak local policy framework, giving little grounds for refusal (e.g. 'local character' not defined), again producing indefensible decisions
- inadequate housing land allocations, forcing developers to seek garden land against members' wishes and
- inspectors insensitive to local character and local policies generally, producing inconsistent decisions at appeal

7.6.17 Interview responses present a very variable picture over the relationship between local policies and decisions at appeal. Some respondents supported the notion that decisions are routinely overturned and felt that Inspectors failed to give due weight to local policy and guidance at appeal. Conversely, the benefit of a "*clear policy base*" in defending appeals was highlighted by a number of authorities with a few indicating that since having dedicated policies; such as residential design guides and residential character designations, in place, the Inspectorate had been generally supportive. However, this position was not echoed by the majority.

7.6.18 In most cases, authorities did not perceive that appeals were more likely to overturn refusals on a particular type of development; for example flats. Only one authority indicated that the Inspectorate were more likely to overturn refusals for flats/apartments, although others felt that refusals on low density, detached dwellings were most likely to be approved on appeal.

7.6.19 One particular point made during the interviews was that inconsistency in the decisions at appeal made it difficult to take precedent for future applications. A couple of respondents noted that this led to a situation whereby applications are repeatedly made with very little change until approval was finally gained. Generally, there are two specific ways in which applicants succeed over time:

- wearing down the LPA and objectors, it was stated that repeatedly contesting an appeal against a decision becomes an excessively costly and labour intensive process and
- the law of averages, some applicants continually appeal on the basis that eventually, due to inconsistency in decisions, an inspector will come along who is inclined to favour the application

## **7.7 Interviewee recommendations for improving the robustness of decision-making**

7.7.1 The last section of the interview was devoted to asking authorities whether they had any views on actions that could, or should, be taken to resolve the tensions surrounding garden land developments. The respondents were asked for recommendations at national level, in their particular authority and for the public. The key points are set out below and considered in the conclusions:

### ***Government/national***

7.7.2 It was recommended that the Government should:

- redraw the balance between density/efficient land use and quality of development as currently the density argument is taking too much precedence
- refine the brownfield definition and make a greater distinction between gardens and other brownfield land, possibly through an addition to the PPS 3 definition
- provide improved guidance on garden land development to support local authorities in dealing with the matter in line with local need. No authority favoured a blanket ban as in some cases the choice is stark; gardens or green belt
- ensure that support for local policy is provided by the Planning Inspectorate

### ***Local authorities***

7.7.3 It was suggested that local authorities should:

- draft dedicated local policies regarding garden land development
- improve the definition and identification of 'local character' within their areas
- look at the cumulative impact of garden development, particularly on the loss of open space
- develop improved communication and engagement with local community on the matter

### ***Local residents/community***

7.7.4 It was suggested that local communities and local residents should:

- encourage greater realism from members regarding garden land development. Members and local community representatives should be encouraged to be less subjective and reactive to public pressure and give more support to officers' recommendations
- develop a greater appreciation of the need to meet housing targets and the alternatives (or lack of in some areas) to garden development (i.e. greenfield/green belt)
- "get involved"

## 8 Conclusions

### 8.1 Overall conclusion

8.1.1 There are a number of general conclusions that can be deduced and evidenced from the data collected. Some of these relate to the specific objectives set; others emerge which, whilst not directly related to the objectives, provide a detailed insight into the subject.

8.1.2 First, however **the overall conclusion is that the matter of garden development, which has proved to be contentious over recent years, is not of national scope.** Analysis of the data confirms that for some authorities it is of major importance; for others it simply is not. The geographical distribution of LPAs who self-report that it is a significant issue is concentrated in London, the south east and the west midlands, with the south east reporting the highest level of significance. In all other regions it was the minority of authorities who reported it as a concern. Analysis of the results by type of authority revealed that the significance is greatest in significantly or semi rural areas and least in large urban authorities, although London does provide the exception. Within London, the boroughs under stress are those in outer suburban areas where garden land can still be found.

8.1.3 The subjective perception by LPAs was analysed by analysis of the percentage of new stock that was added by garden land development. This does not show a clear picture. Again, the south east is the area in which the greatest contribution is made by garden developments and authorities in these areas dealt with the greatest number of applications and appeals. However, the west midlands and London were not the next highest in workload or dwellings added terms. When analysing the percentage of refusals that were overturned on appeal, once more no clear picture emerges from a simple regional analysis. In part this can be explained by a skew caused by some incomplete returns and by inconsistent interpretation of the data requests by LPAs, but this is only in part.

8.1.4 What is evident is that it is a complex multi-faceted matter and much of this stems from the finding that there is a lack of uniformity in the way in which garden developments are handled, as set out in more detail below. The major considerations revolve around:

- the local land supply; in particular whether the density of existing developments means that gardens are available and the presence or otherwise of any Category A-D land
- the level of resources in terms of officers both in development management (to cope with the numbers of applications) and in policy (to progress the finalisation



of local development frameworks and specific policies and guidance for garden development) and

- the position as to whether officers are enabled to take decisions or whether they have to be referred to full committee who may or may not follow PPS and other planning policies in making decisions which can then be defended at appeal

## **8.2 Specific conclusions**

8.2.1 Further comments to support these conclusions are set out below but before doing so the specific objectives are revisited:

### ***The amount and type of housing development in gardens from 1 April 2003 to 31 March 2008, and the reasons for any change***

8.2.2 Over the five-year period for which data has been collected, at a national level, the total contribution of garden land to overall housing stock is little changed year on year. It appears that there has been a steady and consistent flow in most areas, but the interviews pointed to a saturation point starting to be reached in some pressure point authority areas. The total amount of housing resulting from such development does vary from region to region; in those areas where there is a lack of large-scale land availability, such as the south east and south west gardens frequently contribute significantly. Whether the five-year period is an increase on previous years is not known as the data are not available.

8.2.3 With regards to dwelling type, garden land development was seen by most authorities to provide significantly more houses than flats and within this, detached dwellings were most common. However, a few authorities, almost exclusively within London, saw a much higher proportion of flatted development than other regions; however, in some authorities, this was being tackled effectively through local policies.

8.2.4 As the amount of land so developed has not changed year- on year significantly, no detailed consideration has been given to explain changes. It is considered that it would be useful in future to correlate the garden land development statistics with land value statistics and with housing density and housing stock age data as such analysis may give a deeper understanding of the potential for future levels of garden development.

8.2.5 A caveat to this conclusion is that there was inconsistency in the way that authorities interpreted the questions asked of them in Phase 1 and this could produce a skew. However given the large sample achieved, this is unlikely.

### ***The impact of brownfield definition and brownfield targets in encouraging garden development***

8.2.6. For the larger authorities with significant PDL sites which fall under the PPS 3 Categories A-C, attention may have been directed away from garden sites, but without a comprehensive review of all new housing development; this is impossible to interpret. From the authorities' point of view the definitions and changes appear to have had little impact because, for the most part, they do not consider anything under 0.25 hectares to be included in their NLUD return.

8.2.7 Small sites, and this includes most garden sites, therefore, are not normally part of LPAs' brownfield targets. Also because gardens sites are mostly 'windfall' sites and cannot be part of the SHLAA or core strategy, their development and planning policy management is not considered in any coordinated way. Accordingly they do not fit within the strategic picture of housing land supply. This is found to be the case even in areas that might have over the majority of development on these types of sites. This is a clear policy issue which needs to be addressed if brownfield definitions and targets are going to be part of this picture. The lack of strategic view on garden sites also gives rise to a further conclusion (see below) in relation to their impact on matters such as the potential loss of green infrastructure.

8.2.8 In terms of the brownfield definition, it is clear from the research that the inclusion of garden land within the definition has given rise to the presumption among the development community that applications should be approved and systematically, such a presumption can only be successfully challenged if clear local policies have been developed.

### ***The extent and distribution of development on garden land***

8.2.9 As stated in the overall conclusions, the development on garden land is of differential importance. The statistical data was supported by the findings from the interviews. In areas where land supply is constrained, such as the south east, such developments form a very significant part of the overall addition to the housing stock. However, in other areas, such as the north east, it forms less than 10 per cent of new additions. From the interviews, it became apparent that in some areas, for example, where the authority is close to green belt around London or Birmingham, there are very few developable sites that are *not* garden sites. Further, in some areas even garden land is scarce as obvious sites have, during the period of high demand, been developed out. In such small pockets of highly constrained supply, the ability moving forward, to deliver significant housing targets, even with windfall sites, is problematic.

***The role that garden land makes in delivering on local housing objectives and the potential impact that restricting such development would have***

8.2.10 In areas where there is still a sufficient supply of A-D brownfield sites or there are large regeneration schemes in prospect, the contribution of garden land to overall new housing numbers is small. This goes to provide some explanation as to why LPAs in many major urban areas were less likely to experience a high level of applications for garden developments.

8.2.11 Analysis to link the areas where garden land has been found to be significant in scale with land values and average residential density has not been conducted, but this might be a worthwhile exercise moving forward. It is anticipated that such analysis would support the preliminary findings in the supplementary work and reveal that high value, affluent areas of low density detached and semi-detached housing – areas which one authority described as “*where the footballers wish to live*” – are more commonly the subject of greater pressure from garden land development. With the current low levels of demand nationally, most, though not all, authorities reported that the issue of garden development is decreasing.

8.2.12 From the above it follows that the impact that restricting garden development would have is variable. Where it has been a large contributor to the delivery of housing objectives, restricting such developments might have a negative impact on the ability to deliver targets without the release of greenfield land. However, other authorities noted that targets for development on PDL are being easily met, yet they remain a major emphasis and impact upon decision making. However, from the interviews it became clear that this is not universally the case. In some cases the Officers reported that most of the garden land that is accessible has already been developed out – so any restriction would be a case of “*locking the stable door after the horse has bolted*”. The view coming through is that in extreme cases it is unrealistic to rely on windfall sites to deliver significant growth moving forward.

***The effect of appeal decisions, their inter-action with local policies and guidance and the reasons for appeal***

8.2.13 The research revealed a very variable picture in relation to appeals. In some authorities, decisions at first instances are very largely upheld; in other areas appellants are more likely to succeed on appeal. Three patterns emerged through the interviews to explain this.

- in areas where significant headway has been made towards finalising and implementing a local development framework and where officers have designed and implemented local policies, the authority was far less likely to have decisions overturned. The areas where the policy framework is less developed tend to be

those in less densely populated areas where the workload in terms of this type of application is highest and the human resource in terms of planning officers is least. In such areas, the rate of appeal success is higher

- the grounds by which a decision is made as to the locus of decision was variable. In some authorities the majority of garden applications go to committee and even a single objection will trigger reference to full committee; in other areas fewer than 20 per cent are determined in full committee. It was noticeable from the interview data that where there was a high number of committee decisions refusals of consent may be harder to uphold on appeal. The view was expressed that committee members do not always take decisions on the basis of articulated planning policy, but on the views of local affected residents who have concerns about a range of social, economic and environmental grounds. Where the decisions at first instance are in accordance with officer recommendations, not only are there likely to be fewer appeals, but such appeals as there are, are less likely to succeed. The conclusion therefore is that the objectivity and training of committee members and the policy towards the criteria for decisions to be moved to full committee can be critical
- the reasons for appeal vary, but in many cases it is because the first decision was not fully in accordance with officer recommendations and as such, robust local and national policy

8.2.14 In addition to the conclusions under specific objectives of the study, the following related conclusions have been drawn

### ***PPS 3 and local policies***

8.2.15 PPS 3 provides a strong and appropriate agenda of factors to be taken into account when determining garden applications. However a number of authorities reported that it is sufficiently strategic and lacking in detail, as befits a national statement that it is capable of being interpreted in differing ways. Indeed, there was little evidence that PPS 3 has made a **positive** difference to the ability of LPAs to resist garden development - and some evidence that it has made it harder. It is concluded that PPS 3 by itself is not proving sufficiently robust to ensure decisions which optimally meet local planning situations. For this, defined and locally-orientated specific policies are required. The research revealed a wide range of fairly successful local policy solutions (see **Appendix G**) to achieving consistent and appropriate garden land decisions. However, despite this, some authorities did report that, on appeals, there is a tendency for matters related to the need for increased densities to appear to be given greater weight than design considerations and the protection of character, except in conservation areas. It is concluded that for robust and defensible decision-making, greater reference in PPS 3 to local policies and greater clarification of garden land within the PDL definition would be appropriate.

### ***A matter of manpower resource, training and local process***

8.2.16 Authorities where officers are not under a severe workload burden and where decisions are only referred to full committee as an exception are more likely to have in place their LPA and local policies to which decisions adhere. Where decisions are made in full council, the views of individuals who object on specific issues may prevail, leading to increased officer workloads as they seek to defend decisions which are indefensible at appeal. Often, concerns over garden development are more important to local politicians representing the communities who consider they are being targeted by 'garden grabbing' developers, than they are to planning officers who give higher priority to achieving their housing targets and compliance with policy statements. This does not help the relationship between the public and LPAs and the point was made that members of the public, whom the Government and LPAs wish to engage in planning matters, often have an unrealistic view of what planning and planners can achieve.

8.2.17 For genuine and useful engagement to take place, it requires to be grounded in reality and knowledge of national policy.

8.2.18 It is concluded that the situation will not improve unless or until there is appropriate adequate manpower resources and the training of elected members. Where this is in place, whilst it does not overcome objections, which in some areas are well organized and funded, it does reduce the number of frivolous objections that are essentially based on 'NIMBY' principles and not planning policy concerns.

### ***Planning for small sites within the SHLAA***

8.2.19 Garden sites are, usually, small sites. Some authorities, particularly those in the south east expressed the view that they would like to plan them into their SHLAA and not treat them as windfall housing gains. However, they reported that they have not been allowed so to do. Whilst it would certainly not be possible for all LPAs to plan for gardens developments, where they have little other land, it is concluded that such an approach might bring realism into the process of settling housing targets.

### ***The cumulative impact of garden development on open space***

8.2.20 Garden development most commonly occurs in an *ad hoc* and sporadic nature on numerous small sites as opposed to few large sites. This is because they do not form part of the planned provision and are normally regarded as 'windfall.' This presents difficulties in tracking and monitoring the cumulative impact that this process has on the social and physical environment of an area.

8.2.21 LPAs identified that this cumulative issue was particularly prevalent when assessing the impact of garden developments on infrastructure and even more so with regards to loss of open space. Authorities were very aware of the impact on open

space, but were normally unable to use this as a reason for rejection as a lack of evidence would see this overturned on appeal. It was clear that some authorities had sought to address this by undertaking an open space audit and using this as a framework for assessing the impact. However this was done to varying levels of detail; with some only including public and others including private space.

8.2.22 It was indicated by some interviewees that it would be useful “*to look at the cumulative impacts of garden development*” and, whilst it would require manpower making it unfeasible for some authorities, such an activity, it is concluded, could prove beneficial to both policy creation and in determining applications.

### ***Planning contributions***

8.2.23 Most garden developments do not attract a requirement to contribute to affordable housing as they fall below threshold limits, which are typically in region of 10-15 dwellings/0.25-0.5ha for affordable housing contributions. This has several disadvantages for local authorities. First, and particularly in areas where such sites are a major source of net additions to the housing stock, it restricts the development of affordable housing and adds to the problems of ensuring sustainable communities comprising inhabitants across the whole age range.

8.2.24 Second, it makes such sites, which in any event tend to be the cheapest to develop out, even cheaper by comparison with sites which attract s.106 contributions and may need site infrastructure, such as estates roads and services provision. Where developers have the possibility to choose to pursue development on gardens which are categorised as E for brownfield definitions purposes, they are likely to opt for these in preference to Category A- D sites which might offer stronger social benefit and provide less risk to loss of green infrastructure and wildlife habitat.

8.2.25 Finally, the thresholds are encouraging some developers to submit ‘contrived’ applications below the threshold to avoid paying contributions and providing affordable housing. Some authorities have overcome these problems by removing threshold limits and replacing them with tariffs that are applied to all sites. Whilst this does not overcome the differential cost issue in relation to estate infrastructure, it does assist with the matter of social mix within the area and better supports the retention of character. However, other authorities considered it would not be viable to move in this direction. In conclusion, despite the introduction of Circular 05/05, which aimed to clarify matter in relation to s.106, there is still varied practice among LPAs and this does not work in the best interests of sustainable infill development

# Appendices

- A: Questionnaire sent by CLG to all local planning authorities
- B: Questionnaire used for interviews by the Kingston University Research Team
- C: Supplementary questions used by the Kingston University Research Team
- D: Local authority classification type
- E: Authorities participating in Phase 1
- F: Authorities participating in Phase 2
- G: Examples of local policies that have been found to help LPAs determine garden development applications

# Appendix A: Questionnaire sent by CLG to all local planning authorities



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The Chief Planning Officer,  
Local planning authorities in England

3 April 2009

Dear Chief Planning Officer,

## **Request for information to inform review into housing development on gardens**

I am writing to inform you that we are today launching a review of the evidence on the extent and impact of housing development on garden land, and to request that you provide Communities and Local Government with data to inform the first part of the review, which we are aiming to conclude by the end of May. Whilst the survey is voluntary, your assistance would be greatly appreciated in helping to improve the evidence on the extent of building on garden land for both central and local government.

## **Background and Purpose of the Review**

The purpose of the review is to ascertain if there is clear and genuine problem with the extent of development on garden land. The Government made a commitment to consider action if the evidence discloses a problem, provided that "a change of policy would not undermine our objectives on housing" (Baroness Andrews, House of Lords, 25<sup>th</sup> Nov 2008). We propose to establish the amount of housing development on garden land, which at present cannot be distinguished from other land classified as "previously-residential" in the Land Use Change Statistics, such as estate regeneration or conversions.

As you will be aware, local authorities can already set out strong and specific local policies to protect gardens, and particular areas, if that is desirable and appropriate. Planning Policy Statement 3 on housing strengthened local authorities' hand in doing just that.

However, the Government has come under considerable pressure from Parliament to take action in the light of claims of inappropriate or excessive housing development on garden land. Evidence that a genuine problem exists remains unclear, yet there remains a considerable sense of concern amongst Members of Parliament about what goes on in their areas, which is why we are taking action now to review the data.



## **Structure and Timing of Review**

The review will take place in two stages.

As we do not hold the information centrally, the first stage will involve obtaining data directly from local planning authorities. In addition to our request to you we will also ask the Planning Inspectorate to provide information on the appeal decisions highlighted by planning authorities. The survey has been designed to ensure that all of the quantitative information requested is readily available from your Development Control system.

Subject to the data we receive, the second stage of the review will involve the commissioning of an independent external analysis of the data collected from stage one to determine the impact of the development. This is likely to be from a subset of authorities and will look to include authorities from each region, and a mix of large and small authorities in both urban and rural areas. We will publish details of the second stage of the review, including the name of the reviewer, closer to the time. Subject to the response rate we receive to stage one of the review, our aim is to conclude the second stage by the summer.

We have not taken the decision lightly to write to you to request information. We have discussed the review with the Planning Officers Society and the Central and Local Information Partnership Planning group to ensure our request is as straightforward as possible. On this basis we are giving you almost two months to respond, and we would be grateful for a response by 29 May 2009.

**If you or colleagues have any questions about the review then you can phone Joanna Patrick on 020 7944 5111 or William Richardson on 020 7944 2265.**

Yours sincerely,



**STEVE QUARTERMAIN**

*Chief Planner*

## **Information requested**

The following information is needed, which should then be presented via the attached table:

### **Purpose, scope and limits of review**

- the purpose of the review is to establish the amount of housing development on garden land, which at present cannot be distinguished from other land classified as “previously-residential” in the Land Use Change Statistics, such as estate regeneration or conversions.

### **Information required on planning permissions**

- data on the number of planning permissions granted and refused, including those granted and refused on appeal, from 1 April 2003 – 31 March 2008, for housing development within the curtilage of an existing dwelling house – but only where these applications would result in a net increase in dwellings within the existing curtilage.

### **Houses planned**

- the amount of housing allocated through planning permissions, and that would have been allocated via refusals

### **Exclusions**

- excluded from the review are regeneration or renewal schemes, as these are not within the scope of the review and could seriously distort the data.
- also excluded are extensions to properties, as these do not lead to an increase in dwellings, and conversions, as these do not generally lead to a loss of land.

### **General commentary**

- authorities are asked to provide a commentary on the development plan policies they rely on to determine these type of applications, and information on whether they have identified gardens or other sites in residential areas (either individually or through the identification of a broad location), through the plan led system, for future development.
- local authorities are also encouraged to tell us whether such development is an issue or not in their area and why, and (if it is) what steps have been taken to address it (perhaps drawing on the development plan policy commentary above

<b>Local Authority</b>	
------------------------	--

<p>1. Over the period 1 April 2003 to 31 March 2008 - <b>how many planning permissions were granted or refused</b> by the authority for housing development within the curtilage of an existing dwelling house – but only where these applications have, will, or could have, resulted in a net increase in dwellings within the existing curtilage.</p>	<b>Granted</b>	<b>Refused</b>
	2003-04	2003-04
	2004-05	2004-05
	2005-06	2005-06
	2006-07	2006-07
	2007-08	2007-08
<p>2. How many net additional dwellings <b>would be provided</b> through the planning permissions granted in Question 1 above?</p>	<b>Net additional dwellings</b>	
	2003-04	
	2004-05	
	2005-06	
	2006-07	
	2007-08	
<p>3. Over the period 1 April 2003 to 31 March 2008 - <b>how many planning permissions were granted or refused on appeal</b> by the Planning Inspectorate, for housing development within the curtilage of an existing dwelling house – but only where these applications have, will, or could have, resulted in a net increase in dwellings within the existing curtilage.</p>	<b>Granted</b>	<b>Refused</b>
	2003-04	2003-04
	2004-05	2004-05
	2005-06	2005-06
	2006-07	2006-07
	2007-08	2007-08

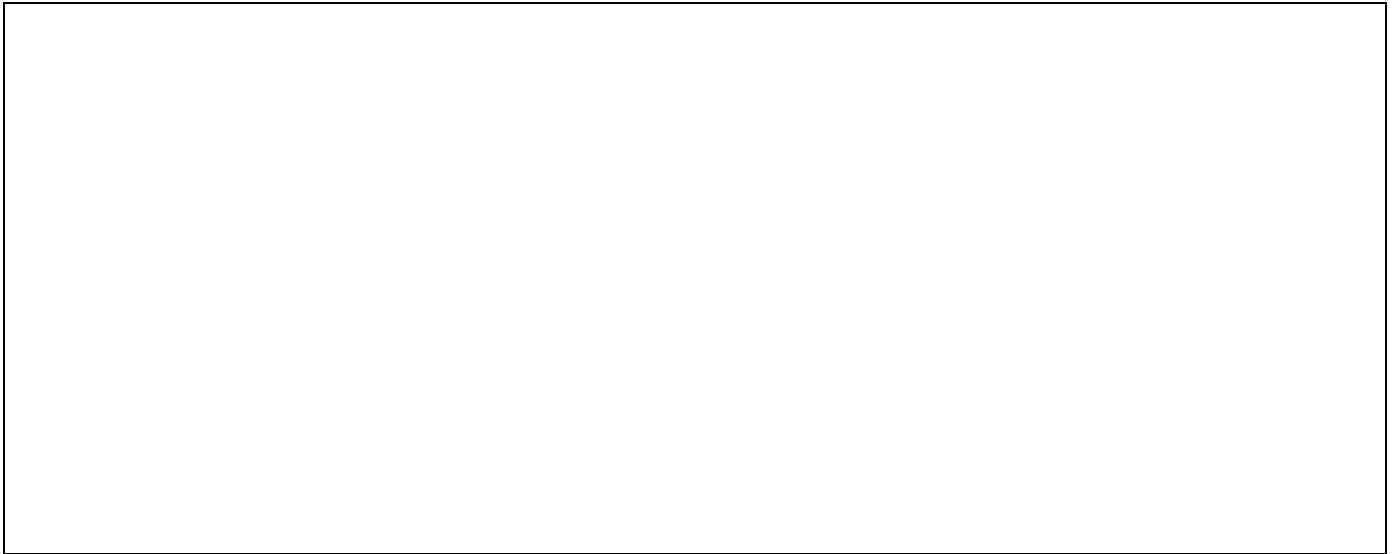
<p>4. How many net additional dwellings <b>would be provided</b> through the planning permissions granted in Question 3 above?</p>	<p><b>Net additional dwellings</b></p> <p>2003-04</p> <p>2004-05</p> <p>2005-06</p> <p>2006-07</p> <p>2007-08</p>
<p>5. How many net additional dwellings <b>would be provided</b> if the refused planning permissions had been granted in line with questions 1 and 3 above?</p>	<p><b>Net additional dwellings</b></p> <p>2003-04</p> <p>2004-05</p> <p>2005-06</p> <p>2006-07</p> <p>2007-08</p>
<p>6. What is the total number of dwellings provided through planning permissions in each of the last five years?</p>	<p><b>Total dwellings</b></p> <p>2003-04</p> <p>2004-05</p> <p>2005-06</p> <p>2006-07</p> <p>2007-08</p>

7. How are applications for each of the categories above considered by the authority? Do any specific policies exist?

8. Have you identified gardens (either individually or through the identification of a broad location) through the plan led system, for future development?

9. Please declare if development on gardens is, or is not, an issue for your authority and why? **If it is not an issue, and your authority is happy to declare this and why** (which could be a combination of the answers to questions 7 and 8 above), then you do not need to provide answers for questions 1-6 (although it would of course still be beneficial to have data from as many authorities as possible).

10. Do you have any other comments?



# Appendix B: Questionnaire used for interviews by the Kingston University Research Team

## Questionnaire to LPAs Gardens Development Study

- 1) **Introduction.** [*questions to ensure that interviewee is the correct person*]
- 2) **Definitions.**
  - a) What is your understanding of garden sites?
    - i) Does it include multi-property 'backland' development?
    - ii) How have they been identified in your SHLAA?
    - iii) Are they included in your NLUD returns?
  - b) How far are they regarded as NLUD Category E in your authority, hence included in NLUD returns by your authority?
- 3) **Determination Process** for Garden Sites.
  - a) What policy and procedure determines whether a decision on 'garden sites' goes to committee? In what way, if at all, is this different to other planning applications?
  - b) In your experience what per cent of garden development applications are decided by Officers and what go to Committee?
  - c) What, if any, impact do public objections have on the procedure? Is there a threshold number of objections that automatically triggers a committee decision? If so, what is it?
  - d) What are the most common grounds for objection by local residents?
  - e) Do Ward Members have a right to call decisions to committee?
  - f) Do Ward Members have a right to speak to the committee on applications in their Ward, irrespective of whether they are on the planning committee?
  - g) Do you have public speaking rights at committees, for parish councils and/or objectors? If so, describe how it works and the extent to which it is used.
- 4) **Policy Development.**
  - a) **Local (L/UDP) policies** explicitly relating to garden conservation.
    - i) How (if at all) is 'garden' defined in your local policies? Does it include residential properties without private green space?
    - ii) Do you have any local policies that are intended to give private garden land – as opposed to other kinds of 'brownfield' land - special protection from development?
      - (1) *If 'yes'* Are they district-wide (e.g. using phrases such as "verdant setting") or confined to particular (e.g. Conservation) geographic areas?
      - (2) *If 'no'*, Do you intend to produce such policies?



**b) LDF Progress.**

- i) What stage are you at with your LDF?
- ii) Has the way you deal with garden sites changed as you develop your LDF?
- iii) *If yes: Why?*
- iv) Have you a draft or approved Core Strategy or are you working with a pre 2004 local development plan?
- v) Apart from formal Conservation Areas, do you have guidance documents, such as Supplementary Policy Documents or Guidance (SPD, SPG) or Local Design Statements, which can be used as material consideration in determining garden development applications? *These may be 'saved' U/LDP policies.*
  - (1) *If 'yes'....Has PPS3 made any difference to the effectiveness of these documents?*
- vi) If there are no policies, does the authority identify a need in the Local Development Scheme?
- vii) Does the character of particular garden sites influence your decisions on applications?
- viii) Back garden developments have been associated with a range of potential dis-benefits and advantages. Which of the following factors are taken into account when making decisions on garden applications:
  - (1) Loss of habitats (biodiversity);
  - (2) Loss of amenity in terms of daylight/sunlight/sense of enclosure;
  - (3) Insufficient private amenity space retained for the existing and planned dwellings;
  - (4) Increased run-off and risk of flash flooding;
  - (5) Loss of trees;
  - (6) Noise;
  - (7) Visual impact on the character of the area;
  - (8) Proximity to facilities.

**c) Requirement for contributions towards affordable housing from smaller sites.**

- i) What is your Authority's threshold below which no contribution is required from developers towards affordable housing?
- ii) In your opinion, does this threshold encourage developers not to assemble larger sites in existing residential areas?
- iii) Have you considered lowering the threshold – or taking smaller % contributions from smaller sites - to ensure that contributions towards affordable housing are secured from all residential developments?
- iv) How common is it for developers to offer smaller schemes (below threshold) with 100 per cent affordable housing?

- v) Do you think that your local housing market makes it more or less likely that garden sites will come forward with affordable housing?
- 5) **Relationship to national policy guidance.** There are two documents which are relevant to our last questions on policy. They have both been published during the period 2003-8: PPS3; Circular 05/05 (Planning Obligations). *These relate to 4) a) & c) above respectively.*
- a) In your opinion, has PPS3 affected your ability to conserve garden space?
  - b) In your opinion, can Planning Obligations be used more effectively since Circular 05/05 to help make garden development acceptable?
- 6) **Stakeholders.** *These are questions about your (LPA) experiences of the role of stakeholders. There will be a separate but complementary set of questions asked of selected stakeholders.*
- a) In your opinion, do developers prefer to build out garden ground, as opposed to Cat A-D brownfield land?
    - i) *If yes: Why?*
  - b) Is there a local forum, for example a Housing Sub-Group of your Local Strategic Partnership, where issues such as garden development are discussed?
    - i) *If 'yes': What is the membership of this forum?*
    - ii) How useful is it to you?
  - c) What, if any, role do local amenity groups (including your local councils) play in development and monitoring of policy affecting garden development?
  - d) Would you say that objectors to what is called "garden grabbing" are well organised in your area? For example, have specific residents action groups been formed to oppose one or more schemes?
  - e) What are the most common objections raised to garden development by objectors?
    - i) Over development.
    - ii) Loss of character.
    - iii) Loss of green space/ biodiversity.
    - iv) Impact on local infrastructure.
    - v) Etc
- 7) **General.**
- a) Taking everything we have covered into account, would you say that garden development is a problem for your authority?
  - b) From your experience, what lessons can be learned about how to handle applications for housing development on garden sites by...
    - i) The Government
    - ii) Your Authority
    - iii) The public.

## Supplementary questions to LPAs garden development study

### Type of development on garden land

1. Over the period 1 April 2003 to 31 March 2008 – what type of dwellings would be provided on garden land through applications **granted by the authority**?

*(For questions 1-3 please provide approximate %'s for each year if possible, if not an opinion of trend i.e. increasing, decreasing, stable. Additionally, for houses please indicate the most predominant type i.e. detached, semi detached; and for flats please indicate the most predominant number of storeys)*

	Houses	Flats/Maisonettes
	<i>e.g. 65% (detached)</i>	<i>e.g. 35% (3 storeys)</i>
2003-04		
2004-05		
2005-06		
2006-07		
2007-08		

2. Over the period 1 April 2003 to 31 March 2008 – what type of dwellings would be provided on garden land through applications **granted on appeal**?

	Houses	Flats/Maisonettes
	<i>e.g. 65% (detached)</i>	<i>e.g. 35% (3 storeys)</i>
2003-04		
2004-05		
2005-06		
2006-07		
2007-08		

3. Over the period 1 April 2003 to 31 March 2008 – what type of dwellings were **refused by authority or on appeal**?

	Houses	Flats/Maisonettes
	<i>e.g. 65% (detached)</i>	<i>e.g. 35% (3 storeys)</i>
2003-04		
2004-05		
2005-06		
2006-07		
2007-08		

4. For applications involving flats/maisonettes, how many units are most commonly proposed on any given site?
- i. 5 or less units
  - ii. 6 – 10 units
  - iii. More than 10 units

5. To what extent are dwellings in back gardens built in areas of (i) existing flats (ii) detached houses (iii) semi-detached houses (iv) terraced houses (v) other residential areas such as housing estates? Please break this down into new houses or flats.

6. With regards to the data requested above, do you hold and manage this type of data systematically in a way which can be used to inform future policy and development control?

7. Is your authority more likely to resist a particular type of development on garden land?

- i. If 'yes', is local policy and guidance supportive of this?

- ii. If 'no', do you intend to produce such policies

8. Do you consider appeal decisions to be supportive of your decisions on particular types of development?

- i. Are appeals more likely to overturn refusals on a particular type of development?

9. In your opinion, are residents objections related to specific characteristics or development *per se*?

- i. Which, if any, specific characteristics/types of dwelling are local residents most opposed to?
  - i. Type of dwelling (if so which)
  - ii. Density
  - iii. Scale (height/bulk)
  - iv. Design
  - v. Proposed market/Occupation
  - vi. Value (high/low)
  - vii. Contextual fit

### **Brownfield definition**

We set out below the official definition of 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 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.”*

1. To what extent does this definition help (or not help) maintain garden space where it is considered to be of value to the local environment and why?

2. If you had the opportunity, how (if at all) would you wish to change this definition in order better to manage your housing delivery whilst at the same time being able to defend the development of garden space where it was felt necessary and appropriate?

**Policy used in decision making**

1. In our previous questioning many authorities stated that they considered that a range of policies were taken into account when making decisions on garden ground applications. We would now like a little more detail. To what extent do you take into account?
- i. other PPS considerations (for example PPS1 on Sustainable Development and Climate change) please state which ones are most important for you

- ii. other guidance please state

## Appendix D: Local authority classification type

The new LA Classification published by DEFRA gives six urban/rural classifications:

1. Major Urban
2. Large Urban
3. Other Urban
4. Significant Rural
5. Rural-50
6. Rural-80

These are defined as follows:

1. Major Urban: districts with either 100,000 people or 50 per cent of their population in urban areas with a population of more than 750,000.
2. Large Urban: districts with either 50,000 people or 50 per cent of their population in one of 17 urban areas with a population between 250,000 and 750,000.
3. Other Urban: districts with fewer than 37,000 people or less than 26 per cent of their population in rural settlements and larger market towns.
4. Significant Rural: districts with more than 37,000 people or more than 26 per cent of their population in rural settlements and larger market towns.
5. Rural-50: districts with at least 50 per cent but less than 80 per cent of their population in rural settlements and larger market towns.
6. Rural-80: districts with at least 80 per cent of their population in rural settlements and larger market towns.

## Appendix E: Authorities participating in Phase 1

Ashfield District Council	Gosport Borough Council
Aylesbury Vale District Council	Gravesham Borough Council
Barnsley Metropolitan Borough Council	Halton Borough Council
Basildon District Council	Hambledon District Council
Basingstoke and Deane Council	Harrogate Borough Council
Bath and North Somerset Council	Hart District Council
Bedford Borough Council	Hartlepool Borough Council
Borough of Poole Council	Hertsmere Borough Council
Bournemouth Borough Council	Hinckley and Bosworth Borough Council
Broadland District Council	Hyndburn Borough Council
Broads Authority	Kettering Borough Council
Calderdale Metropolitan Borough Council	Kingston Upon Hull City Council
Canterbury City Council	Kirklees District Council
Carlisle City Council	Knowsley Council
Central Bedfordshire Council (Former Mid-Bedfordshire)	Leeds Council
Chelmsford Council	Leicester City Council
Cheshire West and Cheshire Council	Litchfield District Council
Chichester District Council	Liverpool City Council
Chiltern District Council	London Borough Camden
City of London Corporation	London Borough of Bromley
Corby Borough Council	London Borough of Enfield
County Durham	London Borough of Hillingdon Council
Craven District Council	London Borough of Lambeth
Croydon Borough Council	London Borough of Lewisham
Dacorum Council	London Borough of Sutton
Dartford Borough Council	London Borough of Tower Hamlets
Derby City Council	London Borough Richmond Upon Thames
East Cambridgeshire District Council	Maidstone Borough Council
East Dorset District Council	Manchester City Council
East Hampshire District Council	Mansfield District Council
East Riding Council	Melton Borough Council
Eastbourne Borough Council	Mid Sussex District Council
Eastleigh Borough Council	Middlesbrough Borough Council
Elmbridge Borough Council	Mole Valley
Epping Forest District Council	New Forest District
Fareham Borough Council	North Dorset District Council
Gedling Borough Council	North East Derbyshire District Council
	North Lincolnshire Council
	North Tyneside



North Warwickshire Borough Council  
North York Moors National Park  
Nottingham City Council  
Oxford City Council  
Plymouth City Council  
Preston City Council  
Redditch Borough Council  
Reigate and Banstead Borough Council  
Ribble Valley Borough Council  
Rotherham Metropolitan Borough  
Council  
Royal Borough Windsor and  
Maidenhead  
Rugby Borough Council  
Runnymede Borough Council  
Rutland Council  
Salford City Council  
Sefton Metropolitan Borough Council  
Sheffield City Council  
Solihull Metropolitan Borough Council  
South Gloucestershire Council  
South Norfolk Council  
South Staffordshire Council  
South Tyneside Council  
Southampton City Council  
Southwark Borough Council  
St Helens Council

Stockton-on-Tees Council  
Stratford District Council  
Suffolk Coastal District Council  
Sunderland City Council  
Surrey Heath Borough Council  
Swale Borough Council  
Swindon Borough Council  
Tameside Metropolitan Borough Council  
Tandridge District Council  
Test Valley Borough Council  
Thanet District Council  
Three Rivers District Council  
Thurrock Council  
Wakefield MDC  
Warrington Borough Council  
Warwick Borough Council  
Watford Council  
Waverley Borough Council  
Welwyn Hatfield Council  
Westminster City Council  
Winchester City Council  
Woking Borough Council  
Wokingham Borough Council  
Wycombe Borough Council  
Wyre Borough Council  
Wyre Forest District Council

## Appendix F: Authorities participating in Phase 2

<b>Authority Name</b>	<b>Region</b>	<b>Type of Authority</b>	<b>Type of Interview</b>	<b>Response to Supplementary</b>
Basildon District	East	OU	2	
Bath & North East Somerset	SW	SR Unitary	2	
Bromley LB	London	MU	1	Y
Calderdale Met Borough	YH	SR	1	
Craven District	YH	R80	2	Y
Epping Forest	East	MU	2	
Hillingdon LB	London	MU	1	Y
Leicester City	EM	LU	1	Y
Lichfield District	WM	R50	2	Y
Mansfield District	EM	OU	2	Y
North Warwickshire	WM	R50	2	Y
Poole (Borough of)	SW	LU	1	Y
Reigate & Banstead Borough	SE	OU	2	
Richmond upon Thames	London	MU	2	
Rotherham Met Borough	YH	LU	1	Y
Sefton Met Borough	NW	MU	1	Y
South Gloucestershire	SW	LU	1	Y
South Tyneside	NE	MU	2	Y
Stockton-on-Tees Met	NE	LU	1	Y
Sutton (LB)	London	MU	2	Y
Swindon Borough	SW	OU Unitary	1	Y
Tandridge District	SE	R50	1	
Warwick Borough	WM	SR	2	
Watford Borough	East	MU	2	Y
Winchester City	SE	R50 Dist	1	
Woking Borough	SE	MU	2	
Wyre Borough	NW	SR	1	Y

## Appendix G: Examples of local policies that have been found to help LPAs determine garden development applications

The following table presents a list of policies, and specific provisions within policies, found to be successful by authorities in determining garden development applications and also defending decisions at appeal. These policies are generally used in addition to general housing and design policies.

<b>POLICY DESCRIPTION</b>	<b>CONTENTS AND PROVISIONS</b>	<b>EXAMPLE AUTHORITY</b>
Residential/Urban Design	<ul style="list-style-type: none"> <li>• Identifies key objectives, criteria and issues for consideration in the design of residential developments.</li> <li>• Prepared with cross-referencing to other relevant local policies.</li> <li>• Covers a range of issues within density and design, and specifically looks at integrating development within residential areas.</li> <li>• States that strict adherence alone to principles in design guide does not guarantee planning permission.</li> <li>• Prevention of development exceeding a set percentage of housing on a particular street.</li> </ul>	<p>London Borough of Hillingdon</p> <p>Design &amp; Accessibility Statement – Residential Layouts</p>
Loss of Garden Land Policies	<ul style="list-style-type: none"> <li>• Lays out foundation for resisting development on garden land where it is considered to be of local ecological value.</li> <li>• Indicates a range of factors that will be assessed to determine ecological value of such land.</li> </ul>	<p>London Borough of Sutton</p> <p>Policy HSG 8</p>
Minimum Standards for Private Garden Space	<ul style="list-style-type: none"> <li>• Set local minimum standards for provision of private garden space depending on type &amp; size of dwelling.</li> <li>• Prevent curtilages being sub-divided into excessively small plots.</li> </ul>	<p>London Borough of Sutton</p> <p>Urban Design Guide</p>
Specific Garden Development Policies	<ul style="list-style-type: none"> <li>• Sets out a range of criteria which developments on garden land must comply with.</li> </ul>	<p>Reigate &amp; Banstead Borough Council</p>

	<ul style="list-style-type: none"> <li>• Often cross-referenced with other relevant Housing and Design policies.</li> <li>• Provisions to avoid partial implementation and encourage larger scale garden developments in a single phase as opposed to individual <i>ad hoc</i> developments.</li> </ul>	Policy Ho 14
Garden Development SPG/SPD	<ul style="list-style-type: none"> <li>• Sets out a range of general and more detailed requirements with which garden development must comply.</li> <li>• Includes pictorial references to support the criteria and provide clear examples of acceptable and unacceptable development.</li> <li>• References to relevant local appeal decisions, both allowed and dismissed to emphasise and illustrate criteria.</li> </ul>	Swindon Borough Council  Backland & Infill Development SPD
Parking Standards	<ul style="list-style-type: none"> <li>• Specific parking policy for residential developments.</li> <li>• Allow refusal of development that causes additional on-street parking.</li> <li>• Link to limitations on application and grant of parking permits for new developments in residential areas.</li> </ul>	Warwick District Council  Vehicle Parking Standards SPD
Character Statement or Plan	<ul style="list-style-type: none"> <li>• Outlines key areas of special character which are worthy of retention.</li> <li>• Provides a detailed definition of the 'character' within each particular area (labelled on a plan).</li> <li>• Sets out general principles and features of future development within these areas.</li> <li>• Particular mentions of the character of plots and gardens and in some cases indication that further garden and infill development would harm character.</li> </ul>	Woking Borough Council  Urban Areas of Special Residential Character SPG
Housing Need Policy	<ul style="list-style-type: none"> <li>• Set out basis for discretion to refuse development on garden sites where housing supply has been exceeded or where the 'need' for a particular type of development has been met.</li> </ul>	Tandridge District Council  Policy CSP 3

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# Glossary

**Appeal:** process whereby a planning applicant can challenge an adverse decision, including a refusal of permission.

**Backland development:** development of 'landlocked' sites behind existing buildings, such as rear gardens and private open space, usually within predominantly residential areas. Such sites often have no street frontages.

**Banked land:** stock land with planning permissions but where development has yet to take place. Banked land can be for minerals, housing or any other use.

**Barker Report – A Review of Housing Supply:** an independent review by Kate Barker (2004), commissioned by HM Treasury and the ODPM (now Communities and Local Government) setting out a range of policy recommendations to improve how the housing market functions.

**Biodiversity:** the whole variety of life encompassing all genetics, species and ecosystem variations, including plants and animals.

**Brownfield land:** see previously developed land (PDL).

**Conservation area:** an area of special architectural or historic interest, the character or appearance of which it is desirable to preserve or enhance.

**Core strategy:** a development plan document setting out the spatial vision and strategic objectives of the planning framework for an area, having regard to the community strategy (see also DPDs).

**Curtilage:** the area normally within the boundaries of a property surrounding the main building and used in connection with it.

**Density:** the number of dwellings per unit area of land, generally hectares.

**Department for Communities and Local Government (CLG):** the successor department to the Office of the Deputy Prime Minister (ODPM). It is an expanded department with a powerful new remit to promote community cohesion and equality, as well as responsibility for housing, urban regeneration, planning and local government.

**Design guide:** a document providing guidance on how development can be carried out in accordance with good design practice often produced by a local authority with a view to retaining local distinctiveness.

**Design statement:** a document, usually submitted by a developer, indicating the design principles upon which a proposal is to be based.

**Development plan document (DPD):** prepared by local planning authorities as an essential part of the LDF. DPDs outline the key development goals of the local development framework.

**‘Garden Grabbing’:** term coined by the media to describe the activity of developers acquiring garden land and subsequently building several new homes on the plot.

**Green Belt:** a designation for land around certain cities and large built-up areas, which aims to keep this land permanently open or largely undeveloped.

**Greenfield land:** land (or a defined site) usually farmland, that has not previously been developed.

**Infill development:** the development of a relatively small gap between existing buildings.

**Infrastructure:** the basic services necessary for development to take place, for example, roads, electricity, sewerage, water, education and health facilities.

**Land use change statistics:** a record showing when the current land use category of a parcel of land differs from that depicted on the existing OS map. A change is also recorded where there is no change in the appropriate land use category, but new features are added, such as a house being demolished and one or more built in its place, or an additional house being built within the grounds of an existing house.

**Local development framework:** a non-statutory term used to describe a folder of documents, which includes all the local planning authority's local development documents. An LDF is comprised of:

- development plan documents (which form part of the statutory development plan)
- supplementary planning documents

The local development framework will also comprise of:

- the statement of community involvement
- the local development scheme
- the annual monitoring report
- any local development orders or simplified planning zones that may have been added

**Local plan:** an old-style development plan prepared by district and other local planning authorities. These plans will continue to operate for a time after the commencement of the new development plan system, by virtue of specific transitional provisions.

**Local planning authority (LPA):** the local authority or council that is empowered by law to exercise planning functions.

**Local authority classification:** the urban/rural classification of a local authority.  
*Further information regarding classifications can be found in Appendix D.*

**National land use database-previously developed land (NLUD-PDL):** Government initiative to provide information on the amount of previously developed land (and buildings) that may be available for development.

**Planning Inspectorate:** an executive agency of the Department for Communities and Local Government of the United Kingdom Government responsible for:

- the processing of planning and enforcement appeals
- holding inquiries into local development plans
- listed building consent appeals
- advertisement appeals
- reporting on planning applications called in for decision by the Secretary of State or in Wales with the National Assembly for Wales
- examinations of development plan documents and statements of community involvement
- various compulsory purchase orders, rights of way cases; and cases arising from the Environmental Protection and Water Acts and the Transport and Works Act and other highways legislation

**Planning obligations:** see Section 106 Agreement

**Planning Policy Statements (PPS):** prepared by the Government after public consultation. PPSs explain statutory provisions and provide guidance to local authorities and others on planning policy and the operation of the planning system. They also explain the relationship between planning policies and other policies which have an important bearing on issues of development and land use.

**Previously-developed land (PDL):** according to Planning Policy Statement (PPS) 3:

*“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 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.*

**Private amenity space:** amenity space within the curtilage of residential development, generally considered to be front garden areas, private rear gardens and areas of enclosed communal space available to residents only.

**Regeneration:** the economic, social and environmental renewal and improvement of rural and urban areas.

**Regional spatial strategy (RSS):** the regional planning document, the RSS, incorporates a regional transport strategy, provides a broad development strategy for the region for a 15-20 year period. The RSS also informs the preparation of local development documents, local transport plans and regional and sub-regional strategies and programmes.

**Run off:** rain or water, which flows off the surface of the land into a river, stream, lake or reservoir

**Section 106 agreement:** a legal agreement under section 106 of the 1990 Town and Country Planning Act. Section 106 agreements are legal agreements between a planning authority and a developer, or undertakings offered unilaterally by a developer, that ensure that certain extra works related to a development are undertaken, such as highway provision. More recently, section 106 agreements have been used to ensure the provision of affordable housing.

**Strategic housing land availability assessment (SHLAA):** an assessment prepared by LPAs of the total amount of land reserved for residential use awaiting development.

**Supplementary planning document (SPD):** a local development document that may cover a range of issues, thematic or site specific, and provides further detail of policies and proposals in a 'parent' development plan document.

**Supplementary planning guidance (SPG):** a document which covers a range of issues, both thematic and site specific and provides further detail of policies and proposals in a development plan.

**Sustainable communities:** places where people want to live and work, now and in the future. They meet the needs of existing and future residents, are sensitive to their environment, and contribute to a high quality of life. They are safe and inclusive, well planned, built and run, and offer equality of opportunity and good services for all.

**Unitary development plan (UDP):** an old-style development plan prepared by a metropolitan district and some unitary local authorities, which contains policies equivalent to those in both a structure plan and local plan. These plans will continue to operate for a time after the commencement of the new development plan system, by virtue of specific transitional provisions.

**Urban sprawl:** the uncontrolled or unplanned extension of urban areas into the countryside.