

LAND AT MOUNT AVENUE, CHALDON, CR3 5BB

**APPEAL PURSUANT TO SECTION 78 (2) OF THE TOWN
AND COUNTRY PLANNING ACT 1990**

APPELLANT'S STATEMENT OF CASE

**PLANNING APPLICATION REF.
TA/2025/771**

MARCH 2026



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1.0 Executive Summary

- 1.1 This appeal is submitted under Section 78(2) of the Town and Country Planning Act 1990 following the failure of Tandridge District Council (“the Council”) to determine planning application ref. TA/2025/771 within the statutory 13-week determination period.
- 1.2 The application was validated on 06 August 2025 and seeks outline planning permission for 30 dwellings (50% affordable), with access, layout and scale for approval and all other matters reserved.
- 1.3 Despite consistent and proactive engagement from Sigma Homes (“the Appellant”), the Council has not progressed the application in a timely or professional manner. Over a period of approximately 32 weeks, three different case officers were assigned to the application, key consultee responses were mishandled or not actioned, and the Council failed to provide internal Policy comments they deemed necessary for determination. At no stage has the Council identified any areas of dispute or technical deficiency in the submitted proposals.
- 1.4 The Appeal Site is a sustainably located, 1.45-hectare parcel of under-utilised land within the Metropolitan Green Belt. It is framed by existing residential development, benefits from strong containment, and has limited visibility in the wider landscape. The scheme responds sensitively to its setting, retaining significant tree cover, delivering new landscaping, and providing a significant amount publicly accessible woodland open space. The development proposes a balanced housing mix, including 50% affordable homes, substantial Biodiversity Net Gain (“BNG”) (13.52% habitat; 123.23% hedgerow), and sustainable transport enhancements.
- 1.5 National planning policy supports the redevelopment of appropriate grey belt land, where proposals meet the “Golden Rules” and do not undermine the strategic function of the Green Belt. The Appellant’s evidence clearly demonstrates that the site satisfies these criteria: it does not contribute to Green Belt purposes (a), (b) or (d); it is sustainably located; it delivers 50% affordable housing; and it provides high-quality public open space and necessary infrastructure.
- 1.6 Even if the Inspector were to take the view that Very Special Circumstances (“VSCs”) are required, the combination of housing delivery, affordable housing provision, landscape and ecological enhancements, and public access benefits clearly outweighs any harm to the Green Belt.
- 1.7 Tandridge District Council cannot demonstrate a five-year housing land supply. Its most recently published figure is 2.17 years (December 2025), and an earlier appeal decision accepted an even lower figure of 1.57 years. We strongly dispute the 2.17-year figure and independent analysis submitted with this appeal confirms that supply has now fallen further to 1.22 years, representing a substantial and persistent shortfall. Crucially, there is no plan-led solution to remedying this shortfall. Tandridge also scored only 42% in the Housing Delivery Test (“HDT”) 2023, delivering 716 homes against a requirement of 1,716.
- 1.8 Importantly, there are no outstanding technical objections from statutory consultees. Surrey County Council Highways, the Lead Local Flood Authority, Surrey Wildlife Trust, and County Archaeology have all confirmed that the proposal is acceptable subject to conditions, all of which the Appellant agrees to.
- 1.9 Given the complexity of Green Belt and grey belt issues, the contested housing land supply position, and the substantial public interest in the proposals, including over 200 representations and a councillor call-in, the Appellant requests that the appeal proceed by way of a Public Inquiry.

This is necessary to ensure full testing of evidence, including cross-examination on Green Belt assessment, policy interpretation, and the Council's claimed five-year housing land supply.

- 1.10 The Appellant reserves the right to update or supplement this Statement of Case once the Council has indicated what its decision would have been had it determined planning application 2025/771. The Appellant also reserves the right to prepare evidence on matters as necessary.

2.0 Introduction

- 2.1 This Statement of Case relates to an appeal following the failure of Tandridge District Council (“TDC” / “the Council”) to determine planning application ref. TA/2025/771. The planning application seeks outline planning permission with all matters reserved except access, layout and scale, for a residential development for up to 30 units.
- 2.2 The Appeal relates to Land at Mount Avenue in Chaldon, CR3 5BB (“the Site”).
- 2.3 The Appellant is Sigma Homes (“the Appellant”).
- 2.4 The appeal is being made as a non-determination appeal and therefore the Appellant has not been informed what the Council's decision on the application would have been. The Appellant therefore reserves the right to update or supplement this Statement of Case once the Council has indicated what its decision would have been had it determined planning application 2025/771.
- 2.5 Indeed, in the most recent correspondence with the Council (set out in further detail in section 4.0 of this Statement), the Council confirmed that they were yet to receive comments from their internal Policy team which would determine whether the Site was grey belt. This is despite the application being valid since 06 August 2025.
- 2.6 The Council's failure to meet statutory deadlines has caused material prejudice. The Appellant has complied fully with all procedural expectations and this is a clear case of non-determination with no legitimate justification.
- 2.7 For the reasons set out in this Statement of Case, the Appellant is considering an application for the award of costs on the grounds of:
- failing to co-operate;
 - missing deadlines;
 - providing late information;
 - failure to discharge the duties of a planning officer in relation to the application of planning judgement; and
 - unreasonably delaying a decision.

3.0 The Appeal Site and the Appeal Scheme

The Appeal Site

- 3.1 The Appeal Site measures 1.45 hectares and comprises currently undeveloped grazing and agricultural land. It is located in the Metropolitan Green Belt.
- 3.2 The Site is bound by and accessed from Mount Avenue to the north. To the west and east of the Site are residential properties of up to 2-storeys in height and naturally buffered through existing trees. To the south of the Site is Birchwood Lane, which is buffered by tree canopy running along the extent of the southern boundary. The existing vegetation results in there being limited views into the Site.
- 2.1 This Site is a sustainable location for new residential development. It is approximately 2.3km (32-minute walk or 11-minute cycle) west of Central Caterham which includes the railway station, Church Walk Shopping Centre and Morrisons and Lidl Supermarkets. It is also approximately 1.7km (23-minute walk or 6-minute cycle (southwest) southwest of the High Street at Caterham-on-the-Hill (which includes a Co-op convenience store and pharmacy). Additional local facilities include the shops at Westway, which are approximately 1.5km from the Site (21-minute walk or 6-minute cycle) and includes a convenience store and a public house, and the facilities at Guards Avenue, which is approximately 1.8km away (25-minute walk or 6-minute cycle) and includes a medical practice, pharmacy and Tesco superstore.
- 2.2 The Appellant is committed to implementing sustainable transport improvements to ensure a sustainable development is delivered. These improvements are secured via Condition 7 set out within the Surrey County Council ("SCC") Highways consultation response which is discussed further in Section 4.0.
- 3.3 The Site is located within Flood Zone 1 and is at low risk for reservoir, artificial drainage systems and coastal flooding. It has no history of flooding and is not at risk of surface water flooding.
- 3.4 To the south of Birchwood Lane is an Area of Great Landscape Value ('AGLV') which is a TDC designation. No part of the Site falls within this designation.
- 3.5 There are no designated heritage assets on the Site and it is not within a Conservation Area. There are no listed buildings nearby and the closest is the Grade II Listed 'Barn 15 Yards North of Roof Farm House', located approximately 420m away.
- 3.6 The Site is subject to tree coverage, and this is largely on the boundaries, notably in the northwest corner. A total of 118 individual trees, 11 tree groups and 3 hedgerows are present at the Site.
- 3.7 For a full description of the Site, including 'Accessibility and Local Amenities' and 'Environmental and Heritage Considerations', please refer to Section 2.0 of the Planning Statement that was submitted in support of the application (prepared by Montagu Evans LLP).

Relevant Planning History

- 3.8 An online search of the Council's planning records has been undertaken and confirms that the Appeal Site has no planning history of relevance to the application.
- 3.9 Of relevance to the Appeal Scheme is the approval of an application (ref. 2025/947) at 15 Mount Avenue, immediately to abutting the Site to its east. The approved scheme is for the:

- *“demolition of the existing dwelling and erection of 8x dwellings, along with associated parking and landscaping.”*
- 3.10 The application was validated on 30 September 2025 and approved on 10 February 2026. The site location plan and proposed site plan are included at Appendix 1.0.

Validation of the Application

- 3.11 The Application was submitted with the following description of development:
- *“Outline planning application for the erection of up to 30 dwellings (including 50% affordable) including provision of vehicular and pedestrian access, landscaping (incorporating SUDS) and other associated infrastructure provision. All matters reserved except access”.*
- 3.12 Following submission, TDC subsequently issued an invalidation letter on 17 July 2025 (Appendix 2.0) which invalidated the Application for the following reason:
- *The LPA wish to formally consider scale and layout in accordance with Part 3, Article 5 (2) of the DMPO 2015.*
- 3.13 In response to this, the Appellant submitted a suite of updated information, including an updated application Covering Letter, Application Form and Planning Statement to ensure validation. Also submitted were a Building Height plan (dwg no. PL-05) and a Proposed Site Plan (dwg no. PL-02 Rev P2).
- 3.14 A second invalidation reason ('Site contamination details are required') was clarified with the Council and addressed.
- 3.15 The Application was subsequently validated on 13 August 2025 (validated date backdated to 06 August 2025) with the following description of development:
- *Erection of 30 dwellings (50% affordable) with associated works including provision of vehicular and pedestrian access, landscaping, drainage, and other associated infrastructure (Outline application with all matters reserved except access, layout and scale).*

The Appeal Scheme

- 3.16 The Appellant is seeking outline planning permission to provide 30 new homes, including 15 affordable homes (50%). The key aspects of the proposal are:
- *Residential (C3) development for 30 units (including 15 affordable homes);*
 - *Vehicular access from Mount Avenue and pedestrian access from Birchwood Lane;*
 - *Building heights of up to 2-storeys*
 - *Open space provision (Woodland Open Space);*
 - *Surface water detention basin; and*
 - *A biodiversity net gain (“BNG”) of 13.52% in habitat units and 123.23% in hedgerow units.*

- 3.17 Approval is sought for access, layout and scale with details of landscaping and appearance reserved.

Site Plan

- 3.18 The Site Plan (ref. PL-02) identifies the layout proposed for the residential development, including the location of the market and affordable homes and the area for the publicly accessible open space. The Plan also identifies the proposed vehicular access created through an extension to Mount Avenue, as well as the creation of a pedestrian access to Birchwood Lane.
- 3.19 The approach of the proposal has been to deliver a singular area of development with proposed built form to be orientated outward looking towards the Site boundaries, creating separation to the rural context. This approach has enabled a significant parcel of land in the western area of the Site to be retained as greenfield land, with landscaping enhancements proposed to deliver publicly accessible open space. The proposals retain the existing tree coverage that bounds the Site's boundaries and introduce landscaping enhancement measures.
- 3.20 An appropriate provision of car parking, cycle parking, private gardens and refuse storage is provided. The proposed access roads are consistent with that of a traditional housing development and ensures that safe access and egress for refuse and service vehicles is provided, including the provision of a turning head.

Site Plan – Building Heights

- 3.21 The Site Plan – Building Heights (ref. PL-05) identifies the maximum building heights for the proposed development. This confirms that the new buildings will be no greater than 2-storeys in height to respond positively to the existing surrounding context.

The Indicative Scheme

Indicative Appearance and Landscaping

- 3.22 The appearance of the development (including materials) is reserved for a future reserved matters application, which will be informed by the surrounding context to ensure the development makes a positive contribution to the siting of the area. It is envisaged that future development will comprise traditional housing development under pitched roofs with materials and fenestration which is appropriate to the characteristics of the locality.
- 3.23 A landscaping concept plan was also submitted alongside the application. This identifies the existing trees and vegetation to be retained, as well as the implementation of additional planting along the Site's boundary to ensure views into the site remain screened. An illustrative landscaping strategy is provided for the proposed housing development and the publicly accessible open space.

Proposed Housing

3.24 The proposal shows the following mix of accommodation:

Unit Type	Number of Units (+ Ratio%)
1-bedroom Flat	4 units (13%)
2-bedroom House	9 units (30%)
3-bedroom house	15 units (50%)
4-bedroom house	2 units (7%)
Total	30 units

- 3.25 The Appeal Scheme as proposed will provide four units as flats and the remainder of the units will be provided as houses, comprising a mix of detached and semi-detached, across the remainder of the Site, consisting of 2-, 3-and 4-bedroom homes.
- 3.26 Within this context the Appeal Scheme responds to current prevailing needs including conventional family housing and flatted units. The Appeal Scheme will deliver 50% affordable housing provision which comprises 15 units.
- 3.27 Each dwelling will have dedicated car parking to comprise 1 or 2 spaces depending on the size of the dwelling. The layout shows provision for private gardens appropriately sized for each of the dwelling houses and extensive shared amenity space. All residents will be able to access the public open space to the west of the Site in addition to the aforementioned on-site resource.

Proposed Public Open Space

- 3.28 The proposal includes the provision of public open space in the western area of the Site. This includes the retention of 113 trees to maintain a wooded area with a permeable path. The existing hard landscaping will be removed and additional tree planting implemented to improve the public open space.
- 3.29 The open space will be appropriately landscaped to enhance the space and can be accessed via foot through the creation of a permeable footpath running from Mount Avenue through to the pedestrian entrance at Birchwood Lane.

Proposed Pedestrian Crossing

- 3.30 A pedestrian crossing is proposed from Birchwood Lane to create permeable linkages through the Site and to promote active travel. The proposed pedestrian access to Birchwood Lane will be implemented in accordance with the submitted plans, providing a permanent barrier to motor vehicle access to the Site.
- 3.31 The proposed pedestrian crossing will be in the form of a raised table pedestrian crossing providing easy and safe pedestrian access between the Site and Birchwood Lane situated opposite to the south. The proposed access at Mount Avenue will also provide a direct route to

the public footpath on Rook Lane and will be via a raised table pedestrian crossing secured via a planning condition.

4.0 Justification for the Appeal Route

- 4.1 It is the Appellant's position that the Public Inquiry route is suitable for this Appeal.
- 4.2 Montagu Evans LLP served the pre-notification of appeal against non-determination of planning application ref. TA/2025/771 on 06 February 2026. A copy of this is included at Appendix 3.0.
- 4.3 The justification for the Public Inquiry appeal route is set out below. Before doing so we set out a detailed chronology of the Appellant's engagement with the Council which demonstrates why an appeal against non-determination is necessary. The Appellant has clearly demonstrated to the Council in correspondence a willingness to work with them secure positive determination at local level. However, we have been continuously frustrated through the Council's conduct in dealing with the application.

Engagement with the Council

- 4.4 The Appeal Scheme was validated on 06 August 2025. In the validation letter (Appendix 4.0) the Council confirming the statutory deadline determination deadline as 05 November 2025 (i.e. 13-weeks from validation).
- 4.5 During the determination period, there have been 3no. Case Officers assigned to the application:
- Case officer 01 (James Kidger): departed TDC on 03 September 2025.
 - Case officer 02 (Alex Jelley): departed TDC on 25 November 2025.
 - Case officer 03 (Amit Patel): Present case officer
- 4.6 Correspondence with Planning Officer 01 was relatively limited given that the first month involved the issuing of consultation responses.
- 4.7 Due to the stage of the application, Case Officer 02 was much more involved in the determination period, and a meeting was held on Wednesday 01 October 2025 to enable the Appellant to work positively with Case Officer 02 (who at this point was relatively new to the application).
- 4.8 In the meeting, Case Officer 02 provided an update on the application, including noting support of the grey belt case and expressing his expectation that the Council would be able to issue a decision under delegated powers. We appreciate that issuing a decision under delegated powers will have been subject to whether there was a Councillor call in to take the scheme to planning committee, especially given the high levels of public interest.
- 4.9 On 21 October 2025, Case Officer 02 confirmed via email (Appendix 5.0) that the only outstanding consultee responses were those of:
- Surrey Wildlife Trust ("SWT"); and
 - Surrey County Council (following the Appellant's submission of an updated technical note in response to their first consultee comment (Appendix 5.0).
- 4.10 On 27 November 2025, the Appellant was notified that Case Officer 02 had left the Council without notice. This followed numerous chases from the Appellant, both via email and telephone.
- 4.11 On 27 November 2025, the Appellant was notified of the new case officer, Amit Patel (Case Officer 03). The Appellant contacted Case Officer 03 via email on 27 November 2025 (Appendix 6.0) and offered a meeting to ensure both parties were aligned on the status of the application and to ensure that Case Officer 03 was brought up to date. The offer of a meeting was not taken

up, nor did we hear anything at all from Case Officer 03 until 10 December 2025. Additionally, we noted the requirement to receive the SWT consultation comment to enable determination of the application.

- 4.12 Having assisted the Council in requesting the SWT consultation response, comments from them were received on 26 January 2026. This is despite the SWT confirming that their response had been issued to TDC on 23 October 2025 and had not been passed on by Case Officer 03, which is corroborated by their dated formal consultation response. The response confirmed no objection subject to the implementation of a number of pre-commencement conditions. The Appellant accepts the conditions proposed.
- 4.13 Following receipt of the SWT consultation comment, a further email (Appendix 7.0) was sent to Case Officer 03 on 27 January 2026 confirming that, as far as the Appellant was concerned, there were no outstanding technical objections arising from the consultee responses and that the application could be determined. In addition to this, a further meeting was offered to ensure a collaborative approach between the Appellant and the LPA was undertaken in working toward determination. The Appellant consolidated the commitment to working with the LPA by voluntarily proposing entering into a Planning Performance Agreement ("PPA"). Neither the meeting nor the PPA were taken up by Case Officer 03. A response from Case Officer 03 was not received until 04 February 2026.
- 4.14 On 04 February 2026 a letter, prepared by Fairthorn Communications, was issued to the Chief Executive at TDC, David Ford, on behalf of the Appellant (Appendix 8.0). In this letter, the Appellant set out our frustration and disappointment regarding the lack of progress made in determining the application. This letter was shared with Case Officer 03 for transparency.
- 4.15 A response to the above was received from Case Officer 03 on 04 February 2026 (Appendix 9.0). In the letter, Case Officer 03 confirmed that a delegated report had not been written by the previous case officer, as well as confirming that there appeared to be a call-in request. Case Officer 03 stated the need to finalise all the consultee comments, but no confirmation was provided as to the outstanding matters. Case Officer 03 noted he would be meeting with Councillors for an update and would provide a firm timeframe to determine the application by the end of the week (i.e. w/c 09 February 2026). Despite regular chasing by the Appellant, an update on this meeting nor the timescales were provided.
- 4.16 On 06 February 2026 (Appendix 10), confirmation was issued to Case Officer 03 that the Appellant had submitted a notice to the Planning Inspectorate confirming intent to submit an appeal against non-determination.
- 4.17 A further email regarding the intent to submit an appeal against non-determination was issued to Case Officer 03 on 12 February 2026 (Appendix 11). The email set out the matters of frustration felt by the Appellant. The email also stated that matters could be resolved subject to the LPA providing clear direction of actions and programme for determination. The Planning Development Manager for TDC, Peter Lee, was copied into the correspondence.
- 4.18 A response from Thomas James (interim Head of Planning), on behalf of David Ford, was received in relation to the previously issued letter (Appendix 12) on 19 February 2026. The email provided an update on the status of the application. This included a requirement for the LPA to receive the revised response from SCC Highways to enable determination of the application. At no point in this email was it mentioned that TDC were still awaiting comments from their Policy team to complete their assessment as to whether the Site constituted Grey Belt. Mr James also confirmed that the application had been called into committee if officers were minded

recommending approval. It is noted that this response was issued 13 days after the most recent update from the Council.

- 4.19 To assist the LPA, the Appellant requested an update from SCC Highways on the status of their response.
- 4.20 The Appellant issued a final request for an update on progress and timescales with regard to the determination of the application from the LPA on 03 March 2026 (Appendix 13). The email set out the Appellant's willingness to work with the LPA to secure a positive determination at local level. The response from Thomas James received on 04 March 2026 confirmed that progress could not be made on the application until the SCC Highways response was received. Thomas confirmed that Case Officer 03 was chasing this response.
- 4.21 On 09 March 2026, the SCC Highways consultation response was received (Appendix 14). SCC Highways confirmed that the development was acceptable on highways grounds subject to the imposition of a number of planning conditions. The Appellant agrees to the conditions proposed and therefore, there are no outstanding technical matters that prevent a positive determination of the application.
- 4.22 On 10 March 2026, Case Officer 03 emailed (Appendix 15) the Appellant to confirm that he had received the consultation response from Highways but noted (for the first time) that he was still awaiting the policy comments. In the email, it was stated that "the Policy Team are undertaking Green Belt Assessment as we speak and their input is required to ensure that we are making a sound assessment and not undermining their evidence base". Case Officer 03 did not set out any timescales for receiving the response, noting that "I am chasing them". In the email, Case Officer 03 also set out he "will speak to with the councillor who has also informed me that he wishes you call this application in and see his final comments and therefore it is not as straightforward as just making a decision". It is highly relevant that the Policy team are an internal consultee within the Council and that their comments remain outstanding nearly 32-weeks after the application was validated.
- 4.23 Case Officer 03 is awaiting the Policy Team to complete their district wide Green Belt Assessment prior to determining the status of the Site. This is not the correct approach to decision making. The correct approach to decision making, as determined by Section 38(6) of the Planning and Compulsory Purchase Act 2004, is to determine a planning application against the statutory development plan unless material considerations indicate otherwise. Delaying the determination of a planning application whilst part of the emerging evidence base is updated is not acting in the interests of proper planning, particularly where timescales for this evidence to be gathered have not been provided.
- 4.24 It is the Appellant's view that a planning officer is charged with applying their planning judgment to the merits of a case. Applying national policy to determine whether a site is grey belt and appropriate development forms part of this. They have not discharged their duty.
- 4.25 To be frank, the Appellant considers it to be unacceptable that over half a year after validating the Application (32-weeks), TDC are yet to undertake their assessment as to whether the Site is Grey Belt. This point demonstrates the unprofessional approach TDC have taken to determining this Application which is unacceptable and indeed detrimental to the national policy directive to deliver much needed residential development.
- 4.26 The Appellant has demonstrated a continued commitment to working collaboratively with the LPA to ensure that the application was determined at the local level. This collaborative approach has been important given the application has been assigned to 3no. different Case Officers. The LPA

have not been forthcoming in engaging positively despite proposing numerous meetings and a PPA.

4.27 In total, it has taken 32 weeks since the application was validated on 06 August 2025 and still TDC have not provided their Policy comments (an internal consultee). The statutory determination period for the application was 13-weeks and the Appellant has tried to work with the LPA positively, despite an absence of engagement from the LPA unless correspondence was directed towards senior staff at TDC.

4.28 Overall, the frustration felt by the Appellant with the LPA's determination of the Application is summarised as follows:

- There are no outstanding objections from statutory consultees.
- A residential application at 15 Mount Avenue (adjacent to the applicant's site) was approved in February 2026 (ref. 2025/947). The scheme had the same case officer (case officer 03), and it was validated a month and a half after the application subject to this Appeal.
- The Appellant had not been made aware of any matters of dispute or issues with the application – and has still not.
- SWT stated they had submitted comments months earlier; the LPA failed to upload them for forward them. This is procedural maladministration and that without the Appellant's intervention, the application would likely still be stuck in this respect.
- Following the meeting with Case Officer 02, the LPA have not taken up the offer to meet to work together through timescales leading to determination. A proposition to enter into a PPA to allow sufficient resource to be allocated to the application was tabled and not taken up by the LPA. This demonstrates the Appellant's ongoing commitment to work collaboratively with the LPA.
 - Only in his email dated 10 March 2026 did Case Officer 03 state that he is "happy to have a catch up with you".
- The Appellant has not seen any progress at all from the LPA on the application which has resulted in prolonged timescales far exceeding the statutory determination period for the application. The absence of policy comments 32 weeks after validation is so far outside any reasonable expectation of performance that it constitutes procedural unfairness.

4.29 In summary, the application was effectively in abeyance for months because Case Officer 03 declined to engage, despite the Appellant proposing multiple opportunities for dialogue, including a PPA.

4.30 This appeal is therefore submitted out of necessity over a lack of engagement with the LPA to provide material updates on the application and move toward determination at the local level within a satisfactory timeline.

4.31 In the light of the above examples of unreasonable behavior, the Appellant will also be considering an application for the award of costs on the grounds of:

- failing to co-operate;

- missing deadlines;
- providing late information;
- failure to discharge the duties of a planning officer in relation to the application of planning judgement; and
- Unreasonably delaying a decision.

The Need for a Public Inquiry

4.32 The Appellant requests that this Appeal be considered by way of a Public Inquiry for the following reasons:

- a) that the planning application relates to the delivery of a significant amount of housing, particularly in the context of the absence of a five-year housing land supply in the District;
- b) the issues are complex and not simply matters of judgement. Points of legal interpretation and policy approach will be significant in relation to the site's Green Belt and grey belt designation. There is a need to cross examine the Council's Expert Witness, particularly on Green Belt / grey belt and housing land supply;
- c) the significant amount of public interest in the Appeal Scheme as demonstrated by the 207 representations that were submitted in relation to the Appeal Application, as well as an objection from the Parish Council. A councillor has also called-in the application to be determined at Planning Committee;
- d) the Development Plan policies require a mix of evidence and legal submissions; and
- e) the Appellant disputes the Council's published housing land supply position.

4.33 The Appellant reserves the right to prepare evidence on matters as necessary which may include housing supply, affordable housing delivery and landscape and visual matters in relation to Green Belt openness considerations.

5.0 Outline of the Appellant's Case

Planning Policy

- 5.1 Before setting out the Appellant's case, it is necessary to examine any changes in planning policy since the Application was submitted.
- 5.2 Since the submission of the Appeal Scheme, the Ministry of Housing, Communities and Local Government have opened consultation on the 'National Planning Policy Framework: proposed reforms and other changes to the planning system'. The consultation commenced on 16 December 2025 and culminated on 10 March 2026.
- 5.3 Additionally, TDC are in the early stages of Local Plan preparation, having recently consulted on the Regulation 18: Early Engagement Consultation. The Appellant has sought to positively engage with the plan making process and submitted formal representations on the emerging Local Plan which are appended to this submission (Appendix 16).
- 5.4 Tandridge does not have a five-year housing land supply, with the latest Council reported figure being 2.17 years in the most recent Annual Monitoring Report 2024/2025 (December 2025). In an appeal decision dated 09 September 2025 (Appendix 17), an Inspector noted that TDC had not sought to challenge the Appellant's position that TDC's Housing Land Supply is 1.57 years.
- 5.5 In support of this appeal, the Appellant has instructed RPS Tetra Tech to review TDC's 5-year housing land supply, which has confirmed there is now a 1.22-year housing land supply. Therefore, the Development Plan policies related to the determination of the Appeal Scheme are therefore out of date and Paragraph 11 of the NPPF is engaged in relation to this Appeal. RPS Tetra Tech's Assessment (with Appendices) is included at Appendix 18.
- 5.6 The weight given to the Development Plan in the consideration of this Appeal is therefore diminished considerably. It is necessary to defer to the relevant policies of the NPPF in the determination of this appeal.

Outline of the Appellant's Case

- 5.7 Whilst the Appellant is not aware of what the Council's decision would have been on the Appeal Scheme (and therefore may need to respond to the Council's position by way of an updated Statement of Case in due course), it envisages that its case will be as follows:
 1. The Appeal Scheme represents appropriate development in the Green Belt in accordance with Paragraph 155(a) which allows for development in the Green Belt that would utilise grey belt land and would not fundamentally undermine the purposes (taken together) of the remaining Green Belt across the area of the plan. The Applicant has demonstrated that the Site does not contribute to purposes a), b) or d) of the Green Belt such that Chaldon is neither a town nor large built-up area. The application meets the Golden Rules set out within Paragraphs 156-157 insofar as; the development proposes 50% (15 units) affordable housing; necessary infrastructure improvements will be made to facilitate the development and will be secured through CIL, S106 and S278; and the proposal includes the provision of a significant area of woodland open space that will be accessible to the public via a permeable footpath.
 2. Were the decision-maker to reach an alternative view in relation to the Site's classification as grey belt and the decision-maker requires Very Special Circumstances

to be demonstrated, these exist as the potential harm to the Green Belt by reason on inappropriateness, and any other harm resulting from the Proposal is clearly outweighed by other considerations. The Appellant will draw upon relevant appeal decisions in relation to the appropriate level of weight to be afforded to each material consideration. The Appellant will refer to appeal decisions including in relation to housing supply and delivery, and affordable housing and. This would include the following factors:

- a. Housing supply and delivery: the Appeal Scheme would make a substantial contribution to housing requirements. The Council cannot demonstrate a 5-year supply against objectively assessed need and indeed claim to be able to demonstrate only a 2.17-year housing land supply, as set out within the Annual Monitoring Report 2024/2025 (December 2025). As noted, the Appellant disputes this and has undertaken additional analysis which concludes the LPA can in fact only demonstrate a 1.22-year supply of housing. Under the superseded Standard Method, the Council were required to provide 634 homes per annum. The new Standard Method increases this figure to 843 homes per annum, an overall increase of 209 homes per annum.
- b. Provision of affordable housing: the Appeal Scheme is of strategic significance in terms of addressing the need for affordable housing by providing 15 (50%) affordable homes. This exceeds the 34% target within adopted policy. The tenure of the affordable homes will be secured through a future reserved matters application but will reflect local housing need. The Council's Strategic Housing Market Assessment (2018) requires the delivery of 310 affordable dwellings per year for the remaining plan period. In the period April 2019 to March 2024, the Council only completed 324 units, marginally above their requirement on an annual basis. This attributes significant weight to the delivery of affordable housing in the planning balance which outweighs the substantial weight afforded to protection of the Green Belt. The Appellant will refer to appeal decisions where the provision of affordable housing carries very substantial weight.
- c. Lack of a Plan-led solution: the Council's emerging Local Plan was found unsound; the Council are now in the very early stages of Local Plan preparation and the policies within the adopted Local Plan are significantly out-of-date. This is particularly the case when considering housing need, both market and affordable.
- d. Golden Rules: Paragraph 158 of the NPPF confirms that a development that complies with the Golden Rules should be given significant weight in favour of the grant of permission. The Proposal is compliant and therefore significant weight is afforded as such.
- e. Provision of public open space: the proposal will result in a high-quality landscaped area that is publicly accessible, having previously been under private ownership. Public access to the open space is a considerable benefit to the community on land which is currently private and inaccessible.
- f. Economic benefits: the proposal would contribute to direct and indirect economic benefits during the construction and operational phase. The creation of local jobs is a considerable benefit of the scheme.
- g. Biodiversity Net Gain: the proposal would achieve BNG of 13.52% in terms of habitat units and 123.23% in terms of hedgerow units. This exceeds the statutory requirement for a minimum of 10% to be delivered on development sites.

3. We note that by the Council's own admission, the identification of grey belt land is required to meet housing need within the district. This is evidenced within the Council's Regulation 18: Early Engagement Consultation document, which acknowledges the concept of the grey belt and commits the Council to undertaking a Green Belt Assessment to identify grey belt land. The Appeal Scheme has demonstrated its compliance with the qualifying requirements for grey belt prescribed by national policy.
4. In the Council's own assessment for identifying the root causes of under delivery of housing, the Housing Delivery Test Action Plan states at Paragraph 5.1 states the Council's constraints to deliver development is restricted by the following:
 - a. ***Planning Designations: Green Belt*** – *the Green Belt extends to some 94% of the district of which development within is heavily restricted with only certain exceptions allowed under para. 154 of the NPPF (December 2024); the Council does have the ability to review the Green Belt under para. 145 and 146 of the NPPF as part of the Local Plan Review, however the Council must demonstrate exceptional circumstances to do so, of which includes instances where an authority cannot meet the identified need for homes, and have the strategy tested during the Local Plan examination. Hitherto, the Green Belt has restricted the Council's ability to deliver the identified housing need, however, the 2024 planning reforms and NPPF update saw the introduction of the Grey Belt; a new land classification within the Green Belt where, when land is identified as Grey Belt and in a sustainable location, development would not be considered inappropriate.*
5. Indeed, in the event that the Inspector is minded to disagree with the Site's classification as grey belt, and in the context of the Council's worsening housing land supply, the benefits of housing delivery at Mount Avenue are even more compelling as a package of VSC. This is increasingly relevant considering the evidence prepared by the Appellant as part of this appeal, that concludes TDC's housing land supply as being 1.22 years.
6. A further material consideration is TDC's acceptance that Green Belt land will likely need to be released to facilitate development, including meeting housing needs, and their recognition of the concept of the grey belt as part of its draft Local Plan strategy.
7. The Appeal Scheme is acceptable in terms of Landscape impact assessment. The LVIA submitted in support of the Application is clear that the Proposal is compliance with relevant policy and would result in no substantial adverse impacts to the visual or landscape baseline at a residential stage (i.e. when the mitigation measures are incorporated).
8. The Appeal Scheme is acceptable in planning policy terms in respect of transport and highways. This is demonstrated by the consultation response received from SCC Highways (Appendix 19), that confirms there is no objection to the development subject to the imposition of a number of conditions. The Appellant agrees to the proposed conditions. Importantly, through their response, SCC Highways confirm that implementing the proposed conditions will secure the Appeal Scheme as a sustainable development.
9. The Appellant has demonstrated that the Appeal Scheme will be acceptable from a flood risk and drainage perspective. This is corroborated by the consultation response received by the LLFA (Appendix 20) received on 02 September 2025, confirming that there was no objection subject to the implementation of conditions. The Appellant agrees to the conditions proposes.

10. In respect of arboricultural and ecological matters, the Appeal Scheme delivers a policy compliant scheme. The consultation response from SWT (Appendix 21) received on 26 January 2026 confirms that the development is acceptable subject to the imposition of conditions. These conditions are accepted by the Appellant.
 11. The Appeal Scheme is acceptable in respect of archaeological matters. The consultation response from SCC Historic Planning: Archaeology (Appendix 22) received on 19 August 2025 confirms the development is acceptable subject to conditions. The Appellant agreed to the condition proposed.
 12. Ultimately, there are no outstanding technical consultee comments.
- 5.8 The Appellant's Case will also focus on the LPA's potential misapplication of policy and the unreasonable deferment based on pending emerging evidence. Planning decisions must be made in accordance with the development plan unless material considerations indicate otherwise. Emerging Local Plan evidence (such as a district wide Green Belt assessment which is referred to by Case Officer 03) is not a valid basis to delay a decision. There is no requirement in statute or policy for grey belt classification to await new district wide evidence. A planning officer must apply planning judgement, not await completion of unprogrammed evidence.

The Appellant's Evidence

- 5.9 The Appellant will prepare a comprehensive suite of evidence in support of this Appeal. This includes expert evidence in relation to:
- a. Housing supply;
 - b. Housing delivery including affordable housing delivery; and
 - c. Planning.
- 5.10 Following receipt of the LPA's Statement of Case the Appellant will prepare any additional evidence that may be necessary.

6.0 Conditions and Obligations

- 6.1 The Appellant will submit that planning conditions and obligations can satisfactorily deal with a number of matters.
- 6.2 The Appellant will submit that all planning conditions must comply with the six tests set out at Paragraph 58 of the NPPF:
1. necessary;
 2. relevant to planning and;
 3. to the development to be permitted;
 4. enforceable;
 5. precise and;
 6. reasonable in all other respects.
- 6.3 The Appellant will also submit that all planning obligations must comply with Regulation 122 (2) of The Community Infrastructure Levy Regulations 2010 and must therefore be:
- (a) necessary to make the development acceptable in planning terms;
 - (b) directly related to the development; and
 - (c) fairly and reasonably related in scale and kind to the development.
- 6.4 The Appellant will also explain that the nature and scale of all other section 106 obligations will comply with Regulation 122 (2) and will satisfactorily mitigate the effects of development.

APPENDIX 1.0

PROPOSED SITE AND SITE LOCATION PLAN

Location Plan

Site Address: 15, Mount Avenue, Chaldon, CR3 5BB

Date Produced: 14-Aug-2025

Scale: 1:1250 @A4



Planning Portal Reference: PP-14247171v1

APPENDIX 2.0

INVALIDATION LETTER

┌ Louis Earle-davis
Montagu Evans Llp
70 St Mary Axe,
London
EC3A 8BE

Please contact: Chloe Finch

On: 01883 722000

E-mail: cfinch@tandridge.gov.uk

└ Case No:

Your ref:

17 July 2025

Dear Louis Earle-Davis,

The Town and Country Planning (Development Management Procedure) (England) Order
2015

The Town and Country Planning (Fees for Applications, Deemed Applications, Requests
and Site Visits) (England) Regulations 2012

Application No.: 2025/771

Site: Land At Mount Avenue, Chaldon, CR3 5BB

Proposal: Outline planning application for the erection of up to 30 dwellings (including 50% affordable) including provision of vehicular and pedestrian access, landscaping (incorporating SUDS) and other associated infrastructure provision. All matters reserved except access.

Thank you for your application which I received on 30 June 2025

Whilst the fee is correct, your application is still incomplete as follows: -

- 1. The LPA wish to formally consider scale and layout in accordance with Part 3, Article 5 (2) of the DMPO 2015.*
- 2. Site contamination details are required.*

Please send any requested information directly to me via the details provided above. Once received, I will then be able to process your application. If the information requested is not received within **24 days**, I will assume that you do not wish to proceed with your application, the application will be withdrawn and your fee will be refunded, if applicable.

Yours faithfully,

Tandridge Planning Service

customerservices@tandridge.gov.uk www.tandridge.gov.uk

Tandridge District Council, Council Offices, 8 Station Road East, Oxted, Surrey RH8 0BT
Tel: 01883 722000 - Monday-Thursday 8.30-5pm, Friday 8.30-4.30pm - Dx: 39359 OXTED

APPENDIX 3.0

NOTIFICATION OF INTENT TO SUBMIT APPEAL

**TOWN AND COUNTRY PLANNING ACT 1990
APPEAL UNDER SECTION 78**

Notification of intention to submit an appeal

Under the provisions of Recommendation 3 of the Rosewell Review into inquiry appeals, this notification is to give the Local Planning Authority and Planning Inspectorate not less than 10 working days' notice of an intention to submit a planning appeal where the appellant will request the inquiry procedure.

Complete the following:

The appeal will be against: Tandridge District Council

For: failure to determine planning application

Appellant(s) name: Sigma Homes

Site address: Land at Mount Avenue, Chaldon, CR3 5BB

Description of development: *Erection of 30 dwellings (50%) affordable with associated works*, including provision of vehicular and pedestrian access, landscaping, drainage, and other associated infrastructure (Outline application with all matters reserved except access, layout and scale).

Planning application number: TA/2025/771

Likely submission date of appeal: 23 February 2026

Proposed duration of inquiry in days: 3 days

APPENDIX 4.0

VALIDATION LETTER

[Louis Earle-davis
Montagu Evans Llp
70 St Mary Axe,
London
EC3A 8BE

] If calling please ask for James Kidger

On

E-mail: jkidger@tandridge.gov.uk

Fax: 01883 722015

Case No:

Your ref:

] 13 August 2025

Dear Sir/Madam,

Application No. : TA/2025/771
Site : Land At Mount Avenue, Chaldon, CR3 5BB
Proposal : Erection of 30 dwellings (50% affordable) with associated works including provision of vehicular and pedestrian access, landscaping, drainage, and other associated infrastructure (Outline application with all matters reserved except access, layout and scale).

Thank you for your planning application, which together with the appropriate fee, was received as a valid application on 06 August 2025.

If you have any queries about the description of the proposal please contact the case officer immediately. In any other case please avoid contacting the case officer within the 4-weeks following the date of this letter to allow initial processing.

If by 05 November 2025 you have not been given notice by the District Council of its decision and you have not agreed in writing to extend the period, then you are entitled to appeal to the Department of Community & Local Government within 12 weeks for householder applications (i.e. if you applied for planning permission using the householder application forms) or within 6 months for all other types of application. Appeals must be made on a form which is available from The Planning Inspectorate (0117 372 6372) or can be downloaded from www.planning-inspectorate.gov.uk.

To assist in publicising this application, it would be appreciated if you would display the attached site notice in a prominent position on the site for at least **24** days from the receipt of this letter. If you are not the owner of the site you will need the owner's consent to display the notice.

Yours faithfully,



David Ford
Chief Executive

We can provide this letter in a range of languages and formats on request

customerservices@tandridge.gov.uk www.tandridge.gov.uk

Tandridge District Council, Council Offices, 8 Station Road East, Oxted, Surrey RH8 0BT
Tel: 01883 722000 - Monday-Thursday 8.30-5pm, Friday 8.30-4.30pm - Dx: 39359 OXTED

How can I see the application and any comments received?

- Visit <http://planning.tandridge.gov.uk/eaccess/Applicationsearch.asp> and search by application number.
- At the Council Offices, Oxted during opening hours.

What are the Planning Committee arrangements?

Most applications are not decided by the Planning Committee, but by officers using delegated powers. Anyone can discuss an application with their Ward Councillor who may ask for it to be referred to the Planning Committee. This will be at the discretion of the Director of Planning, in consultation with the Committee Chairman. To find out if an application is being reported to Committee:

- Sign up for News Direct emails at www.tandridge.gov.uk/yourcouncil/news/newsdirect.htm.
- Follow TandridgeDC via Twitter

Please check the website before travelling for a meeting. Occasionally there are late changes to the agenda, or a meeting may be cancelled. Full details including public speaking arrangements can be found at www.tandridge.gov.uk/planning/planningapplications

How can I find out about decisions?

We will write to advise you of the decision on your application. Alternatively you can;

- Visit <http://planning.tandridge.gov.uk/eaccess/Applicationsearch.asp> and search by application number.
- Sign up to planning email alerts for this application at www.tandridge.gov.uk/planning.
- View decisions at www.councillors.tandridge.gov.uk/cm55/PublicDocuments.aspx.

Agents, and where there is no agent, the applicant, will receive a decision notice either via email or post.

I'd like to speak to someone

Please call Customer Services on 01883 722000, e-mail customerservices@tandridge.gov.uk.

APPENDIX 5.0

231025 EMAIL CORRESPONDENCE

Louis Earle-Davis

Subject: RE: Application Ref: 2025/771

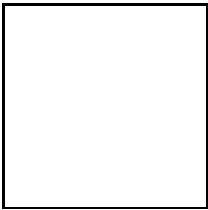
From: Alex Jelley <ajelley@tandridge.gov.uk>

Sent: 21 October 2025 11:01

To: Ben Dakin <ben.dakin@montagu-evans.co.uk>; Louis Earle-Davis <louis.earle-davis@montagu-evans.co.uk>

Cc: David Mabb <david.mabb@montagu-evans.co.uk>

Subject: RE: Application Ref: 2025/771



Good Morning,

I am still waiting for the SWT comments, and also revised Highways comments following your technical note.

Will chase up both today.

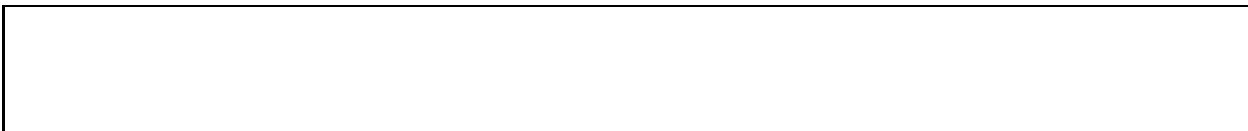
Best wishes,

Alex Jelley
Major Planning Applications Officer (Interim)
Planning
Tel: 01883 732905

ajelley@tandridge.gov.uk

Tandridge District Council
The Council Offices
8 Station Road East
Oxted, Surrey
RH8 0BT

www.tandridge.gov.uk



APPENDIX 6.0

271125 EMAIL CORRESPONDENCE

Louis Earle-Davis

From: Louis Earle-Davis
Sent: 27 November 2025 11:18
To: 'apatel@tandridge.gov.uk'
Cc: David Mabb; Ben Dakin
Subject: Planning Application Ref: 2025/771

Good morning Amit,

I hope you are well.

By way of an introduction, we are the planning agents acting on the planning application (ref. 2025/771) at Mount Avenue.

We understand that you have taken on the case following the departure of Alex, so many thanks for taking this on in what is no doubt an already busy period!

If a quick teams call would be helpful then please do let us know, the scheme has been progressing well and there are no current ongoing issues.

We do note, however, that Surrey Wildlife Trust comments have been submitted but not made available online. Once you are able to, please could you send these across?

We look forward to working with you to bring this application forward.

Kind regards,
Louis

APPENDIX 7.0

270126 EMAIL CORRESPONDENCE

Louis Earle-Davis

Subject: RE: Planning Application Ref: 2025/771 - Mount Avenue

From: Louis Earle-Davis

Sent: 27 January 2026 16:07

To: 'Amit Patel' <apatel@tandridge.gov.uk>; David Mabb <david.mabb@montagu-evans.co.uk>; Peter Lee <PLee@tandridge.gov.uk>

Cc: Ben Dakin <ben.dakin@montagu-evans.co.uk>

Subject: RE: Planning Application Ref: 2025/771 - Mount Avenue

Hi Amit,

Many thanks for sharing the SWT comments.

Firstly, it's great to see that they have not registered an objection. We note that there are a number of pre commencement conditions recommended that we are reviewing with our ecologist, but do not anticipate there being any issues.

We are now of the impression that there are no outstanding consultee responses and therefore the application is in a position to be determined.

We would be more than happy to facilitate a planner-to-planner meeting to discuss the application and move positively towards a resolution. Do you have 30 minutes at 12:00 on Friday 30 January?

As mentioned previously, the applicant is willing to explore entering a PPA with the Council to free up resource and expedite matters. Let's discuss this at our meeting on Friday.

We look forward to hearing from you.

Kind regards,
Louis

APPENDIX 8.0

LETTER TO CHIEF EXECUTIVE



Dear Mr Ford,

I am writing on behalf of Sigma Homes in relation to planning application TA/2025/771.

We fully appreciate that it is unusual to raise an individual planning application at Chief Executive level. However, given the length of the delay now experienced, and the absence of clarity as to the reasons for it, we felt it appropriate to bring the matter to your attention for oversight.

The application was made valid on 6 August 2025 and was due for determination on 5 November 2025. It has not been called in by the local ward member and, throughout the process, it has appeared to be a straightforward scheme suitable for determination under delegated powers by officers.

This is particularly given that the proposal represents a deliverable Grey Belt housing site that could be approved under delegated powers and contribute positively towards the District's housing supply.

All consultation responses have been received, all requested information has been submitted, and no outstanding technical objections remain. The applicant's planning consultants (Montagu Evans LLP), have engaged proactively with the case officer, Amit Patel, and his Team Leader, Peter Lee, in an effort to understand the cause of the delay and to assist in progressing the application.

At present, however, there remains a lack of clarity as to what is preventing the application from being brought forward for determination. This is causing significant difficulty for the applicant who is under contractual obligations to receive a decision urgently in order to avoid an unnecessary appeal by non-determination with its associated potential costs. We understand that this decision can be made at a local delegated level and in the absence of any member call-in, it does not need to go to Planning Committee.

We would be grateful if you might be able to look into the reasons for the delay and, if possible, help ensure the application is determined, following what is now a number of months beyond the statutory timescale.

Sigma Homes remains keen for the application to be determined by the Council rather than having to consider an appeal for non-determination.

Thank you for taking the time to consider this matter. We would of course be happy to discuss it further if that would be helpful.

Yours sincerely,

Miles Willshire

Managing Director

Fairthorn Consultancy

On behalf of Sigma Homes

APPENDIX 9.0

040226 EMAIL CORRESPONDENCE

Louis Earle-Davis

Subject: RE: Planning Application Ref: 2025/771 - Mount Avenue

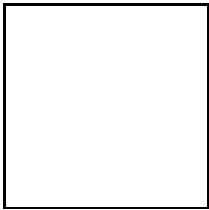
From: Amit Patel <apatel@tandridge.gov.uk>

Sent: 04 February 2026 14:22

To: Louis Earle-Davis <louis.earle-davis@montagu-evans.co.uk>; David Mabb <david.mabb@montagu-evans.co.uk>; Peter Lee <PLee@tandridge.gov.uk>

Cc: Ben Dakin <ben.dakin@montagu-evans.co.uk>

Subject: RE: Planning Application Ref: 2025/771 - Mount Avenue



Dear Louise,

Thank you for your email.

I understand your frustrations but I am trying to resolve this application as soon as I can, which you are aware that I have taken this over from when the previous case officer left. There is no delegated report that has been suggested and need to finalise all the consultee comments, which I have said that

There appears to be a call in request for this application and we are trying to find this, I am due to meet the councillor this week, on all of the Chaldon applications I have and will know what has happened and give a firm timeframe.

Kind regards

Amit Patel
Principal Planning Officer
Planning

Tel: 01883732837

apatel@tandridge.gov.uk

Tandridge District Council
The Council Offices
8 Station Road East
Oxted, Surrey
RH8 0BT

www.tandridge.gov.uk



APPENDIX 10.0

060226 EMAIL CORRESPONDENCE

Louis Earle-Davis

Subject: RE: Planning Application Ref: 2025/771 - Mount Avenue

From: Louis Earle-Davis

Sent: 06 February 2026 16:25

To: 'Amit Patel' <apatel@tandridge.gov.uk>; Ben Dakin <ben.dakin@montagu-evans.co.uk>; David Mabb <david.mabb@montagu-evans.co.uk>; Peter Lee <PLee@tandridge.gov.uk>

Subject: RE: Planning Application Ref: 2025/771 - Mount Avenue

Hi Amit,

Thanks for the update.

You'll have seen we've served notice on our intention to submit an appeal against non-determination.

We hope that we can work positively with yourselves to resolve this matter.

Kind regards,
Louis

APPENDIX 11.0

120226 EMAIL CORRESPONDENCE

Louis Earle-Davis

Subject: RE: Planning Application Ref: 2025/771 - Mount Avenue - Final request for progress from the LPA.

From: David Mabb <david.mabb@montagu-evans.co.uk>

Sent: 12 February 2026 13:08

To: Louis Earle-Davis <louis.earle-davis@montagu-evans.co.uk>; Amit Patel <apatel@tandridge.gov.uk>; Ben Dakin <ben.dakin@montagu-evans.co.uk>; Peter Lee <PLee@tandridge.gov.uk>

Subject: RE: Planning Application Ref: 2025/771 - Mount Avenue - Final request for progress from the LPA.

Amit

You will have seen from the email we cc'd you in to on 6 February that notice has been served to PINs and the applicant has instructed us to appeal for non-determination.

This reflects the frustration felt by the applicant, particularly given:

- 1) There are no outstanding objections from any statutory consultees and have not been for a number of months.
- 2) A residential application at 15 Mount Avenue (adjacent to the applicant's site) was approved this week (ref. 2025/947). You were the case officer and it was validated a month and a half after our application – how has this application been allowed to jump the queue?
- 3) You have not outlined any matters of dispute or issues with the application.
- 4) You have not taken us up on our offer to meet with you to work together through timescales leading to determination.

We are being forced to pursue determination via appeal given the unnecessary delay to determination at local authority level. In the light of this, the applicant is committed to applying for costs as part of the appeal.

As has been the case throughout the determination process, we want to work collaboratively and secure a successful outcome at local level.

To this end, how is this application progressing? Has any substantive progress been made since your last holding email of a week ago?

Approval of this application will facilitate the delivery of much needed market and affordable housing on a sustainably located site next to an existing settlement. There are no technical constraints that prevent development and the delivery of the site is expected within five years – aiding the LPA's five year housing land supply. It is firmly the type of application that national policy supports and initiatives by Government have been put in place to expedite the delivery of housing on such land.

I have been given until tomorrow to resolve this matter with a clear direction from the LPA on actions and programme.

@Peter Lee – I flag this for your attention too given the urgency of a response required to avoid the substantial time and cost implications for the LPA associated with an appeal.

Regards
David

DAVID MABB
PARTNER

Montagu Evans LLP, 70 St Mary Axe, London, EC3A 8BE
d: 020 7312 7530 m: 07818 012 530 e: david.mabb@montagu-evans.co.uk

**"THE CHALLENGE WE FACE IS TO CREATE THOUGHTFULLY
DESIGNED, AFFORDABLE AND SUSTAINABLE LIVING
SPACES, IN EVER-INCREASING NUMBERS, THAT OFFER
SOMETHING MORE FOR THOSE WHO OCCUPY THEM."**



CLICK TO SIGNUP AS WE EXPLORE **LIVING IN OUR TOWNS OF TOMORROW. >>>**



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BEWARE OF CYBER-CRIME: Our banking details will not change during the course of a transaction. Should you receive a notification which advises a change in our bank account details, it may be fraudulent and you should notify Montagu Evans who will advise you accordingly.

Montagu Evans LLP is a limited liability partnership registered in England and Wales. Registered number OC312072. A list of members' names is available for inspection at the registered office 70 St Mary Axe, London EC3A 8BE.

APPENDIX 12.0

RESPONSE FROM CHIEF EXECUTIVE

Subject: RE: Planning Application TA/2025/771 – Request for Oversight on Delay in Determination

From: Thomas James <TJames@tandridge.gov.uk>

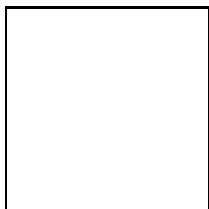
Sent: 19 February 2026 09:46

To: miles.willshire@fairthorn.co.uk

Cc: David Ford <DFord@tandridge.gov.uk>; Amit Patel <APatel@tandridge.gov.uk>; Damian Sullivan <damians@sigmahomesgroup.co.uk>; Ben Dakin <ben.dakin@montagu-evans.co.uk>; Chris East <chrise@sigmahomesgroup.co.uk>

Subject: FW: Planning Application TA/2025/771 – Request for Oversight on Delay in Determination

Importance: High



Dear Mr Wiltshire

Further to your email to David Ford, I have been asked to reply.

It is noted that the applicant has now submitted a non-determination appeal and the Council will let this run its course. The local planning authority are still waiting to receive comments from the County Highway Authority (CHA) so are unable to determine the application until these have been received. Notwithstanding, unfortunately the original case officer left the Council and his replacement also left after only being with the planning team for a couple of months. The application is now with its third case officer. This has caused some delay in the determination of application, please accept my apologies. However, as mentioned above, we are still waiting for the CHA to provide comments and despite chasing, they are still outstanding although the original submission of the application contained insufficient information for a highway assessment to be made and you were required to provide more details, this has also been a factor in the time taken to process the application. I understand the CHA comments will be provided shortly. The site is within the Green Belt and therefore an appropriate assessment on whether it constitutes grey belt needs to be undertaken, amongst other things. I do not agree that a proposal for 30 dwellings within the Green Belt is a “a relatively straightforward residential application” as there are many issues to be assessed.

The application has been called into committee if officers were minded to approve the application (if we were able to determine it) and I will ask the case officer to keep you updated on the matter. I have looked at the application form and note that you are neither the applicant (stated as Sigma Homes) or the agent (stated as Montagu-Evans). Whilst I have responded to you in this instance, I would expect any further correspondence to the case officer being from those stated on the application form.

Regards

Thomas James
Interim Head of Planning (DM)
Planning
Tandridge District Council
The Council Offices
8 Station Road East
Oxted, Surrey
RH8 0BT

tjames@tandridge.gov.uk

www.tandridge.gov.uk

APPENDIX 13.0

030326 EMAIL CORRESPONDENCE

Louis Earle-Davis

Subject: RE: Planning Application TA/2025/771 – Land at Mount Avenue, Chaldon - Agent response to Mr James

From: David Mabb <david.mabb@montagu-evans.co.uk>

Sent: 03 March 2026 16:09

To: TJames@tandridge.gov.uk

Cc: Amit Patel <apatel@tandridge.gov.uk>; Peter Lee <plee@tandridge.gov.uk>; Chris East <chrise@sigmahomesgroup.co.uk>; Damian Sullivan <damians@sigmahomesgroup.co.uk>; Ben Dakin <ben.dakin@montagu-evans.co.uk>; Louis Earle-Davis <louis.earle-davis@montagu-evans.co.uk>

Subject: Planning Application TA/2025/771 – Land at Mount Avenue, Chaldon - Agent response to Mr James

Dear Mr James

I am the planning agent for application ref: TA/2025/771 – Land at Mount Avenue, Chaldon, CR3 5BB and have been sent the email correspondence between yourself and Mr Wiltshire.

To clarify, notice has been served to PINs and the applicant has instructed us to appeal for non-determination. We are progressing the submission, but this has not yet been made. There is still time and a willingness from the applicant to work with the LPA to secure positive determination at local level.

The frustration felt by the applicant reflects:

- 1) There are no outstanding objections from statutory consultees and have not been for a number of months. The County Highway Authority requested further information which was promptly provided. We acknowledge you are still waiting for their follow up response and we have been chasing the highways officer direct to expedite matters. We have not been made aware of any proactive courses of action being taken by our case officer to chase this matter. Article 18 of the Development Management Procedure Order (2015) provides helpful legislation and states that there is no requirement to receive a consultee response before issuing a decision provided that the LPA notifies the consultees and has waited at least 21 days. Both of which have taken place. Given the consultee has not objected, and the information has been provided, it is entirely reasonable for the LPA to determine the application.
- 2) A residential application at 15 Mount Avenue (adjacent to the applicant's site) was approved last month week (ref. 2025/947). Both this application and ours had the same case officer and it was validated a month and a half after our application – how has this application jumped the queue?
- 3) We have not been made aware of any matters of dispute or issues with the application. Notwithstanding the highways response, there is no reason why the bulk of the assessment could not have taken place and a committee report drafted.
- 4) The case officer has not taken us up on our offer to meet to work together through timescales leading to determination. To this end, we have not had a response to our last email (attached – dated 12 February – nearly three weeks ago) which shows our genuine desire to work collaboratively to secure a successful outcome at local level. Peter Lee was also cc'd – and no response from him either.
- 5) We have not seen any progress at all from the LPA on this application which is very disappointing. It makes it extremely difficult for me to advise the applicant on any other reasonable course of action except to appeal for non-determination.

In the light of the above, the applicant is considering applying for costs as part of the appeal.

Approval of this application will facilitate the delivery of much needed market and affordable housing on a sustainably located site next to an existing settlement. There are no physical constraints to development and the delivery of the site is expected within five years – aiding the LPA's five year housing land supply. It is firmly the type of application that national policy supports and initiatives by Government have been put in place to expedite the delivery of housing on such land.

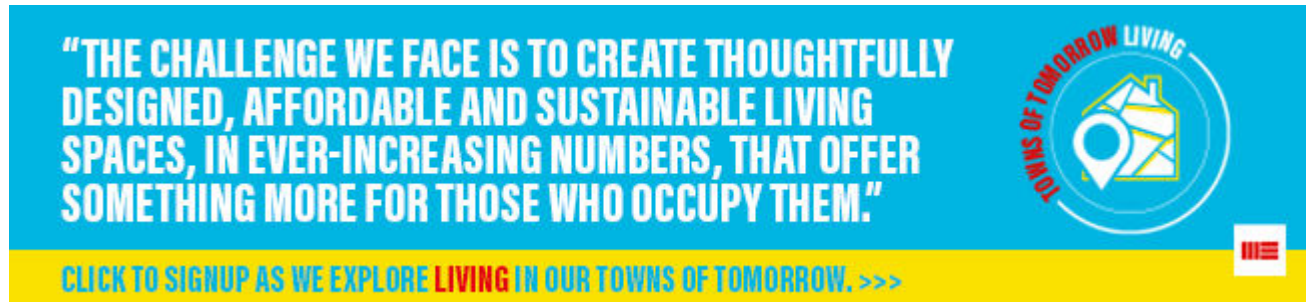
The applicant wants to work together to avoid the substantial time and cost implications for the LPA associated with an appeal but as yet, they have been given no timescales or commitments for resource and progression of the application.

I would be very grateful for your response as to how the LPA would like to proceed on this application. I am under pressure to submit the appeal so I look forward to hearing from you as soon as you are able.

Regards
David

DAVID MABB
PARTNER

Montagu Evans LLP, 70 St Mary Axe, London, EC3A 8BE
d: 020 7312 7530 m: 07818 012 530 e: david.mabb@montagu-evans.co.uk



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APPENDIX 14.0

SCC HIGHWAYS RESPONSE

From: James Lehane <James.Lehane@surreycc.gov.uk> on behalf of TDCTAN/COM/SCC <tdctan@surreycc.gov.uk>
Sent: 09 March 2026 11:32
To: Amit Patel; Statutory
Subject: Response To Application Number TA/25/771 at Land At Mount Avenue, Chaldon, CR3 5BB
Attachments: Response_TA-25-771(3).pdf

Hi Amit,

Please find attached my consultation response in relation to the above planning application.

Kind regards,

James Lehane MCIHT
Principal Transport Development Planning Officer
Environment, Infrastructure & Growth (EIG)
james.lehane@surreycc.gov.uk



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APPLICATION NUMBER	TA/25/771

DEVELOPMENT AFFECTING ROADS

TOWN AND COUNTRY PLANNING GENERAL DEVELOPMENT ORDER 1992

Location: Land At Mount Avenue, Chaldon, CR3 5BB

Development: Erection of 30 dwellings (50% affordable) with associated works including provision of vehicular and pedestrian access, landscaping, drainage, and other associated infrastructure (Outline application with all matters reserved except access, layout and scale).

Contact Officer	James Lehane	Initial Consultation Date	13 August 2025	Response Date	9 March 2026

The proposed development has been considered by THE COUNTY HIGHWAY AUTHORITY (CHA) who having assessed the application on safety, capacity and policy grounds, recommends the following conditions be imposed in any permission granted:

1. No part of the development shall be first occupied unless and until the proposed access to Mount Avenue has been constructed in general accordance with the approved plan (drawing reference 2502094-TS-002), with amendments to remove the proposed footway extension on the west side of Mount Avenue to preserve the existing turning head (subject to detailed design in the Section 278 process required to deliver these works).
2. No part of the development shall be first occupied unless and until the proposed pedestrian access to Birchwood Lane has been constructed in general accordance with the approved plan (drawing reference 2502094-TS-003), providing a permanent barrier to motor vehicle access to the site, and thereafter that permanent physical barrier shall be permanently retained and maintained to the satisfaction of the Local Planning Authority.
3. No part of the development shall be first occupied unless and until the internal site roads have been constructed in general accordance with the approved plan (drawing number PL-03 Rev P1), with the following amendments:
 - a. Provision of a raised table pedestrian crossing at the site access onto Mount Avenue, to provide pedestrian access to the footway on the eastern side of the access road and to reduce vehicle speeds entering and exiting the site.
 - b. Use of block paving within shared surface areas of the site (those areas without segregated footways) to indicate a pedestrian priority environment.
4. The development hereby approved shall not be first occupied unless and until the following cycle facilities have been provided within the development site in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority. Thereafter the said approved facilities shall be provided, retained and maintained to the satisfaction of the Local Planning Authority:

- a. High quality, secure, lit and covered cycle parking for each dwelling.
 - b. Charging points with timers for e-bikes within said facilities.
 - c. Clear hardstanding routes between the cycle stores and the site access.
5. The development hereby approved shall not be first occupied unless and until space has been laid out within the site in accordance with the approved plans (drawing number PL-03 Rev P1) for vehicles to be parked and for vehicles to turn so that they may enter and leave the site in forward gear. Thereafter the parking and turning areas shall be retained and maintained for their designated purposes.
6. No development shall commence until a Construction Transport Management Plan (CTMP), to include details of the following items, has been submitted to and approved in writing by the Local Planning Authority. Only the approved details shall be implemented during the construction of the development.
 - a. Parking for vehicles of site personnel, operatives and visitors.
 - b. Loading and unloading of plant and materials.
 - c. Storage of plant and materials.
 - d. Programme of works (including measures for traffic management).
 - e. Provision of boundary hoarding behind any visibility zones.
 - f. HGV deliveries and hours of operation.
 - g. Vehicle routing.
 - h. Measures to prevent the deposit of materials on the highway.
 - i. Before and after construction condition surveys of the highway and a commitment to fund the repair of any damage caused.
 - j. On-site turning for construction vehicles
7. The development hereby approved shall not be first occupied unless and until the following sustainable transport improvements have been provided in accordance with a scheme to be submitted to and approved by the Local Planning Authority:
 - a. Provision of speed reduction to 20mph, along with any necessary traffic calming measures, between the development and Caterham on the Hill High Street, extending the existing upcoming 20mph limit on Rook Lane (which is to the west of the development, currently planned to end just to the east of the junction with Mount Avenue). This is to include Rook Lane and Chaldon Road, extending to side roads as appropriate and feasible, subject to the necessary Traffic Regulation Order (TRO) consultation.
 - b. The developer shall fund the cost of the TRO advertising and completion (£3,000) required to deliver item a above.
 - c. The improvement of the bus stops located on Rook Lane close to the junction with Mount Avenue to include shelters, enhanced waiting areas and real time passenger information.
 - d. A continuous pedestrian crossing at the Rook Lane junction with Mount Avenue.
 - e. Pedestrian crossing improvement on Rook Lane to provide access to westbound bus services.
 - f. Information to be provided to residents regarding the availability of and whereabouts of local public transport, walking routes and cycling routes.

Reasons

The above conditions are required in order to ensure that the proposed development would not result in unacceptable detriments to the safe operation of the public highway and in order that suitable provision is made for sustainable modes of transport, in accordance with the requirements of the National Planning Policy Framework (NPPF) 2024, including paragraphs 115, 116 and 117, Policy DP5 of the Tandridge Local Plan and the objectives of the Surrey Local Transport Plan 4 (LTP4).

Further specific details concerning each condition above are provided in the 'Note to Planning Officer' section below.

Informative

The permission hereby granted shall not be construed as authority to carry out any works (including Stats connections/diversions required by the development itself or the associated highway works) on the highway or any works that may affect a drainage channel/culvert or water course. In instances where the applicant is not the Highway Authority the applicant is advised that a permit and, potentially, a Section 278 agreement must be obtained from the Highway Authority before any works are carried out on any footway, footpath, carriageway, verge or other land forming part of the highway.

All works (including Stats connections/diversions required by the development itself or the associated highway works) on the highway will require a permit and an application will need to be submitted to the County Council's Street Works Team up to 3 months in advance of the intended start date, depending on the scale of the works proposed and the classification of the road. Please see: <http://www.surreycc.gov.uk/roads-and-transport/permits-and-licences/traffic-management-permit-scheme>

The applicant is also advised that Consent may be required under Section 23 of the Land Drainage Act 1991. Please see: www.surreycc.gov.uk/people-and-community/emergency-planning-and-community-safety/flooding-advice

It is the responsibility of the developer to provide e-bike charging points with standard three-point plug sockets with timers (weatherproof if outdoors) to prevent them constantly drawing a current over night or for longer than required. Signage should be considered regarding damaged or shock impacted batteries, indicating that these should not be used/charged. Where communal bike stores with e-bike charging are required, access and fire escape routes shall not be used for the storage of e-bikes whilst charging. All communal areas where e-bikes are charged must be designed to provide detection, minimise the spread of fire from the cycle store area, and be designed to be fully compliant with Building Regulations. With regard to e-bike sockets in a domestic dwelling, detection measures should be provided, and an official e-bike charger should be used. Guidance on detection can be found in BS 5839-6 for fire detection and fire alarm systems in both new and existing domestic premises. Wherever e-bikes are charged, relevant additional fire resistance measures may be necessary as required by Building Regulations.

Note to Planning Officer

The CHA is content that the proposed development is acceptable in highways planning terms so long as the above conditions and informative notes are included in any permission granted.

The site is not in an ideal location from a sustainable transport perspective, with long walking distances to local amenities (approximately 1.7km to Caterham on the Hill High Street, 2.6km to Caterham High Street, Croydon Road and 1.8km to the supermarket on Coulsdon Road), without appropriate cycle infrastructure and with steep gradients on the route to Caterham town centre.

Rook Lane is a busy road, with high volumes of traffic at most times of day and without any segregated cycle infrastructure, which combines with the overall distance to materially limit the propensity to travel by active modes. It is therefore considered that the sustainable transport and road safety improvements required by the above recommended conditions are necessary in order that the development could be considered acceptable in the context of the 2024 NPPF requirements under paragraphs 115 and 117, as well as the Tandridge Local Plan Policy DP5 and the objectives of the LTP4.

These conditions have also been informed by the advice provided by the Planning Inspectorate in their 2025 webinar on 'What is meant by a Sustainable Location?' (link: <https://www.gov.uk/guidance/planning-inspectorate-webinars#webinar-6---what-is-meant-by-a-sustainable-location>)

Please note the following further comments concerning the above recommended conditions:

Condition 1

The proposed access arrangements onto Mount Avenue including narrowing of the available carriageway in order to provide footways on either side of the road. While the principle of this approach is suitable, the specific proposed changes in this location would result in a loss of the existing turning head area without a material enhancement in terms of pedestrian connectivity. The recommended condition seeks to retain the turning head while providing the direct pedestrian connection into the pedestrian footway on the eastern side of the proposed access.

This condition will require the developer to enter into a Section 278 Agreement with the CHA, with the final details of the scheme to be determined through this process.

Condition 2

The retention of pedestrian and cycle access via Birchwood Lane is beneficial however a physical barrier is required to ensure that this is not used as a secondary vehicular access to the development.

Condition 3

The minor amendments to the proposed site layout are in order to ensure that the site provides a low speed, pedestrian dominated environment in accordance with the Healthy Streets for Surrey Guidance. For more information, please visit: <https://www.surreycc.gov.uk/land-planning-and-development/healthy-streets>

This condition includes provision of a raised table pedestrian crossing at the site access onto Mount Avenue, both for the above reasons but also to provide connectivity with the footway on the eastern side of the access road, with regard to the amendment under condition 2.

Conditions 4 & 5

These conditions seek to secure the proposed vehicular parking and turning provision as well as to provide adequate facilities for cycle parking on site. Cycle parking for houses is generally provided within the curtilage of each dwelling however communal cycle stores can be considered also.

Condition 6

The hours of operation and delivery timings in the CTMP must avoid key periods on the highway network and local school start and finish times for HGV deliveries and ensure that no HGVs will be parked up or waiting on Rook Lane or Mount Avenue at any times. There is to be no HGV or construction access to the development from Birchwood Lane.

Condition 7

As noted above, the opportunities and appeal of travel by sustainable modes from this site are very limited. As such, the measures in this condition have been identified following detailed assessment of the submitted details, local engagement and internal consultation with Road Safety colleagues.

There is an existing planned speed reduction scheme (expected to be implemented in summer 2026) along Rook Lane to the west of the site, which extends to and includes Mount Avenue and the Rook Lane junction with Mount Avenue. By extending this scheme to reach the Caterham on the Hill town centre area (Chaldon Road / High Street / Town End), the potential for walking and cycling trips to be made between the site and local amenities would be greatly enhanced.

This speed reduction would also represent a material improvement in terms of pedestrian safety when seeking to cross Rook Lane to access amenities wider pedestrian and cycle connections.

The final version of the scheme should include residential side roads were practicable, with traffic calming measures to be provided subject to speed survey evidence and technical review. This condition will require the developer to enter into a Section 278 Agreement with the CHA, with the final details of the scheme to be determined through this process and subject to the necessary public TRO consultation.

This condition also requires the delivery of a Copenhagen style continuous footway crossing at the Rook Lane junction with Mount Avenue, which is to enhance pedestrian connectivity and road safety in this location. This is in accordance with the Healthy Streets for Surrey Guidance section 5.2 (link: <https://www.surreycc.gov.uk/land-planning-and-development/healthy-streets/requirements-and-guidance/section?id=5.2>)

The condition further requires that bus stop enhancements are provided on Rook Lane in order that passengers have appropriate facilities and that an improved crossing facility is provided to access these services. The form of this crossing will be informed by what is being delivered under item a of this condition and should be designed to tie in with any traffic calming measures.

It is noted that there is an alternative scheme of improvements outlined in Appendix C of the Transport Statement. These measures would all be beneficial however, given the lengths to the identified destinations and constraints in what can be delivered along those routes, that proposed scheme is not considered adequate to represent providing a genuine and safe choice of transport modes with active and sustainable travel options being able to compete with the private motor vehicle. As such, this alternative approach has been identified and recommended by the CHA.

APPENDIX 15.0

100326 EMAIL CORRESPONDENCE

Louis Earle-Davis

Subject: RE: Planning Application TA/2025/771 – Land at Mount Avenue, Chaldon - Agent response to Mr James

From: Ben Dakin <ben.dakin@montagu-evans.co.uk>

Sent: 09 March 2026 16:46

To: Amit Patel <apatel@tandridge.gov.uk>; David Mabb <david.mabb@montagu-evans.co.uk>

Cc: Peter Lee <PLee@tandridge.gov.uk>; Chris East <chrise@sigmahomesgroup.co.uk>; Damian Sullivan <damians@sigmahomesgroup.co.uk>; Louis Earle-Davis <louis.earle-davis@montagu-evans.co.uk>; Thomas James <TJames@tandridge.gov.uk>

Subject: RE: Planning Application TA/2025/771 – Land at Mount Avenue, Chaldon - Agent response to Mr James

Dear Amit,

We note that the consultation response from the CHA has now been received which confirms that the proposal is acceptable in highways planning terms, subject to the conditions and informative notes set out.

It is our understand that TDC can now progress the application to determination given that this was the only outstanding consultation response.

Please could you provide a timeframe accordingly.

As per David Mabb's email dated 03 March 2026, I reiterate that there is a willingness from the applicant to work with the LPA to secure positive determination at local level. We do however need commitment from the LPA on this point.

If you could provide a response as soon as possible that would be appreciated.

Kind regards,

BEN DAKIN
SENIOR PLANNER

Montagu Evans LLP, 70 St Mary Axe, London, EC3A 8BE
m: 07788 235 118 e: ben.dakin@montagu-evans.co.uk



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APPENDIX 16.0

REGULATION 18 REPRESENTATIONS

JOB002007

**Planning Policy
Tandridge District Council
8 Station Road East
Oxted
Surrey
RH8 0BT**

26 February 2026

Dear Sir or Madam

**TANDRIDGE LOCAL PLAN – REGULATION 18: EARLY ENGAGEMENT CONSULTATION – FEBRUARY
2026
REPRESENTATIONS ON BEHALF OF SIGMA HOMES**

On behalf of our client, Sigma Homes ('Sigma'), we write to submit representations to Tandridge District Council ("TDC" / "the Council"), pursuant to the ongoing regulation 18 early engagement consultation on the Tandridge Local Plan.

Sigma has an interest in the Site referred to as 'Land at Mount Avenue, Chaldon, CR3 5BB' which currently has a live outline planning application for up to 30 homes (C3). The application reference is TA/2025/771 and the description of development is:

- *"Erection of 30 dwellings (50% affordable) with associated works including provision of vehicular and pedestrian access, landscaping, drainage, and other associated infrastructure (Outline application with all matters reserved except access, layout and scale). (Updated highways information received 01.10.2025)".*

Notwithstanding the live planning application, it is our submission that the Site should be removed from the Green Belt and allocated for residential development as part of the emerging Local Plan. We consider that the site capacity should be 30 homes as evidenced by the current planning application as being an acceptable form of development.

It is clear that the Site is Grey Belt in accordance with the definition contained in the NPPF and that the development of the Site would be compliant with the requirements of paragraph 155.

SIGMA'S INTEREST IN TANDRIDGE

The Site is in the Metropolitan Green Belt and is located in the village of Chaldon, extending to 1.45ha. It is contained on three sides by residential dwellings, as well as Birchwood Lane to the south and is physically contained by vegetation with limited views into the Site. To the south of Birchwood Lane is an Area of Great Landscape Value ("AGLV"), however no part of the Site falls within this designation. A copy of the Site Location Plan and indicative layout is contained within **Appendix 1.0**.

It is located within Flood Zone 1 and is at low risk for reservoir, artificial drainage systems and coastal flooding. It has no history of flooding and is not at risk of surface water flooding.

There are no designated heritage assets in relation to the site; it is not within a Conservation Area, nor are there any nearby listed buildings. The nearest listed structure is the Grade II listed 'Barn 15 Yards North of Rook Farm House' located approximately 420m away.

The Site is subject to some tree coverage but this is largely on the boundaries, particularly in the northwest corner. The trees have been surveyed as part of the live application.

Wider Site Context

The local area has good pedestrian permeability with numerous footpaths and off-road routes offering shortcuts to key attractors, over and above the local footway network.

In terms of proximity to public transport, there are numerous within walking and cycling distance and this includes multiple bus stops situated along Rook Lane. The nearest are 150m (2-minute walk) north at the junction of Mount Avenue. From here, services are provided to Warlingham and Reigate via Caterham. Caterham railway station is approximately 2.3km from the Site and provides train services towards London Bridge. This is accessible via bus from services which stop at the Mount Avenue stop.

The Site is also close to the strategic highway network, with the A22 being to the east and subsequently connecting to the M25 (Junction 6) within around 8 minutes of driving.

The Mount Avenue bus stops are located within 200 metres from the Site and therefore within a short walking distance. These stops offer regular services to Reigate and Redhill in one direction and Warlingham, Oxted and Whyteleafe in the other.

Caterham train station is circa 1.29 miles from the Site to the east, amounting to a 6-minute drive or 35-minute walk. The station offers frequent Southern Rail services to London.

The Site is well served by local amenities within walking distance to the Site and via sustainable modes of transport, including a number of shops located within the centre of Caterham. Caterham is also well-served by a number of pubs and shops, including cafes and restaurants.

The closest schools are St Peter and St Paul Church of England Infant School which is approximately a 12-minute walk from the Site.

DISCUSSION

3.3 Where development should go

TDC rightly acknowledges that the District faces complex challenges in determining where future development should be located given that around 94% of the District is within the Metropolitan Green Belt. This leaves very limited land outside of the Green Belt that is available for development to meet identified strategic needs.

In addition to the Green Belt, TDC also acknowledge that the District is subject to other significant constraints including two National Landscapes running through large parts of the area, extensive areas of flood risk, ancient woodlands and locally valued landscapes (designated as AGLV), conservation areas and other heritage assets and areas protected for their biodiversity value. TDC also acknowledge other constraints in the form of infrastructure capacity deficits.

It is TDC's position that the environmental, policy and infrastructure constraints present a very challenging and constrained context for the Local Plan in planning to meet its need. They do, however, acknowledge the requirement that as a starting point the Council should plan positively to meet its identified housing and employment needs over the Plan period alongside due consideration of the area's constraints.

TDC state that “the Green Belt is fundamental to the district’s identity, providing open countryside, distinct settlement patterns and a strong sense of place. It plays a crucial role in preventing urban sprawl, safeguarding the setting of towns and villages and maintaining the character of the countryside”.

The Council also note that the Government’s drive for more housing and changes to national planning policy leaves the Council with no option but to assess whether any areas of the Green Belt could be considered suitable for development in the Local Plan. TDC also state that whilst the Green Belt is fundamental to the identity and character of the District, the scale of housing development now required “will therefore likely mean that some land in the Green Belt will need to be released through the local plan process... The Local Plan process will look to identify the most sustainable and least harmful locations for development within the Green Belt, while ensuring the overall purposes and integrity of the Green Belt are preserved.”

We disagree that it is “likely” that some land in the Green Belt will need to be released through the local plan process. Rather, Green Belt release is unequivocally required for TDC to address their housing land supply position and to ensure sufficient housing is provided helping address their longstanding under supply of housing that has meant them being unable to demonstrate a five year supply for some years.

The NPPF is clear that Green Belt release is required to meet housing need and paragraph 61 of the NPPF states that to support the Government’s objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay. The overall aim should be to meet an area’s identified housing need, including an appropriate mix of housing type for the local community. It does not, however, state that due consideration should be given to the area’s constraints.

The letter from Matthew Pennycook MP (Minister of State for Housing and Planning (**Appendix 2.0**)) to the Chief Executive of the Planning Inspectorate dated 09 October 2025 is relevant in this context. In the letter, the Minister confirmed that he was revoking the letter issued in March 2014 by then Minister Nick Boles and was therefore providing PINS where necessary, with the option to recommend as part of the examination that a Green Belt review is undertaken to consider whether additional sites can be identified, in line with national policy, to meet development needs. It is clear that in the case of Tandridge, Green Belt release will be required.

In terms of when Green Belt release is required, paragraph 145 of the NPPF is relevant and states that once established, Green Belt boundaries should only be altered where exceptional circumstances are fully evidenced and justified through the preparation or updating of plans. Paragraph 146 confirms that exceptional circumstances in this context include, but are not limited to, instances where an authority cannot meet its identified needs for homes, commercial or other development through other means. If this is the case, authorities should review Green Belt boundaries in accordance with the policies in this Framework and propose alterations to meet these needs in full, unless the review provides clear evidence that doing so would fundamentally undermine the purposes (taken together) of the remaining Green Belt, when considered across the area of the plan.

Before concluding the exceptional circumstances exist to justify changes to Green Belt boundaries, the strategic policy-making authority should be able to demonstrate that it has examined fully all other reasonable options for meeting its identified need for development. This will be assessed through the examination of its strategic policies, which will take into account the preceding paragraph and whether the strategy:

- a) makes as much use as possible of suitable brownfield sites and underutilised land;
- b) optimises the density of development in line with the policies in chapter 11 of this Framework, including whether policies promote a significant uplift in minimum density standards in town and city centres and other locations well served by public transport; and
- c) has been informed by discussions with neighbouring authorities about whether they could accommodate some of the identified need for development, as demonstrated through the statement of common ground.

Paragraph 148 is clear that where it is necessary to release Green Belt land for development, plans should give priority to previously developed land, then consider grey belt which is not previously developed, and then other Green belt locations.

When reviewing Green Belt boundaries, the need to promote sustainable patterns of development should determine whether a site's location is appropriate with particular reference to paragraphs 110 and 115 of this framework.

Below we make a number of comments on the Council's approach in terms of where development should go. Firstly, it is our submission that TDC are mischaracterising the Green Belt in the Consultation document. Paragraph 142 of the NPPF states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. Paragraph 143 then goes on to set out the five Green Belt purposes:

- a) to check the unrestricted sprawl of large built-up areas;
- b) to prevent neighbouring towns merging into one another;
- c) to assist in safeguarding the countryside from encroachment;
- d) to preserve the setting and special character of historic towns; and
- e) to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.

In the context of the NPPF, the strong sense of place that the Green Belt makes is irrelevant, as is its contribution to the District's identity. To ensure soundness, TDC should ensure consistency with the wording of the NPPF in the Local Plan rather than including emotive terms that are not relevant.

Additionally, TDC should be clear that Green Belt release is required to ensure that housing need is met. There is absolutely no ambiguity around this given the percentage of land in the District that is Green Belt and the absence of brownfield sites. To ensure soundness, TDC should commit to Green Belt release.

Within the consultation document, TDC state that the effects of the changes to national planning policy are already being seen with speculative applications being allowed at appeal due to the level of housing need that has been established by the Government's standard method. This is incorrect. TDC have, as evidenced above, been a consistently poor performer in terms of both housing land supply and delivery:

- *TDC can currently demonstrate only a 1.92 year housing land supply (acknowledged in their most recent Annual Monitoring Report 2023/2024 (published May 2024); and*
- *Scored only 42% in the Housing Delivery Test 2023 (published in December 2024). This was based on:*
 - *Requirement of 1,716 dwellings over the 3-year period*
 - *Delivery of 716 dwellings over the same period.*

It is therefore disingenuous to suggest that the failure to provide sufficient housing is anything other than a failure of the Council that has manifested over years of under delivery.

Ultimately, Green Belt release is required to provide sufficient housing in Tandridge. The Council should commit to this and be clear that it will meet housing need.

It is clear based on the consultation draft version of the NPPF that the need to release Green Belt land to meet housing needs will not be diluted. The consultation draft contains a very clear direction of travel about this.

In terms of the potential approaches set out (summarised below), it is clear that the Council need to look at each to ensure that sufficient housing is delivered:

- *Towns and larger village intensification.*
- *An even distribution of development across the district.*
- *A focus on new settlements.*
- *Balanced mix of the above.*

What is indisputable is that Green Belt release is required. Ultimately, TDC have seen an abject failure in terms of meeting housing need and delivery. The percentage of Green Belt land in the District is not a justified excuse to not deliver sufficient housing and therefore TDC should commit to Green Belt release and meeting their Standard Method need in full.

3.4 Housing provision

It is correct that the delivery of new homes is one of the most pressing challenges facing the Council and that the Standard Method requirement is for 827 new homes per year, increasing to 993 homes per year for the first five years due to the need to add on a buffer to address past under supply.

Whilst we accept that the emerging Plan is at a very early stage, the Council should commit to delivering their standard need for housing in full.

TDC state their preference for new development to be on brownfield land but acknowledge that the District is unlikely to have enough brownfield land to meet the Government's target. Again, there is no "unlikely" about it. TDC do not have sufficient brownfield land and Green Belt release is required.

Grey Belt

TDC acknowledge the concept of the Grey Belt and note that a Green Belt Assessment is underway to provisionally identify land that could be concluded to be Grey Belt.

We fully support the production of the Green Belt Assessment and reiterate the necessity of this to meeting housing need.

3.5 Economy, employment and retail

We do not comment on this element of the consultation document, aside from noting that future policy will seek to "protect existing employment land from being lost to housing". This further diminishes the amount of brownfield land that is available for development.

THE CASE FOR ALLOCATION

It is our submission that the Mount Avenue Site should be supported by the Council for release from the Green Belt and should be allocated for residential development as part of the emerging Local Plan.

Capacity

It is anticipated that the Site could deliver 30 homes.

Availability

The Site is available for development. It is within one ownership and the promoter has an interest in the Site which would allow them to bring forward development.

Grey Belt

It is our assessment that the Site is Grey Belt and is therefore sequentially preferable for release from the Green Belt. This is demonstrated in the Planning Statement (Section 6.0 – 'Development in the Green Belt') and Green Belt Assessment which accompanied the live planning application (Appendix 3.0).

Deliverability

The Site is deliverable within five years of the intended date of the Local Plan adoption, in accordance with the NPPF. Therefore, subject to planning approval the development could commence within the first five years of the Plan and the remainder would be delivered over the plan period.

CONCLUSIONS

Whilst we accept that the emerging Plan is at a very early stage, we fully endorse the Council's commitment to delivering the full amount of housing as required by the Standard Method, including the buffer. This is a positive and is necessary to ensure soundness.

To meet this, it is clear that Green Belt release is required and TDC must acknowledge this to ensure soundness.

We request that we are added to the Local Plan consultation database and are kept up to date with the emerging Local Plan. We also reserve our position to comment on the next stage of the Plan formulation and appear at the EiP Hearing Sessions.

Should you require any further information or clarification, please do not hesitate to contact myself (david.mabb@montagu-evans.co.uk) or Ben Dakin (ben.dakin@montagu-evans.co.uk).

Yours sincerely,

Montagu Evans

DAVID MABB

PARTNER

MONTAGU EVANS LLP

APPENDIX 17.0

APPEAL DECISION



Appeal Decision

Site visit made on 11 July 2025

by **B Pattison BA (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 09 September 2025

Appeal Ref: APP/M3645/W/25/3359711

The Grasshopper Inn, Westerham Road, Westerham, Surrey TN16 2EU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Kicking Horse 3 Ltd against the decision of Tandridge District Council.
 - The application Ref is TA/2023/938.
 - The development proposed is Demolition of the existing building and erection of a new 63 bedroom care home.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have used the description of development from the Council's decision notice rather than the planning application as this more accurately describes the proposal.
3. The main parties agree that the proposal would not be inappropriate development within the Green Belt. From the submitted evidence and my observations on site I have no reason to disagree with this conclusion, and I have determined the appeal on this basis.
4. A completed Unilateral Undertaking (the UU) was submitted during the appeal. It includes an obligation towards provision and/or enhancement of primary healthcare services within the primary care network. The Council has had an opportunity to comment on the UU, and I have taken account of this here.
5. The appellant has also submitted updated drawings (within Appendix 7 of their Statement of Case) which detail alternative facing materials on the proposal's elevations. Paragraph 16.1 of the Procedural Guide: Planning appeals – England (June 2025) is clear that the appeal process should not be used to evolve a scheme and there are no provisions within the Rules for amendments to be submitted. It is important that what is considered by the Inspector at appeal is essentially the same scheme that was considered by the Council and by interested parties at the application stage. For this reason, I have not accepted the amended drawings for consideration as part of this appeal.

Main Issues

6. The main issues are:
 - the effect of the proposal on the character and appearance of the area, including the Surrey Hills National Landscape; and

- the effect of the proposal on the character and appearance of the local area as a result of the demolition of a non-designated heritage asset and bearing in mind the special attention that should be paid to the desirability of preserving the setting of the nearby Grade II listed buildings.

Reasons

Character and appearance, including National Landscape

7. The appeal site is located within a valley adjacent to Westerham Road. It contains a large faux Tudor-style 1950's roadhouse pub and restaurant building. It is vacant and in a state of disrepair, and a previous historic western wing of the building has been demolished. To the east of the building is a large car park area. The building has a striking design which utilises vernacular features creatively, whilst reflecting nearby rural character through its use of historic materials. Opposite the site on raised ground is a small cluster of buildings forming the hamlet of Moorhouse.
8. The site is located within the Surrey Hills National Landscape (NL). The statutory purpose of National Landscapes is conserving and enhancing the natural beauty of the area of outstanding natural beauty. Section 245 of the Levelling Up and Regeneration Act 2023 (the LURA) amended the duty in the Countryside and Rights of Way Act 2000 in relation to NLs to require relevant authorities, in exercising or performing any functions in relation to, or so as to affect, land in a NL to seek to further the purpose of conserving and enhancing the natural beauty of it.
9. Paragraph 189 of the National Planning Policy Framework (the Framework) also states that great weight should be given to conserving and enhancing landscape and scenic beauty in NLs which have the highest status of protection in relation to these issues. In this case, the National Landscape covers a large area. The Surrey Hills Management Plan (2020 – 2025) sets out that the NL is a diverse landscape characterised by areas of woodland, hills and valleys, traditional mixed farming, a patchwork of chalk grassland and heathland, sunken lanes, picturesque villages, and market towns.
10. In so far as it is relevant to the appeal, I consider the character of the landscape is, in part, derived from rolling hills either side of Westerham Road which are surrounded by areas of woodland and which form a valley which the appeal site sits within. The varied Tudor style form of the appeal building and the small, raised grouping of vernacular buildings within Moorhouse are also positive features within the landscape. Whilst currently in a state of disrepair, the site makes a locally important, positive contribution to the landscape and scenic beauty of the NL.
11. Whilst the proposal's roof form would feature variation in its design, it would largely be dominated by a crown roof with expansive areas of flat roof. I acknowledge that the roof design enables a suitable internal layout for the proposal. However, the crown roof would appear as a large, heavy and somewhat unrelenting mass. It would be highly visible in views along Westerham Road in both directions and in elevated positions on Moorhouse Road. My attention has not been drawn to other local examples of crown roofs, and this factor would exacerbate its prominence as an uncharacteristic feature.
12. Some articulation to the roof form is proposed through a series of mock gable features fronting Westerham Road. These features would be particularly prominent in views in both directions along this straight section of the public highway. From

these viewpoints, and due to their uncharacteristic design, the largely flat gable features would appear as surprising and incongruous elements.

13. Notwithstanding the Council's findings in relation to its effect on the openness of the Green Belt, the proposal would have a large footprint which would spread across much of the width of the site. A range of features would be employed to visually break the mass of the building. These include the gable features, a 'dog leg' building line, variation of materials, and a central element of the building which would be taller than the two side wings. Despite these features the proposal would appear as a sprawling and unrelenting feature. This would contrast negatively to the varied and visually interesting form of the existing building on site.
14. The appellant refers to the National Design Guide and National Model Design Code. However, given my findings above, the proposal would not satisfactorily respond to local character and distinctiveness, which both documents encourage.
15. The appellant indicates that proposed facing materials would include red brick, local stone, timber boarding, render and clay tiles. Examples of these materials can be found within vernacular buildings locally. However, the impact of the development, when viewed in its context, due to its incongruous roof form and unrelenting facade, would cause harm to the rural character and appearance of the area.
16. The changing ground levels within the valley means that visibility of the site is generally limited to the local area. As a result, the visual effects of the proposal would be fairly well contained. However, the visual harm of the proposal would, in my judgement, not conserve or enhance the landscape and scenic beauty, or further the purpose of conserving and enhancing the natural beauty of the NL. Despite the appeal building's disrepair, the site does not currently detract from the NL whereas, for the reasons outlined above, the proposal would be harmful development.
17. The proposal would, therefore, be contrary to Policies CSP18, CSP20 and CSP21 of the Tandridge District Core Strategy (2008) (TCS), Policy DP7 of the Tandridge District Local Plan Part 2: Detailed Policies (2014) (TDLP) and Policy TNP04A of the Tatsfield Neighbourhood Plan (2024). Collectively these policies seek to ensure high quality design which contributes to local distinctiveness, and requires development within the NL to conserve and enhance the special landscape character, whilst outlining that particular attention will be paid to impacts on public views.
18. I also find conflict with paragraph 189 of the Framework, the aims of which are outlined above. The Surrey Hills Management Plan (2020-2025) does not form part of the development plan but is a material consideration for planning purposes. For the same reasons, the proposal would conflict with Policies P1, P2 and P3 which require development to conserve and enhance the character and qualities of the NL.

Designated and non-designated heritage assets

19. The Council's assessment of the appeal building identifies it as a prominent 1950's faux-Tudor roadhouse which was previously attached to a seventeenth century building which has since been demolished. Partial reconstruction works at this end

of the building, as part of a recent planning permission, have commenced but appear to have stopped.

20. The Council indicate that the building features on the Tandridge District Council Buildings of Character List (2013). Furthermore, a Tandridge local list is currently under review, and a draft of the document has been prepared, albeit it has not been consulted on. Regardless, I have no compelling evidence that the building will not appear on the final adopted list, which is supported by a draft assessment of the significance of the building. As a consequence, on the evidence before me I am satisfied that the building has a sufficient degree of significance, because of its heritage interest, to be given due regard as a non-designated heritage asset (NDHA).
21. The proposal would result in the complete loss of the NDHA. Whilst the property is not statutorily listed, paragraph 216 of the Framework states that the effect of an application on the significance of a NDHA should be taken into account in determining the application. In weighing applications that affect directly or indirectly NDHA, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.
22. The appellant, within the Heritage Statement, contends that the appeal building has a low level of significance. Whilst it may be a later example of a roadhouse, it still remains a notable example of a roadhouse building which has historic interest through its role as a former landmark for travellers in the mid-20th century. Indeed, it seems to me, factors such as its rarity as a late example of a roadhouse augment the significance of the building.
23. The appellant indicates that the architectural quality of the building is low and that later additions to the building have compromised its original form. However, whilst the building may have been extended a number of times, the additions are generally sympathetic and employ traditional materials and forms. In my view, these have not eroded the building's key features which reveal its architectural interest, including its steeply pitched roofs, asymmetrical form, mix of gables and half hipped roof forms and small-scale dormer windows.
24. The appellant indicates that compared to other examples of this type of building, the appeal building does not match the architectural quality or cohesive design of other examples provided within the Heritage Statement. Regardless, this does not mean that the appeal building is not architecturally significant in its own right as a NDHA.
25. I acknowledge that much of the interior decorative scheme and associated fixtures have been removed. The appellant also points to the previous demolition of the original seventeenth century section of the building which means that no part of the structure dates from pre-1949. Taking these factors into account, I agree with the Council that the building has moderate local significance. Its demolition would result in a complete loss of significance. I therefore conclude that the proposed development would result in unacceptable harm through the total loss of the NDHA. Given my findings in relation to the replacement building, the loss of the building would cause harm to the character and appearance of the area.
26. The appellant indicates that the building is in a poor state of repair. It is not in dispute that extensive remedial works would be required to bring the building back into use. There is also compelling evidence before me that demonstrates that the

building is no longer suitable for continued public house use, and it is unlikely to be possible to bring it back into an economically viable entertainment venue use. However, the submitted evidence does not assess the potential to convert the building into an alternative use, and it has therefore not been demonstrated that it is not possible to bring it back into an economically viable alternative use.

27. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) require me, in determining this appeal, to have special regard to the desirability of preserving listed buildings, or their setting, or any features of special architectural or historic interest which they possess.
28. There are Grade II listed buildings (LBs) at 1 and 2 Moorhouse Cottages and 7 and 8 Moorhouse Cottages/Moorhouse Farmhouse. The List description confirms that 1 and 2 Moorhouse Cottages date from the sixteenth century with nineteenth century alterations. They are two storeys in height and timber framed on rubblestone and render plinth, with brick quoins and dressings below, and tile hung above.
29. The List description describes 7 and 8 Moorhouse Cottages/Moorhouse Farmhouse as a house with cottages dating from the sixteenth century with nineteenth century alterations. The main farmhouse is two storeys with basement below, whilst the cottages are two storeys and positioned at a right angle to the farmhouse.
30. From my observations on the site visit and the evidence before me, the significance of the LBs is derived mostly from their age, architectural quality and their contribution to the rural character of the area as part of a small grouping of historic agricultural properties.
31. There is limited historic associative link between the appeal building and the cluster of buildings forming Moorhouse. During my site visit, the trees between the appeal building and Moorhouse were in full leaf. However, the appeal building remained clearly in sight in raised views of the LBs from Moorhouse Road and the small lane adjoining 7 and 8 Moorhouse Cottages. This visibility is likely to be heightened during periods of the year when the trees are not in full leaf. The Farmhouse is also particularly visible in direct views from the appeal site, at the junction of Moorhouse Road with Westerham Road. Overall, I consider that the appeal site forms part of the setting of the LBs.
32. Due to the distance and woodland screening, the appeal building is not a prominent feature in the setting of the LBs. As a result of its vernacular style and use of traditional materials it is a sensitive feature within the valley which, in my view, does not detract from the wider setting of the LBs. In direct contrast, and as a result of its uncharacteristic roof form and unrelenting front façade, the proposal would appear as a significantly more prominent and ungainly feature within the rural setting of the LBs. For this reason, it would have a harmful effect on the significance of the designated heritage assets, namely the Grade II listed buildings at 1 and 2 Moorhouse Cottages and 7 and 8 Moorhouse Cottages/Moorhouse Farmhouse.
33. Therefore, in this respect, the proposal would be contrary to Policy DP20 of the TDLP which requires that assets are conserved or enhanced and that heritage assets, including NDHA, are retained, where possible. I also find conflict with the principles of the Framework which for applications affecting non-designated

heritage assets, require a balanced judgement having regard to the scale of any harm or loss and the significance of the heritage asset.

- Heritage Balance

34. Taking account of the separation and screening provided by the intervening trees, the harm to the designated heritage assets would be less than substantial. Nevertheless, I have attached considerable importance and weight to the desirability of avoiding such harm, in accordance with Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
35. In failing to preserve the setting of the LBs, I find that the proposal would, in the words of the Framework, result in less than substantial harm to the significance of the designated heritage assets. In such circumstances, the Framework requires that the less than substantial harm should be weighed against the public benefits. The proposal would provide benefits such as making an efficient use of the site and contributing to local housing supply. The development would have temporary economic benefits through the creation of construction jobs during the construction phase. The proposal's visitors and employees would provide economic benefits through expenditure in local shops and services. Whilst limited due to the size of the proposal, these also weigh in favour of the development. The appellant also indicates that planning conditions could ensure the retention of identified features of interest which could be retained in any future building. In addition, the appellant has reached agreement with the Brooking Museum, for a number of architectural items which could be made available to the museum, in the event that the appeal building is demolished. These matters weigh in favour of the development.
36. That being the case, while I have had regard to the benefits of the development, in the particular circumstances of this case, the public benefits do not outweigh the considerable weight attached to the harm to designated heritage assets. In addition, the proposal would result in harm to the significance of the NDHA, which would result from its total loss.

Other Matters

37. The Framework seeks to significantly boost the supply of homes. Paragraph 73(d) supports the development of windfall sites. The proposal would involve the re-use of the appeal site and paragraph 124 supports the effective use of land.
38. The proposal would provide 63 residential care home beds for older people, providing both general purpose and dementia care, with 24-hour care and supervision for residents aged 65+ years. The proposal would also provide generous, good quality internal and external amenity areas which could be utilised by residents.
39. The appellant's Planning Need Assessment identifies an estimated under-supply of 87 additional standard wetroom care home beds within a five mile market catchment area. The shortfall is anticipated to increase to 148 by 2032. It is outlined that the proposal would address nearly 75% of the shortfall up to 2027.
40. The need to provide housing for older people nationally is critical as set out in the National Planning Practice Guidance (PPG). There is no doubt that there is a clear need for this type of development in Tandridge. Consequently, the cumulative

benefits associated with the provision of a care home providing general needs and dementia care are afforded substantial weight.

41. The proposal would create employment, and would also give rise to some economic benefits during the construction phase and would provide support to local services. Therefore, the economic benefits are afforded moderate weight. The appellant has referred to environmental benefits, however as these have not been quantified I have afforded them limited weight.
42. The appellant indicates that weight should be afforded to the donation of existing building fabric to the Brooking Museum and retention of some architectural materials in the new building, However, given the heritage harm that I have identified, this factor is afforded limited weight.
43. Compliance with the development plan in relation to issues such as landscaping and amenity of neighbouring occupiers are expectations for all development. These weigh neither for nor against the proposal and are therefore considered neutral in the planning balance.

Planning Balance and Conclusion

44. The proposal would cause harm to designated and non-designated heritage assets and the character of the area including the NL. The TCS and TDLP are both older than five years. However, the weight to be attached does not hinge on their age. Paragraph 232 of the Framework makes it clear that due weight should be given to existing policies according to their degree of consistency with the Framework.
45. According to the Framework the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. The Framework also requires great weight to be given to conserving and enhancing landscape and scenic beauty in National Landscapes, and great weight should also be given to heritage assets' conservation.
46. Therefore, the conflict between the proposal and Policies DP7 and DP20 of the TDLP and Policies CSP18, CSP20 and CSP21 of the TCS should be given significant weight in this appeal.
47. The proposal would provide 63 care beds, addressing a need for this type of residential accommodation in the Tandridge area. The appellant states that the Council's Housing Land Supply is 1.57 years. This suggested figure has not been challenged by the Council and is a notable shortfall against the five year housing land supply sought by the Framework.
48. In these circumstances Paragraph 11(d) of the Framework is relevant. However, for the reasons set out above, the application of policies in the Framework that protect National Landscapes and heritage assets provide a strong reason for refusing the development proposed. Consequently, the presumption in favour of sustainable development, as set out in paragraph 11(d) of the Framework is disengaged and the scheme should be considered under a normal planning balance and on that basis, I find that the harm clearly outweighs the benefits.
49. The proposal would be contrary to the development plan and the Framework taken as a whole. There are no other material considerations which indicate that the decision should be determined other than in accordance with the development

plan. Therefore, for the reasons given above, I conclude that the appeal should be dismissed.

B Pattison

INSPECTOR

APPENDIX 18.0

HOUSING LAND SUPPLY STATEMENT

Appeal Decision

Inquiry opened on 8 November 2021

Site visit made on 23 November 2021

by David M H Rose BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th December 2021

Appeal Ref: APP/V1505/W/21/3279154

Land at Market Square, Basildon, SS14 1DU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Orwell (Basildon) Limited against Basildon Borough Council.
 - The application Reference 20/00955/FULL, is dated 30 July 2020.
 - The development proposed is: Demolition and Redevelopment of the Existing Building and Erection of a Mixed Use Scheme Comprising of Flexible Commercial Floorspace (Use Class A1- A5, B1, D1 and/or D2) on the Ground-First Floors and 492 No. One and Two Bedroom Residential Apartments (Use Class C3) in 3 Blocks of up to 17 Storeys, with Associated Parking, Servicing and Communal Amenity Areas.
-

Decision

1. The appeal is allowed and planning permission is granted for: Demolition and Redevelopment of the Existing Building and Erection of a Mixed Use Scheme Comprising of Flexible Commercial Floorspace (Use Class A1- A5, B1, D1 and/or D2) on the Ground-First Floors and 492 No. One and Two Bedroom Residential Apartments (Use Class C3) in 3 Blocks of up to 17 Storeys, with Associated Parking, Servicing and Communal Amenity Areas at Land at Market Square, Basildon, SS14 1DU in accordance with the terms of the application, Reference 20/00955/FULL, dated 30 July 2020, subject to the Schedule of Conditions (nos. 1 - 49) appended at Annex A to this decision.

Preliminary matters

(i) The Inquiry and Site Visits

2. The Inquiry opened on Tuesday 8 November 2021 and was held in a 'virtual' format. I heard evidence over a period of 7 days¹. Oral Closing Submissions were presented on 3 December 2021.
3. As well as the main parties, the Inquiry was attended by 2 Rule 6(6) Parties each with an interest in its own development proposals in Basildon Town Centre. These were Basildon Estates Limited²; and Infrared UK Lion Nominee 1 Limited (in administration) and InfraRed UK Lion Nominee 2 Limited (in administration)³.
4. I undertook a preliminary unaccompanied site visit in and around the town centre, following an agreed itinerary, on 27 October 2021. I also carried out an accompanied site visit on 23 November 2021.

¹ On 8 – 11 and 16 – 18 November 2021

² Hereafter Basildon Estates

³ Hereafter Infrared

(ii) Putative Reasons for Refusal

5. The Council's putative reasons for refusal are:

- 1) *Good design encompasses not only external quality but also the quality of internal environments. The application is not considered to have robustly justified the approach to townscape and architectural language and the resulting harm, in respect of matters including height, scale, massing and general design, the proposed internal arrangement which comprises unwelcoming long corridors, inequal access to private amenity space which is of even greater importance post the pandemic, and a residential entrance which lacks presence and legibility. Therefore, it is not considered that the application adequately demonstrates that it complies with the amended social objective to secure 'well designed, beautiful and safe places'.*
- 2) *The proposed development would, by reason of its height, overshadowing, scale, massing and general design, including the internal environment and lack of direct access to private amenity space, result in an intrusive addition, harmful to the townscape, including landmark Brooke House, character and appearance of the area and fails to create a high quality, well designed development, contrary to the requirements of the NPPF (July 2021), Policy BE12 of the Basildon District Local Plan Saved Policies (2007) and Policies H25, DES1 and DES4 of the Basildon Borough Revised Publication Local Plan 2014 - 2034 (October 2018).*

6. At the Inquiry, the Council confirmed that it did not oppose the principle of a residential led mixed-use development of the appeal site. It supported appropriate regeneration in Basildon Town Centre and welcomed the range of benefits that suitable regeneration could be expected to deliver. In addition, the authority recognised that housing supply and delivery in the Borough is constrained (by Green Belt) and the contribution to housing supply was a significant consideration in favour of the proposal. Finally, the Council acknowledged that it could not demonstrate a 5-year supply of deliverable sites for housing and, accordingly, any adverse effects of allowing the appeal must be shown to significantly and demonstrably outweigh the scheme benefits.

(iii) Site and Surroundings

7. The defining elements of Basildon Town Centre are grounded in its New Town planned form and the influence of Modern Movement architecture. The essence of the place was an encircling road embracing town centre commercial uses and extensive car parking. The central core was laid out in low rise, flat-roofed, blocks, often with ground floor canopies of varying styles, along pedestrian precincts, notably East Walk, and generous squares including East Square, Town Square, St Martin's Square and Market Square. Brooke House, an imposing 14 storey building above a 3 storey pilotis, was a later adjustment to add scale and residential use to the centre. It is listed Grade II.
8. The appeal site is one of the original, predominantly 3 storey and part 4 storey, blocks towards the western edge of the centre. Ground floor retail and commercial units, many now vacant, line Town Square as it merges into St Martin's Square to the north, Market Pavement to the east, Market Square to the south and Fodderwick to the west.

9. The block has widespread use of concrete framing, a range of infill panels, limited use of brickwork and extensive glazing. Seen as a whole, it is strongly horizontal in form, albeit most of its northern and western façades have exposed vertical framing at upper floor levels which wrap around onto the Market Square and Market Pavement elevations before giving way to wider vertical brickwork panels. Similar characteristics prevail elsewhere within the centre, with some elevations squat and unashamedly horizontal in form, and others with pronounced erect framing as evidenced by the northern façade of the adjacent block on the corner of Market Pavement and Town Square.
10. The northern side of Town Square, in the vicinity of the appeal site, is flanked with ground floor commercial uses. Former upper floor offices, Northgate House, converted to residential use, are now clad in an eye-catching manner with vertical 'punched hole' fenestration. The square contains 2 free-standing retail pavilions before taking on a narrower form leading into St Martin's Square.
11. St Martin's Square, with recent public realm enhancement, contains the striking New Town Church of St Martin utilising dark brickwork, pronounced glazing to its western elevation and conspicuous vertical framing. It is complemented by a free-standing, slender, steel framed and glass Millennium Bell Tower. Modern civic buildings, including the Towngate Theatre, constructed in buff brick with darker banding, mark the irregular western sides of the square. The eastern side of the square is formed by the austere blank brick and concrete panel wall of the former M&S store. The final side of the square, again in stepped form, includes the large store format Westgate Shopping Park building, comprising buff brick and stone facing, and the north-western corner of the appeal site.
12. Market Square has seen the recent introduction of the South Essex College building and associated enhancement to the public realm. The contemporary 3 storey building, with an angled footprint, has pronounced horizontal massing broken above the ground floor by light-grey vertical ribbed cladding and vertically proportioned strip windows.
13. Since its conception, Basildon Town Centre as a whole, including sites outside the ring road, has seen the introduction of a scatter of tall buildings (often originating as offices and remodelled to residential) including: Great Oaks House (11 storeys), a short distance to the north of Brooke House and, in turn, Acorn House (7 storeys); Kelting House (9 storeys) abutting the inner cordon of the ring road; The Icon (10 storeys) and Trafford House (8 storeys with approval to add a further 3 floors) to the south of the ring road. Approval also exists for the redevelopment of the Great Oaks GS8 'island' site (8 – 11 storeys), within the arterial road but physically detached from the main town centre.
14. Basildon railway station is located immediately to the south of the ring road, between the continuation of Fodderwick and Market Pavement, and the bus station is to be found a few paces to the east of the southern end of Market Pavement. Beyond St Martin's Square and the northern part of the ring road lies Gloucester Park, an extensive area of attractive recreational space, laid out with water, woodland, pathways and play facilities.

15. In general terms, the physical fabric of parts of the early town centre appear outworn and on a well-advanced downward spiral of decline, evidenced by vacancy and buildings which will not be re-used in their current form. There is consensus that these areas are in need of regeneration and that benefits would accrue from an appropriate mixed-use scheme.

(iv) The appeal proposal

16. The primary massing of the scheme takes the form of 3 north-south orientated blocks ('fingers') connected by 2 storey pavilions and single-storey arcades along the north and south elevations. The western finger contains 3 interlocking blocks stepping down from 17 storeys facing St Martin's Square to 13 storeys fronting Market Square. The central finger reduces in the same way from 13 storeys to 9 storeys. The eastern finger has its tallest element of 15 storeys on the corner of Market Place and Market Pavement stepping down to 10 storeys fronting Town Square.
17. Ground floor uses include a perimeter of flexible commercial/retail units inclusive of a potential healthcare/community facility; an 'incubator' space for small businesses; and the designated double height residential entrance. All servicing and parking would be accommodated internally within the scheme. External communal amenity space would take the form of podium and rooftop gardens. A proportion of the apartments, limited to the inner, podium facing, elevations would have projecting balconies and the remainder would have Juliette balconies. Internal communal amenity space, with a combined circulation function, would be provided mainly at reception level and on the first floor of the central finger. Access to apartments in the eastern and western fingers would be gained through these spaces and thereafter across one of the podium gardens.
18. The scheme is promoted on a Build to Rent basis designed specifically for renting and typically owned by institutional investors and managed by specialist operators. The National Planning Policy Framework⁴ Glossary defines Build to Rent as: *'Purpose built housing that is typically 100% rented out. It can form part of a wider multi-tenure development comprising either flats or houses, but should be on the same site and/or contiguous with the main development. Schemes will usually offer longer tenancy agreements of three years or more, and will typically be professionally managed stock in single ownership and management control'*.

(v) Statement of Common Ground and Housing Land Supply

19. An extensive Statement of Common Ground, between the Appellant and the Council, was submitted before the opening of the Inquiry. The issues in dispute generally reflected those set out in the putative reasons for refusal. No point was pursued on alleged overshadowing.
20. As to housing land supply, the Council's latest calculation of 3.5 years⁵, uplifted from an earlier 'acknowledged' position of 2.4 years, was not accepted. It was said that the Council's Position Statement⁶ did not provide sufficient evidence of a realistic prospect of deliverability within a period of 5 years.

⁴ Hereafter the Framework

⁵ CD B14 Basildon Borough Council Five Year Land Supply Report (2021-2026) – published 23 September 2021

⁶ CD E1 dated 29 October 2021

21. However, it was agreed, irrespective of the figure, that the material shortfall, in combination with the Housing Delivery Test score (45%), engaged the tilted balance in paragraph 11 d) of the Framework. Accordingly, the policies which are most important for determining the application were to be treated as out-of-date and permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
22. Basildon Estates, in its opening submissions, confirmed that it did not seek to occupy a material amount of Inquiry time on the matter as it was accepted that, whilst the scale of any deficit was important, a range would suffice. However, it invited clarification on the town centre regeneration schemes which formed part of the anticipated supply.
23. Infrared alleged that the Council's reliance on sites identified in the Housing and Economic Land Availability Assessment⁷ fell well short of clear evidence of deliverability. This was supplemented by a Position Statement⁸ that discounted the HELAA sites equating to a supply of 1.7 years.
24. In turn, the Council submitted a more detailed Position Statement⁹ setting out further information. This prompted requests from the Appellant and the Rule 6(6) Parties to respond. These responses, and that of the Council limited to clarification, were invited as written statements for my consideration.
25. I return to the matter later in my decision.

Main Issues

26. The main issues are:
 - 1) Having particular regard to the government's objective of 'achieving well-designed places':-
 - (i) the effect of the proposal on the character and appearance of the area; and
 - (ii) whether the proposed development would provide acceptable living conditions for future occupants.
 - 2) In the absence of a 5-year supply of housing land, would any resultant harm significantly and demonstrably outweigh the benefits of the scheme.

Reasons

(i) Planning Policy: The Local Plan

27. The Statement of Common Ground identifies Policy BAS BE 12 of the Basildon District Local Plan Saved Policies and draft Policies H25, DES1 and DES4 in the Basildon Council Revised Publication Local Plan, which is awaiting examination, as the most relevant to the consideration of the main issues.

⁷ Hereafter HELAA

⁸ ID11

⁹ ID19 (15 November 2021) and ID23 (Supplementary Note)

28. Saved Policy BAS BE 12 indicates that permission for new residential development will be refused if it causes material harm in any of 5 ways, including harm to the character of the surrounding area.
29. Policy H25 relates to the size and type of homes and expects, amongst other things, the provision of high-quality homes with sufficient private amenity space to meet the needs of residents. Policy DES1 is aimed at achieving good design with reference to the delivery of regeneration and public realm improvements in town centres and a checklist setting out 10 components of good design. Finally, Policy DES4 requires buildings to be designed to a high standard, responding appropriately to their location and reflecting their function and role in relation to the public realm¹⁰.
30. The Local Plan policies attract limited weight, consistent with their draft status, although it is to be noted that their underlying aims are consistent with national guidance¹¹ and its drive to secure good design in its widest sense.

(ii) Planning and related Guidance

31. The Essex Design Guide (2018 Edition) was endorsed by Basildon Council, in 2018, as a material consideration that may be taken into account when determining planning applications in the Borough¹². I have had regard to it accordingly.
32. The Basildon Town Centre Masterplan (2012) is an Interim Supplementary Planning Document that was intended to be part of the new Local Plan. It was also required to be reviewed after 7 years¹³.
33. The Masterplan established a vision to 2030 and beyond and identified areas for redevelopment including the western side of the appeal site. It acknowledged that some taller buildings would benefit the legibility of the town centre if placed strategically at key arrival points and on route to the town centre.
34. The Illustrative Storey Heights Plan indicated low redevelopment (2 - 4 storeys) fronting Fodderwick and a low to medium building (3 – 7 storeys) where the College now sits. Some high development (8 – 12+ storeys) was anticipated in peripheral locations. The document was intended to be replaced by the Basildon Town Centre Masterplan 2020 following research and study undertaken by 'We Made That' in its Urban Appraisal¹⁴. It provides context and general principles but its relevance in guiding development on the appeal site has waned.
35. The up-dated Masterplan, in turn, became the Basildon Town Centre Regeneration Strategy (2020) as it was not possible to formalise the Masterplan as either a Supplementary Planning Document or a Development Plan Document prior to the adoption of the emerging Local Plan. The appeal site forms part of the Station Environs sub-area which was identified as having an illustrative potential capacity for 840 residential units. Various visual impressions of the town centre indicate tall buildings on the appeal site and elsewhere.

¹⁰ The policies are described in short by way of context – I have had regard to the policies as a whole

¹¹ Including: the Framework; Planning Practice Guidance; National Design Guide; and Historic England Tall Buildings Advice Note No 4 (2015) and March 2020 Consultation Draft

¹² ID24

¹³ CD E2

¹⁴ CD B7

36. Although the Regeneration Strategy was relevant to the processing of the planning application, the Council is working towards a replacement Strategy based on a further urban capacity study¹⁵. Accordingly, the Regeneration Strategy has no formal policy status or weight in my consideration of the appeal.

The first main issue

(i) The effect of the proposal on the character and appearance of the area

The townscape role of Brooke House

37. It can be said, without controversy, that Brooke House provides a landmark function in the town centre arising from its height, bulk and architectural design and detailing. Whether or not it was intended, some 60 years ago, to be the only tall building is academic as other buildings around the town centre form part of its current wider surroundings.
38. Nonetheless, Brooke House remains pre-eminent because of its distinctive form and the contrast provided by much lower buildings along the main pedestrianised spine. This is most notable around East Square, East Walk and Town Square with the existing buildings on the appeal site forming part of that continuum and accentuating the presence of Brooke House.
39. The appeal proposal would introduce new built form, significantly taller and bulkier than that which exists. The highest part of the development, at its north-western corner, would be some 6 metres higher than Brooke House. The nub of the Council's concern, in terms of the relationship, is from viewpoints in and around the town centre.
40. Starting from the vicinity of the railway station¹⁶, Brooke House and the proposed development would be seen as separate and dissimilar elements within the town centre. The 2 would be perceived as standing well apart and they would be clearly distinguishable from each other in terms of location, composition and material palette. It would also be difficult to determine their comparative heights given their separation and relative distances from the viewer. Although the proposal would remove the singularity of Brooke House in this view, the latter would nonetheless retain its strong landmark function within the eastern part of the retail spine.
41. From Broadmayne¹⁷, separation and the distracting presence of intervening foreground buildings and roof top clutter are relevant factors. The nearer presence of the proposal would give it dominance, but Brooke House would still read as a more distant landmark building.
42. Moving along to the vicinity of the fire station¹⁸, Brooke House (save for the slender fire station tower) stands foremost with Great Oaks House and Acorn House completing a subordinate composition. The proposed new cluster of buildings would form a subservient backdrop well beyond both Brooke House and Great Oaks House. In my opinion, the status and standing of Brooke House would remain clearly legible.

¹⁵ CD E2 and CD E3

¹⁶ Including Viewpoint 18

¹⁷ Viewpoint 12

¹⁸ Viewpoint 13

43. In terms of East Walk¹⁹, facing westwards, the looming and dominance of Brooke House would remain foremost. In this regard, the proposed development would form a secondary and subsidiary marker at the opposite end of the 'precinct', with its height significantly diminished by distance. Progressing along East Walk into East Square and Town Square, the relative stature of Brooke House would increase, given its dramatic and arresting construction, before the attention of the viewer progresses towards the proposed new townscape element. However, in my view, the symbolism of Brooke House would not be eroded.
44. Finally, from the opposite direction, the western end of Town Square is, comparatively, constrained in width, with the primacy of Brooke House coming gradually into the frame as the precinct widens into the main square. The proposed block on the north-eastern corner of the appeal site would form the main comparator. Restricted to 10 storeys in height, and on the opposing side of the retail spine, I consider, notwithstanding the removal of the current low-rise buildings, that Brooke House would remain as the principal focal point.
45. Whilst these are only representative static viewpoints, my overall findings are reinforced by my visits in and around the town centre. In my opinion, although the singular landmark quality of Brooke House would be eroded, the proposed development would not have a material adverse impact on the primacy and captivating townscape function of Brooke House as the centre piece of the New Town.

Urban design

46. There has been long-standing recognition that the legibility of the town centre could be improved by introducing some increased height at key arrival points and on routes into the centre. This remains a relevant design aspiration and it is evident, to meet future housing needs and to diversify and enliven the town centre, that there is an increased pressure and architectural justification for, in principle, some additional built definition.
47. The starting point is that it was established, in cross-examination, that such an objective did not demand a response in the form of a building of substantial scale and of 17 storeys in height. That is true in so far as it goes. However, the point at issue is, as advocated by the Appellant, whether the site is worthy of the gesture²⁰.
48. Fodderwick and Market Pavement are principal pedestrian routes from the railway station and the bus station into the town centre. The former also links directly into the civic focus of the town in St Martin's Square and thereafter towards the residential enclave bordering the recreational facilities in Gloucester Park. The appeal site forms the backdrop to Market Square and the new College building. The plot also defines the southern side of Town Square as it leads from the western extent of the main shopping area into St Martin's Square. In my opinion, these characteristics combine to form impeccable credentials for a townscape driven form of development which would provide improved waymarking and definition.

¹⁹ Viewpoint 15 (where more of Brooke House is now obscured by the new cinema)

²⁰ CD E6 Appeal Decision APP/A5270/W/21/3268157 paragraph 19

49. Turning to this in more detail, it is necessary to assess the impacts on surrounding spaces, starting with St Martin's Square. The vision for St Martin's Square in the 2012 Masterplan was essentially cosmetic without reference to new building form. Any suggestion of indicative building heights for Fodderwick, and perhaps elsewhere, needs to be reassessed in the context of current drivers for change.
50. The square itself has a somewhat disparate character consisting of the Council Offices and Towngate Theatre; the Church and associated bell tower; the drab and uninviting side wall of the former M&S store; the Westgate shopping park; and the north-western corner of the appeal site. The square is generous in proportion and the bell tower, as assessed by 'We Made That', provides a very distinctive landmark and asset to the space. It is, generally, only locally prominent in the townscape²¹.
51. The most critical relationship would be approaching, and on entering, the square from the north where the proposed development would form a partial backdrop to the bell tower. Despite the significantly greater height and bulk of the appeal scheme, the individual identity of the structures could not be more striking and, to my mind, the distinctive and delightful eye-catching qualities of the bell tower would prevail.
52. In more general terms, the 17 storey element would occupy a corner recess of the space, and the development as a whole would be perceived as being located outwith and beyond the square itself. In my opinion, despite occupying the re-entrant inset of the existing block, the influence on the pedestrian square would be quite modest with reference to the height of the building and its relationship with the scale and dynamism of the public realm. In addition, I believe that the development would bring purposeful waymarking and contrast to the space, rather than any strong sense of enclosure.
53. Moving on to Town Square, having assessed the project from East Walk relative to Brooke House, Northgate House introduces an increased building height on the northern side of the square, opposite the north-eastern corner of the appeal site. Whilst the proposal would be yet taller, with preceding towers stepping down, it would herald a clear marker to Market Pavement and provide added definition to Town Square as it narrows in width and terminates immediately beyond the appeal site.
54. From the south, in the vicinity of the railway station, the relationship of the proposal with Brooke House is discussed above. In that view, little or nothing is evident of the townscape characteristics of the inner core. Elsewhere along Roundacre, in those locations where Brooke House does not feature²², the proposal would provide a cluster of tall buildings above and beyond the foreground of the modern retail park.
55. Entering Fodderwick, the appeal site is framed by the eastern side of the Westgate shopping park and the recent insertion of the College. In this location I see nothing fundamentally wrong with the proposal's scale and bulk as a function of delineating the edge of the main retail core and waymarking along Fodderwick. The Council's concern about the loss of townscape character is something that I consider below.

²¹ There is, for example, a longer view of its 'spire' from Gloucester Park (Viewpoint 11)

²² For example Viewpoint 19

56. Finally, from the general locality of the southern end of Market Pavement²³, the low-rise characteristics of the appeal site are now influenced by the foreground of the College and the notably taller, uncharacteristic, backdrop of Northgate House. Again, I see the opportunity for change and waymarking, subject to the wider design considerations which I turn to now.

Evolution of the scheme and the proposed design

57. The Inquiry was not afforded the benefit of hearing from the project architect and, despite the overall competency of the Design and Access Statement, the evolution of the scheme is chronicled only in summary form. There is no record of the brief and whether or not the design team was charged with maximising or optimising development on this brownfield site. There was, however, during pre-application engagement with Council Officers, endorsement of the concept of a proposal rising to 17 storeys in height²⁴.
58. Similarly, the Essex Quality Review Panel²⁵, supported in principle matters of scale and density as presented in the Masterplan noting that '*A further review of appropriate building heights and placement within the town centre is now required to ensure that both existing key views are not harmfully affected, whilst creating opportunities for new vistas. The Panel recognised that the use of the Grade II listed Brooke House as the focal building for development within the masterplan. Not enough of the proposed visuals or views have addressed how this structure will be used; it was noted that it currently looks like potential vistas would be obstructed by new development*'.
59. Whilst the genesis of the scheme is vague, a matter to which the Council submit '*is a matter of some importance*²⁶, the task now is to critically evaluate the proposal and to establish whether it is well-founded by reference to the principles set out in the National Design Guide²⁷, and whether it results in a well-designed place.
60. The Design and Access Statement²⁸ records that the '*proposals have been developed in close conjunction with the ambitions and principles set out within the Draft Basildon Town Centre Masterplan*' followed by an illustration of indicative areas for buildings taller than 8 storeys. The crux of the Council's case is that the Appellant, in following this route, has neither understood the local context nor, in consequence, integrated the proposed development into its surroundings.
61. For my part, there is clear evidence that the Appellant was mindful of the origins of Basildon, its architecture, heritage and urban form. It remains to be seen whether that appreciation is expressed in the scheme before me. I have already dealt broadly with the relationship with Brooke House, and I am satisfied that the proposal would not undermine the landmark quality of the original focal building and it would not obstruct vistas or views of that building in its context. Similarly, I have found that the proposal has clear rationale in terms of urban design.

²³ Viewpoint 21

²⁴ CD C3 Paragraph 4 '*.....a development ranging between some 9-17 storeys*'

²⁵ The Review Panel was appointed to undertake a collective review of proposals for the Eastgate Quarter, Market Square (the appeal proposal), and Town Square north which sought to meet the expectations of the emerging 2020 Town Centre Masterplan

²⁶ ID33 paragraph 24

²⁷ CD A9

²⁸ CD C11 section 2.13

62. Moving on to the detail, the design appears to have evolved with an early focus on East Walk, in particular, which exhibits a range of design elements including zig-zag form above ground level, shaped canopies, 2 storey framed pavilions and the interrelationship of horizontal form with Brooke House and its own horizontality. West of Brooke House, towards the appeal site, the buildings tend to have a much simpler rectilinear form and, where they exist, simple flat roofed canopies or colonnaded projection.
63. The National Design Guide points out that *'well-designed places do not need to copy their surroundings in every way it is important to explain how the design of a development relates to context and local character'*²⁹. In this regard, I recognise that there are key elements which the Appellant has sought to include based on its interpretation of context.
64. Starting at street level, the proposed towers, pavilions and podiums each has an identifiable base. In the case of the former, brickwork pillars provide robust vertical framing, with 2 storey proportions. The pavilions are similarly 2 storeys in form, with single storey podiums in deep recess, incorporating generous glazing sub-divided by clearly articulated vertical metal framing. Horizontal subdivision at first floor level, employing dark metal spandrels, shows restraint and does not compromise overall verticality.
65. In terms of seeking to reflect the horizontal banding of Brooke House, the upper floors of the towers are delineated by a string course of brickwork, comprising 2 stretcher courses between single soldier courses. The banding would project some 25mm from the face of the building to provide subtle definition. The robust bulk of the towers is emphasised by deep set fenestration, comprising a combination of glazing and dark aluminium panels for unity in appearance. In my view, although the towers would lack the overt horizontal expression of Brooke House, and that of other 'lesser' buildings, it is evident that the devices employed are based on an understanding of context and its interpretation in a contemporary form.
66. Further, I note that the Council is critical of window openings being of a similar size, with 3 types of fenestration within them, and that all brick piers and spandrels are identical, with all elevations sharing the same treatment. However, to my mind this results in an understated elegance founded on simplicity and unity. Indeed, repetition and consistency are key attributes of Brooke House. The complaint about the proposed building being monotonous and over-bearing lacks foundation.
67. The overall configuration, with tall finger blocks and low pavilions and podiums along the southern and northern elevations would clearly differ from the current composition of town centre street blocks. However, the pavilions would serve to delineate the towers, add human scale to the street and pay homage to the setting of the College. Articulation of the frontages, although 'new' to the centre, serves a justifiable design purpose in emphasising the constituent elements of the proposal and creating visual interest to engage the eye. Nonetheless, with repetition and common elements, the scheme would have a singular identity.

²⁹ CD A9 paragraphs 44 and 45

68. The primary facing material for the proposed development would be brickwork which the Council say '*has no reliable or positive precedent in the Town Centre's original design*³⁰ and '*..... is characteristic of the arguably less successful late 20th century development on the west side of the town centre*³¹.
69. However, brickwork is common throughout the centre albeit often secondary and in combination with other materials. Brooke House, above its pilotis, employs brick, as do parts of the appeal site block and it is characteristic of St Martin's Square. In terms of the mesh metal cladding for the pavilions, the claim that it would be '*alien*' lacks appreciation of its rationale in that its sculptural qualities are founded in a '*lost*' piece of public sculpture crafted in Corten steel³². It would sit comfortably within its context and bring enrichment to its surroundings. The Council's misgivings are also blind to the materials employed on the College and of course Northgate House.
70. I recognise the Review Panel's concern, whilst welcoming brick as an alternative palette, about the loss of local character and what could be seen as more of a London identity. Nonetheless, given the immediate characteristics and surroundings of the site, and the interposing materials of the proposed pavilions and podiums, I consider that the proposed palette would reinforce the design concept of the scheme and contribute towards local distinctiveness.
71. It is true that the scheme lacks street canopies, other than on the north-western corner as microclimate mitigation, which are a modernist feature of the town centre. However, they are by no means universal or continuous across the centre. Omission here does not render the scheme unattractive or so incongruous that it could be claimed to be poor design which would be out of place in its surroundings.
72. Similarly, narrower glazed street level frontages would not, to my mind, diminish the language or invitation of the ground floor uses. Nor would they have a material impact on the character of the centre as active frontages are less evident along the western side of Fodderwick and into St Martin's Square.
73. I have already referred to the articulation of the scheme and its stepped massing. The resultant niches could, as the Council points out, offer hiding places and impact on the perception of safety. However, active frontages, a resident population and generously proportioned public realm should lessen the opportunity for, and a fear of, anti-social behaviour and crime.
74. In conclusion on this part of the first main issue, I acknowledge that the proposal would result in considerable change which requires special consideration. In this regard, I have found that the proposal would not have a material adverse effect on the townscape function of Brooke House. In addition, the scheme would have a clear role in urban design by providing new landmarks related to patterns of movement and emphasising the importance of the western edge of the town centre. Finally, the design is founded in an understanding of the place which has been incorporated, by interpretation and innovation, into a proposal which would relate well to its context. Overall, I find the criticism levelled at the scheme as '*any place design*' to be unfounded.

³⁰ ID33 paragraph 22

³¹ Lowndes Proof paragraph 5.31

³² The Pineapple by William Mitchell 1977

(ii) Whether the proposed development would provide acceptable living conditions for future occupants

Accessibility and internal circulation

75. Starting with the main and only residential entrance to the proposed development, this would be well placed for residents going to and from public transport facilities. In that regard, it has clear logic but those wishing to avail themselves of amenities within the town centre, or to take exercise in Gloucester Park, would have to negotiate part of the perimeter of the building.
76. Whilst multiple entrances would resolve this, by providing choice, it would be counter-intuitive to the ethos of Build to Rent and its objective of fostering community. It would also serve to dilute the legibility of an intended focal entrance and interrupt street facing active mixed-use frontages. I also accept that such an arrangement would have drawbacks in terms of security and management.
77. Endorsing the principle of a dramatic single dedicated entrance, with concierge and space for sitting³³, residents would ascend to the first-floor communal internal amenity area either by a flight of stairs or a lift. It would only be at that point where residents would disperse, with those living in either the eastern or western blocks walking across a communal courtyard, under a covered canopy, before entering their respective residential fingers.
78. Internally, the journey would often be in two parts, utilising a corridor at podium level and another on the apartment floor. Alternatively, for example in the case of a resident either in the north-east corner or the south-west corner of the development, who chose to take the nearest lift, the final leg of the journey would be a longer angulated route along the home corridor. The corridors would lack natural light and natural ventilation.
79. Such an arrangement, in the absence of cores to ground level, is necessarily somewhat contrived, and the lack of natural light and ventilation is contrary to best practice³⁴. The journey from entering the building to home is also, potentially, a long one along corridors with possible blind spots. The Build to Rent Practice Guide does however acknowledge that *'the actual fit of these shared corridors and common areas will have a strong influence on their character'*
80. To counterbalance the identified disadvantages, the journey home would offer the potential for meeting others, for nurturing a sense of belonging, and an opportunity for using the communal amenities, and appreciating the outdoor landscaped gardens. To my mind, given the concept of Build to Rent housing, notably *'.....enabling customers to feel that the entire building is their home, and not just their own unit'*³⁵, the Council's claim that the scheme would be *'harmful to the health and well-being of the resident'*³⁶ is a misplaced overstatement. In my opinion, the 'well-being' advantages firmly outweigh such misgivings and lead to a conclusion that the scheme is well-designed.

³³ CD C11 page 142 Based on an Artist's impression of the entrance lobby

³⁴ ID21 page 80 paragraph 4.6.2

³⁵ ID21 page 33 'Section 2.3 'Sense of Community'

³⁶ Deeley proof paragraph 8.8

81. As to additional items raised by the Council, including the claimed drawbacks of residents using a shared service corridor for waste disposal or recycling, the corridors would have generous width and normal management responsibilities and security arrangements, finalised by planning condition, should minimise issues arising from shared use.

Access to amenity space

82. The Essex Design Guide makes plain that *'every home should have the benefit of individual private or communal private amenity space the guidance applies to homes of all tenures'*³⁷. It adopts a tiered approach indicating that *'development on sites larger than 0.1 hectares should provide at least 25 sq m of private space for each home*³⁸. Where this is not possible, the provision of balconies will be expected.
83. It is common ground that the appeal scheme would provide in the order of 5.4 sq m of communal open space for each residential unit; and external balconies would be limited to 24% of the apartments, some of which would serve one-bedroom accommodation³⁹. The Build to Rent Good Practice Guide notes that *'good practice would be to provide between 6-10m² per dwelling of shared external amenity spaces*⁴⁰.
84. The Essex Design Guide and the Build to Rent Guide are not embodied within policy. It can also be seen that the former does not explicitly provide guidance on high density schemes of the order proposed. Irrespective, accepting the proposition that balconies should be provided, and that Juliette balconies cannot provide privacy or separation for living areas, it is notable that the inclusion of balconies was never intended, and they were added during consideration of the application.
85. There is no doubt that balconies often present a design challenge and that retrofitting to an advanced scheme makes the task more difficult. Although I agree that the addition of projecting balconies on the proposed street facing elevations would be inappropriate in townscape terms, that is not the point. Neither is it of any relevance that an operator might not want balconies, nor that schemes without balconies score highly on surveys of residential satisfaction. The matter at issue is whether the totality of the outdoor space would provide sufficient opportunities for the needs of the residents.
86. The scheme as presented has the advantage of 2 distinct podium gardens. Both, with southerly aspect, would have the potential to receive direct sunlight for a good proportion of the day; enjoy screening from the street; and present opportunities for a variety of outdoor enjoyment. Three smaller rooftop terraces, at floors 11, 12 and 15, would add further choice. Although individual apartments would have unequal access to the facilities, depending on their location by floor level and relative proximity to a lift, any difference would be largely immaterial. The balconies that would be provided would be either east or west facing and would benefit from good levels of sunlight. The appeal site also has close access to Gloucester Park.

³⁷ CD B11 paragraph 3.139

³⁸ CD B11 paragraph 3.150

³⁹ ID22

⁴⁰ ID21 page 75

87. In my opinion, the deficiency in the quantum of outdoor amenity space, or access to it, would be outweighed by the range of spaces offered, their overall utility, the general principles embodied in their design, and the reservation of details by condition.
88. Moreover, the proposed development would also offer a modest amount of internal communal amenity space, principally at podium level. Whilst its form and related functions would be dependent on the operator's business model, utilisation of the space in one way or another, as part of the '*unique offer*' of the development, would be likely to result in some further contribution to residents' overall amenity.

(iii) Conclusion on the first main issue

89. There is a single development plan policy relevant to the main issue, namely Saved Policy BAS BE 12. Draft Policies H25 (1), DES1 and DES4 also merit weight given their consistency with national guidance. In turn, the Framework confirms that '*the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve*⁴¹. Paragraph 130 identifies 6 overarching criteria to guide decision makers.
90. In my opinion, the proposal would not have a harmful impact on the character and appearance of the area, and it would offer good quality living conditions for future occupants. There would be no conflict with local policies or national guidance.

The second main issue

In the absence of a 5-year supply of housing land, would any resultant harm significantly and demonstrably outweigh the benefits of the scheme

(i) Housing Land Supply

91. Basildon is required to deliver a minimum of 6,048 homes over the 5-year period 2021- 2026. This has been calculated using the standard method and includes a 20% buffer as the Council has only been able to meet 45% of its housing requirement over the last 3 years. The Five Year Housing Land Supply Report⁴² identifies a total supply of 4,234 dwellings (3.5 years) consisting of sites with planning permission (1,779 dwellings); HELAA sites (980 dwellings); and Town Centre Regeneration sites in Basildon and Wickford (1,475 dwellings).
92. The Council's Five Year Housing Land Supply Position Statement⁴³ made some minor adjustments, including an uplift to the sites with planning permission and a downward revision to yields from Basildon Town Centre. In a further statement⁴⁴, responding to the submissions of the Appellant and the Rule 6 Parties, the Council's confirmed position was a supply of 3.3 years. However, it is important that the annual housing land supply calculation should not be distorted by ad hoc additions or deductions throughout the monitoring year. Therefore, those dwellings arising from planning permissions, resolutions, or applications post-dating the annual report should be discounted.

⁴¹ CD A2 paragraph 126

⁴² CD B14

⁴³ ID19

⁴⁴ ID30

93. In terms of the remainder of the disputed sites, the principal issue is whether the Council's assessment of deliverability is justified. The Glossary to the Framework defines 'Deliverable' as:
- 'To be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years. In particular:*
- a)*
 - b) where a site has outline planning permission for major development, has been allocated in a development plan, has a grant of permission in principle, or is identified on a brownfield register, it should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years'.*
94. In turn, Planning Practice Guidance: Housing supply and delivery explains that *'in order to demonstrate 5 years' worth of deliverable housing sites, robust, up to date evidence needs to be available*'. It goes on to outline 4 potential sources of evidence which may demonstrate deliverability including, but not limited to: the current status of the site; firm progress towards the submission of an application; firm progress with site assessment work; or clear relevant information about site viability, ownership constraints or infrastructure provision and any successful bids for related funding.
95. Looking first at the sites deriving from the Brownfield Register, none have planning permission and anticipation of development does not amount to clear evidence. Indeed, for example, Car Park 14 and adjacent land, which is identified as delivering over 200 dwellings, was the subject of an application which was withdrawn at the end of September 2021. Despite a reported intention to submit a revised application, and the agreement with Homes England, the prospect of deliverability is, nonetheless, vague.
96. Turning to 'Other Basildon Town Centre Sites', the development of Car Park 2 and Car Park 12 relies on the refurbishment of Great Oaks multi-storey car park. This is due to take place in 2022 with an expectation that the surplus car parks will be the subject of planning applications in the same year. There is no demonstrable evidence to support housing completions within the relevant period.
97. In terms of 'Basildon Council Sites', many of which form part of the Council's housebuilding programme for the next 5 years, most are identified as 'Future Building Programme' and have not progressed to application stage. Whilst it is understandable that full details are not yet in the public domain, and it is acknowledged that the Council has been pro-active in building houses, there is no firm evidence to support the prospect of delivery. The small site owned by Essex County Council is similarly unsupported.
98. Overall, a substantial part of the Council's projected supply does not attain the threshold of deliverability as defined by the Framework and the Planning Practice Guidance. Accordingly, this would diminish a robust assessment of supply to around 1.7 years, a figure promoted by Basildon Estates and Infrared by slightly different means. It would also support the Appellant's reluctance to accept the Council's proffered housing land supply.

99. The calculation of housing land supply is by no means an exact computation, and some sites may yet come forward through the Council's endeavours and land ownership. Indeed, material weight is to be given to the Council's Housing Delivery Action Plan 2021 in response to the acknowledged housing land supply shortfall, and that many of the identified sites are in its control. Small sites are also likely to be easier to deliver.
100. Looking at the exercise as a whole, it is reasonable to assume, on the balance of probability, that some of the sites discounted by the Rule 6 Parties are likely to generate new housing within the relevant period. As a matter of judgement, I find the critique undertaken by Basildon Estates and Infrared to be unduly pessimistic. On the other hand, it is inevitable that some of the sites relied on by the Council will not materialise and a claim of 3.3 years supply cannot be supported.
101. Whilst it has been verified that it is not always necessary to establish the precise level of the shortfall, the difference here is sizeable. As a matter of judgement, from the evidence before me and without undertaking a comprehensive site by site assessment, I consider that the available supply is likely to be, at the very best, no more than the mid-point of the conflicting figures. The shortfall is clearly significant.
102. This leads me to conclude that the housing land availability, and the performance against the Housing Delivery Test, falls well below the expectations of national policy. On this basis, the delivery of additional housing arising from the proposal should be given great weight in the planning balance.

(ii) Heritage assets

103. The Statement of Common Ground confirms that the Council does not advance any heritage objections. In addition, Historic England did not oppose the project. Essex County Council's Places Services identified that Brooke House, a prominent and landmark building of the New Town development, would experience a change to its setting resulting in less than substantial harm at the lower end of the scale.
104. For my part, it is evident that Brooke House, a robust building with distinctive architectural language, was designed to be the tallest building in the New Town. It remains as a landmark feature and a symbol of the New Town Movement. The proposed development would bring about change within the setting of Brooke House as a result of the introduction of a cluster of tall buildings. In my opinion, in local views, these would appear distinct in form and character set well apart from Brooke House. More widely, the development would appear as an additional element on the skyline, lessening the focus of Brooke House. Overall, this would amount to less than substantial harm to the significance of the designated heritage asset.
105. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special regard be given to the desirability of preserving the setting of a Listed Building. Considerable importance and weight are to be given to the harm identified. Taking account of the totality of the public benefits arising from the proposed development, with particular reference to the provision of a significant number of homes, in a highly sustainable location, and the catalyst to the much-needed regeneration of the town centre, this would outweigh the heritage harm that I have identified.

106. The Council also considered the proposal in the context of non-designated heritage assets, including the Fire Station and the Geoffrey Clarke patterned untitled mosaic on the northern elevation of the existing buildings. I agree that there would be no adverse impact on the setting of the former, and provision to relocate the mosaic would be an adequate safeguard.

(iii) Local Representations at application and appeal stage

107. A key local concern is the scale, height and density of the proposed development and its impact on the town centre both visually and socially. I have considered the visual implications earlier in my decision. In my opinion, with active ground floor uses, around the clock concierge service, measures incorporated to design out crime, and the comings and goings of residents, this part of the town centre would become more welcoming
108. In terms of car parking, I am satisfied that provision within the building is at an appropriate level having regard to the location of the site, its proximity to public transport, and the aim to encourage sustainable modes of travel. Conditions to secure a delivery and servicing plan and measures to inform residents of local parking restrictions are added considerations.
109. Fire safety is a dual responsibility with Building Regulations. However, a planning condition could be imposed requiring the submission and approval of a comprehensive independent Fire Statement. It is also to be noted that the scheme was amended, whilst under consideration, to make provision for a secondary stair to the most upper levels of the floors as a mitigation against possible future change to the regulations.
110. As to potential impacts on local services, the scheme includes space for a healthcare facility or, as an alternative, a financial contribution to supplement provision elsewhere. Financial contributions to complement existing infrastructure and facilities, appropriate to the impacts arising from the proposal, would also be secured by planning obligation.
111. A further repeated concern is that of precedent in relation to the acceptance of other tall buildings. However, my decision is site and project specific and other schemes, as they come forward, would be considered on individual merit.
112. Having considered the other points of objection, including concerns about living at height, the size of the apartments, the Build to Rent model and the lack of affordable housing, I am satisfied from my analysis of the main issues that none of these provide reasons to dismiss the appeal.
113. The proposal also received some expressions of support related to the benefits of the project which I assess below.

(iv) The benefits of the proposal

114. The Appellant identifies a comprehensive list of scheme benefits⁴⁵. These are not challenged by the Council other than in the terms that many would be realised by an alternative form of development designed to overcome the harm raised by the authority. Whilst it is true that some of the benefits would be generic, the weight to be attached is scheme specific and, in the case before me, there is no other for comparative assessment.

⁴⁵ CD C10 (pages 22-25)

115. In short, the project would generate additional spend locally during the construction period; and, on completion, expenditure from residents and those employed within the development. Improved employment opportunities would arise and, more generally, redevelopment would revitalise this part of the town centre with mixed-uses, resulting in greater investor confidence. I attach significant weight to these benefits, many of which would be long-term. The provision of a substantial amount of new housing in a highly sustainable location, providing choice and diversity in the local housing market, is a factor of very significant weight.
116. Other claimed benefits, including wider infrastructure improvements, are generally in the nature of mitigation related to increased demands arising from the development. Similarly, good design, sustainability measures and public realm enhancements are a fundamental expectation of local and national policies. None of these add weight in the final planning balance.

(v) The planning balance

117. In conclusion, the proposal would deliver 492 dwellings as part of a mixed-use development in a highly sustainable location. The scheme would not have a harmful effect on the character and appearance of the area, and it would provide good living conditions for future residents. Harm to the setting, to the limited extent identified, and thus the significance of Brooke House, would be outweighed by the benefits of the scheme. There are no other matters which count against the proposal.
118. The Statement of Common Ground⁴⁶ identifies a spectrum of policies with which no discord is alleged. In terms of those most relevant to the appeal, I have found no material conflict. I therefore conclude that the proposal would be in accordance with the development plan when read as a whole. It would also correspond with the Framework when approached in the same manner.
119. The Council acknowledges that it cannot demonstrate a 5-year supply of deliverable housing sites and that the 'tilted' balance in paragraph 11 d) of the Framework requires planning permission to be granted unless '*any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole*'.
120. From my consideration of the main issues, other material considerations and all matters raised, and for the reasons set out above, I conclude that planning permission should be granted.

Planning Conditions

121. The draft planning conditions include a number of pre-commencement conditions (Conditions 3 -12). These are acknowledged, in the Statement of Common Ground, to be agreed for the purposes of section 100ZA and regulation 2 of the Town and Country Planning (Pre-commencement Conditions) Regulations 2018.
122. Conditions are necessary to identify the period within which the development is to commence and to specify the approved plans (Conditions 1 and 2).

⁴⁶ CD E4

123. As the site is previously developed land, measures will need to be taken to identify any sources of contamination and to ensure appropriate working methods and remediation (Conditions 3 – 6). Given the constrained location of the development site, protocols are needed for working methods, noise control and logistics (Conditions 7 – 9).
124. A record of buildings on the site is required for archive purposes; important trees, in the public realm adjacent to the site, need to be safeguarded for amenity reasons; and measures for the relocation of the existing mosaic and additional public art are required for heritage protection and civic pride (Conditions 10 – 12).
125. Important components of the scheme need to be agreed and implemented, to ensure appropriate external materials of construction; site levels relative to adjacent buildings and public realm surfaces; surface water drainage to ensure no off-site flooding; details of fire safety measures; and biodiversity enhancement (Conditions 13 – 17).
126. Given the form and mass of the buildings, wind mitigation measures are to be agreed to ensure safe and comfortable pedestrian movement. Noise mitigation for the apartments will also be required to provide suitable living conditions. The use of glazing, to an agreed standard, at ground floor level is justified on public safety grounds (Conditions 18 – 20).
127. A number of details need to be agreed before the development is occupied. These include the management and maintenance of the surface water drainage system, in the interests of flood prevention; hard and soft landscaping for the amenity of residents, including defensible space for podium level residents facing the outdoor amenity areas; a lighting scheme to avoid light pollution; and a refuse strategy for visual and health well-being (Conditions 21 – 25). The operation of the commercial units should be controlled, to protect living conditions, through noise mitigation and odour control (Conditions 26 – 27).
128. Additionally, car parking facilities, including blue badge parking, electric vehicle charging points, car park management and cycle storage are essential for highway safety and to promote sustainable travel (Conditions 28 – 30). Energy and sustainability measures are justified by the reality of climate change; bird and bat nesting boxes have well founded ecological justification; and communal television and satellite systems would safeguard the buildings from a plethora of unsightly attachments (Conditions 31 – 33).
129. Further, a delivery and servicing plan is intended to minimise impacts on the local highway network; the provision of green roofs would have amenity and ecological benefits; a residential welcome pack, aimed at promoting sustainable transport and well-being are laudable aims; and a strategy for 'meanwhile' uses would enliven vacant units pending full scheme occupation (Conditions 34 – 37). An additional prior to occupation condition is designed to inform prospective residents of local parking restrictions in the interests of highway safety (Condition 49).
130. Compliance conditions are imposed to ensure that all ecological mitigation and enhancement measures are fulfilled; and flexibility is provided between uses to reflect the changes made to the Town and Country Planning (Use Classes) Order 1987 (as amended) which post-dated the making of the application (Conditions 38 – 39).

131. In addition, the hours during which the commercial units are open to customers is to be restricted, and noise from operational plant is to be controlled to safeguard living conditions; a record of drainage maintenance is to be kept related to conditions 15 and 21; superfast broadband is essential for modern living; a proportion of the apartments are to be accessible and adaptable for inclusivity; water efficiency measures are to be implemented to save natural resources; and Secured by Design measures are to provide safety and security (Conditions 40 – 46).
132. Finally, there are 2 conditions related to site assembly to enable the freeholder interest the ability to sign the associated section 106 legal agreement necessary to enable the development (Conditions 47 – 48).
133. I am satisfied that the conditions meet the relevant legal and policy tests. The draft informatives have no formal status and do not need to be included.
134. I have also had regard to the Council's concerns about the unknown nature of the internal amenity provision within the scheme and whether details should be required by condition. However, it is clear from the submitted Management Strategy⁴⁷ that the amenity space is intended to be adaptable and flexible following resident engagement. In my view, a condition would undermine these objectives and it is therefore unreasonable.

Planning Obligation

135. A completed Deed of Planning Obligation, made between the Council, the Appellant and a Mortgagee, pursuant to section 106 of the Town and Country Planning Act 1990, was submitted during the Inquiry. This was accompanied by an agreed Compliance Statement in accordance with Regulation 122(2) of the Community Infrastructure Regulations 2010.
136. The obligations, in summary, include financial contributions in respect of: support for an Employment and Skills Plan (£150,000); childcare and primary education places (£369,144); healthcare infrastructure in the event that NHS England does not accept to operate the healthcare facility within the development (£186,070); open space, culture and sports provision (£570,936.48); high quality highway improvements and pedestrian access in the town centre (£676,091.64); sustainable transport, including local walking and cycling, (£492,092.62); Travel Plan Monitoring (£17,500); measures to monitor, with a view to improving, the performance of existing on street parking controls in the vicinity of the site (£10,000); and an overall combined monitoring fee (£42,200). Related requirements would secure the provision of car club spaces, electric vehicle charging points, car club membership and repairs to the public realm and public roads arising from any damage as a consequence of the demolition and construction phases.
137. There is also a contribution (£62,631.60) towards the Essex Coast Recreation Disturbance Avoidance Strategy (RAMS). This follows on from an Appropriate Assessment (Stage 2), to assess any necessary recreational disturbance mitigation related to the proposed development. Natural England has confirmed that the mitigation described accords with its strategic-level advice and that it should rule out any 'adverse effect on the integrity' of relevant European designated sites within the RAMS.

⁴⁷ CD C26

138. Other obligations include a Build to Rent provision that would secure a marketing strategy and a residential management plan; a review of child yield in the event of occupancy or management changes; an Employment and Skills Plan; the provision of a healthcare facility to a defined standard; and historic building recording.
139. Finally, there is a two-stage viability review mechanism which could secure an uplift in the education contributions (maximum £1,597,021.56). Any further surplus would provide a commuted sum to deliver affordable housing.
140. The Compliance Statement carefully sets out justification related to the underpinning tests set out in Regulation 122(2). There is clear validation through extant or emerging Development Plan policies and the use of transparent formulae.
141. On my analysis, the Obligations are necessary to make the development acceptable in planning terms, are directly related to the development, and are fairly and reasonably related in scale and kind to the development. As such, they all meet the requirements of paragraph 57 of the Framework, and Regulation 122(2).

Conclusion

142. For the reasons given above I conclude that the appeal should be allowed subject to the schedule of conditions at Annex A.

David MH Rose

Inspector

ANNEX A: SCHEDULE OF CONDITIONS (1 – 49)

1. Time Limit

The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

2. Plan Numbers

The development hereby permitted shall be carried out in accordance with the following approved plans:

Plans dated 11th November 2020:

Ground Floor Masterplan 19065-SWAP-XX-00-DR-A-MA-1100
First Floor Masterplan 19065-SWAP-XX-01-DR-A-MA-1101
Second Floor Masterplan 19065-SWAP-XX-02-DR-A-MA-1102
Third Floor Masterplan 19065-SWAP-XX-03-DR-A-MA-1103
Fourth Floor Masterplan 19065-SWAP-XX-04-DR-A-MA-1104
Fifth Floor Masterplan 19065-SWAP-XX-05-DR-A-MA-1105
Sixth Floor Masterplan 19065-SWAP-XX-06-DR-A-MA-1106
Seventh Floor Masterplan 19065-SWAP-XX-07-DR-A-MA-1107
Eighth Floor Masterplan 19065-SWAP-XX-08-DR-A-MA-1108
Ninth Floor Masterplan 19065-SWAP-XX-09-DR-A-MA-1109
Tenth Floor Masterplan 19065-SWAP-XX-10-DR-A-MA-1110
Eleventh Floor Masterplan 19065-SWAP-XX-11-DR-A-MA-1111
Twelfth Floor Masterplan 19065-SWAP-XX-12-DR-A-MA-1112
Thirteenth Floor Masterplan 19065-SWAP-XX-13-DR-A-MA-1113
Fourteenth Floor Masterplan 19065-SWAP-XX-14-DR-A-MA-1114
Fifteenth Floor Masterplan 19065-SWAP-XX-15-DR-A-MA-1115
Sixteenth Floor Masterplan 19065-SWAP-XX-16-DR-A-MA-1116
Roof Level Masterplan 19065-SWAP-XX-RF-DR-A-MA-1120
Ground Floor General Arrangement 19065-SWAP-XX-00-DR-A-GA-1200
First Floor General Arrangement 19065-SWAP-XX-01-DR-A-GA-1201
Second Floor General Arrangement 19065-SWAP-XX-02-DR-A-GA-1202
Third Floor General Arrangement 19065-SWAP-XX-03-DR-A-GA-1203
Fourth Floor General Arrangement 19065-SWAP-XX-04-DR-A-GA-1204
Fifth Floor General Arrangement 19065-SWAP-XX-05-DR-A-GA-1205
Sixth Floor General Arrangement 19065-SWAP-XX-06-DR-A-GA-1206
Seventh Floor General Arrangement 19065-SWAP-XX-07-DR-A-GA-1207
Eighth Floor General Arrangement 19065-SWAP-XX-08-DR-A-GA-1208
Ninth Floor General Arrangement 19065-SWAP-XX-09-DR-A-GA-1209
Tenth Floor General Arrangement 19065-SWAP-XX-10-DR-A-GA-1210
Eleventh Floor General Arrangement 19065-SWAP-XX-11-DR-A-GA-1211
Twelfth Floor General Arrangement 19065-SWAP-XX-12-DR-A-GA-1212
Thirteenth Floor General Arrangement 19065-SWAP-XX-13-DR-A-GA-1213
Fourteenth Floor General Arrangement 19065-SWAP-XX-14-DR-A-GA-1214
Fifteenth Floor General Arrangement 19065-SWAP-XX-15-DR-A-GA-1215
Sixteenth Floor General Arrangement 19065-SWAP-XX-16-DR-A-GA-1216
Roof Level General Arrangement 19065-SWAP-XX-RF-DR-A-GA-1220
General Arrangement Building Section A 19065-SWAP-XX-XX-DR-A-GA-1411
General Arrangement Proposed Long Section B 19065-SWAP-XX-BB-DR-A-GA-1412
General Arrangement Proposed Short Section C 19065-SWAP-XX-CC-DR-A-GA-1413

General Arrangement Proposed Short Section D 19065-SWAP-XX-DD-DR-A-GA-1414

East Elevation 19065-SWAP-XX-01-DR-A-GA-1311

North Elevation 19065-SWAP-XX-02-DR-A-GA-1312

South Elevation 19065-SWAP-XX-03-DR-A-GA-1313

West Elevation 19065-SWAP-XX-04-DR-A-GA-1314

West Courtyard Elevation 19065-SWAP-XX-05-DR-A-GA-1315

East Courtyard Elevation 19065-SWAP-XX-06-DR-A-GA-1316

Plans dated 24th June 2020:

Landscaping Plan - 4126_BBLA-XX-01-L-101-B

Landscaping Plan - 4126_BBLA-XX-XX-L-102-B

Plans dated 25th June 2020:

Location Plan 19065-SWAP-XX-XX-DR-A-CP-1000 Revision R5

Red Line Plan 19065-SWAP-XX-XX-DR-A-CP-1001 Revision R12

Demolition Plan 19065-SWAP- XX-00-DR-A-MA-1011 Revision R3

Plans dated 3rd July 2020:

Landscaping Plan - 4126_BBLA-XX-00-L-100-P1

Plans dated 31st July 2020:

Podium Sections 19065-SWAP- XX-XX-DR-A-GA-1601 Revision PA

Pavilion Detail Sections 19065-SWAP- XX-XX-DR-A-GA-1700 Revision PA

Podium Detail Sections 19065-SWAP- XX-XX-DR-A-GA-1701 Revision PA

Finger A Detail Sections 19065-SWAP- XX-XX-DR-A-GA-1702 Revision PA

Finger A Detail Sections with Canopy 19065-SWAP- XX-XX-DR-A-GA-1703 Revision PA

Lateral Unit Type 1WCA -19065-SWAP- 1W-XX-DR-A-GA-1502 Revision PA

Lateral Unit Type 2A - 19065-SWAP- 2A-XX-DR-A-GA-1506 Revision PA

Lateral Unit Type 2B -19065-SWAP- 2B-XX-DR-A-GA-1507 Revision PA

Lateral Unit Type 2WCA - 19065-SWAP- 2W-XX-DR-A-GA-1509 Revision PA.

PRE-COMMENCEMENT CONDITIONS

3. Land Contamination (Site Characterisation)

No development shall commence, including any works of demolition, until a desk-top study has been carried out to identify and evaluate all potential sources of contamination and the impacts on land and/or controlled waters, relevant to the site. The desk-top study shall establish a 'conceptual site model' and identify all plausible pollutant linkages. Furthermore, the assessment shall set objectives for intrusive site investigation works/Quantitative Risk Assessment (or state if none required). The desk-top study and a non-technical summary shall be submitted to and approved in writing by the Local Planning Authority without delay upon completion.

4. Land Contamination (Site Investigation)

If identified as being required following the completion of the desk-top study, a site investigation shall be carried out prior to commencement of development to fully and effectively characterise the nature and extent of any land contamination and/or pollution of controlled waters. It shall specifically include a risk assessment that adopts the Source-Pathway-Receptor principle, in order that any potential risks are adequately assessed, taking into account the site's existing status and proposed new use. The site investigation and findings shall be submitted to and approved in writing by the Local Planning Authority without delay upon completion.

5. Land Contamination (Submission of Remediation Scheme)

A written method statement detailing the remediation requirements for land contamination and/or pollution of controlled waters affecting the site, shall be submitted to and approved in writing by the Local Planning Authority prior to commencement of development and all requirements shall be implemented and completed in accordance with the approved method statement. No deviation shall be made from this scheme without the express written agreement of the Local Planning Authority. If during redevelopment contamination not previously considered is identified, then the Local Planning Authority shall be notified immediately and no further work shall be carried out until a method statement detailing a scheme for dealing with the suspected contamination has been submitted to and approved in writing by the Local Planning Authority.

6. Land Contamination (Implementation of Approved Remediation Scheme)

Following completion of measures identified in the remediation scheme, a full closure report shall be submitted to and approved in writing by the Local Planning Authority. The report shall provide verification that the required works regarding contamination have been carried out in accordance with the approved Method Statement(s). Post remediation sampling and monitoring results shall be included in the closure report to demonstrate that the required remediation has been fully met. The closure report shall include a completed certificate, signed by the developer, confirming that the required works regarding contamination have been carried out in accordance with the approved written method statement. A sample of the certificate to be completed is available in Appendix 2 of Land Affected by Contamination: Technical Guidance for Applicants and Developers.

7. Construction Environmental Management Plan (CEMP) and Site Waste Management Plan (SWMP)

No development shall commence, including any works of demolition, until a Construction Environmental Management Plan (CEMP) and Site Waste Management Plan (SWMP) have been submitted to and approved in writing by the Local Planning Authority. The approved Plans shall be adhered to throughout the construction period. The Plans shall provide for:

- i. construction traffic management;
- ii. the parking of vehicles of site operatives and visitors;
- iii. details of access to the site;
- iv. loading and unloading and the storage of plant and materials used in constructing the development;
- v. the erection and maintenance of security hoardings including decorative displays and facilities for public viewing, where appropriate;
- vi. wheel washing facilities;
- vii. measures to control the emission of noise, dust and dirt during construction;
- viii. a scheme for recycling/disposing of waste resulting from demolition and construction works; and
- ix. details of a nominated developer/resident liaison representative with an address and contact telephone number to be circulated to those residents consulted on the application by the developer's representatives. This person will act as first point of contact for residents who have any problems or questions related to the ongoing development.

Dust suppression methods shall be employed during demolition and construction so as to minimise the likelihood of nuisance being caused to neighbouring properties.

No materials produced as a result of the site development or clearance shall be burned on site.

8. Construction Noise

No development shall commence, including any works of demolition, until a scheme specifying the provisions to be made to control noise emanating from the site during construction works has been submitted to and approved in writing by the Local Planning Authority. This scheme should include details of the construction methods to be employed and the equipment to be used. The works are to be carried out in accordance with the recommendations contained within British Standard 5228:2009 'Code of practice for noise and vibration control on construction and open sites' (Parts 1 and 2).

9. Construction Logistics Plan

- A. No development shall commence, including any works of demolition, until a Construction Logistics Plan has been submitted to and approved in writing by the Local Planning Authority. The Plan shall be designed to minimise deliveries of materials and export of any waste materials within the times of peak traffic congestion on the local road network.
- B. The approved Plan shall be adhered to throughout the construction period.

10. Historic Building Recording

- A. No development shall commence, including any works of demolition, until a programme of historic building recording has been secured in accordance with a Written Scheme of Investigation which has been submitted to and approved in writing by the Local Planning Authority.
- B. No development shall commence, including any works of demolition, until the satisfactory completion of fieldwork in accordance with the submitted Written Scheme of Investigation approved at A.
- C. The developer shall submit a Historic Buildings Report to the Local Planning Authority for approval in writing and deposition of a digital archive with the Archaeological Data Service (ADS), within 6 months of the completion of the fieldwork.

11. Tree Protection

No development shall commence, including any works of demolition, until:

- A. The three large mature London Plane trees at the south-west and south-east corners of the site boundary (within the public realm), have been protected by secure, stout exclusion fencing erected at a minimum distance equivalent to the branch spread of the trees and in accordance with BS5837:2012 Trees in relation to design, demolition and construction recommendations; and
- B. any works connected with the approved scheme within the branch spread of the trees shall be by hand only. No materials, supplies, plant or machinery shall be stored, parked or allowed access beneath the branch spread or within the exclusion fencing. Any trees that are damaged or felled during construction work must be replaced with semi-mature trees of the same or similar species.

12. Public Art

- A. No development shall commence, including any works of demolition, until a Public Art Strategy for the development, including all reasonable endeavours and best practices to preserve the existing mosaic (The Vortex) within a publicly accessible location, has been submitted to and approved in writing by the Local Planning Authority.
- B. The Public Art Strategy shall be implemented in accordance with the approved details and the approved artwork(s) shall be installed prior to occupation of the development and retained thereafter.

NO ABOVE GROUND NEW DEVELOPMENT

13. External Materials

- A. No development comprising external elevational treatments shall take place until full details, including samples, specifications, annotated plans and fire safety ratings, of all materials to be used in the construction of the external surfaces of the development have been submitted to and approved in writing by the Local Planning Authority.
- B. The development shall only be implemented in accordance with the approved details.

14. Site Levels

- A.) No above ground new development shall commence, until details of existing and finished site levels, finished floor and ridge levels of the buildings to be erected, and finished external surface levels have been submitted to and approved in writing by the Local Planning Authority.
- B. The development shall be carried out in accordance with the approved details.

15. Surface Water Drainage Scheme

- A. No above ground new development shall commence, until a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the Local Planning Authority. The scheme should include but not be limited to:
 - Limiting discharge rates to 7.3l/s for all storm events up to and including the 1 in 100 year rate plus 40% allowance for climate change. All relevant permissions to discharge from the site into any outfall should be demonstrated.
 - Provide sufficient storage to ensure no off-site flooding as a result of the development during all storm events up to and including the 1 in 100 year plus 40% climate change event.
 - Demonstrate that all storage features can half empty within 24 hours for the 1 in 30 plus 40% climate change critical storm event.
 - Final modelling and calculations for all areas of the drainage system.
 - The appropriate level of treatment for all run-off leaving the site, in line with the Simple Index Approach in chapter 26 of the CIRIA SuDS Manual C753.
 - Detailed engineering drawings of each component of the drainage scheme.
 - A final drainage plan which details exceedance and conveyance routes, FFL and ground levels, and location and sizing of any drainage features.
 - A written report summarising the final strategy and highlighting any minor changes to the approved strategy.

B. The development shall be carried out in accordance with the approved details.

16. Fire Statement

A. No above ground new development shall commence until a Fire Statement has been submitted to and approved in writing by the Local Planning Authority. The Fire Statement shall be produced by an independent third party suitably qualified assessor which shall detail the building's construction, methods, products and materials used; the means of escape for all building users including those who are disabled or require level access together with the associated management plan; access for fire service personnel and equipment; ongoing maintenance and monitoring and how provision will be made within the site to enable fire appliances to gain access to the building.

B. The development shall be carried out in accordance with the approved details.

17. Biodiversity Enhancement Strategy

A. No above ground new development shall commence until a Biodiversity Enhancement Strategy for protected and priority species has been submitted to and approved in writing by the Local Planning Authority. The content of the Biodiversity Enhancement Strategy shall include the following:

- a) purpose and conservation objectives for the proposed enhancement measures;
- b) detailed designs to achieve stated objectives;
- c) locations of proposed enhancement measures by appropriate maps and plans;
- d) timetable for implementation demonstrating that works are aligned with the proposed phasing of development;
- e) persons responsible for implementing the enhancement measures;
- f) details of initial aftercare and long-term maintenance (where relevant).

B. The works shall be implemented in accordance with the approved details and shall be retained in that manner thereafter.

18. Wind Mitigation Measures

A. No above ground new development shall commence until a detailed scheme of wind mitigation measures, accompanied by wind testing, has been submitted to and approved in writing by the Local Planning Authority.

B. The approved details shall be implemented prior to occupation of the development and shall be maintained at all times thereafter.

19. Noise Protection Scheme (Residential Units)

A. No above ground new development shall commence until a scheme of noise insulation for the residential units has been submitted to and approved in writing by the Local Planning Authority. The insulation provided shall ensure that the noise levels within the residential units (with windows partially open) does not exceed:

35-40 dB LAeq for living rooms (07.00 hours - 23.00 hours);

30-35 dB LAeq for bedrooms (23.00 hours – 07.00 hours);

45 dB LAm_{ax} for individual noise events in bedrooms (23.00 hours – 07.00 hours);

50-55 dB LAeq for outdoor living area (07.00 hours – 23.00 hours).

- B. The approved scheme shall be fully implemented before the first occupation of the residential unit to which it relates and shall be maintained at all times thereafter.
- C. Should predicted noise levels (with partially open windows) exceed the criteria identified above then details of an alternative method of ventilation should be submitted to and approved in writing by the Local Planning Authority and fully implemented prior to the first occupation of the residential unit to which it relates and shall be maintained at all times thereafter.

20. Ground floor frontage glazing

- A. No development comprising external elevational treatments shall take place until details of the standard of glazing proposed to the ground floor frontages have been submitted to and approved in writing by the Local Planning Authority.
- B. The development shall only be implemented in accordance with the approved details.

PRIOR TO OCCUPATION CONDITIONS

21. Drainage Maintenance

- A. Prior to occupation of the development a Maintenance Plan detailing the maintenance arrangements, including who is responsible for different elements of the surface water drainage system, and the maintenance activities / frequencies, shall be submitted to and approved in writing by the Local Planning Authority. Should any part be maintainable by a maintenance company, details of long-term funding arrangements should also be provided.
- B. Drainage maintenance shall be carried out thereafter in accordance with the approved details.

22. Hard Landscaping

- A. Prior to occupation of the development full details of the hard landscaping shall be submitted to and approved in writing by the Local Planning Authority. The hard landscaping scheme shall include, but not be limited to, details of the following:
 - a) surface materials;
 - b) communal amenity spaces and play spaces and any related play equipment;
 - c) boundary treatment, including to the roof terraces; and
 - d) management and maintenance.
- B. The hard landscaping scheme shall be implemented prior to occupation of the development in accordance with the approved details and thereafter permanently maintained.

23. Soft Landscaping

- A. Prior to occupation of the development a detailed scheme of soft landscaping shall be submitted to and approved in writing by the Local Planning Authority. The landscaping scheme, which shall incorporate local sourced and drought tolerant plants, shall be designed with the aim of improving and increasing biodiversity and demonstrating a net gain for pollinators in line with the Council's Pollinator Action Plan.

- B. The approved landscaping scheme shall be carried out in the first planting and seeding seasons following the occupation or completion of the development, whichever is the sooner. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species unless the Local Planning Authority gives written consent to any variation.

24. Lighting Scheme

- A. Prior to occupation of the development a Lighting Scheme shall be submitted to and approved in writing by the Local Planning Authority.
- B. The development shall be carried out in accordance with the approved Lighting Scheme prior to occupation of the development and the Lighting Scheme shall thereafter be retained in operation as approved.

25. Refuse Strategy

- A. Prior to occupation of the development a detailed residential and commercial refuse and recycling strategy, including the design and location of the refuse and recycling stores, shall be submitted to and approved in writing by the Local Planning Authority but otherwise in accordance with the Design & Access Statement.
- B. The approved refuse and recycling stores shall be provided before the occupation of the development and thereafter permanently retained unless otherwise agreed in writing with the Local Planning Authority.
- C. The development shall also make provision for any future connection to a centralised waste scheme in accordance with details to be submitted to and approved in writing by the Local Planning Authority prior to occupation of the development.

26. Noise Impact Assessment

- A. Prior to occupation of the commercial units hereby permitted an additional detailed Noise Impact Assessment, detailing expected amplified noise levels and any mitigation measures to be introduced to overcome any such issues, shall be submitted to and approved in writing by the Local Planning Authority.
- B. The use of the relevant commercial units shall only commence once any mitigation measures set out in the Noise Impact Assessment have been carried out in accordance with the approved details and any mitigation measures shall thereafter be retained in operation / complied with as approved.
- C. The building structure (residential units directly above commercial units) shall incorporate insulation measures as necessary to meet the standard of Part E of the Building Regulations Approved Document for Impact Sound.

27. Details of Any Commercial Kitchen Extract Ventilation System and Carbon Filtration

- A. Prior to occupation of any commercial unit hereby permitted with a commercial kitchen, details of any ventilation system for the removal and treatment of cooking odours, which include the location and appearance of external ducting and measures to mitigate system noise, shall be submitted to and approved in writing by the Local Planning Authority. The details shall have regard to guidance and recommendations in DEFRA publication 'Guidance on the Control of Odour and Noise from Commercial Kitchen Exhaust Systems'.

- B. The approved details shall be fully implemented prior to the commencement of the relevant commercial use and shall be maintained at all times thereafter. The external ducting shall be removed when the authorised use of the premises for the sale of hot food ceases.
- C. Where a commercial kitchen is installed in a commercial unit a high efficiency activated carbon filtration unit shall be installed for that premises which shall ensure a maximum capture of odour producing chemicals and incorporate 100kg of carbon granules per 1,000 cubic feet per minute air flow. The extract system shall be isolated from the building structure with suitable mountings and shall terminate at a point at least 1 metre above the eaves. If this cannot be complied with for planning reasons, then a higher level of odour control will be required in line with EMAQ Guidance – Control of Odour and Noise from Commercial Kitchen Exhaust Systems.

28. Car Parking, Blue Badge Car Parking and Electric Vehicle Charging Points

Prior to occupation of the development:

- A. the car parking areas indicated on Drawing No. 19065-SWAP-XX-00-DR-A-GA-1200 shall be constructed and marked out, and thereafter retained permanently for the accommodation of vehicles of occupiers and visitors to the premises and not used for any other purpose; and
- B. 20 active and 20 passive electric vehicle charging points shall be provided within the car parking spaces. These shall be constructed and marked out and the charging points installed, and thereafter retained permanently for the accommodation of vehicles of occupiers and visitors to the premises and not used for any other purpose; and
- C. the Blue Badge (WCA) car parking bays indicated on Drawing No. 19065-SWAP-XX-00-DR-A-GA-1200 shall be clearly marked with a British Standard disabled symbol and permanently retained for the use of disabled persons and their vehicles.

29. Car Park Management

- A. Prior to occupation of the development a Car Parking Management Plan shall be submitted to and approved in writing by the Local Planning Authority.
- B. The scheme shall be implemented in accordance with the approved details prior to occupation of the development and thereafter permanently retained.

30. Cycle Parking

- A. Prior to occupation of the development details of the cycle parking facilities, as shown on Drawing Nos. 19065-SWAP-XX-00-DR-A-GA-1200 shall be submitted to and approved in writing by the Local Planning Authority. The submission should include details of the security, monitoring and access arrangements for the cycle parking facilities.
- B. The development shall not be occupied until the approved details have been implemented. Thereafter, the cycle parking facilities shall be permanently retained.

31. Energy and Sustainability

- A. Prior to occupation of the development details of the location and quantum of any photovoltaic panels and Air Source Heat Pumps shall be submitted to and approved in writing by the Local Planning Authority.
- B. The development shall not be occupied until the approved details have been implemented.
- C. The development hereby permitted shall be carried out in accordance with the submitted Energy and Sustainability Strategy dated 10th July 2020 prepared by MTT Ltd.
- D. The development shall be future proofed for connection to a district energy centre in accordance with details to be submitted to and approved in writing by the Local Planning Authority prior to occupation of the development.
- E. The commercial units shall achieve a Building Research Establishment Environmental Assessment Method (BREEAM) rating of 'Good'.

32. Bird / Bat Boxes

- A. Prior to occupation of the development details of bird and bat nesting boxes shall be submitted to and approved in writing by the Local Planning Authority. The details shall accord with the advice set out in "Biodiversity for Low and Zero Carbon Buildings: A Technical Guide for New Build" (Published by RIBA, March 2010) or similar advice from the RSPB and the Bat Conservation Trust.
- B. The bird and bat nesting boxes shall be installed on the building or in any trees on the site prior to occupation of the development in accordance with the approved details and shall be permanently retained thereafter.

33. Communal Television and Satellite System

- A. Prior to occupation of the development details of any communal television and/or satellite system shall be submitted to and approved in writing by the Local Planning Authority.
- B. The approved system shall be provided prior to occupation of the residential units and be made available to each residential unit.
- C. No antennae or satellite dishes may be installed on the exterior of the building, with the exception of a single antennae or satellite dish per block to support the communal television and satellite system. The proposed antennae or satellite dishes shall be designed to minimise their visual impact and shall not be mounted on any publicly visible façade.

34. Delivery and Servicing Plan

- A. Prior to occupation of the development a Delivery and Servicing Plan shall be submitted to and approved in writing by the Local Planning Authority but otherwise in accordance with the Design and Access Statement. The Plan shall identify efficiencies and sustainability measures to be undertaken once the development is operational and should incorporate details of deliveries to the site and servicing arrangements, including the size of vehicles, routing and tracking of vehicles and times of deliveries and servicing.
- B. The approved Plan shall be implemented and adhered to thereafter.

35. Green Roofs

- A. Prior to occupation of the development a detailed scheme for the green roofs, including maintenance and management arrangements, shall be submitted to and approved in writing by the Local Planning Authority.
- B. The approved scheme shall be implemented in accordance with the approved scheme prior to occupation of the development.

36. Residential Welcome Pack

- A. Prior to occupation of the development the developer shall submit to the Local Planning Authority for approval in writing a Residential Welcome Pack which includes details relating to the non-availability of on-street parking permits, details of travel plan measures to encourage the use of sustainable modes of transport, the availability of the car club scheme and health, wellbeing (including the promotion of local areas of natural green space) and community support information.
- B. The Residential Welcome Pack as approved shall be provided to all new residents of the development on occupation.

37. Meanwhile Uses

- A. Prior to occupation of the development a strategy for providing meanwhile uses for the new commercial units upon their completion as part of a wider phasing programme, shall be submitted to and approved in writing by the Local Planning Authority.
- B. For a period of 3 years post-completion meanwhile uses shall be secured and implemented for any vacant commercial units in accordance with the approved strategy at no cost to the developer.

COMPLIANCE CONDITIONS

38. In Accordance with Ecological Appraisal Recommendations

All mitigation and enhancement measures and/or works shall be carried out in accordance with the details contained in the submitted Ecological Assessment (Ecology Solutions, July 2020).

39. Flexible Uses

Following the first occupation of the flexible use commercial units hereby permitted, any subsequent change of use of a commercial unit to another use within Class A1, A2, A3, B1, D1 and D2 is permitted with the exception of Classes A4 or A5.

40. Restriction on Operating Hours of Commercial Uses

The commercial uses hereby permitted are permitted to open to customers between the hours of 07:00 and 23:00 on any day and at no other time.

41. Drainage Logs

The applicant or any successor in title must maintain yearly logs of maintenance which should be carried out in accordance with any approved Maintenance Plan. These must be available for inspection upon a request by the Local Planning Authority.

42. Noise from Plant (BS4142:2014)

The combined rating level of the noise from any plant installed pursuant to this permission (other than plant which is only to be operated in emergency circumstances) shall not exceed the existing background sound level any time at the outside of noise-sensitive buildings. Any assessment of compliance with this condition shall be made according to the methodology and procedures presented in BS4142:2014.

43. Superfast Broadband

Prior to occupation of the development all of the residential units hereby approved shall be fitted with superfast broadband capability.

44. Accessibility and Adaptability

A minimum of 10% of the residential units shall comply with Building Regulations Optional Requirement Approved Document M4(2) Category 2: Accessible and adaptable dwellings (2015 edition). Evidence of compliance shall be notified to the building control body appointed for the development in the appropriate Full Plans Application, or Building Notice, or Initial Notice to enable the building control body to check compliance.

45. Water Efficiency

The development hereby permitted shall comply with the water efficiency optional requirement in paragraphs 2.8 to 2.12 of the Building Regulations Approved Document G. Evidence of compliance shall be notified to the building control body appointed for the development in the appropriate Full Plans Application, or Building Notice, or Initial Notice to enable the building control body to check compliance.

46. Secured By Design

- A. The development hereby permitted shall use reasonable endeavours to achieve a Gold award of the Secured by Design for Homes (2019 Guide) and Commercial (2015 Guide) or any equivalent document superseding these Guides.
- B. A certificated Post Construction Review, or other verification process agreed with the Local Planning Authority, shall be provided upon completion of the development, confirming that the agreed standards at A. have been met.
- C. In the event that the agreed standards at A. are not achievable then prior to completion of the development the applicant shall submit to the Local Planning Authority for approval in writing justification for this and details of the highest award of the Secured by Design for Homes (2019 Guide) and Commercial (2015 Guide) or any equivalent document superseding these Guides which is achievable for the development.
- D. A certificated Post Construction Review, or other verification process agreed with the Local Planning Authority, shall be provided upon completion of the development, confirming that the agreed standards at C., as relevant, have been met.

SITE ASSEMBLY CONDITIONS

47. Site Assembly 1

None of the following shall take place unless a registered conveyancer's certificate has been submitted of the same date as the relevant operations or occupation (as applicable) confirming whether the leasehold interest bound by the Section 106 Agreement continues to subsist over the whole of the Land:

- a) commencement of development

- b) Substantial Implementation
- c) Practical Completion
- d) first marketing of the dwellings hereby approved
- e) 12 months following Practical Completion
- f) first occupation (other than fitting out, marketing, security and management-set up) of more than
 - (i) 123 of the dwellings hereby approved
 - (ii) 246 of the dwellings hereby approved
 - (iii) 394 of the dwellings hereby approved

48. Site Assembly 2

None of the following shall take place unless on the date of as the relevant operations or occupation (as applicable) either: (1) the leasehold interest bound by the Section 106 Agreement continues to subsist over the whole of the Land; or (2) the local planning authority has confirmed in writing that the freehold and any new long leasehold interest then subsisting in the Site have been bound by the obligations in Section 106 Agreement to the local planning authority's written satisfaction:

- a) commencement of development
- b) Substantial Implementation
- c) Practical Completion
- d) first marketing of the dwellings hereby approved
- e) 12 months following Practical Completion
- f) first occupation (other than fitting out, marketing, security and management-set up) of more than
 - (i) 123 of the dwellings hereby approved
 - (ii) 246 of the dwellings hereby approved
 - (iii) 394 of the dwellings hereby approved

ADDITIONAL PRIOR TO OCCUPATION CONDITION

49. CPZ Restrictions

- A. The residential element of the development shall not be occupied until a marketing scheme is submitted to and approved in writing by the Local Planning Authority containing measures for notifying prospective owners or occupiers of the permitted residential units from time to time of:
 - (a) existing on-street parking restrictions and penalties for breach of these restrictions; and
 - (b) the effect of The Essex County Council (Basildon Borough) (Prohibition of Waiting, Loading and Stopping) and (On-Street Parking Places) (Civil Enforcement Area) Consolidation Order 2019 (as amended) and how Schedule 5 to the Order restricts eligibility for parking permits for properties built after 1 November 2019.
- B. Notification of prospective owners or occupiers of the permitted residential units shall be carried out in accordance with the approved scheme.

End of Conditions Schedule

ANNEX B: APPEARANCES

FOR BASILDON BOROUGH COUNCIL

Douglas Edwards QC

Instructed by Charlotte McKay
Locum Senior Planning Lawyer
Basildon Borough Council

He called

Neil Deely
BA (Hons) Dip.Arch RIBA ARB FRSA

Founding Partner
Metropolitan Workshop LLP

Michael Lowndes
BA (Hons) Dip TP MSc Dip Cons(AA) MRTPI

Senior Consultant
Lichfields

Mrs Adele Lawrence*
BA MPlanPrac MRTPI

Principal Planner
Basildon Borough Council

Mrs Charlotte McKay*
FCILEx LLB

Locum Senior Planning Lawyer
Basildon Borough Council

FOR ORWELL (BASILDON) LIMITED - APPELLANT

Scott Lyness QC
Assisted by Ben Fulbrook of Counsel

Instructed by
Dentons

He called

David Cafferty
BSc(Hons) BArch RIBA

Director
HLM Architects

Timothy Jackson
BA(Hons) Dip LA CMLI

Director
FPCR Environment and Design Limited

Ms Lesley Roberts
BSc MIPRM MARLA NAEA

Partner/Executive Director
Allsop LLP

Mark Harris
BA(Hons) Dip TP MRTPI

Partner
Freeths LLP

Roy Pinnock*

Instructing Solicitor
Dentons

* Participation in Section 106 and conditions round table discussion

FOR BASILDON ESTATES LIMITED – RULE 6

Thomas Hill QC

Instructed by
Asserson LLP

He called

Ms Lucy Markham
IHBC MRTPI

Partner
Montagu Evans

Ms Karen Jones*
BA(Hons) MSc MRTPI

Senior Director
RPS Group Limited

**FOR INFRARED UK LION NOMINEE 1 LIMITED (IN ADMINISTRATION) &
INFRARED UK LION NOMINEE 2 LIMITED (IN ADMINISTRATION) - RULE 6**

Miss Stephanie Hall of Counsel

Instructed by
Rebecca Roffe
Partner CMS

She called

John Mumby
BA (Hons) MRTPI

Director of Planning
Iceni Projects Limited

INTERESTED PERSONS

Councillor Davida Ademuyiwa

St Martin's Ward
Basildon

Angela O'Donoghue CBE

Principal and Chief Executive
South Essex College

* Ms Jones was not called - her Proof of Evidence remained before the Inquiry

ANNEX C: LIST OF DOCUMENTS**Core documents list (provided by Dentons)**

A	Government policy and guidance
1.	NPPF (February 2019)
2.	NPPF (July 2021)
3.	NPPG (various extracts)
4.	Building Research Establishment (BRE) Guidelines: Site Layout Planning for Daylight and Sunlight 2011, A Guide to Good Practice, Second Edition (2011)
5.	Historic England Advice Note 3 – The Setting of Heritage Assets (December 2017)
6.	Historic England Advice Note 4 – Tall Buildings (December 2015 and March 2020 Consultation Draft)
7.	Historic England Conservation Principles, Policies and Guidance (2008)
8.	Historic Environment Good Practice Advice in Planning: Note 12: Statements of Heritage Significance (October 2019)
9.	National Design Guide (October 2019)
10.	Nationally Described Space Standards (March 2015)

B	Development Plan documents, LPA guidance, and other LPA documents
1.	Basildon District Local Plan Saved Policies (2007)
2.	Basildon Borough Revised Publication Local Plan (2018)
3.	Basildon Planning Obligations Strategy SPD (2015)
4.	Basildon Town Centre Masterplan (2012)
5.	Basildon Town Centre draft Masterplan / Regeneration Strategy (2020)
6.	Basildon Urban Characterisation and Design Review (2015)
7.	Basildon Town Centre Masterplan – We Made That - Urban Appraisal (revision A) (15-04-2020)
8.	Essex County Council Parking Standards (2009)
9.	Essex County Council Developer's Guide to Infrastructure Contributions (Revised 2020)

B	Development Plan documents, LPA guidance, and other LPA documents
10.	Basildon Council Development Control Guidelines (1997)
11.	Essex Design Guide (2018)
12.	BBC Response to the Local Plan Inspector's Initial Questions (29 January 2021)
13.	Inspector's Response to Council's Response to Initial Questions (23 March 2021)
14.	Basildon Borough Council – Five Year Land Supply Report (2021-2026)
15.	Basildon Note on the Standard Methodology Figure for Housing Need in Basildon Borough (July 2021)
16.	Basildon Council - Housing Delivery Test Action Plan (May 2020)
17.	Basildon Council – Town Centre Masterplan Residential Audit (August 2018)
18.	Basildon Council – Housing and Economic Land Availability Assessment (HELAA) Review 2020 - Vol 1: main report, Appendices A-G (October 2021)
19.	Basildon Council – DRAFT Housing Delivery Test Action Plan (July 2021)

C	Market Square Basildon planning application documents (ref: 20/00955/FULL)
1.	Planning Performance Agreement dated 27 April 2020
2.	Design Review Panel Report dated 20 May 2020
3.	BBC pre-application response dated 13 July 2020
4.	Covering Letter - 30 July 2020
5.	Application Form - 30 July 2020
6.	Location Plan 19065-SWAP- XX-XX-DR-A-CP-1000
7.	Red Line Plan 19065-SWAP-XX-XX-DR-A-CP-1001
8.	Original application plans
9.	Landscaping Plans (4126_BBLA-XX-XX-L-102-B; 4126_BBLA-XX-01-L-101-B; 4126_BBLA-XX-00-L-100-P1)
10.	Planning Statement - July 2020
11.	Design and Access Statement - July 2020
12.	Environmental Statement - Non-Technical Summary - July 2020

C	Market Square Basildon planning application documents (ref: 20/00955/FULL)
13.	Environmental Statement Vol 1 - July 2020
14.	Environmental Statement Vol 2 - July 2020
15.	Transport Statement - July 2020
16.	Travel Plan - July 2020
17.	Ecological Assessment - July 2020
18.	Financial Viability Assessment - July 2020
19.	External Daylight Sunlight Report - July 2020
20.	Internal Daylight Sunlight Report - July 2020
21.	Statement of Community Involvement - July 2020
22.	Flood Risk Assessment - June 2020
23.	Drainage Strategy - June 2020
24.	Sustainability and Energy Statement - July 2020
25.	Ground Investigation and Contamination - June 2020
26.	Mainstay Management Strategy - July 2020
27.	Section 106 Heads of Terms - July 2020
28.	Essex County Council SUDS Planning Advice sent to Officers - August 2020
29.	Financial Viability Assessment Post Submission Review Response - September 2020
30.	Air Quality Technical Note - September 2020
31.	Appropriate Assessment Report - September 2020
32.	External Daylight Sunlight Report Addendum - October 2020
33.	Internal Daylight Sunlight Overshadowing Report Addendum - October 2020
34.	Design and Access Statement Addendum - October 2020
35.	Addendum Covering Letter - 16 November 2020
36.	November 2020 amended application plans
37.	Planning Statement Addendum - November 2020
38.	Concept Fire Strategy Report - November 2020

C	Market Square Basildon planning application documents (ref: 20/00955/FULL)
39.	Environmental Statement Further Information Report - November 2020
40.	Pub and Nightclub Noise Impact Technical Memorandum - November 2020
41.	Draft conditions with Freeths comments - December 2020
42.	Statutory Consultee Responses
43.	Third Party Objection Responses
44.	Third Party Support Responses
45.	Committee Report - 24 February 2021 with update sheet and minutes
46.	DCMS Listing decision dated 22 March 2021 and accompanying Historic England Report dated 10 February 2021
47.	Essex County Council letter to BBC dated 29 April 2021 confirming no objection to application
48.	Committee Report - 29 April 2021 with minutes
49.	Mosaic Retention Options Report - February 2021
50.	Mosaic Listing Representation - February 2021
51.	Mosaic Listing Response to HE - February 2021

D	Market Square Basildon appeal documents
1.	Appeal form (16 July 2021)
2.	Appellant Statement of Case (16 July 2021)
3.	Basildon Council Appeal Questionnaire
4.	Basildon Council Planning Committee Report with enclosures (18 August 2021)
5.	Basildon Council Planning Committee Report update sheet (18 August 2021)
6.	Basildon Council Planning Committee Minutes (18 August 2021)
7.	LPA Statement of Case (13 September 2021)
8.	Basildon Estates Statement of Case (17 September 2021)
9.	Infrared Capital Partners Statement of Case (24 September 2021)
10.	PINs Case Management Conference notes (20 September 2021)
11.	Description of Development (4 October 2021)

D	Market Square Basildon appeal documents
12.	Environmental Statement – Statement of Competency (4 October 2021)
13.	Environmental Statement – References & Sources list (4 October 2021)
14.	Appeal representations

E	Inquiry documents
1.	Basildon Borough Council - Five Year Housing Land Supply Position Statement (29 October 2021)
2.	Basildon Borough Council - Basildon Town Centre Regeneration Strategy Note for the Inquiry (29 October 2021)
3.	Basildon Borough Council - Position Statement - The Emerging Local Plan (29 October 2021)
4.	Statement of Common Ground agreed between BBC and Appellant (November 2021)
5.	Basildon Borough Council – CIL Compliance Statement (2 November 2021)
6.	Appeal decision ref: APP/A5270/W/21/3268157 - 51-56 Manor Road and 53-55 Drayton Green Road, West Ealing, London W13 0LJ (29 October 2021)

BBC evidence submitted	
	Michael Lowndes – Planning – summary proof of evidence
	Michael Lowndes – Planning – proof of evidence
	Michael Lowndes – Planning – appendix to proof of evidence
	Michael Lowndes – Planning – rebuttal statement
	Michael Lowndes – Planning - Addendum
	Neil Deely – Design – summary proof of evidence
	Neil Deely – Design – proof of evidence
	Neil Deely – Design – rebuttal statement

Appellant evidence submitted	
	Mark Harris – Planning – summary proof of evidence
	Mark Harris – Planning – proof of evidence

Appellant evidence submitted	
	Mark Harris – Planning – appendix to proof of evidence
	David Cafferty – Design – proof of evidence with appendix
	David Cafferty – Design – rebuttal statement
	David Cafferty – Design – architect's presentation
	Tim Jackson – Townscape – proof of evidence with appendices
	Lesley Roberts – Planning – summary proof of evidence
	Lesley Roberts – BTR – proof of evidence
	Lesley Roberts – BTR – appendices proof of evidence

Basildon Estates evidence submitted	
	Karen Jones – Planning – proof of evidence
	Lucky Markham – Townscape – summary proof of evidence
	Lucky Markham – Townscape – proof of evidence
	Lucky Markham – Townscape – appendices to proof of evidence
	Lucky Markham – Townscape – rebuttal statement

InfraRed evidence submitted	
	John Mumby – Planning – proof of evidence with appendix

Documents submitted at Inquiry	
ID1	GS8 Committee Report and DAS (submitted by Appellant, 9 November 2021)
ID2	Trafford House Committee Report and DAS (submitted by Appellant, 9 November 2021)
ID3	Basildon Town Centre Regeneration – in answer to questions about building height (submitted by Appellant, 9 November 2021)
ID4	London Housing Design Guide, pages 35 & 36 (submitted by Council, 9 November 2021)
ID5	Appellant opening submissions (submitted by Appellant, 9 November 2021)

Documents submitted at Inquiry	
ID6	Basildon Borough Council opening submissions (submitted by BBC, 9 November 2021)
ID7	Basildon Estates (R6) opening submissions (submitted by Basildon Estates, 9 November 2021)
ID8	Infrared (R6) opening submissions (submitted by Infrared, 9 November 2021)
ID9	Local resident 1 representation (submitted 9 November 2021)
ID10	Local resident 2 representation (submitted 9 November 2021)
ID11	Position statement from InfraRed on the topic of five year housing land supply and PPG extracts (submitted by Infrared, 10 November 2021)
ID12	Updated draft conditions (submitted by Appellant, 10 November 2021)
ID13	East Square committee report (refs: 18/00275/FULL & 18/00941/LBBAS) (submitted by Basildon Estates, 11 November 2021)
ID14	Statement from the Leader of the Council (submitted by Council, 11 November 2021)
ID15	Final CIL Compliance Statement (submitted by Appellant, 11 November 2021)
ID16	Section 106 Agreement with Plans (submitted by Appellant, 11 November 2021)
ID17	Section 106 Agreement comparison changed pages (submitted by Appellant, 11 November 2021)
ID18	Agreed conditions (submitted by Appellant, 11 November 2021)
ID19	Five Year Housing Land Supply Position Statement – 15 November 2021 (submitted by Council, 16 November 2021)
ID20	Urban Capacity and Local Plan Update Note (submitted by Council, 16 November 2021)
ID21	UK ULI Residential Council – Build to Rent – A Best Practice Guide (March 2016) (requested to be submitted by Council, 17 November 2021)
ID22	Note on balconies and amenity space (submitted by Appellant, 17 November 2021)
ID23	Supplementary Note in respect of Core Document B14 - Five Year Housing Land Supply (submitted by Council, 17 November 2021)
ID24	Transcript of the minutes of Basildon Borough Council's Strategic Planning and Infrastructure Committee of 28 June 2018 (submitted by Council, 18 November 2021)
ID25	Local Plan Proposals Map 1998 Town Centre Inset map (submitted by Basildon Estates, 18 November 2021)

Documents submitted at Inquiry	
ID26	Agreed note on Environment Act and Biodiversity Net Gain (submitted by Appellant, 23 November 2021)
ID27	Appellant 5YHLS Observations (submitted 24 November 2021)
ID28	Basildon Estates Limited 5YHLS Note (submitted 24 November 2021)
ID29	Infrared 5YHLS Note with Appendices A1-A4 (submitted 24 November 2021)
ID30	Response of Basildon Borough Council to Appellant and Rule 6 Parties Submissions on Five Year Housing Land Supply (submitted 1 December 2021)
ID31	Infrared Closing Submissions
ID32	Basildon Estates Closing Submissions
ID33	Basildon Borough Council Closing Submissions
ID34	Appellant's Closing Submissions



Ministry of Housing,
Communities &
Local Government

David Hutchison
Pegasus Group
Pegasus House
Querns Business Centre
Whitworth Road
Cirencester
Gloucestershire GL7 1RT

Our ref: APP/D0121/W/16/3153935

Your ref: 15/P/0315/O

28 March 2018

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY CHARLES CHURCH DEVELOPMENTS LTD**

**LAND AT FARLEIGH FIELDS AND 54, 56, 58 FARLEIGH ROAD, FARLEIGH ROAD,
BACKWELL, SOMERSET
APPLICATION REF: 15/P/0315/O**

1. I am directed by the Secretary of State to say that consideration has been given to the report of G D Jones BSc(Hons) DipTP DMS MRTPI who held a public local inquiry on 14-17 and 21-24 March 2017 into your client's appeal against the decision of North Somerset Council to refuse planning permission for your client's application for planning permission for residential development of up to 220 new dwellings with supporting infrastructure and facilities including the demolition of 56 Farleigh Road, in accordance with application ref: 15/P/0315/O, dated 7 June 2016.
2. On 21 March 2017, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be dismissed.
4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, and agrees with their recommendation. He has decided to dismiss the appeal. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Matters arising since the close of the inquiry

4. On 29 September 2017, the Secretary of State wrote to the main parties to afford them an opportunity to comment on an email dated 15 September 2017 from North Somerset Council regarding the Council's revised Site Allocations Plan and position with regard to their 5 year land supply. The Secretary of State received your representations on 6 October. These representations were circulated to the other parties on 16 October 2017. No responses were received in reply to your representation. Copies of these letters may be obtained on written request to the address at the foot of the first page of this letter.
5. On 14 February the Secretary of State wrote to the main parties to afford them an opportunity to comment on change to the National Planning Practice Guidance ("the PPG") on 10th August 2017 on the Written Ministerial Statement ("WMS") on neighbourhood planning dated 12th December 2016. A list of representations received in response to this letter is at Annex A. These representations were circulated to the main parties on 1 March.
6. The Secretary of State has taken these representations into consideration when reaching his decision.

Policy and statutory considerations

7. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
8. In this case the development plan includes the remaining saved policies of the North Somerset Replacement Local Plan 2007 (NSRLP), the Core Strategy 2015, the Development Management Policies Sites and Policies Plan Part 1 2016 (DMPP Pt1) and Backwell Neighbourhood Plan March 2015 (the NP). The Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR22-28.
9. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'), as well as the Written Ministerial Statement on Neighbourhood Planning of 12 December 2016 (the WMS), and associated Guidance (located in the PPG at Paragraph: 083 Reference ID: 41-083-20170810) and the Supreme Court ruling of 10 May 2017, *Suffolk Coastal District Council v Hopkins Homes Ltd and another; Richborough Estates Partnerships LLP and another v Cheshire East Borough Council (2017) UKSC 36*.

Emerging plan

10. The emerging plan comprises emerging local planning policy documents, the Site Allocations Plan Sites and Policies Plan Part 2 (the eSAP) and the Joint Spatial Plan (the eJSP).
11. Paragraph 216 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to

the policies in the Framework. While broadly consistent with the Framework, the eSAP has yet to reach an advanced stage and is subject to a significant number of unresolved objections, and therefore the Secretary of State has given it limited weight in his consideration. The eJSP has yet to complete examination, and the Secretary of State thus gives it moderate weight.

Main issues

Housing Land Supply (HLS)

12. The Secretary of State has carefully considered the Inspector's analysis of the supply of housing land in North Somerset (IR310- 336). He notes the main parties disagree over whether or not the Council can demonstrate a 5 year HLS.
13. The Secretary of State has had regard to representations from the Council, stating that by instructing the Council to proceed with the Proposed Modifications consultation, the Local Plan Inspector has demonstrated that she is satisfied that the additional housing sites have made the plan capable of being found sound, including in respect of the 5 year supply position.
14. The Secretary of State has also carefully considered your representations made on the 6 October 2017 where you strongly disagree with the council's representation that they can now demonstrate a 5 year HLS.
15. The Secretary of State notes that the Local Plan Inspector has not concluded that the Council can demonstrate a 5 year HLS, or that the Site Allocations Plan (SAP) is sound. He further concludes that the allocations set out in the SAP are subject to public consultation, and to the completion of the SAP examination, and as such it is not yet possible to conclude that they are suitable or deliverable.
16. He has therefore gone on to consider the appeal Inspector's analysis of the HLS position. For the reasons given at IR311 the Secretary of State agrees that the 'Sedgefield' methodology should be used when calculating HLS. He further agrees, for the reasons given by the Inspector at IR315-321, that there is a record of persistent under delivery, and as such that a buffer of 20% is applicable.
17. The Secretary of State has given careful consideration to the Inspector's analysis of housing delivery. With regard to small consented sites, the Secretary of State agrees that it is reasonable to apply a lapse rate of 10%, for the reasons given at IR323-324. As such he reduces total supply by four units, giving a subtotal of 8,213.
18. The Secretary of State has gone on to consider the disputed 'large consented sites'. For the reasons set out by the Inspector at IR325-327, he concludes that 328 units should be removed from supply, reducing the subtotal further to 7,885 (IR326).
19. With regard to 'Local Plan allocations' sites, the Secretary of State concludes, for the reasons given at IR328, that delivery should be reduced by 40 dwellings, giving a subtotal of 7,845.
20. He further reduces total delivery by 263 dwellings in regard to the 'strategic sites', for the reasons set out by the Inspector at IR329. The Secretary of State concludes that this gives a subtotal of 7,582 units.

21. For the reasons given at IR330-332, he deducts another 157 units from supply in respect of 'emerging allocations' sites, reducing the sub total to 7,425 dwellings. He discounts another 180 dwellings from the supply figure with regard to the empty homes allowance, for the reasons given at IR333-334. This gives a total deliverable supply figure of 7,245 units.
22. He sets this against a housing requirement of 9,293 dwellings, giving a 3.9 year supply of housing.

Written Ministerial Statement on Neighbourhood Planning 2016 (WMS)

23. The WMS sets out how planning applications and appeals should be determined in circumstances where the local planning authority cannot demonstrate a five year supply of housing, but a neighbourhood plan is in force. The Secretary of State concludes, for the reasons given, that the Inspector has correctly stated how the WMS should be interpreted (IR336). The Secretary of State notes that the WMS is less than two years old.
24. The Secretary of State has had regard to your representations of 28 February 2018, noting that at paragraph 9 of your letter you state that the WMS and the Guidance would not be relevant as the BNP does not allocate sites, and or, the Council cannot demonstrate a 3 year HLS. For the reasons given at paragraphs 13 above, he has concluded that the Council can deliver a 3 year supply of sites.
25. For the reasons given by the Inspector at IR361, the Secretary of State notes that the NP does not state a specific quantum of dwellings to be built, and that the Council does not use these sites in calculating its housing land supply. However, the Secretary of State has had regard to in particular paragraph 8.9 of the NP and the associated plan indicating development sites where residential development will be supported, and concludes that this means that the NP, when read as a whole, allocates sites for housing, in agreement with the Inspector at IR361. Given his findings on HLS, the Secretary of State therefore concludes that all three criteria of the WMS are met and, consequently, that the WMS (and associated Guidance) applies in this case, and therefore that significant weight should be given to the Neighbourhood Plan notwithstanding the fact that the local planning authority cannot demonstrate a 5-year supply of deliverable housing sites.

Location strategy for new development in the District

26. The Secretary of State has carefully considered the Inspector's assessment of the location strategy for new development (IR338-343). He considers the most relevant policies to be Core Strategy Policy CS32 which identifies Backwell as one of the nine 'Service Villages' and allows new development within as well as adjoining the Settlement Boundaries of Service Villages subject to certain criteria. He notes that the policy goes on to say that sites that lie outside the Settlement Boundaries for development in excess of about 25 dwellings must be brought forward as allocations through Local Plans or Neighbourhood Plans.
27. The Secretary of State is in agreement with the Inspector (IR341) that the appeal development would substantially exceed 'about 25 dwellings', and thus conflicts with Policy CS32.

28. The Secretary of State accepts that the appeal proposal is outside the settlement boundary as defined by NSRLP Policy H/7. However, for the reasons given at IR343, he does not find any direct conflict with Policy H/7 or Policy CS33.
29. However, he further considers that the proposal conflicts with NP Policy Development 1 for the reasons given at IR343.

Character and appearance of the area

30. The Secretary of State has carefully considered the Inspector's analysis (IR344-358) of the impact on the character and appearance of the area. He notes that the Inspector has considered the appeal on the basis of public access within the site being limited to public rights of way which cross the site. For the reasons given, he agrees with the Inspector that the proposed development would have limited effect beyond the immediate area of the site. He further agrees that the proposed development would significantly affect the setting and character of Backwell (IR354) and this carries significant weight against the proposal. As such, he agrees with the Inspector that the proposal would conflict with Policies CS5 and CS2 of the Core Strategy, Policy DM10 of the DMPP Part 1, and Policy Development 1 of the NP. He further agrees, for the reasons set out at IR356 that the proposal would conflict with DMPP Part 1 Policy DM32.

Development plan

31. The Secretary of State notes that Policies DM10, DM25, DM32 and Policy CS5 are not said by any of the parties to be policies for the supply of housing (IR364) and thus agrees that they should carry full weight. Having had regard to the decision of the Supreme Court in *Suffolk Coastal District Council v Hopkins Homes Ltd and another; Richborough Estates Partnerships LLP and another v Cheshire East Borough Council [2017] UKSC 36*, and for the reasons given at IR365-368, he agrees that NP Policy Development 1 and Core Strategy Policy CS32 are no longer relevant policies for the supply of housing for the purposes of paragraph 49 of the Framework, and as such should carry full weight in this case even in the absence of a 5 year supply of housing land.
32. Given the conflict with NP Policy Development 1, the Secretary of State has had regard to p198 of the Framework, which states that where an application conflicts with Neighbourhood Plan that has been brought into force, permission should not normally be granted. As stated above, applying the WMS (and associated Guidance), the Secretary of State gives significant weight to the Neighbourhood Plan. Even were the WMS not engaged, the Secretary of State considers that following the *Hopkins* judgment NP Policy Development 1 is not a policy for the supply of housing, and as such it would still be given significant weight in the circumstances of this case.

Benefits of the proposal

33. The Secretary of State concludes that the appeal proposal would assist in delivery of affordable and market housing (IR384), including 30% affordable, in a sustainable location, in an area without a 5 year housing land supply. He further finds, for the reasons set out at IR369, that the proposal would deliver a range of social, economic and environmental benefits, including expenditure on construction and investment in the area, the creation of construction jobs, financial contributions towards offsite infrastructure, the provision of public open space and green infrastructure, the

enhancement of public rights of way and delivery of new footpaths, and enhancements to biodiversity.

Planning conditions

34. The Secretary of State has given consideration to the Inspector's analysis at IR374-379, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 206 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 206 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for dismissing this appeal and refusing planning permission.

Planning obligations

35. Having had regard to the Inspector's analysis at IR380, the planning obligation dated 22 March 2017, paragraphs 203-205 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR380 that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 204 of the Framework and is necessary to make the development acceptable in planning terms, is directly related to the development, and is fairly and reasonably related in scale and kind to the development. However, the Secretary of State does not consider that the obligation overcomes his reasons for dismissing this appeal and refusing planning permission.

Planning balance and overall conclusion

36. For the reasons given above, the Secretary of State considers that the appeal application is not in accordance with Core Strategy Policies, DMPP Policies, and NP Policy Development 1 of the development plan, and is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.
37. The lack of a 5-year housing land supply means that the presumption in favour of sustainable development applies, as set out at paragraph 14 of the Framework. However, given his findings on the NP WMS above, he concludes that the housing policies in the NP should be afforded significant weight, in line with the Guidance.
38. The proposals would deliver a range of social, economic and environmental benefits, in particular the provision of market and affordable housing (30%, 65 in number) in a sustainable location, in an area without a 5 year supply. This carries very significant weight in favour of the appeal proposal.
39. Against this is the conflict with the development plan, and in particular the Backwell NP and with NP Development 1, which is not a policy for the supply of housing. The Framework (paragraph 198) states that applications in conflict with a made neighbourhood plan should not normally be granted. The proposal would also cause harm to the character and appearance of the area. Overall the Secretary of State gives substantial weight to these adverse impacts.
40. Applying his planning judgment therefore, the Secretary of State concludes that the adverse impacts of granting the appeal development planning permission would

significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

41. The Secretary of State therefore concludes that the appeal be dismissed.

Formal decision

42. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for residential development of up to 220 new dwellings at Farleigh Fields and 54, 56, 58 Farleigh Road, Farleigh Road, Backwell, Somerset.

Right to challenge the decision

43. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
44. A copy of this letter has been sent to North Somerset Council; Persimmon Homes and Backwell Parish Council, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Phil Barber

Phil Barber
Authorised by Secretary of State to sign in that behalf

Annex A

SCHEDULE OF REPRESENTATIONS

Representations received in response to the Secretary of State's letter of 29 September 2017

Party	Date
David Hutchison, Pegasus Planning Group	6 October 2017

Responses received in response to the Representations from Pegasus Planning Group circulated 16 October 2017

Party	Date
Nil	

Representations received in response to the Secretary of State's letter of 14 February 2018

Party	Date
David Hutchison, Pegasus Planning Group	28 February 2018

Report to the Secretary of State for Communities and Local Government

by G D Jones BSc(Hons) DipTP DMS MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Date: 14 July 2017

TOWN AND COUNTRY PLANNING ACT
NORTH SOMERSET COUNCIL
APPEAL BY
CHARLES CHURCH DEVELOPMENTS LTD

Inquiry opened on 14 March 2017

Land at Farleigh Fields and 54, 56, 58 Farleigh Road, Farleigh Road, Backwell, Somerset

File Ref(s): APP/D0121/W/16/3153935

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File Ref: APP/D0121/W/16/3153935**Land at Farleigh Fields and 54, 56, 58 Farleigh Road, Farleigh Road, Backwell, Somerset**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Charles Church Developments Ltd against North Somerset Council.
- The application Ref 15/P/0315/O, dated 22 January 2015, was refused by notice dated 7 June 2016.
- The development proposed is described as residential development of up to 220 new dwellings with supporting infrastructure and facilities including the demolition of 56 Farleigh Road, creation of new vehicular.
- The Inquiry sat for 7 days on 14-17 and 21-24 March 2017.

Summary of Recommendation: The appeal be dismissed

Preliminary Matters

1. Determination of the appeal was recovered by the Secretary of State during the course of the Inquiry by way of a direction dated 21 March 2017 for the reason that 'the appeal involves proposals for residential development of over 150 units or on sites of over 5 hectares, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities'.
2. The appeal proposal is for outline planning permission with access only to be determined at this stage and with appearance, landscaping, layout and scale reserved for future approval. Whilst not formally part of the scheme, I have treated the details relating to these reserved matters submitted with the application and the appeal as a guide as to how the site might be developed.
3. The application was refused for two reasons. In summary the grounds for these were that:
 - 1) The appeal site is not within Backwell's 'Settlement Boundary' nor allocated for development in the Backwell Neighbourhood Plan, and the scale of the proposed development would be disproportionate to the size of the existing village and have a detrimental impact upon the character of the area; and
 - 2) The proposed development, outside the established settlement, would be out of keeping with the overall character of the village and its landscape setting and quality causing harm to the setting and edge of the village.
4. The Development Management Policies Sites and Policies Plan Part 1 July 2016 (the DMPP Pt1) was adopted after the appeal planning application was determined, as were the remitted policies of the North Somerset Core Strategy (the Core Strategy). As a consequence, a number of policies of the North Somerset Replacement Local Plan 2007 (the NSRLP) are now superseded, including Policy H/8, as superseded by Core Strategy Policy CS33, but not Policy H/7. Additionally, Policy GDP/3 of the NSRLP has been superseded by Policy DM32 of the DMPP Pt1.
5. A legal agreement dated 22 March 2017 containing planning obligations pursuant to Section 106 of the Act (the S106 Agreement) was submitted by the appellant during the Inquiry - CD18.9a.
6. I carried out a site visit on 20 March 2017, which covered the site and the

surrounding area. That visit was unaccompanied, as agreed by the parties at the Inquiry, and included all locations and views which those parties had asked me to cover.

7. After I had closed the Inquiry a further appeal decision (the Oldmixon Road appeal) was brought to my attention concerning proposed development involving housing at a site at Weston-super-Mare¹. As that decision is in the public domain and the given the need for consistency among Inspectors, having sought the views of the main parties on its admission, I decided to take it into account along with the other material submitted prior to the closure of the Inquiry. I have advised the parties of my decision in this regard.
8. Additionally after the Inquiry closed, the Supreme Court issued a judgment on 10 May 2017 (the Supreme Court Judgment)² concerning, among other things, the interpretation of para 49 of, and its relationship with para 14 of, the National Planning Policy Framework (the Framework). I gave the parties opportunity to make further submissions in view of that Judgment and I have taken these into account when writing my report³.

The Site and Surroundings

9. The appeal site is located within the village of Backwell, which is situated roughly 0.5km to the south of the settlement of Nailsea, some 8km roughly to the west of the Bristol urban area and 14km to the north east of Weston-super-Mare. Backwell is identified in the Core Strategy as a Service Village. According to the 2011 Census, it had a resident population of 4,589 and the total number of dwellings was some 1,891.
10. The village has a range of facilities with a variety of shops including two convenience stores and a post office. It also has Infants, Junior and Secondary schools, medical and dental centres, and a swimming pool and leisure centre. Most of these facilities are within walking and/or cycling distance of the site. Backwell is also served by public transport including by a mainline railway station with direct services to Bristol, Weston-super-Mare and beyond, as well as by regular bus services.
11. The site, known locally as Farleigh Fields, is located between Backwell, including West Town, to the west, Farleigh to the northeast and Church Town to the south. These three areas have, over time, become linked by development, principally in the form of ribbon development along Farleigh Road, the A370, to the north of the site linking Backwell and Farleigh, and along Church Lane to the east connecting Farleigh and Church Town. Consequently, the site is largely encircled by the buildings which now line the surrounding roads, which also include Dark Lane to the west. Exceptions to this arrangement include where the site extends northward into Farleigh Road in the form of two T-shaped areas. The first includes an existing undeveloped corridor between 30 and 32 Farleigh Road and a length of highway, while the second includes Nos 54, 56 and 58 and a further stretch of this street.

¹ INSP.6

² [2017] UKSC 37 on appeals from: [2016] EWCA Civ 168, [2015] EWHC 132 (Admin) and [2015] EWHC 410 (Admin)

³ INSP 5

12. Other than Nos 54, 56 and 58, the land is largely undeveloped and in agricultural use. It generally rises, reasonably steeply in parts, from Farleigh Road southward towards Church Town. Two public rights of way cross the site. Footpath ref. LA2/6/10 crosses it on a generally northwest-southeast alignment linking Farleigh Road, initially via the corridor between Nos 30 and 32, with St Andrews Church/Church Lane in Church Town. Footpath ref. LA2/4/20 crosses the site on a northeast-southwest alignment linking Church Lane in the vicinity of St Andrews Church with another part of Church Lane in the vicinity of Fairfield Primary School to the northeast. These footpaths form part of a circular walk around Backwell known as the Backwell Round.
13. The site is not located within the Green Belt, is not designated as Local Green Space (LGS) in the development plan and contains no heritage assets, nor is it directly affected by any wider adopted landscape, ecology or heritage designations. It does, however, lie within 4km of the North Somerset and Mendip Bats Special Area of Conservation (the SAC), and the Brockley Halls Stables SSSI forms part of the SAC site and is within 2.4km of the closest part of the site.
14. Backwell Church Town Conservation Area (the Conservation Area) also lies to the south of the site but no part of the site is within the designated area. The only point at which the site adjoins the Conservation Area is where the right of way noted above connects to the neighbouring Grade I listed St Andrews Church.
15. The North Somerset Landscape Character Assessment SPD 2005 (the Landscape Character SPD) identifies a series of Landscape Character Types and Landscape Character Areas (LCAs)⁴. The site straddles two LCAs with its upper part falling within LCA E6: Cleeve Ridge and the lower part within LCA J5: Land Yeo and Kenn Rolling Valley Farmland. The strategy for the former is to conserve the peaceful remote character, and for the latter to conserve the intact pastoral landscape with hedgerow networks, winding rural roads and stone farmsteads, while strengthening elements of weaker character such as village edges and orchards⁵.

Planning Policy

16. The Framework outlines a presumption in favour of sustainable development, which it indicates has three dimensions – economic, social and environmental. Para 14 sets out how this presumption is to be applied and indicates that development proposals which accord with the development plan should be approved without delay, while going on to say that where it is absent, silent or relevant policies are out-of-date, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits or specific policies in the Framework indicate development should be restricted.
17. In respect to housing delivery, it requires North Somerset Council (NSC) to meet the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in the Framework, including identifying key sites which are critical to the delivery of the

⁴ Extracts at CD1.27a App.8 and CD15.4 Appx 5

⁵ Further details of these LCAs are set out at CD14.4 paras 3.3 to 3.14

housing strategy over the plan period. Applications for housing should be considered in the context of the presumption in favour of sustainable development.

18. The Framework adds that relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites. The Written Ministerial Statement on Neighbourhood Planning of 12 December 2016 (the WMS) is also relevant in this regard. Among other things it states that relevant policies for the supply of housing in a neighbourhood plan should not be deemed to be 'out-of-date' under para 49 of the Framework where all of the following apply:

- The WMS is less than two years old, or the neighbourhood plan has been part of the development plan for two years or less;
- The neighbourhood plan allocates sites for housing; and
- The local planning authority can demonstrate a three-year supply of deliverable housing sites.

The parties disagree over whether Backwell's neighbourhood plan allocates sites for housing and whether NSC can demonstrate either a three or a five year supply of deliverable housing sites.

19. The WMS also states, among other things, that the Government confirms that where a planning application conflicts with a neighbourhood plan, planning permission should not normally be granted⁶, yet communities who have been proactive and worked hard to bring forward such a plan are often frustrated that it is being undermined because their local planning authorities cannot demonstrate a five-year land supply of deliverable housing sites.

20. The second refusal reason also expressly alleges conflict with Framework paras 56, 64, 66 and 109 resulting from the appeal development.

21. Although weighty material considerations, neither the Framework nor the WMS change the statutory status of the development plan. The development plan for the area includes the remaining saved policies of the NSRLP, the Core Strategy, the DMPP Pt1 and Backwell Neighbourhood Plan March 2015 (the NP).

22. In view of the changed development plan context since the planning application for the appeal development was determined, NSC indicated prior to the Inquiry that the development plan policy conflict alleged in its refusal reasons is now in respect to Policy H/7 of the NSRLP, Policies CS5, CS12, CS32 and CS33 of the Core Strategy, Policy DM32 of the DMPP Pt1, and Policy Development 1 of the NP. The evidence also refers to DMPP Pt1 Policies DM10 and DM25 which are 'linked' to Structure Plan Policies CS5 and CS12 respectively.

23. The Core Strategy covers the plan period 2006-26 and was originally adopted in April 2012. Following a legal challenge to Policy CS13, which had set the area's housing requirement, it was remitted for re-examination. A number of other policies, including Policy CS32, were also remitted on the basis that should the housing requirement change there may be consequences for those Policies. All other policies remained adopted, including Policies CS5 and CS12. Policy CS13

⁶ This consistent with Framework para 198

was re-adopted with an increased minimum housing requirement of 20,985 dwellings in September 2015, while the other remitted policies, including Policy CS32, were re-adopted in January 2017.

24. The plan period of the NSRLP ran to 2011. Policy H/7 remains part of the development plan. It establishes the 'Settlement Boundaries' for the area and is primarily concerned with proposed development within rather than beyond those boundaries.
25. The character, distinctiveness, diversity and quality of North Somerset's landscape are to be protected through Core Strategy Policy CS5 and DM Policy Plan Pt1 Policies DM10, while Policy DM25 aims to protect and enhance the existing public rights of way network and ensure the provision of new and improved multi-user routes connecting with new developments. Core Strategy Policy CS12 and Policy DM32 of the DMPP Pt1 relate to high quality design and place-making.
26. Core Strategy Policy CS32 identifies nine 'Service Villages', which include Backwell. It states that new development within or adjoining the Settlement Boundaries of Service Villages which enhances the overall sustainability of the settlement will be supported subject to the number of criteria, but that sites outside the Settlement Boundaries in excess of about 25 dwellings must be brought forward as allocations through Local Plans or Neighbourhood Plans. Its supporting text at para 4.85 states that 'The Council will not support proposals which either on their own or in aggregate cause significant adverse impacts on the character or functioning of the village.'
27. Policy CS14 also refers to those settlements in setting out the broad district-wide distribution of new dwellings based on the following hierarchy and minimum net additional dwellings to be delivered across the plan period:
 - Weston-super-Mare will be the focus for new residential development, including the strategic allocation at Weston Villages, with 6,300 dwellings in the Weston urban area plus 6,500 at Weston Villages;
 - Then most additional development is to take place at the towns of Clevedon, Nailsea and Portishead totalling 5,100 dwellings;
 - At Service Villages there will be opportunities for small-scale development of an appropriate scale either within or abutting settlement boundaries or through site allocations totalling 2,100 dwellings; and
 - Elsewhere development will be more strictly controlled although appropriate development will be acceptable within the settlement boundaries of infill villages totalling 985 dwellings.
28. Core Strategy Policy CS33 indicates that development outside the areas covered by other area based policies of the Core Strategy, including CS32, will be strictly controlled in order to protect the character of the rural area and prevent unsustainable development.
29. The appeal site is not allocated for development in the NP. Its Policy Development 1 states, among other things, that housing development in Backwell which is at a level appropriate to the size and character of the settlement will be supported and adds that infilling, defined as one or two additional dwellings, will also be acceptable. Para 8.9 refers to 'development sites' and states that 'the Neighbourhood Plan identifies sites where residential

- development and in the case of Sites A and B, residential and employment development, is supported.' Five 'development sites', A to E inclusive, are shown, delineated on an accompanying map.
30. The evidence also refers to NP Policy Development 4, which states that significant development of agricultural land that has been demonstrated to be necessary should also demonstrate that it prioritises the use of poorer quality agricultural land over the use of higher quality agricultural land.
31. Although not part of the development plan there are also two emerging local planning policy documents, the Site Allocations Plan Sites and Policies Plan Part 2 (the eSAP) and the Joint Spatial Plan (the eJSP).
32. The Publication Version of the eSAP, dated October 2016, identifies proposed residential allocations to meet the Core Strategy housing requirement as well as reviewing existing sites and identifies potential LGS and strategic gaps. The appeal site is not proposed to be allocated for development in the eSAP, while it does propose to designate some, but not all, of the site as LGS. At the time of the Inquiry the eSAP was the subject of a significant number of unresolved objections, which will need to be considered at the Examination in due course.
33. The eJSP is a strategic plan being prepared jointly by the West of England authorities for the plan period 2016-2036. It is intended that it will identify the overall housing requirement and district apportionment, strategic development locations and key infrastructure requirements; and set the context for a new North Somerset Local Plan 2018-2036 which will review and roll-forward the existing plans. The latest housing target for the eJSP area is around 105,000 dwellings of which around 32,200 should be affordable. The eJSP Consultation document Towards an Emerging Spatial Strategy includes a potential strategic development location at Nailsea/Backwell for some 3,600 dwellings. It is common ground between the main parties that the eJSP is at an early stage of preparation and carried limited weight at the time of the Inquiry.

Planning History

34. The appeal site has been the subject of the number of planning applications for residential development since the mid-1980s, the most recent of which was dismissed on appeal by the Secretary of State following an Inquiry in 2000 (the 2000 Appeal)⁷. The site has also been promoted for development through the plan-making process. Although it has been recommended by Local Plan Inspectors for allocation in the past it has remained unallocated⁸.

The Proposals

35. The appeal planning application as initially submitted proposed the development of up to 340 dwellings. However, the application was revised in July 2015 reducing the number of dwellings proposed to up to 220. The revisions to the application included a revised Concept Master Plan, Parameter Plans and amendments to an internal road linking two proposed areas of housing, and were supported by a number of other revised documents which were updated to deal with the changes.

⁷ CD8.1 – Inspector's report for appeal ref. APP/D0121/A/99/1035049, dated 10 October 2000

⁸ CD18.13 - Woodspring Local Plan Inspector's Report – Statement of Decisions and Reasons, dated June 1999

36. The revised Concept Master Plan⁹ shows two linked residential development parcels with a total area of some 7.3ha, covering roughly 35% of the overall site. Some 12.9ha of the site, roughly 60%, is shown as being proposed to be retained as green infrastructure, including landscape buffers and public open space. Existing hedgerows and trees within the site are proposed to be retained except where sections are to be removed to accommodate the internal access road. The Design and Access Statement states that the proposed houses would be mostly 2 storey with 2.5 storey buildings in key locations, while the residential development would have a net density of some 25 dwellings per hectare¹⁰.
37. The land between the two hedgerows which runs almost parallel to footpath LA2/6/10 is proposed to be used as public open space. While it would be left largely undeveloped it would be crossed by a new road that would link the two proposed housing areas. A further area of open space would be retained on the southern/eastern parts of the site, on its upper slopes, which would separate the proposed development from the Conservation Area to the south. An area of some 5.5ha within the southern field is proposed to be retained as agricultural grazing land with the existing public access rights retained and enhanced. These principal areas of retained open space would form roughly a T-shape with the two areas of proposed housing to either side. The alignments of the two existing rights of way are not proposed to be altered.
38. Consent is sought at this stage for access details. A new vehicular access is proposed to Farleigh Road running between Nos 54 and 58, which would be retained as houses while No 56 would be demolished. Associated works are proposed within the existing highway including pedestrian crossing refuges and a right hand turning lane off Farleigh Road into the site. The access proposals also show details of works to where the footpath LA2/6/10 meets Farleigh Road, a further pedestrian crossing refuge and a new Toucan crossing to Farleigh Road.
39. With the exception of those areas adjacent to and within Farleigh Road where highway/access works are proposed, the site stands as an area of undeveloped land outside of, but largely adjacent to, the Backwell Settlement Boundary.

Other Agreed Facts

40. NSC and the appellant (the main parties) produced a general Statement of Common Ground (the SoCG) prior to the inquiry¹¹. Backwell Parish Council (BPC), a Rule 6 party at the Inquiry, was not a signatory to the SoCG. The main parties have also agreed a separate Housing Land Supply Statement of Common Ground (the HLS SoCG)¹². The SoCG describes the site, the proposal and the policy context. Along with the HLS SoCG, it also confirms that the main parties agree that:
- The appeal proposal conflicts with Core Strategy Policy CS32 given that the scheme would exceed 25 dwellings and the site is not allocated for housing in the development plan;
 - NSC does not have an adopted Site Allocations Plan which allocates sites in excess of 25 dwellings at the Service Villages and PN Policy Development 1

⁹ CD1.5

¹⁰ CD1.19

¹¹ CD11.1 and CD11.1a

¹² CD11.2

makes no reference as to whether all new housing should be within the Settlement Boundary;

- The adopted housing requirement of 20,985 dwellings from 2006 to 2026 forms the appropriate figure against which to assess housing land supply and, in that regard, it is appropriate to assess supply for the five year period 1 April 2016 to 31 March 2021;
 - When annualised the requirement, which was not calculated until 2013 or adopted until September 2015, has not been achieved in any of the previous 8 years, while the annualised requirement of NSRLP was broadly met for the period 2006-11. Additionally, there was a backlog at March 2016 of 2,498 dwellings against the adopted minimum housing requirement and it is unlikely that that minimum requirement will be achieved in 2016/17;
 - The Sedgfield methodology should be used when calculating the five-year housing land supply;
 - A number of the emerging site allocations, designed to accommodate the housing requirements of the Core Strategy, will be outside the current defined Settlement Boundaries, and they are being reviewed as part of the eSAP but no such change is proposed in the vicinity of the appeal site;
 - Backwell has been identified by NSC as being the most sustainable service village in North Somerset¹³, and is capable of accommodating new development appropriate to the size and character of the settlement in order to enhance the village's role as a local hub for community facilities and services, has the ability to support sustainable patterns of living, has a range of facilities within walking and cycling distance of the site and the proximity of public transport services is likely to encourage use of these services;
 - The appeal proposals accord with Core Strategy Policy SC16 to deliver 30% affordable housing on site as part of the scheme and there is an identified and unmet need for affordable housing across North Somerset;
 - The planning obligations within the S106 Agreement are likely to mitigate a number of impacts of development on community infrastructure and it covers all infrastructure items that were requested by NSC, including in respect to education, highways and public open space, and that there is an existing deficit of open space within the parish; and
 - The proposed development is acceptable in arboricultural terms and most of the trees and hedgerows would be retained, would not harm the setting of the Conservation Area nor that of any nearby Listed Building, is not likely to have a significant effect on the SAC and, following the implementation of the recommendations set out in the ecological assessment, it would result in a net gain to biodiversity.
41. It should also be noted that during the course of the Inquiry both main parties' positions on anticipated housing supply over the relevant five year period evolved somewhat in view of each other's evidence such that some aspects of the HLS SoCG are superseded. Their updated position is set out in a spreadsheet, which they jointly prepared and submitted towards the end of the Inquiry¹⁴.

¹³ CD.5.8 and CD.5.9

¹⁴ The spreadsheet in question forms part of CD18.18

42. The summaries of cases of the parties set out in the following sections are based on the closing submissions¹⁵ and on the written and oral evidence, with references given to relevant sources, up to the point at which I closed the Inquiry. It should be noted that that evidence was put prior to the Supreme Court Judgment and as such it should be read in the context of the parties' pursuant comments¹⁶. In summary, these comments are that in the view of both NCS and BPC the weight to be given to development plan policy is unaltered, and in the view of the appellant only Core Strategy Policies CS14 and CS32 and NP Development Plan Policy 1 are now relevant policies for the supply of housing and overall the appellant does not believe that the Judgment materially effects its evidence as previously presented.

The Case for North Somerset Council

Introduction

43. NCS considers that this is a case about a housebuilder that has purchased and wishes to develop a site which is demonstrably special to the people of Backwell and which holds particular local significance because of its recreational value and its contribution to the character and setting of the village.
44. It contends that although the appellant appears to have controlled the site for many years, and that it undoubtedly understands that planning is intended to be plan-led, it has decided to promote its development outside the development plan process. It adds that that is so notwithstanding that the Core Strategy clearly indicates schemes of this scale should be advanced through a local or neighbourhood plan, even as NSC prepares for the examination of its eSAP. According to NSC the appellant faces the difficulty that the site is not allocated in the NP and may have calculated this did not matter when it lodged its appeal. However, in the light of the WMS, NSC considers that what the NP says is now a matter of considerable importance and local people are entitled to expect their NP to be given effect.
45. NSC sees it as no surprise in the circumstances that nearly 1,000 villagers have formally objected to the scheme. It also adds that 'they are doubtless fortified by the fact that past attempts to develop this special site have foundered because of the harm that would be caused to the character of the village'.
46. Thus the balance to be struck is, in NSC's view, between the benefits of providing about 10 times more housing and affordable housing than it considers the policy indicates is appropriate in this kind of location, and harm this would cause to the character and setting of the village. More generally, NSC sees this appeal is an important test of the weight which is to be afforded to neighbourhood plans which the Housing White Paper (the White Paper)¹⁷ indicates are likely to play an increasingly important role in shaping local communities and turning the rhetoric of localism into reality.

Issue 1 - Effect on the locational strategy for new development in the district

47. Core Strategy Policy CS13 requires a minimum of 20,985 new homes to be delivered over the plan period, while Policy CS14 specifies the broad distribution

¹⁵ INSP.2, INSP.3 and INSP.4

¹⁶ INSP.5

¹⁷ CD3.4

of those dwellings:

- (1) The focus will be on Weston super Mare, including strategic allocations at Weston Villages. Accordingly, in NSC's view, Policy CS28 provides that new development should take place within or adjacent to the settlement boundary, but sites for in excess of about 75 dwellings outside the boundary must be brought forward through the Local Plan or Neighbourhood Plan process.
- (2) Outside Weston "most additional development will take place at the towns of Clevedon, Nailsea and Portishead, on sites within or abutting settlement boundaries, but outside the Green Belt". NSC says that Policy CS31 stipulates that sites of more than about 50 dwellings outside a settlement boundary must be brought forward through the development plan process.
- (3) Core Strategy Policy CS32 provides that in Service Villages there will be opportunities for "small-scale development of an appropriate scale either within or abutting settlement boundaries or through site allocations". NSC considers that the key words here are 'small scale'.

48. Policy CS32 specifies what is meant by "small-scale development" within or abutting Service Villages – the short point, in NSC's view is that outside Service Villages' settlement boundaries sites for more than about 25 dwellings must be brought forward as allocations through Local Plans or neighbourhood plans.
49. Thus, in NSC's opinion, the Plan seeks to direct large scale development to sites in or adjacent to the most sustainable locations; 'large scale in this context means more than about 50 dwellings, while 'most sustainable locations' means Weston-super-Mere, Weston Villages, Clevedon and Nailsea. Service Villages are intended to grow, but only small increments of up to 25 dwellings are intended to be brought forward on the edge of settlements through the development management process according to NSC.¹⁸
50. The flexibility imparted by the development management process under Core Strategy Policy CS32 is, in NSC's view, intended to ensure the requirement will be met over the plan period without threatening the character of villages, over-burdening their infrastructure or undermining the spatial strategy, while it is also calculated to ensure the form, design and scale of development reinforces local distinctiveness.¹⁹
51. NSC considers that it is possible that in some cases larger schemes could be accommodated without harming those policy objectives. However, in a plan-led system, the question of whether, in a particular village, that is so, how big a scheme can be accommodated and where it should take place ought, in the view of NSC, to be mediated through the Local Plan or Neighbourhood Plan process; while Policy CS32 does not admit the development of larger sites through the development management process under any circumstances. NSC adds that although there was reference during the Inquiry to development at Yalton, that is not necessarily due to Policy CS32 and the Inquiry has not been told about the full circumstances associated with what happened in those other cases.

¹⁸ NSC also state: That flexibility also relaxes the strict constraint on development in the countryside adjacent to a settlement boundary imposed by NSRLP Policy H/7, such that it is 'hopeless' to argue settlement boundaries only reflect the need to meet the historic housing requirement. Setting to one side the fact the eSAP alters settlement boundaries to accommodate the required quantum of development, provided proposals satisfy criteria relating to the qualities and scale of Policies CS28, CS31 and CS32 they do not constrain future housing growth.

¹⁹ CD5.5 paras 69 and 70 respectively

52. The NP, as part of the development plan, defines the village's settlement boundary. Policy Development 1 admits development at a level appropriate to the size and character of the village.²⁰ NSC contend that 'appropriate' development is not confined to that which is within the settlement boundary, such that, reading the Plan as a whole, Policy Development 1 can and should be read consistently with Core Strategy Policy CS32. It follows, in the view of NSC, that NP Policy Development 1 allows development of up to about 25 homes abutting the settlement boundary provided a scheme would satisfy the other criteria of Policy CS32.
53. NSC says that the appeal proposal exceeds the threshold specified by Policy CS32 by a factor of 10 and consequently 'it is likely to cause the kind of mischief' the Examining Inspector for the remitted Core Strategy policies sought to avoid when he specified that threshold.
54. Therefore, the effect of allowing the appeal would be to cause conflict with, and undermine, the locational strategy of the development plan, in NSC's opinion; and the appellant's planning witness Mr Hutchinson concedes conflict with Policies CS14 and CS32 at paras 7.92, 8.30 and 8.47 of his proof of evidence.

Issue 2 - Effect on the character and appearance of the area

The scope of the issue

55. This issue is addressed by the appellant's landscape witness Mr Cooper²¹, and NSC state that he expressly agreed that the second refusal reason makes three particular allegations, namely that the erection of 220 dwellings outside the settlement boundary would be a form of development:
- 1) Out of keeping with the overall character of the village;
 - 2) Out of keeping with its landscape setting and the quality of that setting; and
 - 3) That (1) and (2) would cause harm to the setting and appearance of the edge of the village.

The scope of the appellant's evidence

56. NSC maintain that Mr Cooper acknowledges that the parties do not join issue on the scheme's impact on the wider landscape in itself, whether viewed as a resource, that is as a receptor in its own right, or in terms of its wider visual impact. On this basis NSC also states 'Mr Cooper's evidence generally, and his repeated references in chief to the report prepared by NSC's landscape architect, is akin to a striker who wheels away to celebrate in front of a disbelieving stadium, having just shot his football into the wrong goal'.

The 'correct' approach

57. NSC sees the 'way home' as being indicated by the second refusal reason's reference to Core Strategy Policies CS5 and CS12. Policy CS5 is headed 'Landscape and the historic environment', while Policy CS12 is concerned with 'achieving high quality design and place making'. It added that Mr Cooper agreed that these strategic policies are 'operationalised' by DM10 and DM32 respectively²². NSC considers this to be important:

²⁰ CD5.11, p.11

²¹ CD14.4, para 1.13

²² CD5.6 - Links to CS5 and CS12 on pages 28 and 76 respectively

- 1) DM10 requires that all development proposals should be '...carefully integrated into the natural built and historic environment, aiming to establish a strong sense of place, respond to local character, and reflect the identity of local surroundings, whilst minimising landscape impact'. These matters relate, in NSC's view to place and character, rather than landscape in itself.
 - 2) In a similar vein, DM32 requires that 'The design and planning of development proposals should demonstrate sensitivity to the local character, and setting, and enhance the area taking into account the existing context. Design solutions should seek to enhance *local distinctiveness* and contribute to the creation of a sense of *place and identity*.' (NSC's emphasis) And continues 'Proposals that reflect community aspirations and values will be encouraged. Proposals which cause unacceptable harm to the character or appearance of the area will not be permitted.'
58. NSC considers that the impact of the scheme on the character and appearance of the area therefore requires:
- 1) An appreciation of Backwell's existing 'sense of place'; that is, those features which impart particular character and identity.
 - 2) Consideration of the extent to which the scheme would respect and enhance those characteristics, reinforce what makes Backwell distinctive, and which give it its sense of place and identity.
59. NSC state that, when questioned about the application of Policy DM32, Mr Cooper agreed it is material to consider:
- 1) Whether the scheme enhances local distinctiveness²³.
 - 2) The local community's aspirations.
60. NSC also maintains that Mr Cooper repeatedly rejected the notion that the site's function is relevant to an assessment of the scheme's impact on *character and distinctiveness*, and that specifically he rejected that it is material to consider:
- 1) The site's role in creating physical and visual separation between Church Town and Farleigh/ West Town;
 - 2) The site's function as a focus of the Backwell Round;
 - 3) The site's actual use as public open space; and
 - 4) The community's aspiration that the site should be designated as LGS.
61. However, adopting Framework para 64, NSC's case is that the impact of a scheme on the character of an area is inseparable from an analysis of the way it functions.²⁴ Thus Mr Cooper's rejection of this principle, in NSC's view, serves to underline the narrow scope of his evidence and its limited relevance to this issue.

The character of Backwell and how the site contributes to that character

62. In NSC's view Backwell's distinctive character arises from the historical pattern of development of the hamlets of Church Town, Farleigh, Backwell Common and West Town. Each was established in the Mediaeval period. They became linked by ribbon development along Church Lane and Farleigh Road in the early part of the 20th Century. The last major phase of development was in the 1980's, which

²³ NSC additionally stated that - while it serves to underline the appellant's 'misplaced' focus on the scheme's wider landscape impact - in re-examination Mr Cooper was invited to agree that the issue of whether the scheme enhances local distinctiveness is not a matter that had been raised by NSC, but that is incorrect - see for example DC14.5 paras 9.6 and 9.25-9.27.

²⁴ DC14.5 para 9.1 for instance

saw the village expand north towards the railway, and the consolidation and growth of West Town.

63. In that context NSC considers that Mr Cooper agreed that Church Town has a particularly distinctive character, with St Andrews Church as its focus standing in an elevated location at the heart of the Conservation Area, which is marked by a mix of architectural types, styles and materials and where plot sizes and the orientation of properties are irregular. There is relatively little modern infill and it is subservient to the rich, fine grained and historic character of this area. Most important of all, in NSC's view, the Appellant's Heritage Assessment states:

*"The hamlet is situated against a dramatic sylvan backdrop formed by the wooded scarp and associated coombes of Backwell Hill to the south, and is linked to the main body of Backwell by Chapel Lane and Dark Lane. Open fields lie to the east, west and north (the field to the north being the proposed development site) of the Conservation Area, resulting in the readability of the hamlet as a separate settlement to the main sprawl of Post-war Backwell".*²⁵ (NSC emphasis)

This, in NSC's view, emphasises 'in the appellant's own words' that Church Town is a separate settlement from 'the main sprawl'.

64. The open fields referred to in that Heritage Assessment make a distinctive contribution to the setting of Backwell in NSC's opinion; they physically separate Church Town from Farleigh and West Town and as a matter of fact and policy, the land is countryside. It has a rolling, open character. The 2000 Appeal Inspector described it as having a 'rural appearance'²⁶ and NSC considers that he was right. Mr Cooper agreed that nothing has changed on the ground and NSC sees that as having important consequences:

1) Looking north from the church, Farleigh and West Town are viewed at a distance of 400-500m across farmland. Development along Church Lane lies outside a person's peripheral vision. Church Town appears as an entirely different village.

2) Looking south from the entrance to the site, the sense is of leaving one settlement and setting out across the countryside to another. That sense of transition is sharpened by the contrast between the elevated view of the historic Church and the Conservation Area, which is reinforced by its hillside location compared with the strongly suburban character of Farleigh and West Town.²⁷

NSC say that a key point, noted by the 2000 Inspector and agreed by Mr Cooper, is that viewed from the footpath at the northern end of the site, ribbon development along Church Lane is either not perceived or is only seen in part.²⁸

65. The whole of the appeal site has remained free of development notwithstanding persistent pressure for its development since the mid-1980s. Mr Cooper ascribes its remaining intact to an *historical accident*²⁹. That, in NSC's view, is factually incorrect and it says may be due to him not being fully informed of the factual matrix within which his evidence was set; NSC maintains that it is the result of

²⁵ CD1.26 para 5.5

²⁶ CD8.1 para 119

²⁷ In NSC's view, whilst it is still possible to identify the older parts of the latter two hamlets, their historic character has been submerged by modern development.

²⁸ CD8.1 para 119 and Mr Cooper in cross examination indicated that about eight dwellings could be seen at first floor or roof level only, and that the eye is drawn to the church

²⁹ CD14.4, para 2.3

the consistent application of policy and development management, which has resulted in development being resisted for the reason, amongst other things, that it would harm the character of Backwell.³⁰

66. NSC considers that the countryside between Church Town and West Town / Farleigh is well used by the public, and is crossed by the two public rights of way. However, from NSC's perspective, the evidence to the inquiry was that the public wander freely across the whole of the site except for the two fields that are proposed for development and it considers that there was no evidence that they are, or have been, prevented from doing so. On that basis NSC maintains that the area actually operates as public open space.
67. Footpath ref. LA2/6/10 runs about 25 metres to the east of the western area of proposed housing and, in NSC's view, whether moving north or south it remains close at hand and clearly in view along most of its length. A substantial length of footpath ref. LA2/4/20 runs immediately to the south of the eastern site. The actual line of the footpath and that which is designated provide, in NSC's opinion, sustained and clear views across the eastern site. Consequently, NSC considers that the development sites operate as 'stand-offs', which keeps Farleigh and West Town at a distance and that maintain the rural quality of the footpaths and the strong sense of walking through relatively tranquil countryside.
68. According to NSC the importance of the site for recreation is clearly conveyed by the plan of the Backwell Round³¹; it is, NSC say, the hub of a series of circular walks around the village and the surrounding countryside and that function is a key component of character, and provides an opportunity to appreciate the characteristics of the surrounding area.
69. NSC sees the survival of this 'extensive area of highly accessible countryside within a village but outside its settlement boundary' as highly unusual³² and a distinctive feature of Backwell, which is 'cherished by local people', who have communicated their aspiration to keep it open through the NP, representations on the eSAP and some 953 representations on the planning application.

The effect of the appeal proposals

70. The development of the east and west parcels would, in NSC's opinion, detract from the character and distinctiveness of Backwell by:
 - 1) Eroding the distinctive rural setting of Church Town.
 - 2) Harming the character / enjoyment of the rights of way / public open space.
 - 3) Frustrating the community's aspiration that the whole site should be designated as LGS, and harming the character of the alternative which NSC proposes to allocate through the SAP.

'Erosion of the distinctive rural setting of Church Town'

71. NSC also state that Mr Cooper accepted that houses up to 2.5 storeys in height

³⁰ NSC refers to decision notices in respect of applications 1016/84, 2116/85 and the 2000 Appeal decision paras 118-126 and 162 in support of this point - CD18.17 and CD8.1 respectively

³¹ CD5.11, p.5

³² NSC added that Mr Cooper could not think of another example and the example of Winscombe produced by the appellant's planning witness, Mr Hutchinson, is its view quite different as it is 'plainly much small' (entirely filled by 175 dwellings), it sits within the settlement boundary and its development is 'supported by local people' (it is allocated in the eSAP).

would be seen to rise up the hill from around 28m AOD adjacent to Farleigh Road up to a height of 37m AOD at the southern end of the western site. Whether viewed from St Andrew's Church, the entrance to the site from Farleigh Road or footpath ref LA2/6/10, the development of the western parcel would be perceived to virtually link West Town with Church Town, in NSC's opinion, and Church Town's distinct and separate historic character would be substantially eroded in conflict with the objects of DM10 and DM32, and consequently CS5 and CS12.

The character and enjoyment of the public rights of way and public open space

72. NSC also state that Mr Cooper agreed that those houses which would sit next to footpath ref. LA2/6/10 would stand up to 2.5 storeys in height.³³ Those houses would in NSC's view be a stone's throw away and highly visible. The journey between Farleigh / West Town and Church Town would, in NSC's opinion, cease to be a walk through open countryside but rather a walk next to houses, thereby destroying any sense of solitude, and would be likely to erode tranquillity.
73. According to NSC that 'loss' would be reinforced by these aspects of the scheme:
- (1) The road / footpath that links the east and west parcels is likely to require a retaining wall or similar structure, would sever the path and would appear as an entirely incongruous, urbanising feature, which would introduce all kinds of vehicular traffic across the path of walkers enjoying the countryside³⁴.
 - (2) The road / footpath would also have to be lit and it is doubtful whether very low intensity lighting would be fit for purpose if the residents are to walk to local schools and other facilities.
 - (3) The footpath itself would be hard surfaced and that would further urbanise the walk through countryside.
74. NSC considers that the development of the eastern site would have a similar impact on the basis that it would bring housing up the slope south to within a short distance of the footpath that people actually use and they would look down into 2-2.5 storey houses, which would fill the foreground along at least half of the length of footpath ref LA2/4/20.
75. The cumulative impact of both schemes must be considered in NSC's view. The diminished experience of footpath users heading south along footpath ref LA2/6/10 would, it says, be compounded by the development of the eastern site if they turn east along footpath ref LA2/4/20 to enjoy a circular walk, and walks in other directions along the Backwell round would be similarly affected.
76. In short, the rural, tranquil and open character of the rights of way and the public open space would be substantially diminished in the opinion of NSC and would also constitute a clear conflict with CS5, CS12, DM10, DM32 and DM25 and Framework para 75. NSC also considers it untenable to argue that the severance of footpath ref LA2/6/10 would not harm its enjoyment and amenity.

'Frustrating' the site's designation as LGS / 'harm' to future LGS

77. The local community aspires to secure the allocation of the whole site as LGS and NSC agrees that at least part of the site should be designated as such. That

³³ See CD1.8

³⁴ NSC added that Mr Cooper's submission that the land could be graded to avoid the need for retaining structures is inconsistent with the topographical drawings in the Flood Risk Assessment (CD1.23) and CD18.5a

question of how much land ought to be designated remains to be resolved via the eSAP. That LGS will be designated appears, in NSC's view, to be highly probable.

78. It also states that the appellant asserted repeatedly that NSC concluded the site ought to be designated as LGS solely because of its beauty, yet that is not so - Schedule 4 of the eSAP describes the proposed allocation as followings:

'Two fields meeting in a T shape near St Andrew's Church. Pasture, but considered to exceptionally warrant LGS designation because of their particular importance in terms of the setting of the Grade 1 listed St Andrew's Church, being high lying, prominent and visible from a significant distance to the south. They are also crossed by public rights of way, which lead towards and afford views of the church.'³⁵

79. NSC considers that the site also complies with other relevant criteria specified by the Framework³⁶ - it is closely proximate to the community it serves, and demonstrably holds a particular local significance.
80. The grant of planning permission would prevent allocation of the whole site as LGS. Alternatively, for the reasons set out above it would, in the opinion of NSC, harm the function of the land that it proposes to allocate as LGS, thereby detracting from amenity value, and that would frustrate a legitimate community aspiration, thus giving rise to further conflict with Policy DM32.

Issue 3 - Five year and three year housing land supply

Five year supply

81. NSC maintains that the appellant contention that NSC should not advance the case it has a five year supply because it has recently adopted a different position is wholly without merit. NSC expressly reserved its position on the five year supply at the Bleadon Hill and Oldmixon Road appeals³⁷ - in each case the principal issue was landscape impact, while recent development management decisions merely report NSC's tested supply, rather than the untested evidence advanced at this inquiry. That is both sensible and reasonable in its view.
82. However, there can be no doubt that the question of whether NSC can demonstrate a five years supply is a live issue. That is recognised by the eSAP Examining Inspector, who identified the tension between the views expressed by the Inspector who examined Policy CS13 and the other remitted policies of the Core Strategy, and the Sandford and Banwell appeal Inspectors³⁸. In short, NSC sees that there was 'bound to come a day' when five year housing land supply would have to be dealt with, and at this stage it is key given the WMS.

Whether NSC is an authority which has persistently under-delivered housing

83. NSC concedes that if it is concluded that there is a record of persistent under delivery it cannot demonstrate a five year housing land supply and adds that whether a record of delivery discloses persistent under delivery requires a conclusion to be drawn on two matters:
- 1) The period over which delivery is to be measured.

³⁵ CD5.7, pp64

³⁶ Para 77

³⁷ CD8.8 and INSP.6

³⁸ CD8.2 and CD8.3

- 2) The appropriate benchmark (the requirement).
84. In October 2016 the Banwell appeal Inspector concluded that the relevant period was 2006 to 2016 and that the relevant requirement was that specified in CS13³⁹. On that basis he found a 20% buffer ought to be applied. In November 2016 the Inspector examining the remitted Core Strategy policies expressed a contrary opinion. He had regard to the whole economic cycle - 1996/97 to 2015/16 - and measured against the benchmark of the fluctuating requirements which NSC had to plan for over that same period, which led him to decide that a 5% buffer was more appropriate. NSC considers that invites that examining Inspector's approach should be adopted in this case, and adds that it accords with that commended by the Local Plans Expert Group (the LPEG) and the timescale adopted by that Inspector also reflects National Planning Practice Guidance (the NPPG) at ID3-035.
85. NSC state that the appellant's housing witness, Mr Tiley, agreed that annual average delivery rates are 'simply abstract statistics'; they do not bear any resemblance to reality, which is characterised by 'lumpy' delivery, which reflects periods of 'feast and famine'. On that basis, NSC says, he accepted it is appropriate to measure delivery by reference to the total number of houses delivered compared with the requirement over the relevant reference period. It adds, there then followed a number of calculations, which can be summarised:
- 1) If one adopts the period 1996/97 to 2015/16 and applies the requirement specified by the development plan that was in force over that period (including a requirement for 1,049 dpa in 2013/14 and 2014/15), delivery just exceeds 86% of the target. That would not trigger a 20% buffer under the proposals contained in the White Paper.
 - 2) If the same period is adopted, and the number of years in which supply matched or exceeded any requirement that was in force at the time, NSC under-delivered in 11 out of 18 years, equating to a 61% delivery rate compared with the 65% threshold suggested by the LPEG.
 - 3) If a 10 year period is adopted whether by reference to the Core Strategy requirement or otherwise, NSC conceded that the picture is one of persistent under delivery.
86. NSC advances the approach of the remitted Core Strategy policies examining Inspector pending a full and rounded review of this topic via the eSAP process.

Housing Land Supply assuming a 20% buffer

87. NSC says that it is necessary to consider this issue in the light of the WMS.

Matters of principle

88. NSC adds:
- (1) *Lead in times*: Mr Tiley accepted that the use of median lead in times obscures the fact that in reality the speed with which a site can be brought forward depends on a range of factors (size, brownfield/ greenfield etc). Consequently, his median delivery time for all sites is not terribly useful. He appeared to accept that a balanced judgment needs to be taken on a site by site

³⁹ CD8.3 para 30

basis, having regard to its particular characteristics and common sense professional judgments.⁴⁰

(2) *Lapse rates*: Mr Tiley accepted a lapse rate should be expressed as the number of dwellings permitted by a stock of planning permissions granted over a certain period which are not subsequently commenced in accordance with s91 or s92 of the Act, expressed as a percentage of the total number of all dwellings granted by all planning permissions for dwellings over that period.

He accepted that his assessment of lapse rates was not compiled on this basis. His approach of taking the number of extant permissions in a particular year and assuming the sum of those which lapse over the following three years can be used to calculate a lapse rate is plainly wrong. It would be rare for a permission to lapse in years 1 or 2, and his base stock will include permissions which have been implemented. In short, NSC sees the statistic he produces as meaningless.

NSC accepted that Ms Richards' assessment is 'infected by a similar defect'. The Inspector examining the remitted Core Strategy policies was not persuaded by either approach.⁴¹ Therefore, the 'standard' 10% lapse rate which Mr Tiley acknowledged tends to be the default statistic absent reliable evidence on the point should be adopted, although it is noted that the Banwell appeal Inspector adopted a 9% lapse rate and rejected the 'assertion' it should be set at 24%.⁴²

(3) *Draft allocations*: the Wainhomes judgment⁴³ and the NPPG ID3-031 indicate a local planning authority may rely on draft allocations provided they are supported by robust evidence of deliverability. The Banwell appeal Inspector was satisfied that those relied on by NSC satisfy that criterion, and that its research of their deliverability meant certain objections made could safely be set aside⁴⁴. NSC invited me to adopt the same approach in the light of NSC's housing witness, Ms Richards', knowledge and the 'advanced' stage of the eSAP.

(4) *Unimplemented local plan allocations*: NSC has reviewed the deliverability of sites it intends to carry forward into the SAP and considers as a matter of principle such sites should be counted towards the supply, consistent with the Banwell appeal decision⁴⁵ and the NPPG.⁴⁶

(5) *Empty homes*: while the potential contribution of empty homes was discounted by the Banwell appeal Inspector for want of substantial evidence, NSC considers that that shortcoming has been remedied and that its housing witness Ms Richards was not seriously challenged on the point.

(6) *Rural buildings*: Banwell appeal Inspector recognised that whilst supply from this source is finite it is not unrealistic to expect this category to continue to contribute to supply⁴⁷ and nothing has changed such that this category towards the overall supply.

(7) *Base date*: While the appellant is content to remove sites from the supply since 1 April 2016 it resists additions. NSC considers that this must be wrong in

⁴⁰ That was, in NSC's view, certainly the approach taken by Mr Tiley and Mrs Richards at the 'round table' session

⁴¹ CD5.5, para 19

⁴² CD8.3, para 41

⁴³ Wainhomes (South West) Holdings Ltd v Secretary of State for Communities and Local Government, Neutral Citation: [2013] EWHC 597 (Admin)

⁴⁴ CD8.3 para 40

⁴⁵ CD8.3 para 42

⁴⁶ ID3-030

⁴⁷ CD8.3, para 43

principle and Ms Richards' approach is to make balanced changes, so that the supply includes sites that have come forward since the base date. It says that this approach is justified and preferred to that of the appellant for three reasons:

- (a) The base date was nearly 11 months old at the time of the Inquiry. A practical, common sense approach dictates use of the most up-to-date information to calibrate the baseline. The data has its limitations. However, housing land supply calculations are inevitably imprecise. That does not matter provided their output is meaningful.
- (b) Ms Richards' oral evidence was that a similar approach was adopted in the Sandford and Banwell appeal decisions and NSC sees that there is no good reason for taking a different approach in this case.
- (c) NPPG ID3-041 to 043 show that one does not have to 'slavishly' tick off every source of supply.

Matters of detail

89. The main areas of dispute, in NSC's view, concern the deliverability and trajectory of large sites and the trajectory of strategic sites. The differences between the parties were narrowed during the round table session. The parties' experts have made a final response in respect of various outstanding matters. NSC asks the following are taken into account in coming to a view on this matter:

- (1) The Banwell appeal Inspector adjudicated on this issue less than 6 months ago and he made a full and carefully reasoned decision, having been presented with comprehensive evidence, which was tested through cross-examination.
- (2) He concluded that housing land supply stood at about a 4.2 year supply based on essentially the same information - he is unlikely to have got his assessment very wrong in NSC's view.
- (3) Since then the eSAP has advanced, strategic sites have progressed and planning permissions have been granted - the direction of travel, it says, is up.
- (4) In the circumstances, NSC says it would be surprising if supply were to fall below 4 years, and unsurprising if it were to be maintained or increased.

90. In that context, Ms Richards concludes that if a 20% buffer is applied supply stands at around 4.4 years, which is consistent with the Banwell appeal decision. NSC considers that it is 'probably about right'.

The consequence of the assessment of Housing Land Supply

91. If a 20% buffer is applied, or the supply is judged to fall below five years for other reasons, NSC's case is that the WMS is engaged and that full weight should be attached to the NP, as follows:

- (1) The WMS is less than two years old;
- (2) The NP allocates sites for housing:
 - (a) Page 12 sets out a plan entitled "Development Sites A to E";
 - (b) Sites A to E are identified by para 8.9 as "sites where residential development and in the case of Sites A and B, residential and employment development, is supported";
 - (c) The proposals map at p.21 repeats those allocations, a "potential

development site” is a perfectly good description of an allocation, it indicates clearly what kind of development will be permitted on each site; and

(d) The appellant’s contrary argument is ‘based on the misconception’ that the absence of an *allocations policy* means there are no allocations. NSC says that is wrong because:

- (i) If a plan makes allocations an *allocations policy* (which sets out criteria for making allocations) is unnecessary; and
- (ii) If a “schedule” or list which identifies allocated sites is required, then one refers to para 8.9.

(3) NSC contends that it can demonstrate a three year supply of sites:

- (a) It is submitted that this criterion simply means a three year supply calculated as part of the annual five year assessment;
- (b) That would be consistent with the object of giving effect to housing proposals contained in neighbourhood plans “unless there is significant lack of land in the wider authority area” (i.e. less than three years based on the standard five year assessment);
- (c) The appellant’s alternative approach would make it less likely that the NP would have effect and that runs contrary to the policy of the WMS in NSC’s view. It should also be noted that Aylesbury Vale DC has not adopted that approach as first claimed by the appellant’s housing witness; and
- (d) NSC’s approach is consistent with the White Paper, which indicates that the Government proposes to allow local authorities to assess the state of their five year supply each year, but makes no proposal for a separate calculation of the three year supply (even though it affirms the policy of the WMS).

92. The result is that the provisions of NP Policy Development 1 should be given full weight and, as noted above, it should be read consistently with Core Strategy Policy CS32, in the view of NSC.

Other material considerations

93. NSC notes that the primary benefits of this scheme comprise the provision of market and affordable housing. Subject to the caveats that there is no evidence of a particular need for affordable housing in Backwell and that these homes are better located in more sustainable high order settlements, NSC accepts each benefit ought to be accorded substantial weight.

94. NSC comments on the other benefits claimed by the appellant⁴⁸ as follows:

- (1) There is no substantial evidence that the development would inject substantial expenditure into the local economy, therefore, this carries limited weight;
- (2) There is no evidence that the scheme would create construction jobs in the local area, therefore, this carries limited weight;
- (3) The provision of homes for economically active people and younger families is an aspect of the provision of market and affordable housing and should be

⁴⁸ CD14.1, para 8.47

discounted;

(4) The provision of public open space and green infrastructure does no more than formalise what exists and which will be guaranteed by the designation of LGS, and therefore carries limited weight;

(5) The 'enhancement' of public rights of way is not a benefit at all as their hard surfacing would harm the character of the site; and

(6) The appeal site is said to be deliverable yet there appears to be an issue regarding the deliverability of the access, which puts a question mark against the scheme.

The overall planning balance

95. The balance to be struck, in NSC's view, is essentially whether the provision of up to 220 market and affordable houses on the site outweighs the scheme's 'admitted' conflict with the development plan's locational strategy for the provision of housing, the harm it would cause to the character and setting of Backwell and development plan policies for the protection of the environment.

The starting point

96. For the reasons that have been given, NSC considers that the scheme conflicts with Core Strategy Policies CS14, CS32, CS5 and CS12, DMPP Pt1 Policies DM10, DM25 and DM32 and NP Policy Development 1; and in accordance with s38(6) of the Act planning permission should be refused unless other material considerations indicate otherwise.

97. Furthermore, NSC maintains that that conflict with the development plan rebuts the presumption in favour of sustainable development with reference to *East Staffordshire DC v SSCLG and Barwood Strategic Land* [2016] EWHC 2973 (Admin) at paras 30 and 31. NSC adds that, whilst there exists a residual discretion to allow the appeal, that should only be exercised, if, in the circumstances of this case, the benefits of granting planning permission are considered to be exceptional.

98. More particularly, in NSC's view, in accordance with Framework para 17(1) and the WMS, local people who have invested substantial time and resources in preparing the Core Strategy, DMPP Pt1 and the NP are entitled to expect that the policies of each will be given effect, so that they act as a predictable and efficient framework for decision making.

99. If it is concluded that NSC cannot demonstrate a five year housing land supply the policies of the Core Strategy and the DMPP Pt1 (with the exception of DM25) will be deemed to be out of date. Nonetheless, they should continue to attract substantial weight in the opinion of NSC; each has been found to comply with the Framework within the last 12 months and they are a flexible suite of policies that balance the need for new homes with the need to protect the environment.

100. In any event, NSC considers that NP Development Policy 1 indicates clearly that this scheme should be rejected: there can be no serious room for doubt that it will harm the character and setting of the village. That policy objection continues to attract full weight in NSC's opinion. It also contends that the other material considerations that are 'prayed in aid' by the appellant do not tip the balance in its favour.

101. NSC considers that if this site is to come forward then in accordance with Core Strategy Policy CS32 it should be advanced through the SAP process; that would allow a sensible judgment to be made about its relative merits compared with the plethora of other sites which have been identified in the village⁴⁹. NSC adds that this is particularly important in view of the special importance local people attach to maintaining the site as open countryside, and its and Secretary of State's consistent findings that development would harm Backwell's character. Additionally, NSC considers the loss of best and most versatile farmland (BMV) land also weighs against the scheme.
102. For these reasons, NSC respectfully invites me to recommend to the Secretary of State that the appeal should be dismissed.

The Case for Backwell Parish Council

Approach

103. If the proposals are found to comply with the provisions of the development plan, then permission should be granted. However, in BPC's view it is obvious that is not the case; the proposals fail to comply at least with Core Strategy Policy CS32 and NP policies development 1 and 4 so there is no presumption in favour of the development. Indeed BPC considers that the proposals fail to comply with the development plan in a number of respects, as follows.
104. The Framework is clear that it does not change the statutory status of the development plan as the starting point for decision-making. It also has as its first core principle that planning should be genuinely plan-led, empowering local people to shape their surroundings, with succinct local and neighbourhood plans setting out a positive vision for the future of the area. BPC considers the appeal proposal to be contrary to that vision.
105. BPC considers that it is important that the statutory presumption is applied properly; in particular, because certain policies may be out-of-date does not mean that the breach of the development plan becomes a technical or trivial one. Such breaches, being the breach of the policies and vision put in place to secure sustainable development appropriate to the particular needs and characteristics of the plan area, remain potentially very significant and weighty matters. The Framework does not advocate that if policies are out of date then its para 14 stands alone as providing the decision-making framework; rather, in BPC's view, the Framework emphasises that the presumption in favour of the plan remains the proper starting point.
106. Consequently, in any weighing exercise under s38(6) or under Framework para 14 proper consideration and weight must be given to the breaches of the plan on the negative side of the balance, as is made very clear in, for example, the NPPG ref 41-083 which guides the approach to breaches of a neighbourhood plan where there is not a five year housing land supply: 'In this situation, when assessing the adverse impacts of the proposal against the policies in the Framework as a whole, decision-makers should include within their assessment those policies in the Framework that deal with neighbourhood planning. This includes paras 183-185 of the Framework; and para 198 which states that where a planning application conflicts with a neighbourhood plan that has been brought

⁴⁹ See CD5.10

into force, planning permission should not normally be granted'.

107. This was also addressed in the East Staffs judgment⁵⁰, in the opinion of BPC, by means of a series of decision-making steps. The Court confirmed that the starting point remains the presumption in favour of the development plan (para 21). Where proposals are inconsistent with the plan Framework para 14 may be a material consideration that would justify departing from the development plan (para 22), yet this does not change the presumption that proposals inconsistent with the plan should not be approved (para 22). Paras 35 to 40 emphasise the relationship between the development plan and sustainable development. Framework para 14 uses the development plan as a pivot (para 30), such that the para 14 exercise allows for the breaches of the development plan to be weighed in the balance. Accordingly, in BPC's view, the Framework para 14 balance is not to be carried out without regard to the development plan; that would be to displace the presumption in favour of the plan.
108. Framework paras 14 and 49 do not make 'out-of-date' policies for the supply of housing irrelevant in the determination of the application, nor prescribe the appropriate weight. Those policies and that legal presumption continue to apply. It is, therefore, 'clear' to BPC that the breaches of the plan weigh against the proposal within the para 14 balances, and that the presumption against such development continues to apply. The weight to be given to the policies and their breach is a matter for the decision-maker. This is likely to be less than the full weight that an up-to-date plan would attract, but it may still be significant and will vary according to the circumstances, including, for example:
- (i) The extent to which relevant policies fall short of providing for the five year supply of housing land; and
 - (ii) The action being taken by the local authority to address it.
109. BPC submits that there is a clear public interest in applying the policies as a coherent expression of what is sustainable development.

Housing Land Supply

110. NSC maintains it can demonstrate five years' and certainly three years' supply for the purposes of this appeal, and BPC accepts that.

Action being taken

111. BPC considers that the eSAP will help to deliver the key policies set out in the Core Strategy, which include the housing needed within North Somerset, and that it is well-advanced as it has been submitted examination. NSC considers the eSAP to be sound. While there are objections to it and these will be tested, recent supply has increased and BPC finds it hard to see what else NSC could do to deliver housing.

Countryside and the character and identity of the village

112. BPC considers that the policies in issue are all consistent with core principles and policies of the Framework, para 17(5), regarding countryside, confirm that planning must take account of the different roles and character of different areas, and also that they should recognise the intrinsic character and beauty of the

⁵⁰ CD8.7

countryside. Whilst BPC acknowledges that this is not the same as protecting it for its own sake, it considers it to be it is a protective principle; the positive attributes of the countryside should be protected. The role and character of different areas, in BPC's view, includes the role and character of countryside in providing the rural setting for villages, and maintaining the settlement pattern. The 'intrinsic character and beauty' of the countryside is that which gives the countryside its essential and true characteristics, which BPC considers are its openness, agricultural use, and rural character and appearance, which are exhibited at the site.

113. The development plan clearly defines its policies in the view of BPC:

1) Core Strategy Policies CS12, CS14 and CS32 are broadly consistent with the Framework, and the appeal site is open, undeveloped, rural and agricultural land exhibiting precisely the intrinsic character and beauty that are recognised in the Framework. Thus the application of these Policies to the site is consistent with the Framework; and

2) DMPP Pt1 Policy DM10 seeks to protect and enhance the quality and distinctive qualities of the landscape, and in particular proposals should be carefully integrated into the natural environment and reflect the identity of local surroundings, whilst minimising landscape impact. Policy DM25 seeks to protect and enhance the existing public rights of way network and Policy DM32 seeks to ensure high quality design of buildings. These policies are entirely consistent with the Framework.

114. BPC also maintains that the Backwell Settlement Boundary is consistent with the plan which NSC considers sound to meet its development needs, and forms the basis of the application of its policy, such that NSC must consider that boundary to be consistent with national policies, including to meet its full, objectively assessed needs for housing in balance with recognising the intrinsic character and beauty of the countryside.

Backwell Neighbourhood Plan

115. BPC maintains that the NP must be read as a whole, and that it is framed explicitly to identify relevant issues and objectives, as well as provide the policies for ensuring the protection of identified positive contributors to village character and the needs/aspirations of the community. Policy Development 1 explains that housing development in Backwell which is at a level appropriate to the size and character of the settlement will be supported, while Policy Development 4 explains that significant development of agricultural land that has been demonstrated to be necessary should also demonstrate that it prioritises the use of poorer quality agricultural land over the use of higher quality agricultural land.

116. The NP Examiner was made aware and was presented with evidence that there would be a need for increased number of dwellings to be delivered in the district, but he confirmed that it satisfied the relevant tests and recommended that the NP could be made without the need to identify higher levels of development. The NP is entirely consistent with the Framework and up-to-date in relation to these policies and their purposes. Therefore, BPC considers that any concerns are with the delivery of housing supply at a district level.

Character and appearance

117. In order to assess the effect that the scheme will have on the character and appearance of the area, BPC considers that it is necessary to understand and identify the role and function that the site serves in combination with the quality and contribution of the site in landscape terms. There is no dispute that the development will create some harm. BPC says that it would be significant, especially when considered at a local level. Indeed it is accepted in the evidence of the appellant's landscape witness, Mr Cooper, that taken from viewpoint 1, on the north-west public footway entrance to the site, there would be direct views of the new housing and also of the new link road that will dissect the fields. Those effects are considered to be 'adverse and important' but it is suggested that these will reduce to moderate importance/important 15 years after planting.
118. While it may not be at the centre of the village, the site has been described by BPC and the local residents as being the 'treasure in the heart of the village' and as a 'rural oasis', and it 'undoubtedly provides a rural setting that positively contributes to and enhances the character and identity of the village'. The scheme's effect on the character of Backwell would, according to BPC, be felt not only in the way the community operates and perceives itself but also the visual impact. It also says that the evidence from the local residents is that Farleigh Fields are regarded and have been used extensively without challenge, as open space for recreational purposes as well as being used as part of the public right of way the route which forms part of the Backwell Round.
119. BPC considers that the visual impression upon entering Farleigh Fields from Farleigh Road is one of passing from and away from the busy road into open countryside; an impression which remains until the higher ground is reached. Along with the sense of being in the countryside, there is also the sense of tranquillity. The peace and tranquillity afforded to the fields by residents and the value that they place upon this countryside and their relationship with it was well documented, in the view of BPC, during the course of the inquiry by the residents. Once the role of the site is taken into account, the proposal's impacts can be established; the fields and their surrounds are clearly sensitive to residential development as a result of its particular role as village setting, and this is precisely the role that BPC considers that the NP seeks to protect.
120. The value of objective assessments is that it can help place the site in context by reference to the role it plays in relation to the settlement and the countryside, and the extent to which in visual and landscape terms it is characteristic of the wider countryside. BPC says that the valued character of this setting, and which is characteristic, is encapsulated in the NP, and that once the proper role and character of the site is understood, then the impacts of its development are seen as unacceptable.
121. However, BPC considers that the assessment undertaken in the LVIA⁵¹ fails to recognise that proper role, character and function of the site - while it emphasised the quality of the landscape, the magnitude of that change was then not addressed before the conclusion reached that the significance of the effect of appeal development on the site was considered to be low/insignificant. In BPC's opinion the assessment fails 'a common-sense test', and it is clear that the initial

⁵¹ CD11.2

assessment of role/sensitivity and then magnitude has gone awry; the issue concerns a failure to identify the rural character of the site, its openness and the value of the fields both in landscape terms but also in terms of its function. The significance and degree of the change that would occur would, in BPC's view, fundamentally change the character of the site and how it is used.

122. There would also be visual and perceptual effects, and BPC considers that there will be significant harm in landscape and visual terms experienced at close proximity to the site. The experience of the use currently afforded by the many frequent users of the public rights of way will invariably deteriorate, and the site would no longer display qualities of calm and tranquillity, of being an oasis and bringing a sense of calm.
123. The site and the surrounds would, in BPC's opinion, be more sensitive to any change because of the way the fields are used by the public engaged in recreation. The site forms part of the definitive footpath network and the public have regularly deviated from those paths without challenge. BPC says that there is no suggestion that this current use is likely to be brought to an end, and 'as seen on site' there are views of it from public and private viewpoints overlooking the proposed development.
124. In BPC's view the proposals seek to introduce an inappropriate scale and type of development on the site which would result in inappropriate and harmful urbanising effects. Whilst assessed simply as landscape character impacts the effect is considered by the appellant to be of borderline or minimal significance, when considered in the context of the identity of the village, as should have happened, the impacts are significant in the opinion of BPC, and it adds that these issues must be judged to reflect the role of the site in contributing to the character and identity of the village of Backwell.
125. BPC seeks to have Farleigh Fields designated as LGS, as it sees them as meeting the necessary criteria in full: they are in reasonably close proximity to the community they serve; they are demonstrably special to the local community and hold particular local significance; are local in character; and do not amount to an extensive tract of land. NSC supports BPC's aims, albeit it does not accept that all of the fields should necessarily be designated as LGS. If Farleigh Fields were designated as LGS, this would afford the land 'special protection'. BPS says that a key concept of LGS is that the land is demonstrably special and thus can only remain the case if there is sufficient surrounding undeveloped and open land to create this special nature, in terms of beauty, tranquillity and affording a haven for wildlife. However, it is proposed to construct an access way, Sustainable Drainage System (SuDS) infrastructure, a play area and associated infrastructure works over the land that would be LGS, in conflict with that designation and the field would effectively amount to no more than a green corridor in the view of BPC. It firmly of the view, therefore, that there is a direct conflict with the aims of such designation and the proposed use of the fields in the manner proposed.
126. BPC considers that the construction of those works and elevated access way would be inconsistent with the proposed LGS status, dominate the landscape and create visual and perceptual harm, be out of keeping with the rural feel and peaceful nature currently afforded by the land and create a possible safety hazard and conflict between users of the right of way and the access way. The that public footpath would be dissected in the normal meaning of the word and

this would in itself amount to a harmful impact on it as a right of way contrary to Framework para 75 and DMPP Pt1 Policy DM25 which seek to protect and enhance footpaths. Whilst improved accessibility may occur if the footpath were to be resurfaced, the visual impact that would result would in the opinion of BPC conflict with its rural feel and amount to an urbanising impact.

127. When properly assessed and placed alongside the policies that have been considered above, BPC considers that the appeal proposal:

- 1) Fails to take proper account of the role and character of the site within its landscape context, and fail to recognise the intrinsic character and beauty of the countryside in the terms of Framework para 17(5);
- 2) Breaches NP Policy Development 1 as it is too large in this location to be considered of a level commensurate with the size and character of the settlement, which is to be read alongside Core Strategy Policy CS32;
- 3) Conflicts with Policy CS32 in relation to Service Villages requires that 'sites outside the Settlement Boundaries in excess of about 25 dwellings must be brought forward as allocations through Local Plans or Neighbourhood Plans';
- 4) Is additional to the NP's planned development of around 100 dwellings by 2026. While that is not a cap, BPC says that 320 new dwellings would represent a significant and substantial increase over the 1,680 existing dwellings in Backwell main village. This scheme, if permitted, would be the largest development for over 50 years. There is thus, in the view of BPC, a direct conflict with Policy CS32 that envisages only 'small scale development' in Backwell, 'proposals for small scale development appropriate to the size and character of the village which respects the character of the village and supports or enhances the village's role as a local hub for community facilities and services, employment and affordable housing, including public transport will be supported'; and
- 5) Is neither small in scale nor appropriate when considered in the context of the character of the village.

Loss of best and most versatile agricultural land

128. The site falls into the category of BMV. Framework para 112 and NP Policy Development 4 seek to encourage the prioritisation of poorer quality agricultural land over the use of higher quality. This scheme fails to comply with this aims in BPC's view. The appellant suggests that around 12ha of the land would remain capable of reverting to agricultural use, and while BPC accepted during the Inquiry that the land not proposed for housing would not be sterilised, it would be unlikely that it would revert to an active agricultural use and as such BPC considers that the site would cease to remain in active agricultural use.

Infrastructure and Services

129. DMPP Pt1 Policy DM70 seeks to allow development where the necessary infrastructure to support it is in place or can be provided in a timely manner through developer funded contributions. BPC says that the position in relation to education is that the appellant accepts existing infrastructure is inadequate and so proposes 'necessary' planning obligations, and the issue that arises is whether that infrastructure would be provided in a timely manner.

Education

130. BPC submits that the appellant has not provided and neither was it required of the appellant to produce evidence in support of the delivery of educational infrastructure, indeed:

(a) There are no identified plans for the provision of any permanent new school or infrastructure within Backwell; and

(b) Consequently village children are unlikely to be able to be educated in the village, at least during the short to medium term while the infrastructure is provided to cope with the development. There are already examples of schools being oversubscribed in this way and concerns raised by interested parties.

131. BPC does not consider that the appellant has provided any evidence as to what expansion works, if any, have been identified, when these may take place, or how much they may cost, and this was not requested by any party. However, in the view of BPC the justification for the education contribution is silent on what expansion works will be undertaken, when or at what cost and the planning obligations do not identify the particular capital project and no costings of a project have been provided. BPC says it cannot have any confidence or certainty that the education funds will be spent within the parish of Backwell as the S106 Agreement simply requires the money to be spent within the vicinity of the site, which could fall outside the Parish.

132. It is not sufficient in BPC's opinion to say that a contribution is made; the school is full or near to capacity and permitting further development would mean that children cannot be educated in the village would promote unsustainable transport, and does not promote inclusive communities in the terms of Framework para 69. BPC sees this as the developers simply paying funds based on a standard formula, with no evidence having been provided to indicate that the impacts of the development would be mitigated, or that additional capacity sufficient to meet the needs of the community is likely to be provided.

Highway concerns

133. Access to developments must be safe in the terms of Framework para 32. BPC considers that the issue in this case is the intensification in the use of the A370 and the dangerous levels of congestion experienced in Station Road combined with the cumulative impacts that would stem from the appeal development and other development sites. Whilst appreciating that the impact on the highways may not be considered to be 'severe' and thus was not considered to warrant a reason for refusal, the impact on the highway, in BPC's view, would be considerable and sufficient to create additional pressures / stresses on the network and the rat runs with the consequential concerns / frustrations that would follow.

134. The NP recognises that the delivery of infrastructure improvements at Backwell crossroads is extremely challenging and that increasing its capacity could have adverse traffic generation impacts and other adverse consequences. Accordingly BPC considers that there is potential for conflict between users of the highway and safety concerns.

135. In BPC's opinion, the local evidence shows that typically there are significant queues at peak morning and evening times and any increased flow of traffic from

the site would increase these queues adding to the frustration experienced by the road users. Backwell has very little employment so the majority of any new residents would have to out-commute. BPC's view is that the experience of existing residents and human nature is such that irrespective of any Travel Plan, the majority would use private cars, despite the apparent availability of public transport, thereby adding to the existing traffic congestion.

136. The junction at the village cross-roads is equipped with a system that is responsive to traffic conditions and optimises the flow of traffic at the junction, such that BPC sees no further improvements to traffic flow being possible to that junction. The appellant's short-term modelling to 2019 identifies only short-term effects and overlooks, in the opinion of BPC, the forecast tripling of traffic queues at the cross-roads in the longer term, which would affect Backwell for many years after the planned development would be complete. That tripling effect by 2026 was predicted in a TPA study used to inform the NP before the effect of the appeal proposals, which would only worsen the situation in BPC's view.

Balance and Conclusions

137. BPC has set out what it considers to be the proper approach to the determination of the appeal proposal including that if it is found to accord with the development plan it should be granted permission, but that that is not the case as its policies are breached. It invites the Secretary of State to accord weight to the competing considerations for and against in light of its submissions as summarised above.
138. An issue of particular significance to BPC is the weight to be given to the NP, which it considers is up-to-date and Framework compliant, and that the only issues of weight arise as a result of the application of Framework para 49, and that paras 184, 185 and 198 remain a critical part of the para 14 balancing exercise.
139. BPC considers that the WMS strongly endorses the principle that development that fails to accord with an up to date and made neighbourhood plan should be refused even where the district is unable to identify a five year housing land supply at the district level. It says that the WMS makes clear:
- 1) Where an application conflicts with a neighbourhood plan that has been brought into force, planning permission should not normally be granted; and
 - 2) Building on proposals to further strengthen neighbourhood planning through the Neighbourhood Planning Bill, the Government makes clear that where communities plan for housing in their area in a neighbourhood plan, those plans should not be deemed out of date unless there is a significant lack of and supply for housing in the wider local authority area.
140. BPC says that the WMS contains an operative part which disapplies Framework para 49 where three considerations are met, the first of which is met as the WMS is less than two years old. The second requires the NP to allocate sites for development, and BPC considers that it has clearly demonstrated that there were two separate and distinct processes in the consideration of NP development sites.
141. BPC refers to NP Evidence Base G⁵² and maintains that at G.40 it shows that

⁵² CD5.16

the NP 'identified' sites put forward by 17 developers and that was followed by an objective process as described at G.41 to determine the most appropriate sites to be allocated and 5 sites were proposed at G.59. It also refers to G.60 point 4, which uses the words 'allocate' and 'allocation' but acknowledges that these words are not used in the 'made' plan. While it accepts that there is no policy in the NP that refers to the allocation of sites, BPC considers that it is clear 'on a plain reading of the NP' that five sites, A to E, were allocated as outlined on the plan referred to in para 8.9 of the NP. Furthermore, what was proposed in the NP in terms of those allocated sites is such that all of those have now come forward, albeit at various stages, for development.

142. BPC considers that even if the Secretary of State concludes that the NP does not allocate sites, it is nevertheless up to date and provides for housing in a permissive way that is consistent with meeting greater housing needs; it is not capped. BPC says that on that basis the WMS is consistent with Framework paras 184, 185 and 198 and endorses the giving of significant weight to breaches of the NP, which is also endorsed in the White Paper. BPC maintain that this is at odds with the applicants' submissions that in the circumstances that exist in this district and parish the development plan policies should be given significantly reduced weight as a result of para 49 or for any other reason. It adds that in many cases breaches of the NP are given very substantial and indeed determinative weight against the acknowledged benefits of the provision of market and affordable housing.
143. BPC acknowledge that the White Paper is a material consideration, but considers that there remain a number of stages including consultation before it generates substantive changes to national policy or the law, and the weight given to it must reflect this. It considers that certain themes are apparent:
 - (1) The Government wishes to boost housing supply, consistent with the Framework while the message is to build the right homes in the right places;
 - (2) The plan-led system remains central and there will be increased action to ensure authorities have up to date plans;
 - (3) The role of local communities in planning for their areas is endorsed - provide greater certainty for authorities that have planned for new homes and reduce the scope for local and neighbourhood plans to be undermined by changing the way that land supply for housing is assessed;
 - (4) Infrastructure must be provided at the right time in the right place; and
 - (5) Encouraging housing that meets the needs of the future population.
144. Although in its opinion the weight to be afforded to the White Paper is limited, BPC considers that it confirms the importance given to neighbourhood plans by the WMS and the Framework. In BPC's submission it is entirely consistent with the NP approach. As part of its overall conclusion, BPC states that one of the key aims, as expressed in the NP, at para 4.6, is that 'residents wish to safeguard Backwell for future generations as an attractive place to live with a sustainable village-feel in close proximity to the countryside.'
145. For all of the reasons given above BPC submits that the proposals are contrary to identified policies within the development plan including identified policies within the NP, it would undermine and conflict with the clear vision and aspirations of the local community as properly expressed through an up-to-date

and made neighbourhood plan, and applying the Framework, the NPPG, and the WMS planning permission should be refused.

146. While Framework para 49 may be triggered due to housing land supply at the district level, for the reasons it has identified BPC considers that the development plan policies should still attract significant weight and policies in the eSAP identify the same core purposes as the existing development plan. In the language of the WMS and the Framework, BPC considers that the local community has done exactly what it should and made the NP which provides its vision for the area, and which identifies the right types of development for that community. The shortfall at district level, if any, is not significant in the opinion of BPC and should not in any event frustrate the proper use of neighbourhood plans as a powerful tool in the decision-making process.

147. When the balance is properly addressed BPC considers that it is clear:

- 1) The appeal proposal is contrary to the development plan, including an up to date neighbourhood plan, and the material considerations in support of the proposals put forward by the applicant do not indicate that permission should be granted having regard to section 38(6) of the Act; and
- 2) As a result of those breaches, and the harm caused, it does not amount to sustainable development, but rather when balanced in full, the harm significantly and demonstrably outweigh the benefits.

148. For these reasons, BPC requests that the appeal be dismissed.

The Case for Charles Church Developments Ltd

The Policy Context

149. The appellant considers that the components of the statutory development plan are agreed as set out in the SoCG. Core Strategy Policy CS14 provides the Service Village minimum requirement of 2,100 homes to be delivered during the plan period. This has increased from 805 homes since re-adoption following examination of the remitted policies. The appellant says that the development plan has yet to determine where this requirement will be accommodated amongst the nine Service Villages – an exercise that will require an assessment of their relative sustainability credentials as they are not the same. In its view the context in which Policies CS14 and CS32 were examined was, among other things, the approach to indicative levels appropriate for windfalls at each tier of the settlement hierarchy to increase flexibility⁵³, i.e. about 25 for the Service Villages.

150. The appellant's view is that the minimum requirement for the Service Villages has implications for the existing Settlement Boundaries. Policy CS14 retains the NSRLP Settlement Boundaries as adopted in 2007 '... pending any alterations as part of any future Local Plan or neighbourhood Development Plan...' ⁵⁴. The NSRLP only planned for development up to 2011 and the appellant sees, as a consequence, the Settlement Boundaries as being effectively time expired, not being intended to meet the needs of the adopted Core Strategy and that they will necessarily have to flex to accommodate allocations to address the requirement.

⁵³ CD5.5 paras 35-39 & 68-70

⁵⁴ CD5.3 para 3.199 – also see paras 3.197 & 4.89

151. The appellant accepts that its scheme conflicts with the 'about 25' limitation in Policy CS32 and has not been brought forward as an allocation through Local Plans or the NP, because the proposal is for 220 dwellings thereby exceeding the 'windfall threshold' and it is not an allocated site. However, both CS14 and CS32 expressly anticipate that to meet the minimum Service Village requirement there will have to be allocations. It says however, in the absence of an adopted SAP the development plan is presently silent as to where this requirement is to be met. It also notes that when examining the remitted Core Strategy policies the Examining Inspector increased the Service Village requirement from 805 to 2,100 but the spatial strategy remained unchanged, and that while he endorsed the approach that larger sites should be allocated through the local plan process that Inspector made no comment regarding upper limits or the scale of allocations⁵⁵.
152. In the appellant's view Policy CS32 is intended to assess sites of less than about 25 dwellings and provides useful development control criteria and, aside from the acknowledged conflict, the only remaining issues in dispute relate to bullet points 1 and 4. These relate principally to form, character and landscape setting, which are addressed below. The appellant does not consider that the Policy requires that all development at Services Villages must take place within Settlement Boundaries or that development proposals outside them must be refused, nor that there is a percentage restriction or limitation on the increase of dwellings to be accommodated at the Service Villages. The mathematical approach advocated by NSC's planning witness Mr Tate⁵⁶ is simply wrong in the appellant's view, Policy CS32 does not limit each village to 25 houses (the 'about 25' relates to the scale of a windfall site). Similarly, in the appellant's opinion, his suggestion that a 'policy compliant' approach to CS32 would represent an increase of only 1.5% at Backwell is also erroneous⁵⁷. The appellant says that the obvious flaws to this approach are demonstrated by the simple fact that a limit of 25 per Service Village would only deliver 225 dwellings over the plan period, roughly 10% of the minimum requirement.
153. Irrespective of the housing land supply position, the appellant considers that the development plan is presently silent within the meaning of Framework para 14. The appellant refers to the South Oxfordshire case⁵⁸ in terms of whether or not the development plan is presently silent within the meaning of Framework para 14. In its view that judgment identified there was no distinction to be drawn between an argument that the policies in the development plan were silent because there was no DPD and the argument that the plan was out of date because there was no DPD. As held in the Bloor case⁵⁹, 'silent' within para 14 meant an absence of relevant policy, and consequently, in the appellant's view, it is a matter of planning judgement for the decision-maker to determine whether there is a body of policy sufficient to determine whether the scheme is acceptable or unacceptable in principle. In the South Oxfordshire case the local planning authority had no SAP and Gilbert J observed at para 95:

'...The question "how much housing does the Development Plan intend should be allocated in the period x to y" is not the same question as "where does the Plan

⁵⁵ CD5.5 paras 38 and 69-70 respectively

⁵⁶ CD15.5 para 8.1 on ward

⁵⁷ CD15.5 para 9.19

⁵⁸ CD18.22

⁵⁹ CD18.23

say that housing could or should be built?" In some cases, it can be the second question that matters. Whether it does so depends on the circumstances and is a matter for the planning judgment of the decision maker.'

154. The appellant says that in this appeal the minimum requirement for the Service Villages has been identified but the eSAP has yet to allocate where within the Service Villages that housing could or should be built. Therefore, in its view, the tilted balance in para 14 of the Framework is engaged irrespective of the housing land supply situation.
155. Policies CS14 and CS32 are acknowledged to be policies relevant to the supply of housing and therefore the absence of a five-year supply of deliverable housing sites Framework paras 49 and 14 in any event. It is the appellant's case that this will involve an assessment of the weight to be afforded to these policies as per the principles in the *Suffolk Coastal v Richborough Estates* case⁶⁰. That will be informed by the extent of the housing land supply deficit, which the appellant's planning witness Mr Hutchison described as 'dire'. The appellant's point in this regard is that these policies are clearly not providing the mechanism for delivering the number of houses that are needed right now. It also maintains that the deficit is also a 'stark demonstration' that NSC is failing to comply with the national policy imperative to boost significantly the supply of housing. When the development plan is looked at a whole and in the context of the increasing deficit then, in its view, there should be no need to await an allocation and consequently conflict with this element of the policies should be afforded significantly reduced weight.
156. The weight to be afforded to the eSAP is reduced, in the appellant's opinion, due to the significant number of objections and identified concerns of its Examining Inspector. There is no prematurity objection raised by NSC. The appellant believes that it is likely that NSC will have to consider further sites and in that context it says that the site clearly represents an opportunity. It also considers that the appeal scheme should be viewed in the context of Backwell's acknowledged sustainability credentials when compared with the other Service Villages – in cross examination Mr Reep, NSC's planning policy witness, referred to Backwell as being 'top of the pile'. The appellant says that much time was spent during the Inquiry considering NSC's Comparative Assessment of Rural Settlements⁶¹ that identifies the most sustainable locations for development outside the main towns. The RAG approach employed therein allows for a consistent approach to be taken across all nine Service Villages, as agreed by Mr Reep, and Backwell tops that list in the appellant's view.
157. The appellant also says that, as acknowledged by Mr Reep, when determining where to allocate the Service Village minimum requirement, the first step would be to allocate development to the best and most sustainable locations, this being consistent with Core Principle 11 of the Framework. This was, in the appellant's view, graphically demonstrated by its planning witness in evidence when he went through the Policies Map⁶² to illustrate the constraints in the other Service Villages. The appellant says that the next stage is to determine the sustainability credentials of the site. In the context of the site, the appellant sees the

⁶⁰ CD18.4

⁶¹ CD5.8 and CD5.8a

⁶² CD5.21a, b and c

site-specific sustainability credentials as impressive including the absence of any heritage, public right of way, highways, ecology or BMV related refusal reasons, and the site is neither within Green Belt, floodplain or any landscape designation, although elsewhere within Backwell development is restricted by constraints including Green Belt and floodplain.

158. Regarding the NP, the appellant's the primary contention is that the appeal scheme does not conflict with its policies on the basis that Policy Development 1 supports housing development in Backwell which is at a level appropriate to the size and character of the settlement. Character is not limited to the visual considerations in the appellant's opinion, it is broader than that and will include, among other things, its role as a Service Village and how it functions. According to the appellant, Backwell's position as the most sustainable of the Service Villages indicates that as a settlement it represents a good location for housing. The appellant considers that when the site and scheme are then assessed they confirm that this permissive policy is satisfied; in particular there is no cap or limit on the scale of housing at Backwell.
159. The WMS is a 'red herring' in the opinion of the appellant because there is no conflict with the NP in any event and, even if it was engaged, tests 2 and 3 are not met, firstly because the NP does not allocate sites as it contains no allocation policies. Whilst the NP was being progressed its Steering Group was assisted by NSC and, the appellant considers it of particular note that as part of that process NSC twice told the Steering Group prior to the examination of the draft NP that 'there should be a specific policy which allocates development sites...' ⁶³. The NP examiner expressly noted that 'the Policies of the Neighbourhood Plan do not designate, or allocate sites and the wording should reflect this fact' ⁶⁴ and consequently recommended changes to the draft. The appellant says that those changes were subsequently adopted in the 'made' plan and considers that it is also worth noting that two of the sites referred to in the NP, Moor Land and Ettrick Garage, were then identified as having potential viability issues and the uses favoured by their owners were not then known ⁶⁵. Such uncertainties would, in the view of the appellant, ordinarily preclude allocation of those sites as demonstrated by the Toolkit produced by BPC during this inquiry ⁶⁶. The appellant say, moreover, the plan attached to the NP only refers to 'potential development sites'.
160. This is unsurprising to the appellant in view of the context in which the NP was being prepared. The appellant say as was acknowledged by BPC's witness, the Steering Group was planning to accommodate an element of the residual Service Village housing requirement of 805 homes rather than the 2,100 ultimately adopted, a 161% increase, and were only anticipating having to find sites for about 60 houses ⁶⁷. However, when the NP was examined the extent of that increased requirement was not known albeit that the examiner noted that '... District housing numbers will be considerably higher than previously thought' ⁶⁸ and accordingly, in the appellant's view, advocated the flexible and permissive Policy Development 1.

⁶³ CD17.3 para 5

⁶⁴ CD5.12 pages 30-31

⁶⁵ CD5.15 para 10.4

⁶⁶ CD18.7 page 7

⁶⁷ CD5.16 page 10

⁶⁸ CD5.12 page 10

161. The appellant says that the Policies map⁶⁹ confirms that NSC recorded Moor Lane as a safeguarded employment site while the other Backwell Sites are not shown. It adds that the eSAP refers to 'all' allocated sites but contains no reference to the NP⁷⁰. Furthermore, there is no reference to these sites being allocations in the LPA's Five-Year Housing Land Supply Paper April 2016⁷¹ and 'if only *allocation* could be stretched as far as that sought by NSC and BPC then we would all be millionaires' according to the appellant.

162. The third test for the application of the WMS is the three years housing land supply and in the appellant's view that test is also failed. The appellant also considers that the WMS is only concerned with Framework para 49 where there is no requisite five years housing land supply. It adds that where, 'as here', the development plan is 'silent' as to where housing could or should be built then the tilted balance in para 14 of the Framework is engaged in any event.

Housing Land Supply

163. There is an agreed Schedule / Table document that has been prepared for the inquiry and the different positions are as follows⁷²:

- Backlog 2,498⁷³, but predicted to be 2,765⁷⁴ at April 2017
- Appellant 2.73 years (-4,217 dwellings)
- LPA 5.05 years (+86 dwellings)

164. The appellant considers it important to place this issue into 'its proper context'; it says NSC is now contending that it can demonstrate a Framework compliant supply of housing land although its housing witness, Ms Richards, acknowledged that it was 'marginal' – the appellant called it 'wafer thin' - and only on the basis of a 5% buffer, and her position has decreased since giving that oral evidence concession. It also said the latest five year housing land supply evidence was published in May 2016 and relates to the supply as at 1 April 2016, although NSC's trajectory was not available until the Banwell inquiry.

The Buffer

165. The appellant says that NSC contends for the 5% buffer solely on the basis that it was suggested by the Examining Inspector for the remitted policies of the Core Strategy – the appellant referred to this as tantamount to defying gravity. It added that Ms Richards accepted in cross examination that that Inspector did not interrogate the details of the five years housing land supply, that his position was derived from the hearings in June but asserted he did consider the framework and methodology. Since that examination, the appellant adds, the housing land supply in the district has been tested and NSC has been found to have a 'significant deficit'.

166. Five year housing land supply was subsequently tested at both the Sandford⁷⁵

⁶⁹ CD5.21c

⁷⁰ CD5.7, page 17

⁷¹ CD6.1

⁷² The appellant also states that it nonetheless appears that NSC has subsequently identified another position to the eSAP examining Inspector with an even smaller surplus

⁷³ HLS SoCG para 2.8

⁷⁴ CD14.7 para 104

⁷⁵ CD8.2 paras 24 and 25

and Banwell⁷⁶ appeals and both Inspectors confirmed the absence of a five year housing land supply and that the appropriate buffer to be applied was 20% due to persistent under delivery. The Banwell Inspector determined the housing land supply to be no greater than 4.2 years whilst the Sandwell Inspector did not conclude on a precise figure. The appellant adds that since then NSC has accepted that it is unable to demonstrate a Framework compliant supply of housing land and that the appropriate buffer is 20% for the purposes of evidence at appeals⁷⁷. The findings of these Inspectors and the approach taken by NSC are, in the appellant's opinion, material considerations in the determination of this appeal, as is the need for consistency of approach by NSC.

167. However, the appellant says that NSC has taken a contradictory approach to its stance in this appeal as recently as March 2017. The following applications were considered by NSC members on the basis that it was unable to demonstrate a five year housing land supply and that a 20% buffer should be applied. The following planning applications were granted by NSC's Planning and Regulatory Committee in this context⁷⁸:

- Application Ref 16/P/1521/O - Land at Wrington Lane, Conglesbury, on 8 February 2017;
- Application Ref 16/P/152744/OT2 – Land at Wolvershill Road, Banwell on 8 February 2017;
- Application Ref 17/P/0023/F2 – Cothill, Station Road, Sandford, Winscombe on 8 March 2017; and
- Application Ref 16/P/2490/O - Withydale Farm, Weston Road, Congresbury on 8 March 2017.

168. The appellant said that NSC's housing witness, Ms Richards, agreed in cross examination that the last time the issue of the appropriate buffer was tested was at the Banwell appeal inquiry and that as there has been no material change in circumstances since that time the 20% buffer should still apply. It added that that this approach is also entirely consistent with the acceptance by NSC that it has not met the annualised housing requirement⁷⁹ of the adopted Core Strategy in any one of the previous eight years and will not meet it next year⁸⁰.

169. The appellant also considers that NSC's current approach of using historic requirements, including 'the unlawful requirement' prior to the judicial review to the previously adopted Core Strategy to be flawed. To assess delivery against requirements rather than needs simply excuses under-delivery in the eyes of the appellant. The appellant's evidence is that, in any event, there is still a record of persistent under delivery using any period and any definition. It adds that the LPEG approach⁸¹ to assessing the appropriate buffer is not policy, and it has not been replicated in the Housing White Paper, yet even that approach shows a record of persistent under delivery in North Somerset.

⁷⁶ CD8.3 para 27

⁷⁷ As was accepted by Ms Richards in cross examination these were the *Wentwood Drive* appeal (8 November 2016); the *Station Road* appeal (5 December 2016); and the *Oldmixon Road* appeal (23 December 2016).

⁷⁸ CD6.4 to CD6.7 inclusive

⁷⁹ The appellant states "the need being the appropriate measure as indicated by Lewis J in the Cotswold case" - see CD16.2 para 47

⁸⁰ HLS SoCG para 2.8

⁸¹ DC18.25 para 4

170. The appellant states that in making an assessment of the five year housing land supply the decision maker will have to determine whether the sites contended for in NSC's trajectory and disputed by the appellant are deliverable within the meaning of Framework Footnote 11 and the relevant NPPG having regard, among other things, to the following principles and considerations.

Lead-in Times

171. The appellant considers that there will 'obviously' be some delay between the grant of permission and delivery of houses and that this will be affected by the nature of the permission, whether outline or detailed as well as site specific issues. It also says that its housing witness, Mr Tiley, has provided a robust assessment of the average lead-in times in North Somerset⁸² derived from the identified sites which indicates that on average, the time between the validation of an outline application and first delivery is about 5.5 years, which he then compared with other known studies⁸³ to ensure that his assessment is realistic. It adds, in contrast Ms Richards for NSC relies on 100% delivery in respect of large sites on a trajectory that the appellant maintains is wholly unrealistic, as supported by the alternative trajectories in block graph form attached to the HLS SoCG, and does not take account of past trends. According to the appellant, her assertion that government and NSC proposals⁸⁴ will speed up determinations has 'no track record' in the appellant's opinion and as discussed during the round table session on housing supply she still assumes some sites will achieve completions this year despite the absence of any implementable permissions or applications.

Sites which post-date the base date

172. There is, in the appellant's view, now a significant body of appeal decisions in which Inspectors have indicated that such an approach is not appropriate in the absence of proper accounting - if such sites are to be included then account must also be taken of the housing requirement that has accrued during the same period⁸⁵. In this appeal the agreed base date is 1 April 2016. Whilst Ms Richards has identified sites that have accrued since that date, the appellant says that she has not factored in the increased requirement and increased backlog. Consequently, in the appellant's opinion, whilst those sites will inevitably be included in the trajectory they will address the needs from the next base date and not the needs as at 1 April 2016.

Sites in operational use

173. The NPPG indicates that availability requires an assessment of the operational requirements of landowners, and the appellant adds that to comply with Framework Footnote 11 a site that is currently subject to the operational requirements of landowners should not be considered available now and therefore should not be considered deliverable.

Rural Buildings and Empty Homes

174. Despite agreeing that rural buildings are a finite resource, the appellant says

⁸² CD14.2 p31 Table 8.3

⁸³ CD15.2 Appendices 17 & 18

⁸⁴ CD17.1 para 5.10

⁸⁵ CD8.9 paras 11-13, CD8.10 para 30, CD8.12 paras 20-24

that Ms Richards relies upon a constant supply from this source albeit over a limited period, while its witness Mr Tiley has demonstrated that there is a marked downward trend of deliveries from this source. The appellant considers that it is simply not realistic to assume the constant delivery rate contended for by NSC.

Empty Homes

175. The NPPG indicates that an empty homes allowance should be included in the trajectory only where this has been robustly tested through an examination. Ms Richards for NSC accepted during cross-examination that such an allowance had not been robustly tested in North Somerset. Furthermore, in the appellant's view, the approach adopted by her is unrealistic given that North Somerset already has the 7th lowest number of empty homes in the country out of 326.

Strategic Allocations

176. The appellant considers that specific matters discussed during the housing delivery round table session need to be factored into the delivery trajectory for these sites, including the 'failure' of NSC to take account of the most recent delivery assessments provided by Persimmon and Mead Realisations to the Weston Villages Joint Delivery Review Board⁸⁶ and the delivery problems associated with phase 2 of Haywood Village concerning the 1.5 jobs per dwelling and other viability issues. Moreover, the assumed delivery rates must, in the appellant's opinion, be viewed in their proper perspective - the assumed delivery rates will exceed anything ever achieved within the district⁸⁷ or on any site nationally⁸⁸. The appellant maintains that in view of NSC's delivery track record that is 'more akin to fantasy than a realistic assessment of housing delivery'.

Emerging Allocations

177. The appellant considers that reliance upon emerging allocations in the eSAP needs to be viewed in the context of Framework para 216 and that 'significant' objections that have been lodged. It also maintains that to this must be added the concerns raised by the eSAP Examining Inspector and that previous Inspectors have expressed caution about including the delivery of such sites⁸⁹ as have the Courts⁹⁰. Specifically, some of the sites relied upon as emerging allocations by NSC, namely Engine Lane, North West Nailsea and Moor Road, are all outside existing Settlement Boundaries and of a scale that conflict, in the appellant's view, with existing development plan policy. The appellant considers that the reliance on such sites requires that there are material considerations which suggest that applications on these sites should be approved, such that this would require that either NSC accepts that there is not a five year housing land supply or that it is prejudicing the appropriate plan-making process by relying on sites which have not yet been subject to examination.

Small Site Lapse Rates

178. Although this would only affect some 89 units, the appellant's witness Mr Tiley felt that it is important that this figure is mathematically sound and that in his

⁸⁶ The Board includes landowners and developers of the Weston Villages development and NSC

⁸⁷ HLS SoCG para 2.18

⁸⁸ CD14.2 para 8.105

⁸⁹ CD5.5 para 21; and CD15.2 Appx 29 at para 47, Appx 30 at para 21, and Appx 6 at para 32

⁹⁰ CD15.2 Appx 31 at para 35

opinion NSC had wrongly calculated the lapse rate in respect of year 1 and calculated it to outstanding permissions only - this approach fails to account for the fact that permissions usually last for three years and consequently NSC's figure is artificially reduced. He added that NSC has calculated the lapse rate in a way which is inconsistent with the way in which it is applied and also said that his approach is consistent with that of other local planning authorities⁹¹.

179. For all of these reasons, in the appellant's view, Mr Tiley's assessment of the housing land supply within the district should be favoured, which demonstrates that NSC is unable to demonstrate a five years or a three years housing land supply in whichever way the latter is to be assessed.

The effect of the proposals on the character of the settlement of Backwell

180. When considering this issue, in the appellant's view, it is important to examine the reasons for refusal. The first contends that the scale of the proposal would have a detrimental impact upon the character of the area. This is echoed in the second reason for refusal, which confirms that it is the scale - 220 dwellings - that is out of keeping with the overall character of the village and will harm the quality of its landscape setting and edge of the village.

181. Such details as are provided in these refusal reasons must, in the opinion of the appellant, be considered in the context of the site. NSC's own evidence acknowledges, among other things, that the 'site is enclosed by existing development'; that the visual impacts 'would be largely localised to the site itself and limited to its immediate surroundings'; and '... no objection can be raised to the impact upon the 'wider landscape' character...' ⁹². The SoCG confirms that the site is not located in the Green Belt and not directly affected by any adopted landscape, ecology or heritage designations⁹³. Moreover, the appellant says, there is no objection to the effects of the appeal proposals on either the wider landscape or the wider landscape character areas.

182. The appellant states that the alleged impact is upon the immediate character 'which NSC claims is rural despite being surrounded by houses'. The evidence of the appellant's landscape witness, Mr Cooper, is that the site is semi-rural, which the appellant considers is consistent with the Landscape Character SPD, which notes the noise and nuisance of the A370 as 'a dominant presence' ⁹⁴ and the 'ubiquitous ribbon development along major roads which weakens the rural character of the otherwise largely pastoral landscape' ⁹⁵. The appellant maintains that this reflects the wider character of Backwell as evidenced by its historic pattern of growth. Mr Cooper illustrated the evolution of Backwell by reference to the historic maps of the settlement⁹⁶, in particular:

- Between 1883 and 1902 West Town, Backwell Church Town and Farleigh were completely separate, and with separate settings. Although the site is related to Church Town, there was and remains no relationship between the site and West Town or Farleigh;

⁹¹ CD14.2 p.36

⁹² Quotes from CD14.5 paras 2.1, 8.27 & 8.33

⁹³ SoCG para 3.6

⁹⁴ CD1.27a App.8 p143 of the Area J5 Rolling Valley Farmland.

⁹⁵ CD1.27a App.8 p.144 'Character'.

⁹⁶ CD15.4 App.1 L5

- By 1930-1932 ribbon development had already started along the road to Nailsea and along Dark Lane;
- Between 1932-1960 there was a period of considerable ribbon development. Houses had been built around the periphery of the triangle comprising Dark Lane, Church Lane and Farleigh Road. These maps indicate that by 1960 the housing in Church Town was physically linked to Farleigh;
- The 1980 map illustrates the extensive development period that had taken place since 1960 between Dark Lane, West Town and Nailsea including the new school and further development around the triangle; and
- The most recent map is dated 2005 and shows how development has now linked all three hamlets into Backwell. Farleigh has even become Farleigh Backwell. Although the site is still partially in the setting of Church Town the proposals are agreed to have no effect upon that hamlet.

In Mr Cooper's view the present day settlement of Backwell has 'no landscape logic'. The appellant considers it to be largely a modern settlement with some historic parts that is the product of ribbon development and infilling and adds there is no harm in this, it is simply the way the settlement has developed.

183. In the appellant's view this would necessarily have provided the context for NSC's Landscape Officer's assessment of the appeal scheme and informed his consultation response⁹⁷, which followed 'extensive pre-application discussions' during which it was agreed that the application LVIA followed the appropriate methodology and had assessed all relevant viewpoints⁹⁸. The appellant asks for the following comments from that consultation response to be noted in particular:

- The housing would be visually contained at a lower level on either side of the central space;
- The site would only be visible from local viewpoints and, when seen at longer views, in the context of development; and
- Existing houses recede into background and the visual effects '...can be dealt with by mitigation.

184. The appellant also considers that NSC's Landscape Officer's consultation response undermines the weight to be attached to the subsequent allegations of landscape and visual harm relied upon by NSC. Firstly, reference has been made to the letter from Brandon Lewis dated 27 March 2015⁹⁹ - this pre-dates that consultation response. The appellant contends moreover that that letter concerns impact on landscape character as an important consideration in the decision-making process and it was not identified as such in the Landscape Officer's consultation response or in the case officer's subsequent delegated report. The Landscape Officer explained that 'The proposal avoids any adverse impact upon the Green Belt, the wider landscape and the setting of Tyntesfield, and will be largely unseen from much of the village.'

185. Mr Cooper, for the appellant, explained that, whilst outline the appeal scheme has been 'landscape led' and followed a long period of discussion with landscape

⁹⁷ CD9.14 & CD9.15

⁹⁸ SoCG para 7.60

⁹⁹ NSC's appeal document ref. NSC 27

and other officers, including a reduction in extent based on landscape and visual guidance. The site comprises private land with two public rights of way. In the appellant's view, the residential development is restricted to the lowest and least visible land¹⁰⁰; no housing is proposed on the central field; no housing is proposed in the vicinity of the Conservation Area; the long views of the moors and the Mendips are retained; development is proposed within the less sensitive landscape character area J5 Rolling Valley Farmland¹⁰¹ as opposed to the more sensitive E6 Cleeve Ridge; the hedgerows and trees are to be retained, managed and replanted, particularly those on the western side and along the upper fields; lower building heights are proposed around the edges of the site; and residential amenity has been addressed through mitigation and set-backs. In the appellant's opinion these have been acknowledged by NSC's Landscape Officer.

186. In the appellant's view the design matters now put forward by NSC are a recent invention and not indicated in the officer's report, the refusal reasons or NSC's Statement of Case. The appellant considers that the premise was always that the scale of the proposals was unacceptable in the context of Backwell's position in the settlement hierarchy and no issue was ever taken with the case studies explained in the Design and Access Statement. Irrespective of their 'lack of provenance' the design criticisms are unfounded in the appellant's view as it is common ground between the appellant and NSC that because this is an outline scheme, details relating to layout, scale and appearance can be considered in subsequent reserved matters applications¹⁰².

187. The second refusal reason expressly refers to Framework para 109, which affords protection to valued landscapes and NSC's witness on landscape matters, Mr Tate, carried out a GLVIA3 Box 5.1 exercise in his evidence¹⁰³. However, the appellant maintains that such a contention is wholly contrary to NSC's Landscape Officer's assessment of the scheme, did not form part of the refusal reasons, nor was it an issue raised in pre-application discussions. To be a valued landscape it must have physical attributes that take it out of the ordinary, beyond mere countryside, as per the Stroud case¹⁰⁴. Mr Cooper, the appellant's landscape witness, explained that the site simply does not meet the Box 5.1 criteria – in particular: the site has no historical or landscape significance, no special physical attributes, and views from the site do not form any part of that assessment process¹⁰⁵. Neither, in the appellant's view, are Farleigh Fields unique in comprising undeveloped farmland with public rights of way surrounded by buildings - the same can equally be said of the land in the 'centre' of Winscombe, which has now been granted planning permission¹⁰⁶.

188. Additionally, the appellant considers that NSC's contention that the site represents a valued landscape, despite the absence of any landscape designation whatsoever or recognition in landscape character guidance, would also be inconsistent with its approach to the proposed Backwell LGS in the eSAP¹⁰⁷.

¹⁰⁰ CD1.19 p.47 Illustrative Masterplan

¹⁰¹ CD15.4 App 1 L6 'noting that J5 is adversely affected by the A370 and this has a *moderate* character (p144 of the Landscape Character SPD) and the strategy is to strengthen the weaker character of the village edges and plant orchards'

¹⁰² SoCG para 7.44 onward

¹⁰³ CD14.5 paras 8.46-8.47

¹⁰⁴ CD8.6

¹⁰⁵ CD14.4 paras 3.18-22

¹⁰⁶ CD18.20

¹⁰⁷ CD5.5

NSC's reason for the northern and southern fields of the site 'exceptionally' warranting LGS designation is the public rights of way and their particular importance in terms of the setting of the Grade 1 listed St Andrew's church. Neither those rights of way nor the impact upon heritage assets are mentioned in the refusal reasons, while none of the other identified criteria were considered to have been met in the appellant's view. The appellant also considers it to be of particular significance that the definition of 'Beauty' as one of the designation criteria expressly includes the contribution of a site to '...the character of the settlement, which would normally be expected to be significant'¹⁰⁸, yet this is not mentioned in the site assessment¹⁰⁹. The appellant says moreover, the eastern and western fields on which the built development is proposed 'do not even figure' and it is proposed to provide the promoted LGS as public open space in any event - a matter that was considered in the delegated report to be a benefit.

189. The Backwell Round footpath would be unaffected by the appeal development in the appellant's view and it considers that the proposal would be seen in the context of the existing development in such limited views of the proposed development that will be available. Mr Cooper's evidence for the appellant is that in these circumstances simply because the houses can be seen is not necessarily harmful; and, apart from Church Town, this part of Backwell is now almost wholly a new settlement and there is nothing significant about the open space, apart from the fact that it has been enclosed. The public open space proposed as an integral component of the scheme will, in the appellant's view, help to address an acknowledged deficit in the settlement, afford greater public access than is presently enjoyed¹¹⁰ and the appeal scheme may present the 'opportunity' to upgrade the existing public rights of way¹¹¹.

190. Insofar as concerns have been raised over views and the road crossing the public rights of way the appellant maintains that:

- Views from upper fields will be retained as indicated in the Design and Access Statement¹¹², houses added on the cross sections shown in the Design and Access Statement represent the heights of buildings shown in the parameters plans, and show that long views of the Moors and the Mendip hills would be retained from the key upper fields of the site; and
- The design of central open space 'was shown by its witness', Mr Cooper, to have the potential to remain open in character with no inappropriately steep gradients, the land being regraded back to the existing slopes, the lane crossing of the open space was compared to well-known example, the Downs in Bristol, a semi-rural landscape crossed without harm by lanes and access roads, with no footpaths on either side, and no lighting.

191. The appellant considers that the evidence of Mr Cooper also demonstrates that this outline scheme can address all the design, landscape, visual and character concerns that have been raised by NSC, BPC and members of the public. Indeed, through its witness, BPC confirmed that it would continue to seek LGS status for the retained open land if planning permission was granted. In the appellant's

¹⁰⁸ NSC appeal document Ref NSC 6

¹⁰⁹ Ref NSC 6 - definition of 'beauty' at p.5; the designation criteria at p.11; and the assessment at p.44.

¹¹⁰ The appellant also says there is no evidence before the Inquiry to support potential Village Green status

¹¹¹ SoCG para 7.50

¹¹² CD1.19 p33

view this indicates that this land would still meet the LGS exceptional criteria relied upon by NSC¹¹³ in those circumstances.

Other Material Considerations and the Planning Balance

192. The appellant maintains that the 220 extra houses in Backwell would have no detrimental effect upon the spatial strategy in the adopted Core Strategy, there is no prematurity objection being run by NSC, and Backwell is the most sustainable of the Service Villages. In the appellant's opinion much was made of the localism agenda during the Inquiry but it considers that it should be borne in mind that much greater proportionate increases have been considered appropriate at some other 'less sustainable' Service Villages¹¹⁴ including 25% at Yatton, 25% at Churchill, 14% at Winscombe and 18% at Sandford. The appellant considers that, on that basis, it cannot be argued that the appeal scheme represents a disproportionate scale of development for the settlement¹¹⁵ or undermine confidence in the plan-led system.
193. Some concerns have been raised by both BPC and interested parties over harm to community cohesion, but in the appellant's view there is simply no basis for what it sees as unsubstantiated assertions and that it would be contrary to the evidence. Backwell represents, in the appellant's opinion, a vibrant and welcoming community with a multitude of facilities and opportunities for community involvement. As expressed in the NP Evidence Base G, it represents an attractive destination that is unaffordable to many who aspire to live there, particularly young people¹¹⁶. The appellant also considers that concerns over infrastructure impacts, including highways and education issues that have been raised by BPC and others, have also been addressed to the satisfaction of the relevant statutory authorities.
194. The planning history of the site figured during the Inquiry including the 'footprints' of the previous schemes that correlate with the planning history as summarised in the SoCG¹¹⁷. While the appellant's planning witness Mr Hutchison acknowledged that the countryside has not changed since a previous scheme was refused in 2000¹¹⁸, nor has it changed much since 1985 in the appellant's view. The appellant adds that it can be seen from the Woodspring Local Plan Inspector's Report¹¹⁹ that three previous Inspectors and the Secretary of State have not considered impact on character to be a pivotal issue. The site has been recommended for approval at appeal and as a Local Plan allocation¹²⁰. The appellant contends that 'suffice it to say' the planning judgments made by Inspectors over the years in terms of impact on the character of the settlement have been varied.
195. While not an issue with NSC, BPC has raised the issue of loss of BMV agricultural land, yet the appellant submits that some 60%, 12.88ha, of the site

¹¹³ NSC's appeal document Ref NSC6

¹¹⁴ Here the appellant refers to its witness Mr Hutchison in Chief, CD5.8 and that Taylor Wimpey is promoting 650 to the west of Backwell and the eJSP has suggested up to 3,600 between Backwell and Nailsea.

¹¹⁵ The appellant says, particularly as Backwell increased by 89 dwellings from the 2001 to the 2011 census (9dpa)

¹¹⁶ CD 5.16 G.21 and G.17 respectively

¹¹⁷ SoCG para 4.1

¹¹⁸ NSC appeal Ref. NSC 15

¹¹⁹ CD18.12 & CD18.13 – the appellant adds that following the recommendation to allocate the site for housing that Council declined because it had a surplus of housing rather than because of impact on the character of the settlement

¹²⁰ The appellant adds that this contrary to the inference made by BPC in its representation to have the appeal recovered for determination by the SoS.

will not be sterilised but remain as open land that, if necessary, could be brought back into agricultural use. The appellant also maintains that the loss of BMV would not be significant in terms of requiring Natural England be notified¹²¹.

196. The appellant commends the overall planning balance exercise that has been conducted by its witness Mr Hutchison along with his conclusions in his proof of evidence at paras 55 to 59. It also asks that it be noted that this exercise was 'essentially unchallenged' by NSC and BPC, save, it says, for the weight to be attached to the proposed public open space, albeit still acknowledged to be a benefit.

197. The appellant also maintains that this is essentially a greenfield freehold site¹²² that could provide the access within a year of grant and delivery of the houses over the ensuing four years; and consequently, its development could make a significant contribution to the 'dire' housing deficit for both market and affordable homes that persists within the district. There would, in the appellant's view, be little identifiable harm as a result of the appeal scheme and significant benefits. In short, it says, the proposal represents an excellent example of sustainable development in the context of Framework para 14.

198. For all of these reasons the appellant respectfully requests that this appeal be allowed.

The Case for Other Parties Who Gave Evidence at the Inquiry¹²³

The Case for Martin Powell

199. He expressed concern that during the short period in which NSC is getting organised to address the housing land supply issue developers are taking advantage and that this developer, having paid agricultural values for land, is being opportunistic. He is also critical of the level of public engagement undertaken by the appellant in contrast to that associated with the NP, for which there was a 96% 'for' vote which included, in his view, no development beyond the settlement boundary and the NP identifies sites for development which is enough, the rest should be protected. He added that Farleigh Fields is the consequence of three hamlets joining over time and allowing the development would undermine that and there would be an overall harm to the character and appearance of the area caused by the development.

200. Mr Powell also stated that the appellant has shown no benefits would result from the development in contrast to a number of problems that would result including the loss of green space and rural character, the formation of a road to link the two development areas and the proposed play area further encroaching on the green space, off-site congestion/traffic, increased flood risk, limited capacity of local services including medical and schools, light noise and air pollution, harm to / loss of wildlife habitat, and that the development would be a disproportionate over development relative to the village.

¹²¹ Mr Hutchinson, the appellant's planning witness, also notes some 10 potential allocations in the Service Villages involve the loss of BMV such that in the appellant's view it is 'clearly necessary' to address the housing requirement.

¹²² The appellant states 'save for elements of the access in respect of which the developer has acquisition rights'

¹²³ CD18.8

The Case for David Andrews

201. He explained that he spoke on behalf of himself and his wife who have lived in Backwell for 20 years, not adjacent to Farleigh Fields, but within a 15 minute walk and set out their involvement in local groups and activities. To them Backwell means a vibrant, caring community supporting local initiatives that improve village life, greenery, open spaces, and the freedom to live life at one's own pace, with room to breathe; and the whole of Farleigh Fields is the "treasure in the heart of the village" - somewhere to walk, relax and drink in the quiet views of the houses, the church and the surrounding trees, somewhere to find a little peace.
202. He added that this sense of peace will be destroyed if any of the fields are developed and instead there would be an impact on Backwell's infrastructure, which he states is that of a village not an urban area. In his view the new road junction and traffic would cause delays to the commuters currently using that road and may also interfere with the effective working of the existing lights and with local traffic attempting to cross the main road; and there would be more people parking on the side roads near the railway station as the car park will be full, and using the already busy Station Road to drive to Nailsea so they can shop there. And with this greater risk to pedestrians including school children, particularly given the narrow carriageways and very narrow pavements, in the village with some roads having a pavement on one side only.
203. He queries with local doctors and dentists as well as schools could cope with around 500-600 extra residents, with no apparent available space around the current surgeries for them to expand, and moving to a new location would be expensive in his view. In conclusion he states that this proposal is allowed to go ahead the people of Backwell would not only lose the "treasure in the heart of the village" but would have to live in a far more congested environment with, in all probability, a detrimental effect on their well-being.

The Case for Rachel Beckingsale

204. She explained that she has lived in Backwell for 11 years and wider local area for more than 30 years, and is able to appreciate Farleigh Fields and its abundant wildlife on a daily basis as her home overlooks the fields. She added that she observes this haven of green space being enjoyed by the many walkers and runners who use the footpath between Church Town and the A370 on a regular basis and the farmer looking after the fertile fields with crops being harvested annually and cattle grazing on the slopes in the distance. In her view these fields are not a 'hole' as described by the developers but a haven of peace giving Backwell its truly individual village character - the developers propose to retain the footpath to the Church and some of the green space around it, however this land would be useless for farming, it would have to be maintained at considerable expense, and the peace and tranquillity of this rural vista would be destroyed.
205. Backwell is a village with a thriving community – as a mother of two young children Ms Beckingsale explained that she appreciates the closeness of community which village life provides, and that the demand for school places

increased to such an extent that the infant school increased its intake in September 2013 from 45 to 60 and immediately filled all the places, a trend she understands has continued over the last 4 years. She also stated that the two local preschools have also been operating at capacity in recent years, and the volunteer run toddler group is currently thriving.

206. She also stated that she understands that more housing is required countrywide and supported the NP which allowed for modest development in the village. With the approval of a planning application to build 65 homes off Moor Lane as well as 8 3 bed homes in the centre of the village and a further 9 new homes likely to be built in West Town, she believes this is as many as Backwell would be able to absorb at this time given the present infrastructure. Even this number of homes could cause a critical shortage of school places and will in her view undoubtedly add vehicles to the already highly congested roads in the village. She does not believe that the building of a further 220 homes on Farleigh Fields is at all in keeping with the size and character of Backwell as a village, and the increase in the number of residents and the traffic they would contribute to the local roads would be unsustainable.

The Case for Peter Hoare

207. He explained that while they do not have a view over Farleigh Fields he and his wife have lived nearby in Church Town since 2001, and that while they have been fortunate enough to live in some attractive places none are as agreeable as Backwell. He added that although not all of the village is pretty it combines a balance of open space with sensible development, an adequate infrastructure and thriving community life which, unlike others we have seen, is welcoming and inclusive; indeed we rapidly became involved in local affairs and he is now Chairman of the local Royal British Legion Branch.
208. He said that he is probably one of the most frequent users of Farleigh Fields as he and his wife walk their dog there almost daily, often on the way to our allotment behind the George Inn, and they take a circular route using both main footpaths. He added that that what they love about Farleigh Fields is the glorious view, the feeling of space and the agricultural setting, with one part used for arable crops and the other for livestock. During school holidays their grandchildren enjoy walking and playing in the fields and they also go blackberrying in the late summer.
209. The proposal would in his view totally change this carefully preserved rural 'oasis' for ever. He said that he appreciates that Charles Church only state the intention to use two of the 4 fields for houses plus roads on the third, but does not believe things would stop there. He also said that any form of development, whether for an access way or for housing, would have a marked impact on the rural sense that you get when walking around this area. The impact that an access way over which cars can and would go being built across one of the fields would in his opinion go against the very purpose of the local green space allocation that has been sought and the views would also be such that the whole feel of the area would change from a rural to urbanised setting.
210. He stated that he thinks the remaining parcel would be too small to farm effectively and BPC would not have the resources to maintain it and that it would become overgrown and eventually be surrendered for housing; consequently, the 'jewel in the crown' of Backwell, the Conservation Area around the Church, would

be lost in a sea of modern housing, just as has happened in nearby Nailsea. He concluded by saying that for decades the people of this village have worked hard to support sensitive proposals but to prevent over-development and he urges the appeal to be rejected and Farleigh Fields be preserved for generations to come.

The Case for Peter Hemmings

211. Mr Hemmings has lived in Backwell for over 20 years and has been Backwell's volunteer Rights of Way Officer for the last 17. He moved to the village on job re-location from London to North Bristol and after looking for places to live all around Bristol, he chose Backwell because of its semi-rural setting and facilities. He added that for the last 17 years he has organized summer walks around the village and helped publish a free "family friendly" walks booklet, which booklet gives details of six easy walks along the most used and scenic paths of the village and highlights interesting points of interest along the routes, and as the ROW Officer, he said that he has surveyed all 62 paths of the Parish and give regular feedback to assist BPC and NSC to keep them accessible throughout the year.
212. He also explained that he liaised with NSC during the creation of the Backwell Round Walks which form part of a series of local walks linking paths in and around villages in North Somerset that can be easily accessed by "Kissing Gates" instead of stiles. He added that Farleigh Fields and St Andrews Church are included in both the Backwell Round paths and the Backwell Walks booklet because these paths have some of the best views across the valley towards Clevedon and Weston-Super-Mare and can be easily accessed by families and older members of the community who are unable to walk the steeper paths behind the church to the top of Backwell Hill.
213. Prior to work starting on the Neighbourhood Plan he attended a presentation given by a government sponsored official. After the meeting he was told by the presenter that, after it was agreed, it would be the definitive document until 2026; many people spent a lot of time overcoming policy changes to get the document formally approved. He closed by saying that the paths and views around Farleigh Fields are valued assets of the village, and that it would be completely spoilt by any development and should be protected for people to appreciate and enjoy in the future.

The Case for Bob Taylor

214. Mr Taylor spoke as a local resident and as Chairman of BPC. He said that he has been a councillor for 22 years and a chairman for 6 years, and that he and his wife have been privileged to live in Backwell for nearly 40 years during which time they ran the village newsagent for over 35 years and got to know many of the residents personally. He heads not just a Council of 15 members but also 'an army of volunteer residents' that believe as he does, that their village needs to grow and prosper in a controlled manner. He added that in order to maintain its attractive character, this is not only for their current residents' future benefit, but also for the next generation of children and their children.
215. To enable this to happen he explained that it became obvious to BPC that they needed to know what residents' thoughts and aspirations were and they therefore commissioned a survey called a Community Plan, which formed the ground work that led them to volunteer to be a 'pilot parish', and to prepare a Neighbourhood Plan.

216. He added that this was far from easy as there was no agenda or guidance to work with, just a general directive from NSC. It involved a steering group of 15 Backwell volunteers headed by Parish Councillor Chris Perry. The plan took 4 years to prepare and was eventually adopted by NSC. It was the first in North Somerset and only the 30th in the country. He added that at the village referendum nearly 1,500 residents turned out to approve the plan by a majority of 96%, and they went on to become a 'N Plan champion' recruited by the DCLG to assist other councils nationally to prepare their own Neighbourhood Plans.
217. He also explained that in the NP one thing that became obvious was that there was demand from older residents for opportunities for them to down-size and starter homes for younger residents, and that they then had to identify and allocate the best area in the village to site them. He added that the site chosen was situated in Moor Lane which has close proximity to schools, buses, the railway station, the garage and associated convenience store, with the main shopping area only 10 minutes' walk away, and at that time the Moor Lane site was designated for industrial use but it had been left dormant so was 'ideal' for this development.
218. He stated that the steering group through the NP quite rightly also tried to identify alternative employment opportunities and sites, specifically the disused and dormant Cole's quarry, and that since the NP was finalized the erection of small industrial units has been agreed for this site. He added that the village is a thriving community, with many successful organizations, plus an active cultural and social life – specifically, Backwell Playing Fields Charity offers its residents both old and young, 4 football pitches, 4 tennis courts, a youth club, scouts and guides organisations, judo plus a play school facility; there are also 20 pieces of play equipment as well as a skate board ramp and a BMX circuit, and a very popular bowls club which also houses 2 Probus clubs. He added that other village assets are the Leisure Centre, the W.I. Hall and the purpose-built Play House Theatre and Film Club, that BPC own and maintain a further 2 play areas plus our allotment site consisting of 80 allotments, and that annual village events are the Donkey Derby, Flower Show, 2 day musical festivals.
219. He said that BPC provides funding annually to many of the 40 organizations that make Backwell what it is, in total to the tune of £40,000, and that this funding ranges from providing their own lolly pop lady, the 'Meeting Point' organisation which gives our senior residents help and advice, to assisting the tennis club and the junior football club update their facilities and promote active mixed sports for boys and girls. BPC are also heavily involved in and help fund the 16-acre Sports Recreation facility the Parish Hall and our Youth Club.
220. He added that BPC have responded to NSC cuts by cutting our own grassed areas and maintained street cleanliness including the voluntary village clean up; that it also helps to retained our village's attractive appearances by maintaining our floral displays and providing a 24 foot Christmas tree on the village green, along with the festive Christmas light display on the main road; and it takes its involvement in the social side of the village very seriously – for instance it will be organizing our Christmas Party for 90 senior residents, Christmas around the Crib for our young families and the Chairman's Christmas drinks, in order to show gratitude for helping make Backwell a close and active community. He added that it was with great pride that they welcomed the Olympic Torch in 2012 when it visited Backwell, held by a youngster from the village and our volunteers

provided breakfast and snacks for over 80 residents.

221. Cllr Taylor went on to say that Backwell provides plenty of community facilities and opportunities for undertaking various leisure activities, however, many residents simply like to enjoy leisurely walks and to relax in the beautiful landscape that makes up parts of the village, in particular Farleigh Fields. These fields make a valuable contribution to the quality of life in the area. It is an area where people can stroll and admire our beautiful countryside where cattle still graze as well as the abundant wildlife. These fields represent a typical English countryside environment of peace, quiet and serenity. He added that the historic Church of St Andrews overlooks these fields adding to their historic appeal and beauty, and from Farleigh Fields there are views across to the Tyntesfield estate and on a good day to South Wales.
222. To Backwell residents Farleigh Fields is, in his view, an important asset just the same as any club or play equipment, and as such it must be protected, and the character and appearance of a development of the size proposed would result in a change from a rural appearance to one of a heavily built up development. He added that above the fields is the oldest part of Backwell which contains the 'well', which gave the village its name, and it also contains the old Manor House, several converted farm buildings, St Andrew's School House, the War Memorial and the Jubilee Stone, erected to celebrate Queen Victoria's Jubilee. In his opinion residents 'mental picture' of the village is synonymous with the Church nestling above Farleigh Fields.
223. He added that from 1984 to 2000 Farleigh Fields was targeted for development by numerous planning applications, all of which were refused at officer level, committee level, government inspector level and finally by the Secretary of State. He also said that at the last appeal in 2000, the government inspector stated "do not bring this application back before us again". Such was, in Cllr Taylor's view, the inappropriateness of the application to build on Farleigh Fields.
224. He went on to say that the A370 and its adjoining infrastructure have remained unaltered for over 50 years and as a result, the capacity of the community to 'accept' new houses is limited. He has concerns about whether the village itself is capable of accepting such a substantial increase in population over a relatively short time period. He added that the village has accepted small pockets of development and has never said no to sensible development; however the 65 homes in Moor Lane proposed in the NP, plus a further 30 in small pockets around the village would provide sustainable development whilst protecting our rural village life which we love so much. He closed by respectfully ask that the appeal be dismissed.

The Case for Jayne Kearney

225. Ms Kearney started by explaining that she has lived in Backwell for 10 years. She added that she walks across Farleigh Fields with her dog most days, and loves the fact that by taking just a few steps off the main road you can find yourself in open countryside, and that the fields provide an incredibly cathartic escape from the constant hustle and bustle of everyday life and she often takes some time to stop and breathe and enjoy the space and the views. For her they are a chance to reconnect with nature - a reminder of the changing seasons - the vivid greens as the hedgerows burst into life in Spring; the warmth of the summer sun making it a pleasure to walk through the long grasses and

wildflowers; the wild field mushrooms that pop up so suddenly in Autumn; and the beauty of a crisp, clear, frosted winter's morning. She added that even when it is pouring with rain and blowing a gale, she would still rather battle her way through the mud than trudge past what she sees as yet more characterless houses.

226. She went on to say that the fields are also a haven for wildlife, and that she has very happy memories of wildlife spotting with her son when he was younger, armed with his I-Spy Nature book they would love to watch the goldfinches flashing amongst the hedgerows, the curious robin hopping ever closer to us along the fence and the crows chasing the buzzards away from their nests. He added that their butterfly identification was always 'a bit ropey' and they were never very good at remembering how many spots were good on a ladybird, but they had lots of fun nonetheless and the dog was very happy to spend the time following scent trails left by the rabbits, badgers and hedgehogs etc. She also said that they spent a memorable afternoon dissecting what they thought were owl pellets collected from around the church - only to discover, after much research and a wealth of learning, that they were probably Buzzard pellets.
227. She concluded by saying that all this would be lost if these fields became a housing development; the wildlife would largely disappear with the destruction of their habitat and a strip of land with a footpath through the middle could never recapture the peace and diversity of the current fields and hedgerows.

The Case for Norma Knight

228. She explained that she has in Church Lane, a short walk from Farleigh Fields since 1984 and has enjoyed the beauty of the fields and their role of the parish, and as a qualified historian with experience in researching local history. She added that she has traced their use in the development of Backwell; first recorded in Domesday Book in 1086, Backwell's prosperity depended on agriculture and this area was prime agricultural land providing pasture for sheep and cattle as well as for crops. She also explained that there was no central settlement, instead there were numerous farms and several small hamlets; the earliest and most important was around the church and manor house and was known as Church Town, and to the east lay Farleigh where inns, a market and a fair became established.
229. She said that until the 18th century the main road through Backwell ran from Farleigh directly to Church Town bounding Farleigh Fields on the south side, which is now Church Lane, and in the 1760s a more direct route between Farleigh and another hamlet at West Town was developed. She added that highway wardens' accounts recorded the use of gunpowder and local labour to level and straighten an existing track and this road, now A370, bounded these Fields on the north side.
230. She explained that Backwell formed part of the Longleat Estate after 1709 and all development was closely controlled by the Marquess of Bath, and that in 1939 the Marquess sold all his land here and this opened the way for new houses and shops. She added that most building was delayed until the end of the Second World War and was concentrated in the middle of the parish where the modern village developed, however even then it was all on a modest scale, with small estates and infill. She added that in her view this continues to be the best way to provide for the future of the parish.

231. She closed by saying that Farleigh Fields lie outside the settlement area and are still good agricultural land, and that they also lie between two conservation areas at Church Town and Farleigh and provide a valuable open space for the health and enjoyment of all parishioners.

The Case for Mark Mallett

232. Mr Mallett said that he has been a Backwell resident on Farleigh Road since 2003, and that his wife and he have taught at the Secondary School and their children attended both the schools in Backwell. He added that he has walked Farleigh Fields on an almost daily basis — exercising his dogs, attending St Andrew's Parish Church or simply in order to gain refreshment and stress-relief from the vicissitudes of life as a Comprehensive School Teacher. He and his family are vehemently opposed to the proposal and outlined three reasons in particular why to allow the Appeal would be to diminish the character of Backwell and the quality of life for its residents.
233. Firstly, in his view Farleigh Fields is an oasis — a green lung — for a village which has become a commuter route between Bristol, Weston-Super-Mare and the M5. The views below St Andrew's are stunning in his opinion. He added that one's direct and peripheral vision is dominated by the landscape of Farleigh Fields in all directions and then the eye is drawn to Backwell Common, Wraxall and Tickenham Woods and the coastline from Clevedon to Weston, and that on a clear day you can see across the channel to Wales. In his view the experience of being in this tranquil haven above the bustle and congestion of the A370 is priceless. He is aware that the revised proposal leaves two fields intact from development, but to allow the appeal would in his opinion represent an amputation and cancel much of the tranquillity described. He considers that the scenic quality of the landscape would be marred by the introduction of a built form of development within the lower fields.
234. Secondly, in his opinion it would inevitably have an impact on wild life. As well as the farm-stock occupying the fields, he said that there are colonies of rabbits and field-mice and that he has regularly seen foxes and red deer. In the skies above, kestrels and buzzards hunt the fields by day and bats are seen and owls heard from dusk until the dawn. This, he feels, illustrates the way in which Farleigh Fields represents a green corridor between Backwell Common and the fields and woodland above St Andrew's on Backwell Hill. Development of some of the fields would in his opinion fatally compromise the habitat there.
235. His final point relates to educational infrastructure – speaking as a parent, teacher in Backwell, and a Headteacher at Chew Valley Secondary School. He said that Backwell School's outstanding reputation has seen it grow markedly over the last twenty years, and that there is a very serious danger of it being required to expand further (because of housing development in the locality) in a way that would significantly detract from the educational experience of local children. He explained that the school is already 1750 strong, and that in his view the impact of being in so large a school is to make a child's experience potentially one of anonymity. Further growth at the Secondary School would, in his view, be educationally deleterious for the young people in its care, and there is also the point that Backwell Junior School is already at capacity on what he sees as being an incredibly cramped site. In his opinion expansion of housing threatens the very high quality of education which these two superb schools currently provide.

The Case for Cyril Routley

236. Mr Routley explained that he and his wife live on 45 Station Road near the station and also lived at 34 Farleigh Road during 1964-71 enjoying this view and appreciating all that it offered. He said that important to them at that time was the visual aspect leading up to the church on the hill, a view they saw every morning from our bedroom window. He added that there was the tranquillity it afforded them of an open space removed from the bustle of modern life; the opportunity to walk along the footpaths. Frequently then it was the custom for groups of walkers to explore the various footpaths in the village on a Friday evening, an activity which continues to this day. He also said that similarly they would appreciate the uninterrupted view from the churchyard down onto the village and he still finds this uplifting even now to stand there and gaze.
237. Farleigh Fields is in his view good quality agricultural land and is used by the farmer for arable and grazing, and is the habitat for much wildlife. All of this would be destroyed forever, he added, if this development were approved. It is specious, in his opinion, to claim that "the houses will not affect the landscape or the character of the village". He stated that adding 220 houses on this site is a gross overestimate of what Backwell can absorb, and coupled with other known smaller planned developments in Backwell, this would add some 300 houses to a village of 1,750. He said that local people care passionately about the character of the village, that Backwell has absorbed small developments successfully in recent decades, and that it would be hard to maintain its character with such a sudden increase.
238. He went on to say that having spent the whole of his working life in education he knows of the reputation of the village schools extremely well, that many people move into the village on this account, and that his next door neighbours are an example and their predecessors, something that is replicated in many of the house sales locally. He added that the comprehensive school is always oversubscribed as are the junior and infant schools. The new housing on Farleigh Fields would in his opinion create an influx of some 400 children and the parents would most definitely be seeking for them to be educated in the village, and this would be impossible without some consideration being given to expansion of education opportunities here. He added that it would be tragic to put the current outstanding schools at danger with this unwelcome development, and that the alternative would be a greater use of the already dangerous and inadequate Station Road, with parents driving their children to Nailsea schools.
239. He also referred to the Backwell Neighbourhood Plan which he said he had perused over the time it has been under consideration, and that from that, it is clearly the belief in the village that the overwhelming majority of villagers are very much opposed to development on this site, being out of character with the greater part of the village. He added that draining the water that flows down the hill is an issue, and that when he lived on Farleigh Road, the field entrance was just one house away from his and that this was the focal point of much water pouring off the hill from exactly where the westerly part of the development will take place. This, he said, created regular flooding on to the A370 during periods of heavy rain, and covering the grassland with ever more concrete and tarmac would exacerbate this danger.
240. He closed by explaining that although he and his wife moved away from Farleigh Road in 1971 they still regard Farleigh Fields as a crucial part of village

life, and value it no less since they moved. He added that his wife was born in Backwell, and is an organist at St Andrew's church, and that she has taught music to countless Backwell boys and girls over the years - often to a couple of generations. He said that Backwell is a stable place, with a fantastic, caring community and asked that this is not endangered with such an unwelcome development on such well-loved fields.

The Case for Colette Howard

241. She explained that she has lived in Backwell since 2002 and wished to express her strong feelings regarding the heavy traffic and bad parking experienced in Backwell on a daily basis, especially close to the railway station. She added that she believes that the proposal would significantly add to congestion in and around Backwell and would add even more chaos and hazards to our roads for pedestrians and motorists alike, and that while she had voiced my concerns many times to NSC and BPC, some suggestions on how to improve the situation have been discussed such as parking permits very little has ever changed for the better.
242. She said that she had been a commuter using Nailsea & Backwell Railway Station since 2002, travelling to Bristol and more recently to Bath on a daily basis, and that she had witnessed significant growth in the levels of traffic using the main roads and side roads during that period, and it has been extremely noticeable how many more people are now using Nailsea & Backwell Railway Station, which has impacted on the volume of traffic too. It is quite noticeable in her view how busy the station now is, not only by how little platform space there is available to stand on when waiting for the train, but also the lengthy queues to buy rail tickets, the large volume of cars parking down side streets etc; and she added that she felt that a large proportion of these rail users are not locals, and are driving to Backwell from other villages to commute to Bristol and beyond.
243. She gave an example of commuter numbers by saying that when her regular train arrives in Backwell at 5.30 each evening, at least 2 out of the 8 carriages disembark, and those people then spread themselves amongst the local side streets and to the station car park to collect their cars and head off out of Backwell to wherever they live, which causes chaos along these narrow residential roads and Station Road especially; and this relates to only one train. She added that she has witnessed people leaving this train to collect their cars, doing 3 point turns and blocking off roads; parking on double yellow lines all day down our narrow residential streets, as they rush to catch the morning train and just cannot be bothered to use the station car park, even though there are still spaces available; and they generally cause a nuisance of themselves to local residents by their inconsiderate parking right outside their houses and their quite often arrogant and rude behaviour whilst doing so.
244. She explained that she believes that another housing development would produce even more traffic on our streets, with more people potentially using the railway system, and parking on our streets, a situation that is already creaking at the seams; and although you may think residents of this new development could easily walk to the railway station from the Farleigh Fields development, she would put money on it that a lot of them would not. She added that in any event more traffic would then be added to the mix along Station Road and the residential side roads, which are already congested to an unacceptable level for those who already living there, let alone adding more traffic to the situation.

245. She believes a new development like this would bring a significant level of extra traffic to the area, it would cause severe congestion to the village especially at busy periods, on a scale that you would expect from a town not a village, and it would become a bottleneck for motorists, locals and business people alike, trying to go about their daily business in the area in a safe way. In her view some common sense is needed here and she suggests that Backwell already struggles from a traffic perspective, and if a comprehensive study were carried out, it would quickly become clear that our roads cannot cope now with what is being asked of them, let alone coping with higher volumes of traffic created by such a development. She added that no new residential roads being proposed by the developers would remove the congestion that would still hit the A370 and Station Road at some point.
246. She explained that she had thought the investment that locals had already committed to producing the NP would show evidence of residents' willing to compromise and plan for growth in the village, as they realise they cannot stand still, and it is a document produced by intelligent people who know change must come and have worked hard to put forward sensible and manageable suggestions to handle future growth of the village over the next few years with input from villagers. On that basis she asks why is this being ignored, is the message we should take from this inquiry an indication that if a developer fancies a piece of land, such arrangements already in place should be ignored - not a good message to be sending out in her view, nor does it inspire people in the future to work on producing such a document? She closed by saying that she is against the proposals.

The Case for Alistair Ireland

247. He explained that he has lived in Backwell for 10 years, some 15 minutes' walk from Farleigh Fields, and that he has always been an active person, from a young age involved in competitive sport as well as being a keen walker. He explained that following an injury five years ago he has used Farleigh Fields more and found it a helpful and enjoyable environment that aided his recovery.
248. Whilst walking in Farleigh Fields, he said that he meet other regular walkers also enjoying the very special ambiance and the wonderful views, and that he is able to slow down and unwind, finding a calmness and serenity that is not possible to achieve if you are having to dodge traffic as you do on other walks in the village. He added that he feels that Farleigh Fields are a very special place; the lower part provides a pleasing visual break that is experienced quite swiftly upon entering from the road, as you walk up the hill, the views from the footpath as you look both right and left are extensive and provide a sense of being in the countryside. He added that that if any part of the fields were built upon this sense of being in the countryside would be eroded and destroyed, and that no amount of planting or landscaping would reduce this very permanent and damaging impact.
249. The fields have in his view many interesting variations in the plants, and he said that that he has found special parts of the fields that have an abundance of bees and pollinating insects feeding on the clover at certain times of the year, and incidentally has found more four leaved clover there than anywhere else. He added that that he purchases local honey, made from hives kept just above Farleigh Fields and must say the honey is the best he has tasted and prevented the occasional bouts of hay fever. He expressed concern regarding potential

flooding associated with the development and closed by saying that losing this beautiful space would be a tremendous blow to himself and to those who already enjoy walking in what we regard as our "Village Green" and would remove forever an oasis of calm from an increasingly "busy" world.

The Case for James Harwood

250. Mr Harwood explained that he has lived in what he considers to be the amazing, unique village of Backwell for nearly five years with this wife and three children. He is originally from Yorkshire and feels that he has found a true home from home. Having children was his driving force to get out of a big city environment and Backwell has in his view definitely been that as it has a true village feel and is a perfect size to allow for an amazing community spirit. He added that that when they first discovered Backwell they were drawn by the lovely open spaces surrounding the village and the fantastic country environment that surrounds and is integral to this amazing village.
251. Farleigh Fields, in his view, forms a significant portion of that feel and without it he does not feel that Backwell will ever be the same again, as it would lose its village feel. He explained that as a family they love walking across the fields and my children often remark on how lucky we are to have such a fantastic environment on their doorstep, and that they often walk across the fields appreciating the wildlife and wild flowers that are in abundance. In his opinion it is a truly educational experience for his children and they see different things every time they walk across them; whether it is up to the church or to continue walking up to the woods above Backwell. Building on any of the fields will in his view result in the loss of the very pleasing, open and agricultural attributes of the area. The character and appearance of the entire area would, he feels, be adversely affected and changed forever through the construction of the buildings, roads and hard surfaced areas. He added that there is likely to be some street lighting as well which will create an unwelcome intrusion in an otherwise rural setting.
252. He explained that he feels that building on this integral part of Backwell would be so detrimental on so many levels, and that it would change the whole aspect of the village feel and would restrict my children's appreciation of the natural surrounding environment. He added that his children absolutely adore the open spaces of Farleigh Fields and often will ask to put on their wellies and venture across the fields. They are also at the local schools and it is in his view a very privileged option to walk them to school. As it stands, he said, there is significant traffic already along the busy A370 and traffic is a major concern to most parents, and at school times it is always essential to watch our children closely as cars and lorries seem to be an endless cause of danger along the busy remain road into Bristol. Building a further 220 house on the fields would in his opinion be ridiculous; the congestion and danger would be so much worse. He also said that Backwell struggles with the traffic it already has, and that with an extra 220 homes he would expect at least an extra 1.5 cars per household, so an extra 330 cars at a conservative estimate - Backwell would not cope in his view. He added that the danger to his children would be increased, the congestion would be increased, the pollution would be increased and Backwell would become a worse place to live.
253. With the extra 220 homes school places would in his opinion be a problem, while doctors' appointments would become impossible - they are often hard to

get already, he added. With the extra suggested development and Backwell being a draw to families he estimated a potential of 400 extra children to the Backwell population. He explained that he feels that the village is already at breaking point for school places and doctors' appointments and that the extra development is definitely not in the best interest of the village and totally against the NP, which was supported by many residents.

254. He said that there are already close to 80 new homes passed to be built in the area, which is sustainable, but that 220 extra homes is definitely not. He added that the area close to the new ring road closer to Bristol centre would be more sustainable with better travel links and better links to employment. Backwell is in his opinion a predominantly a family village with very limited employment options, such that any new development would see its inhabitants having to travel out of Backwell to jobs outside the area, thus adding to the already dangerous traffic conditions on the Backwell roads.

255. He concluded by saying that the development of the land be rejected again and never be allowed to be reconsidered, and that it is not right for the village, not sustainable and would inevitably make Backwell a poorer place to live; be that for the children and the adults of the village.

The Case for Richard MacLeavy

256. Mr MacLeavy explained that he spoke in opposition to the scheme in a personal capacity, as a life-long resident of Backwell, and as a Parish Councillor - a member of BPC. His objection is on the grounds that the application is, in his view, made in direct contravention of the policies outlined in the NP, and the planning policies adopted by NSC. He said that quite simply, the development proposals do not conform to the NP and that the appeal directly opposes, and is contrary to, the government's Localism Acts.

257. Regarding the NP, he explained that he fully supports the policies proposed and adopted therein because they were developed through thorough research, analysis, planning and consultations with local residents and businesses, and it was then ratified by a referendum which indicated overwhelming support in the village. However, the appellant, in his opinion, seeks to ignore the NP. He added that while he had no direct role in the preparation of the Plan he is deeply committed to it and an enthusiast for localism as he said that he has witnessed at first hand the real and positive results of local democracy as a local councillor. He also said that any approval to the application development would constitute a blatant defiance of the NP, and portray serious disrespect for the wishes of the locality and NSC as local planning authority.

258. Regarding what he described as the impact on the village identity, Mr MacLeavy said that there is no doubt that such a development would have a serious detrimental impact on the character of the village, and place an intolerable burden on the village's facilities. He added that NP allows for moderate, sustainable growth, but a development of this size, and in this location, would place extreme demands and an unacceptable strain on the village's resources. He also said that the prime agricultural land is a feature of the community and confirms its position as an attractive and desirable village within North Somerset. In his view the non-affordable housing proposed are likely to be priced towards the higher end of the market, such that the development will not provide for young people growing up in the community who

may wish to purchase a home and remain within the village.

259. Regarding localism, he said that it was Greg Clark MP who introduced the original legislation and who in September 2011, announced:

`Neighbourhood planning will hand power back to communities to decide the vision for their area as they see fit, encouraging people to plan positively for their future.

`This is localism in action and the enthusiasm across the country for neighbourhood planning shows how keen communities are to get involved. '

260. Clearly, in Mr MacLeavy's view, government statements have encouraged belief in the status of neighbourhood plans and galvanised communities across the country to prepare them and to adhere to them, and to allow this development would fly in the face of the NP resulting in erosion in public confidence in the planning system.

261. In conclusion he said that the proposals blatantly contravene the NP by proposing to build on land that falls outside the village settlement boundary and potentially placing an intolerable burden on the village's resources. Most importantly, he added, approving the proposals will strip Backwell of a popular, well-made development plan; alarm communities involved in neighbourhood planning throughout the country; and expose the government's localism policies as a charade and a failure of democracy.

The Case for Geoff Wells

262. Mr Wells said that he was speaking on behalf of himself and his wife and also for Backwell Residents Association (BRA), which he said was formed in the early 1980's to maintain the village as a vibrant and caring community. He added that on planning matters they have always opposed housing on Farleigh Fields but that they do support projects for some 80 dwellings, as identified in NP; adding that the BRA has almost 350 household members, each paying £10 annual subscription.

263. He explained that he was born in the Midlands into a family working in agriculture, although his working life in Bristol has been office based, and that Backwell still has lots of agriculture around it which he greatly values. He explained that he lives in the village centre, close to the Playing Fields, so in no way are we adjacent to Farleigh Fields, where he often walks. He said that he takes great pleasure from seeing Farleigh Fields being worked as farming land - sometimes arable, other times grazing for sheep or beef cattle. He added that there are often buzzards overhead, and a few years ago, a ploughing match was held there, with the field full of vintage tractors.

264. He explained that he took over an allotment, when they were created in 1977, and chairs the allotments committee, and that Backwell allotments field is well kept and popular with over 80 families who work them, and many walkers who use the popular footpaths through the field. He also said that he has always played tennis on the excellent courts in Backwell Playing Fields, and still enjoys it, and that every week, hundreds of people, young and old, enjoy the varied facilities offered at the Playing Fields. He added that there are 3 great open spaces in Backwell; the allotment field, the Playing Fields and Farleigh Fields - each has its merits, with Farleigh Fields being the only one that is farmed, and is

still perfectly tranquil.

265. He went on to say that Farleigh Fields is a small acreage to be farmed, and that, should any building take place on the fields, it would certainly make farming unviable on any remaining and the link to agriculture would be lost. He added that donating some of the land to the village as a so called amenity would be of no value whatsoever – there would be a cost to maintain it, and it would quickly deteriorate.
266. He also said that prior to the inquiry, he and his wife examined the latest comments on the proposal in detail and of the 353 comments only 3 were in favour. He also said that he created a geographical map of objectors and found that a quarter live adjacent to Farleigh Fields, while a quarter live in 3 areas remote from the centre - near the station, and at the Weston and Bristol ends of the village. The remaining half were, he said, in the central area of the village near the shops, neither close nor far from Farleigh Fields, which in his view shows that they are appreciated by the whole village, and not just by those who live on their borders.
267. In summary, he said that Farleigh Fields are outside the settlement boundary, and should be protected as an agricultural asset; they are easily accessible to most houses in the village, which make Backwell very different from a suburb of Bristol. He closed by saying that he hopes the Inquiry will judge, as others have in the past and that Farleigh Fields should be retained to the benefit of the whole community, as a unique piece of farming land in the heart of our village.

The Case for Mike Phillis

268. He explained that he and his wife have lived in the village since 1978 as Backwell appeared to offer a great deal as a place to raise a family, and that over the years their decision has proved to be a winner in every sense. He added that Backwell has every facility to provide a full healthy lifestyle that good Town Planning seeks to achieve as an objective; as developed to date the village thrives as a success story. He went on to say that as a village caring community they have spent much time and effort in examining where might further development take place which could complement the existing without prejudicing the vibrancy and balance, and that this has been incorporated in the NP, which was formally approved and adopted in 2015.
269. The appeal proposal, in his view, amounts to a carbuncle in the very heart of this village and if allowed would destroy the community as exists today. He added that it seeks to increase the number of houses within the village significantly and in doing so is taking out of use almost 8 hectares of grade 2 agriculture land against national policy in an area that contributes so much to the beauty and tranquillity of the open views up to the Church and down across the valley to the Wraxall hills. He also stated that there is no doubt that the proposal would damage the concept of Local Green Space and would take away much loved open space and fresh air from close to the village centre in direct conflict with accepted good practice, and that it would negate all of the good planning objectives achieved to date to meet the standards of sustainability and would fly directly in the face of National Planning Policies. The addition of 220 units would, in his opinion, bring significant and possibly saturation levels of extra traffic movements to the A370, Dark Lane, Church Lane and Station Road increasing serious safety issues particularly at peak times especially as all are

school routes.

270. In conclusion he stated that he feels that there is absolutely no merit in any direction that can possibly support this appeal but so much can be saved by dismissing it, and that the proposal directly challenges the formally approved planning policies and objectives and any allowance of the appeal would make a total mockery of all the sophisticated planning framework developed over the many years.

The Case for Chris Miles

271. He explained that he has lived in the village since 2014 with his wife and two young children, some 10 minutes' walk from Farleigh Fields, which would be will be detrimentally changed forever should the proposal go ahead. He stated that he has numerous reasons to oppose it but would focus on two key issues that he feels most passionately about - the strain on the local schools and the destruction of local green space.
272. Regarding local schools he said that his family has first-hand experience of the existing strain already placed on both Backwell primary schools - West Leigh Infants and Backwell Junior School, and that when they first moved to the village their daughter was unable to secure a place at West Leigh as it was already heavily oversubscribed. He went on to say that eventually they secured a place in Nailsea, so instead of walking to the local school they drove, and soon found this was a common problem. He added that he shudders to think how many extra cars are on our local roads at peak times because of this. After a year, his daughter got a place at West Leigh and his son was accepted this academic year as a sibling. He explained that they are both active parents involved in the school drop off and collection at the infant and junior schools, and that they can see these schools are already at capacity and there are more siblings coming through.
273. He also stated that if the application were approved, it would not be a case of a few extra children but about 100 to 200. He asked where on earth do these new extra children go to school - squeeze them in at Backwell, or Nailsea, Long Ashton and so on? In his view to have more cars and traffic is not right or healthy, and ultimately the schools will become overcrowded and the children's education will suffer.
274. Regarding local green space he said that they are lucky to have their niece and nephew at Fairfield School who they collect on a regular weekly basis. The trip from the junior school, after picking up their daughter across, across Farleigh Fields is taken as often as possible. He said that their children, like so many in the village, enjoy the opportunity to see the cattle and wildlife up close, and only recently they saw and heard their first owl in the trees at the back of the school. This local green space provides a haven for wildlife in his opinion and provides a safe open environment for children to walk and play without fear of vehicles.
275. He added that he was lucky enough to grow up in the Cotswolds so can appreciate a good view, but said that there are two views he finds the most magical all year round. He stated that as a keen cyclist, he regularly cycles down Wraxall Hill to the junction of Bristol Road and the view looking back towards my home, and village across the valley with St Andrews Church and Farleigh Fields at the centre is the most glorious around. But the most important view, in his

opinion is from our village looking back toward Wraxall from the Conservation Area at the top of Farleigh Fields by the church. He added that the full panoramic scene makes him realise how lucky they are to live in the village. He closed by saying that if this application were granted it would be a travesty and to emphasis this point he asked that reference is made to a photograph that he has supplied¹²⁴.

The Case for Sarah Rees¹²⁵

276. Ms Rees explained that she has lived in Backwell for 26 years and works as a Therapeutic Counsellor with many North Somerset people who are struggling with a variety of Mental Health concerns. She added that her interest in keeping Farleigh Fields as what she describes as an oasis of unspoiled green, focusses on the benefits to health and wellbeing of this area of natural beauty and tranquillity. She said that this compact yet natural and open green space offers a haven for nature lovers, ramblers and dog walkers, and that it is a safe route from the Church Town area to the village though unspoiled countryside for people of all ages, but especially for students at the 3 schools in Backwell.

277. She referred to what she described as considerable evidence to support the need for green open spaces to support people of all ages with improving and maintaining their wellbeing and said that:

1. A recent study by Dr Ian Alcock et al at the University of Exeter Medical School, evidenced that 'green spaces deliver lasting mental health benefits'. In a five year study, using data from over 1,000 participants, he showed that green space in towns and cities can lead to significant and sustained improvements in mental health. They found that, on average, movers to greener areas experienced an immediate improvement in mental health that was sustained for at least 3 years after they moved. The study also showed that people relocating to a more built up area suffered a drop in mental health. In 2012 the World Health Organisation cited depression as the leading cause of disability worldwide, and this study builds on research that has found natural environments could act as vital resources to improve health and wellbeing.
2. The Groundwork 'Green Space report' in 2012 also summarized the health benefits of green spaces stating that:
 - The more time people spend outdoors the less stressed they feel — an important consideration given the cost to the UK economy of depression and mental illness, which has been calculated at £26.1bn pa.
 - A study of GP records in the Netherlands indicated that the annual prevalence rates for 15 of 24 chosen disease clusters was lower where there was more green space within 1km. This correlation was strongest for anxiety and depression, and among children.
3. The National Institute for Health and Care Excellence has also published

¹²⁴ Mr Miles supplied a photograph which is attached to his statement at CD 18.8

¹²⁵ Ms Rees provided the following References to support her statement: 1. Longitudinal Effects on Mental Health of Moving to Greener and Less Green Urban Areas - Ian Alcock Mathew P. White Benedict W. Wheeler Lora E. Fleming and Michael H. Depledge - Environ. Sci. Technol., 2014, 48 (2), pp 1247-1255 Publication Date (Web): December 9, 2013 (Article); 2. Grey Places Need Green Spaces. The case for investing in our nation's natural assets - Julian Dobson 2012; and 3. NICE <https://www.nice.org.uk/Guidance/PF18> Physical activity and the environment. Public Health guideline 8 (PH8) 2008

guidelines on the importance of public open spaces for health and wellbeing. The Public Health guideline 8 (PH8) published in January 2008 on Physical activity and the environment says in Recommendation 4 that designers and managers of public open spaces, paths and rights of way, as well as local authorities should, amongst other things ensure public open spaces and public paths ... are safe, attractive and welcoming to everyone.

278. She closed by saying that these three all evidence the importance of keeping this area of natural and unspoiled green in Backwell, to maintain and improve the mental health and wellbeing of residents.

The Case for Lorraine Hopkinson

279. She explained that she is a mother of two 2 boys and with her husband and dogs they have enjoyed living in Backwell Village for around 12 years, and they moved to the village because they wanted to bring up their children in a healthy and safe village environment and enjoy all that goes with that. Their boys have attended the local schools and currently the 12 year old walks to Secondary School on his own each day. She and her 7 year old either scoot or cycle to the Junior School each day. She added that the benefits of children walking or cycling to school each day are well documented and encouraged by all Government agencies, and as well as all of the health benefits for the children, (and the grownups!), there are of course the environmental benefits too, things that are very important to them as parents.
280. She went on to say that their journey to school is not without its issues, however, as traffic travelling through the village on Farleigh Road to Bristol is very heavy, similarly traffic travelling to and from Nailsea on the narrow Station Road, where buses have to mount the pavement in places to pass, is very congested, particularly as the entrance to the Secondary School sits on Station Road. She added that children already frequently spill on to Station Road as the pavements are narrow and overcrowded, and that there have sadly been two incidents recently with pedestrians (one a school child) being hit by cars on Station Road. She also said that the Junior School sits at the top of Dark Lane, next to the recycling centre and the proposed new business park, again these are very busy roads indeed.
281. She then asked 'how on earth could Backwell Village cope with an additional 220 houses?', and added that extra cars on the already congested roads, extra children trying to find a place at the small Infant and Junior Schools, which she said are already full, extra patients at the Doctors Surgery and so on. She added that 220 houses bring people, children and cars who all need to be supported by an infrastructure, Backwell is a Village, it is not equipped to support this significant increase in the number of houses being built over what she imagines would be a relatively short period of time. Its roads are in her view narrow village roads and its pavements are narrow village pavements, while the Schools are small village schools.
282. She feels that the impact of 220 houses would be to the detriment of everyone, with gridlock on the roads, an increase in pollution, safety issues with cars and pedestrians alike, resentment amongst the community as parents compete to get their children in to the local school, more parents driving as they cannot get their children in to the local village school. And ultimately, she said, the enjoyment and quality of life from living in a village is gone, because all of

the things that make it a village, like walking and cycling to your local school have gone.

283. Finally, she said that she would like to add that people in Backwell are not NIMBYs, or adverse to any type of change; people moving to the village are always welcomed but that a rapid influx of new people will, she feels, be difficult for a village of this size to absorb over a short period of time and will cause social tension and disrupt the social cohesiveness of our tightknit community. She added that it would impose a strain on the local roads and local facilities and stated that over 80 new houses have already been allowed and are allocated within three locations in the village. She closed by saying that Backwell is the community's village and as a community they have a duty of care to everyone both old and new, to ensure that it remains a village, with all that entails and something they protect for future generations - because once it is gone, it is gone forever.

The Case for Bill Charnock

284. Mr Charnock explained that he lives 10 minutes from Farleigh Fields and arrived here for a number of reasons which he outlined. He was attracted by open spaces close to place of work and the huge local interest in natural History embodied in North Somerset Wildlife wardens. He explained the work that had been done to undertake a comprehensive wildlife survey of parish involving those wardens and local residents creating the Backwell Environment Trust (BET), of which he was the founder Chairman from 2004 to 2012. He added that the BET canvassed every house in Backwell and following numerous small donations plus a grant from NSC it has bought 22 acres of nature reserves, for which there is a huge weekly volunteer input to managing them. This work has led to him being awarded the Queen's award for volunteering.
285. He said that the NP involved the comprehensive collection of all available information on Backwell biodiversity with input from a range of groups and organisations. He added that his main point is that for agricultural land Farleigh Fields are particularly bio-diverse, and that this is due to their connectivity to moorland to west, open country to east, Oldfield Down to south and Backwell Lake to Tickenham Ridge to the north. He added that the work associated with the NP and the areas special characteristic led to the recommendation that Farleigh Fields at large be designation as LGS which has the overwhelming support from villagers. He closed by saying that losing Farleigh Fields would be a significant loss of connectivity and one could forget about the continued presence of peregrines on the Church Tower.

The Case for Keith Riches

286. Mr Riches said that he and his wife have lived in Backwell since 1973, in four different parts of the village, since 1984 in Farleigh Road, and that during the first 24 years he was away much of the time in the Royal Navy and it was always a source of comfort to him that his family were settled in a safe, pleasant community. He added that they have always tried to take advantage of, and contribute to, the life of the village, and their sons attended the three village schools.
287. His first point was to endorse all that has been said about Backwell by the council representatives and other residents. In his view Backwell is not a picture

postcard village and it is blighted by very busy roads; nevertheless it is a vibrant community and a very special place to live, and as regular walkers they have always enjoyed the open and accessible nature of Farleigh Fields as an integral part of the village's character. He added that the two footpaths reflect the agricultural use of the fields - they are wet and muddy for much of the year, and one is steep in places - but they are ancient rights of way, and are shown on the OS maps; and they are part of a complex network of such paths in working fields, none of which have, or need hard surfaces. He said that he had heard it said that Backwell has a deficit of hard surface, flat, accessible paths, but he does not agree and referred to the playing fields, the open space behind Backwell Vale, Backwell Lake and Rockwell Environment Trust Nature Reserve all having appropriate hard surface paths in his view.

288. As part of this development it has been proposed that ten or twelve hectares would remain as some sort of open space, with various hints that it could still be used for agriculture, however he does not consider this would be viable and predict that any development would result in all of this best and most versatile land being taken out of agricultural use.

289. The access onto Farleigh Road is narrow and seems to be reliant on unsightly retaining walls in his opinion, and the road connecting the two halves of the proposed development, now called a lane, crosses the steep middle field. This lane, he said, would require significant landscaping and crossing points, and would be the route for service and residents' vehicles for approximately 100 houses. He added that presumably there would have to be street lighting throughout the site, resulting in this development being a beacon of unwanted illumination instead of the current dark space. He also said that at the moment, much of Backwell does not have street lighting and that is how most residents prefer it - in short, this lovely rural setting would be lost in his view.

290. He said that at present, Farleigh Fields are a satisfactory 'Rural Drainage System' most of the time, soaking up rain as it falls, but that this 'system' can be overcome by heavy rain, causing a mini flash flood and ponding on Farleigh Road bad enough to disrupt traffic. He added that on several occasions during recent years, prolonged heavy rain has resulted in the south side gardens becoming water-logged, with more serious flooding on the road, and consequential overflow into gardens and buildings on the north side, and on a couple of recent occasions this has been bad enough to cause costly damage in the school buildings. He went on to say that against this background of very real concerns he notes that in the 2000 application a 'village pond' was proposed at the bottom of the middle field, and in the 2015 application 'attenuation ponds' were proposed, and these are now called 'SuDS'. He stated that he is not convinced that these proposed drainage areas would be big enough to safeguard all the properties mentioned, and that he is also certain that most of the time these areas will not be bone dry or nice full ponds, but a muddy wet mess.

291. He said, to summarise, some features of the development proposal are as flawed as previous applications and demonstrate a serious and continuing lack of sensitivity for the site and its environs.

292. He then turned to what he described as wider village issues and said that unfortunately, there is far too much reliance on cars for work and trips to the schools and shops. One end of this proposed development he feels is not far from the village centre but the other end is quite some distance further. He

added that villagers are lucky to have a reasonable bus service along the A370, a less frequent bus service to Nailsea, and a train station - on the face of it a sustainable location; but this ignores the local and regional details. He also said that not many employment centres are directly accessible from these bus and train routes, so most people use a car, and while the village does have a small supermarket and other useful shops, a great deal of shopping is done in the bigger retail facilities in Nailsea, by car. He also said that although three local schools are close by, the Infants school is some 1.5km to the northwest. If normal patterns prevail, it is in his opinion likely that younger pupils would be taken by car, perhaps en route to work.

293. He went on to say that he has read and heard what the appellant's consultant has to say about traffic predictions, apparently based on what he described as a brief, localised survey and some fancy modelling. In his view something does not stack up; and he said that there is a continuing, remorseless increase in traffic along the main road, back Lane and especially Station Road, and villagers have to contend with the cumulative effect of other developments which feed increasing amounts of traffic through Backwell. He added that there have been numerous accidents over the last couple of years, local and commuting journeys by the new residents in these 220 houses would exacerbate all these issues. He said that he acknowledges that some people will walk to the shops, the bus stop or the train station, but that Station Road in particular is already too busy to be pleasant to walk along and cycling is hazardous. He added that the proposed development is not as sustainable as it is claimed to be.

294. He closed by asking that the NP and the wishes of Backwell residents are supported, and invited the Secretary of State to reject this appeal in line with past decision making.

The Case for Jayne Kirkbride

295. She explained that she has lived in Farleigh Road for 16 years and that there are many reasons why she believes that the proposal should not proceed, but concentrated on what she described as her real concerns with the proposed access sites and related traffic issues. She said that the proposed vehicular and pedestrian access points are situated between the entrances for two schools, and added that during the last 16 years, she has been a full time housewife, walking both of her sons to the local schools, walking her dog, walking to local amenities and driving her car through the village, on a daily basis. As such she says that she sees the traffic at all times of the day, every day, from the perspective of both a driver and a pedestrian.

296. Farleigh Road is, in her view, a busy and fast road with deceptively dangerous bends, and that during the daily rush hour, at bank holidays, on the first day of school holidays and when there are accidents or delays on the local M5, stationary or very slow moving traffic tails past the entrance to Church Lane, and often up to the George Inn. She and her neighbours along both sides of Farleigh Road currently experience difficulties in joining the traffic in both directions.

297. The proposed 'huge' increase in traffic entering Farleigh Road at this dangerous point in the road would in her opinion lead to immense problems, not just to the residents, but all other road users and pedestrians, including drivers attempting to join the A370 from the development. Motorists would, she feels, find the time taken to get through the crossroad traffic lights, greatly increased.

She added that this currently results in motorists taking risks, regularly driving on the pavement, to undertake traffic turning right, either to homes, the leisure centre or making a right turn into Station Road, regardless of pedestrians particularly children being on the pavement. She went on to say that an impatient tanker driver carrying aviation fuel tried to undertake traffic turning right just past the pedestrian access point, that she and four children were walking home from school on this bit of pavement, and that the police were involved.

298. She also said that there have been numerous accidents along this stretch of the road, since she has lived here and that this includes the traffic island outside her house being destroyed 5 times, the lamp post outside no. 48 being knocked over and replaced twice. She added that in October 2015, the whole road including pavements were closed for 6 hours outside her house and no. 52, when a refuse lorry lost control driving past no. 56 towards Weston on a dry sunny afternoon at school going home time, swung across the road, hit a van and landed on its side in the middle of the road. In the autumn, her 16 year old, son was knocked off his bike and thrown onto a car, whilst doing a right hand turn, although he was wearing a fluorescent jacket and it was a bright sunny day.

299. She concluded by saying that recently, a car travelling towards Bristol careered across the road and demolished the metal fence at no. 38, and that the most recent accident (Sunday 26th February 2017) was a car travelling to Bristol, which lost control opposite the pedestrian access, mounted the pavement and destroyed the traffic island, outside no. 34.

The Case for Lisa Bates

300. Mrs Bates read a letter prepared on her and her husband's behalf concerning their property 58 Farleigh Road, which forms part of the site and specifically part of the proposed vehicular access to Farleigh Road. In summary, the letter explains that in order to construct the highways works and dedicate the access land as highway the appellant would need to reach an agreement with Mr and Mrs Bates, and that while they are in negotiation, at this stage it remains unclear whether agreement will be reached. The letter concludes that as things stand the appellant would not be able to satisfy the suggested Grampian condition regarding access provision and adds that if the position changes after the close of the Inquiry an update would be provided.

Written Representations

Representations Made at Appeal Stage¹²⁶

301. There are some 334 further individual written representations on the appeal from some 282 different sources/addresses, including from local residents, the Federation of West Leigh Infants School and Backwell C of E Junior School, and the Backwell Residents' Association. These largely raise objections to the proposal on grounds similar to those made at the Inquiry by NSC, BPC and the other interested parties who gave evidence.

302. There are also two written representations from residents of Backwell who support the appeal development on the basis that it would deliver additional

¹²⁶ INSP.1

housing in the village and assist affordability in the area, the site is better suited to housing than other proposed sites and is not very good agricultural land, and the scheme is sympathetic to the environment.

Representations Made at Application Stage

303. The representations made in respect to the planning application were attached to the appeal questionnaire and summarised in NSC officer's report on the appeal development¹²⁷. The report records that approximately **929 letters of representation were received** from interested parties, predominantly local residents **923 objecting** and **6 supporting** the proposal. It provides an analysis of the matters raised in the objections, which are generally on grounds repeated by interested parties at the appeal stage. The officer's report also sets out the majority of the responses from **consultative bodies** to the application¹²⁸.

Conditions

304. During the course of the Inquiry NSC and the appellant jointly submitted a schedule of conditions. At the Inquiry session on conditions there was also further discussion and broad agreement between the main parties regarding some of the detail of the suggested conditions, which led to a final schedule of 32 suggested conditions¹²⁹.

Obligations¹³⁰

305. In summary, the S106 Agreement contains planning obligations in respect to:

- The provision of on-site affordable housing at a rate of not less than 30% of the total number of dwellings developed;
- The provision, use and management of on-site informal public open space, attenuation areas/SuDS, landscaping buffers and play area;
- The provision of highways works including a priority junction with a ghost island and right turn lane, a pedestrian and toucan crossing, four pedestrian islands, and signing and lining works to support the proposed 30mph speed limit in Farleigh Road, along with financial contributions and bonds to support their delivery; and
- Financial contributions, which would be index linked, to provide:
 - Improvements to two bus stops between the proposed site access points on Farleigh Road;
 - Primary School, Early Years, Special Needs, Youth Facilities educational capacity¹³¹;
 - Built Sport and Leisure facilities at Backwell Leisure Centre, Scotch Horn Leisure Centre, community halls in Backwell and parking improvements at the Rodney Road shopping area;
 - Playing Pitches to improve drainage, changing and training facilities

¹²⁷ CD1.42

¹²⁸ CD9

¹²⁹ CD18.29

¹³⁰ The obligations are set out in CD18.9a and summarised in CD18.9c

¹³¹ The education contribution provides for two scenarios regarding the timing of the appeal scheme and another proposed development in the area in order to mitigate against over-payment should both schemes be developed

- at Backwell Recreation Ground;
- Library facilities at Nailsea Library and the visiting mobile library;
- Travel information packs, public transport taster tickets and cycle vouchers; and
- Improvement of 12 existing structures on the public right of way network in the vicinity of the site.

306. NSC has provided a 'Section 106 Statement of Justification' (the Planning Obligations Statement) in support of all of the obligations¹³². It addresses the application of statutory requirements to the planning obligations within the S106 Agreement, including pooling for infrastructure projects, and also sets out the relevant planning guidance and policy justification.

Inspector's Conclusions

307. The numbers in square brackets in this section are references to previous paragraphs in the Report which are particularly relied upon in reaching the conclusions.

Main Considerations

308. Having regard to the reasons for refusal, the relevant policy context and the evidence to the Inquiry, the main considerations that need to be addressed are:

- a) Whether or not NSC is able to demonstrate a five-year and/or three-year supply of housing land for the area and the extent of any potential shortfall;
- b) The effect of the appeal scheme on the location strategy for new development in the District;
- c) Its effect on the character and appearance of the area; and
- d) Whether any development plan conflict and harm arising is outweighed by any material considerations including the housing land supply.

309. In broad terms, in the three following subsections I conclude against the relevant development policies and then in the final subsection deal with the weight to be attached to these policies and other material considerations.

a) Supply of Housing Land [7, 8, 17, 40, 41, 81-94, 163-191]

310. In respect to housing delivery, the Framework requires NSC to meet the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in the Framework. Applications for housing should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if NSC cannot demonstrate a five-year supply of deliverable housing sites. The main parties disagree over whether or not NSC can do so.

311. Policy CS13 of the Core Strategy sets the housing requirement for the period 2006-26 at a minimum of 20,985 dwellings. The main parties agree that there was a shortfall on delivery against that annualised requirement at the end of 2015/16 of 2,498 dwellings and that the Sedgfield methodology should be used

¹³² CD18.9b

when calculating the five-year housing land supply. I have found no reason to disagree.

312. The other principal areas of disagreement between the main parties in regard to housing supply concern which buffer, 5 or 20%, and the level of supply that will actually be forthcoming from the sources identified by NSC. In respect to the latter point this is due to disagreement over the level of lapse rate to be applied to 'small sites with consent', the inclusion of and delivery rates from a number of sites, and the likely yields from 'change of use of rural buildings' and from 'empty homes'. As a result NSC contends for a total supply of 8,217 dwellings over the five year period while the appellant claims it to be 5,076 dwellings.
313. In summary, NSC's preferred scenario - based on a 5% buffer, which results in a five year requirement of 8,131 homes, and its assessment of anticipated delivery - indicates 5.05 years housing land supply, a surplus of 86 dwellings. In contrast, the appellant's preferred scenario - based on a 20% buffer, gives a five year requirement of 9,293 homes, and its assessment of housing delivery - indicates 2.73 years housing land supply, a deficit of 4,217 dwellings.
314. I deal firstly with the buffer and then with the various points of disagreement regarding NSC's housing land supply over the five year period.
315. I recognise that a 5% buffer was used by the Inspector when examining the remitted policies of the Core Strategy and that the complete version of the Core Strategy was adopted on that basis reasonably recently in January 2017. It appears that that approach was established at or prior to the associated hearings in June 2016. The matter has subsequently been considered in what is likely to have been some detail at the Sandford appeal and then at the Banwell appeal. Both of these appeal Inspectors concluded that a 20%, rather than 5%, buffer should be applied and on the evidence before me I agree with them. There are a number of considerations that have led me to this conclusion as outlined below.
316. As the Sandford appeal Inspector identified, the most recent examining Inspector for the Core Strategy was clear that while the five year housing land supply position was relevant to that examination insofar as he needed to know whether the remitted policies are capable of allowing for the early delivery of sites sufficient to ensure an ongoing five year supply, he did not want to replicate a detailed s78 type discussion on the subject.
317. On that basis although the examining Inspector had evidence before him on this matter and stated that he had no real evidence of persistent under-supply over the whole of the economic cycle and that NSC has had to deal with changing housing requirements so it seemed to him that the buffer should be 5%, it appears very likely that the matter was considered in significantly greater detail at the subsequent Sandford and Banwell appeals. This is supported by the reasonably detailed assessment of whether or not NSC has a record of persistent under delivery set out in the respective decision letter for those appeals. The matter was also explored at some length during the current appeal Inquiry.
318. Having considered all of the evidence before me, I find that I broadly agree with the approach adopted by the Banwell appeal Inspector on this particular point. For instance, *assessing for persistent under delivery as far back as 1996 as promoted by NSC seems unnecessary as during the last ten years there have been improving economic conditions (to 2006), high economic activity (2007/8),*

a recession (to 2011) and improving economic conditions again since 2011. I also agree that this is a reasonable period of time for avoiding any undue influence arising from a temporary or short-lived fluctuation.

319. On that basis, and given that NSC has not met the annualised housing requirement in eight out of the last ten years and as the evidence indicates that it will not do so in the following year, 2016/17, I consider that there is a record of persistent under delivery.
320. In coming to this view I have taken into account all of NSC's evidence on this matter, including that the housing requirement as it is now understood was not available for much of that ten year period and that the approach set out in the LPEG report should be favoured. However, while I recognise that the development plan policy circumstances in which NSC has operated over recent years has been challenging, in my view it is appropriate for performance to be measured against the actually housing requirement for that period rather than a figure that has been found to be unlawful by the Courts. Moreover, I give little weight to the LPEG approach as it is not planning policy at any level and with reference to the White Paper there is no reason to believe that it is likely to be adopted by the government, indeed the contrary seems most likely.
321. For these reasons, therefore, I conclude that there is currently a record of persistent under delivery and as such a buffer of 20% is applicable.
322. I turn now to the various points of contention between the main parties regarding NSC's identified sources of housing delivery over the five year period. For ease of reference I follow the order of those issues as they appear on the spreadsheet which summarises the parties' final positions on housing supply¹³³. The sources in question are all 'small consented sites', 12 of the 'large consented sites', four 'Local Plan allocations', five of the 'strategic sites', 13 of the 'emerging allocations', 'change of use of rural buildings' and 'empty homes'.
323. Regarding small consented sites both parties consider that it is appropriate to apply a lapse rate to this source but they do not agree over the rate. NSC's application of a 9% lapse rate for small sites is based on past trends, however as the appellant's housing witness identifies in his evidence¹³⁴ that approach appears to be mathematically flawed. In any event, however, although I note that the Banwell appeal Inspector favoured NSC's approach on this matter, as both parties' figures are based on a short period I am not persuaded that they offer a reliable representation of past lapse rates.
324. In the absence of a reliable figure and given that both parties agree that a lapse rate should be applied to small sites, I consider it reasonable to employ a flat rate of 10% as a proxy as is often done by my colleague Inspectors in such circumstances. The evidence shows that 148 such dwellings are under construction with 357 yet to start. Applying the 10% lapse rate to the latter figure gives a total of 469 dwellings, compared to 473 dwellings predicated by NSC. Total supply should therefore be reduced by four units from 8,217 to 8,213.
325. I deal now with the disputed 'large consented sites'. Both the Oxford Plasma

¹³³ That spreadsheet forms part of CD18.18

¹³⁴ This is set out in some detail at paras 8.27-8.45 of Mr Tiley's Proof of Evidence CD14.2

Technology and Bleadon Quarry sites are still in use but also had extant planning permission for residential development at the time of the Inquiry. Both occupants have indicated their intention to relocate. The Framework also states that sites with planning permission should be considered deliverable until permission expires¹³⁵. On this basis I consider that they should both remain in the five year housing land supply. Moreover, the timing and rates of delivery identified by NSC do not appear to be unrealistic such that no reduction is warranted.

326. It is common ground that it is appropriate to assess supply for the five year period starting from 1 April 2016, however NSC includes sites in its anticipated supply that have been consented since that base date. As the appellant identifies, there is a significant body of appeal decisions in which Inspectors have indicated that such an approach is not appropriate in the absence of proper accounting¹³⁶. I share those Inspectors' broad view that if such sites are to be included then account must also be taken of the housing requirement that has accrued during the same period. NSC has not factored in that increased requirement or the increased backlog accrued after 1 April 2016, such that there is an imbalance in its inputs and a consequential artificial inflation of its supply of housing land over the five year period in relative terms. Accordingly, all of those sites¹³⁷, which amount to 328 dwellings, should be omitted for the purposes of this exercise. Total supply should therefore be reduced from 8,213 to 7,885 homes.

327. The appellant has undertaken a detail assessment of lead-in times for large development. While it provides useful context it is no substitute for site by site assessment based on site specific evidence. Having reviewed that detailed evidence I consider that NSC's revised estimates regarding the timing and annual delivery of the remaining contested 'large sites'¹³⁸ are not unrealistic and consequently no further reduction to the anticipated delivery from the 'large consented sites' is warranted in my view.

328. There are four disputed 'Local Plan allocations' sites. The appellant has raised several issues about each of these sites. While they all appear to be legitimate concerns, having regard to the wider evidence they do not appear to be insurmountable. Consequently, on balance it seems likely that most of those sites would come forward within the five year period. Nonetheless, bearing in mind the on-going use of the Westacres Caravan Park site and as there is still no planning permission for its redevelopment, NSC's trajectory should now be delayed by a year in my view, thereby reducing delivery across the five year period by 40 homes. Total supply should therefore be reduced from 8,213 to 8,173 dwellings.

329. Five 'strategic sites' remain in contention. While NSC has amended its projections in light of the Banwell appeal decision the appellant considers that further deductions are appropriate and I recognise that there remain challenges associated with their delivery. However, although NSC's forecasts are reasonably optimistic, like the Banwell Inspector, broadly speaking I do not see them as

¹³⁵ Footnote 11 to para 47 of the Framework

¹³⁶ CD8.9 paras 11-13, CD8.10 para 30 and CD8.12 paras 20-24

¹³⁷ Coates House, Wentworth Drive, North of A368 Sandford, Wolverhill Road, Wrington Lane, Tickenham Garden and Former Royal Oak

¹³⁸ Arnolds Way Phase 2, Pudding Pie Lane East and Woodborough Farm

being necessarily unrealistic. However, there are two exceptions in my view, particularly given the passage of time since the Banwell appeal, namely 'Locking Parklands future phases' and 'Winterstoke Remainder'. As the first of these has only outline planning permission it seems unlikely, particularly in light of the general evidence on lead-in times, that it will deliver 60 dwellings in 2017/18, such that I favour the appellant's forecast delivery from this site. Regarding the latter of these sites, the latest information from the site's developer, Persimmon, gives good reason to believe that delivery will be delayed by a year compared to NSC's prediction. Consequently, I also favour the appellant's forecast for this site, which results in a reduction of 200 dwellings. Although a small point, the evidence also indicates that the 'Winterstoke Village Phase 1' site is proposed for 239 rather than 242 homes. Therefore, total supply should be reduced by 263 homes from 8,173 to 7,910 dwellings.

330. There are 11 disputed 'emerging allocations' sites, which are all housing allocations proposed in the eSAP. The eSAP has yet to reach an advanced stage and there are also outstanding objections such that in my view it carries limited weight in terms of planning policy and in the context of Framework para 216. However, as the Banwell appeal Inspector identified, sites should not be discounted merely because of objections and the inclusion of the emerging allocations appears to have been carefully researched by NSC.

331. While I note the Sandwell appeal Inspector's comments in this regard¹³⁹, I agree with the Banwell appeal Inspector that, on balance, reliance can be placed upon them for the purposes of assessing housing land supply, such that, while reasonably optimistic, they are not unrealistic for this purpose. In coming to this view, along with the wider evidence, I have taken into account the eSAP Examining Inspector's letter to NSC which post-dates the Banwell appeal¹⁴⁰. I do not see the points raised by the Examining Inspector as 'concerns' as such, as the appellant has put it, but rather matters to be addressed. In light of NSC's response to that Inspector¹⁴¹ I see no overriding reason to remove any of these sites from NSC's delivery forecast.

332. I also note that the Banwell appeal Inspector decided not to make any adjustment to NSC's forecasts regarding homes to be delivered as a result of change of use from rural buildings. However, in view of the evidence before me I favour the appellant's estimates in this regard. There are a number of reasons for this. Rural buildings are a finite resource such that at some point in time delivery of new homes from this source will decline and cease. There is no reason to believe that delivery will cease over the five years in question. Nonetheless, NSC's assumption that delivery will be constant and that consented schemes will all be implemented appears over-optimistic, particularly in the face of the appellant's evidence regarding the downward trend in the number of applications for this type of development. The appellant's evidence also indicates that there is likely to be at least some overlap from this source and from small site windfalls, a source which the appellant does not contest. Therefore, total supply should be reduced by 157 homes from 7,910 to 7,753 dwellings.

333. Regarding an empty homes allowance, the appellant maintains that the NPPG

¹³⁹ CD8.2 (particularly para 32)

¹⁴⁰ CD5.22

¹⁴¹ CD18.19a&b

indicates that such an allowance should be included in the trajectory only where this has been robustly tested through an examination. However, the NPPG actually says that when at examination of a draft Local Plan local planning authorities seeking to count the bringing of empty homes back into use against housing need would have to provide robust evidence, for example, to test the deliverability of the strategy and to avoid double counting; it does not say that it must have been through the examination process¹⁴². On that basis the key point from this part of the NPPG appears to be that the supporting evidence must be robust, and I see no reason why that approach should apply any less to the development management process than to plan-making.

334. I note that the Banwell appeal Inspector discounted this source on the evidence before him. Since then NSC has adopted a new Empty Property Delivery Plan for the period 2016-21 and its current evidence is that 180 homes will be delivered from this source over the five year period. While the adoption of the new Delivery Plan appears to be a positive step, I note that it is not an entirely new initiative as it replaces an earlier Plan produced in 2011. The figure of 180 homes is based on past trends such that it has some evidential support. However, in my view NSC's case on this aspect of potential housing delivery is not robustly evidenced in the terms of the NPPG. For instance, the evidence does not clearly test the deliverability of the strategy or demonstrate that there would be no double counting. Consequently, the allowance of 180 units from this source should be discounted and total supply reduced from 7,753 to 7,573 dwellings.
335. For the foregoing reasons, therefore, over the five years in question, the housing delivery would be 7,573 dwellings compared to a requirement of 9,293 homes, which equates to a 4.07 years housing land supply, a deficit of 1,720 dwellings.
336. The WMS also raises the question of whether or not NSC can demonstrate a three-year supply of deliverable housing sites. The main parties also dispute how this figure should be calculated. The appellant advances the approach that housing land supply should be recalculated following the same principles as for the calculation of the five-year supply but for three years only. However this would result in a proportionately worse housing land supply position compared to the five year period. Give that the WMS is clearly intended to help support relevant policies for the supply of housing in a neighbourhood plan at times when a five-year housing land supply cannot be demonstrated, the appellant's approach cannot reasonably be said to be what is intended by the WMS. Accordingly, I favour NSC's approach, which indicates a 4.07 year supply as identified above, and as such it can demonstrate a three-year supply of deliverable housing sites in the terms of the WMS.
337. I deal with the effects of the absence of a demonstrable five-year supply of housing land for the area, the extent of the shortfall and the presence of a three-year supply as part of my fourth main consideration later in my report.

b) Location Strategy for New Development [9, 21-29, 35-40, 47-54, 149-162]

338. NSC's location strategy for new development in North Somerset is set out in

¹⁴² NPPG Paragraph: 039 Reference ID: 3-039-20140306

the development plan. It includes Core Strategy Policy CS14 which establishes a settlement hierarchy with Weston-super-Mare as the focus for new housing within its urban area and at a new allocation known as Weston Villages. Below Weston-super-Mare in the hierarchy are the three towns of Clevedon, Nailsea and Portishead which act as service centres, followed by the nine Service Villages, and then other settlements and countryside.

339. The site is located adjacent to and encircled by development within the greater settlement of Backwell. It is not, however, within the defined Settlement Boundary of Backwell, as established via NSRLP Policy H/7 and retained by the Core Strategy pending any alterations as part of any future Local Plan¹⁴³.

340. Core Strategy Policy CS32 identifies Backwell as one of the nine 'Service Villages'. It allows new development within as well as adjoining the Settlement Boundaries of Service Villages subject to certain criteria. However, it adds that sites that lie outside the Settlement Boundaries for development in excess of about 25 dwellings must be brought forward as allocations through Local Plans or Neighbourhood Plans.

341. The appeal development would very substantially exceed the 'about 25 dwellings' threshold set out in Policy CS32. The Neighbourhood Plan does not allocate the site for housing development and nor is it currently included in the eSAP as a housing allocation. There is also no reason to believe that the proposals would fully meet any of the wider relevant exception criteria for development beyond Settlement Boundaries set out in the development plan. Consequently, in this regard the appeal scheme would be at odds with the location strategy for new development in the District, in conflict with Policy CS32 of the Core Strategy.

342. NSC considers that the proposed development would also conflict with NSRLP Policy H/7 and Core Strategy Policy CS33. While it establishes Settlement Boundaries, Policy H/7 is primarily concerned with proposed development within those Boundaries rather than beyond them such that I do not see the scheme as being directly at odds with this Policy. Similarly, Policy CS33 is concerned with the development outside the areas covered by other area based policies of the Core Strategy, including Policy CS32. On that basis, as the site is clearly covered by Policy CS32 as outlined above, I also see no direct conflict with Policy CS33 arising in this case. Nonetheless, my conclusions in respect to these policies do not alter my finding that the appeal scheme would be at odds with the location strategy in conflict with Policy CS32 as set out above.

343. I also take the view the appeal development would conflict with NP Development Policy 1 for the reasons identified by NSC [52]. In short, this Policy forms part of the development plan, and the development plan also defines the Settlement Boundaries and should be read as a whole; it admits development at a level appropriate to the size and character of the village, and 'appropriate' development is not confined to that which is within the settlement boundary; and thus it should be read consistently with Policy CS32. It follows that NP Development Policy 1 allows development of up to about 25 homes abutting the settlement boundary provided a scheme would satisfy the other criteria of Policy CS32. However, in this case the scale of the proposed development would

¹⁴³ Core Strategy paras 3.199, 3.201, 4.87 and 4.93

significantly exceed that threshold.

c) Character and Appearance [9-15, 20-29, 35-40, 55-80, 112-127, 180-191]

344. NSC's concerns in this regard relate to a large extent to matters of character and appearance rather than landscape impact as such. The site is reasonably self-contained, in large part due to the screening effect of the existing development that surrounds it as well as to an extent by planting and topography. For this reason, combined with the proposed location of the proposed houses and associated works to the lower lying parts of the site, and subject to careful consideration of the matters that would be reserved for future consideration, the appeal scheme would have a very limited effect on the character and appearance of the area beyond the immediate area. Indeed any such effects would be largely limited to within the site itself.
345. The undeveloped, greater part of the site is unusual in that it is surrounded by development. It is used for agricultural purposes and has many of the features that are associated with other nearby agricultural land that lies beyond the settlement. Based on the representations of local people and from what I have seen and heard during the appeal process, it appears that the two public footpaths that cross the land are well used, and this is consistent with what I observed when I visited the site¹⁴⁴. I also found that, notwithstanding the proximity of the busy A370, highway noise is not particularly noticeable within the site and that it has a reasonably tranquil quality, a point also reflected in some of submissions from interested parties.
346. Users of these rights of way are very likely to be very well aware that the site is surrounded by development as it is readily apparent as one enters and leaves the site. It is also often, at least in part, apparent when walking across the site along these footpaths. Nonetheless, for the reasons outlined above, combined with its reasonably substantial size along with the features within it, the site has a distinctly rural, countryside character and appearance. In my view its importance - both as a local resource, via the rights of way that cross it, and in terms of its contribution to the unusual countryside setting of the village – is elevated by the fact that it lies within the settlement, surrounded by the development. In short, the site is important locally in those terms and that importance stems in large part from the fact that it remains open, undeveloped countryside.
347. With reference to the Guidelines for Landscape and Visual Impact Assessment¹⁴⁵, particularly Box 5.1, the site cannot be said to display the characteristics necessary for it to be a 'valued landscape' in the terms of Framework para 109 [187-188]. However, this does not alter the importance of the site as described above.
348. While the planning application is in outline with all matters reserved except for access, the appellant's evidence is based on the scheme as shown on the revised Concept Master Plan¹⁴⁶. That Plan shows two parcels of land that would be developed for housing to the north and west of the site adjacent to the existing

¹⁴⁴ In addition to my formal site visit on 20 March 2017, as I explained during my opening on the first day of the Inquiry, I also visited the site and surrounding area on 13 March 2017.

¹⁴⁵ CD 4.1

¹⁴⁶ CD 1.5

development which lines Farleigh Road and Dark Lane. While these two proposed areas of housing would be joined via a link road and footway, they would be otherwise separated by what is currently a field through which footpath LA2/6/10 runs.

349. In addition to the link road and footway, the land that would be located between the two areas of housing is shown¹⁴⁷ as accommodating twin flood attenuation basins proposed to be located to each side of the existing right of way, as well as a 'play zone'. This land along with the remaining site located to the south and east is proposed to be open space, with a series of new footpath links shown supplementing the existing public footpaths.
350. In my view the northern/eastern area of proposed housing would be less prominent than that proposed to the west due mainly to its relative size. Nonetheless, even allowing for the proposed mitigation, the fact that both parcels of land had been developed for housing would be readily apparent to users of the existing rights of way, including the route known as the Backwell Round, as they moved through the site. This would be primarily due to the filtered views that would be available through the hedges and planting, as well as views that would be available over these landscape features and via gaps required for access and movement, particularly via the openings required to accommodate the proposed link road. While I recognise that existing housing and other development is reasonably close at hand, the appeal development would bring development, and development of a reasonably large scale, significantly closer to the users of the rights of way, which for the reasons outlined above would be readily perceived.
351. While the appellant considers that the link road and the associated footway would be low key features, regardless of their design they would nonetheless herald the presence of the two areas of housing which they are intended to serve. The flood attenuation features and play zone would also be likely to alert users of the rights of way to the presence of the homes that they would serve.
352. I acknowledge that all of these features could be very carefully designed to minimise their effect on the character and appearance of this part of the site. However, based on the evidence and my experience of such matters, no matter how carefully they might be designed, the road in particular, but also the basins, would appear as engineered forms that would sit awkwardly with the site's current rural character. These proposed features, combined with the play zone, would have a markedly urbanising effect on a portion of the site that is part of the area proposed to be designated as LGS in the eSAP. With that development there are also likely to be some additional works that would further the urbanising effect, such as street lighting and footpath surfacing.
353. In addition to their physical appearance, the use of these features, particularly the road due to the nature and frequency of vehicle movements, would also have an urbanising effect that would harm further the area's rural quality. These effects would be particularly prominent given the proximity of these proposed features to footpath LA2/6/10.
354. For these reasons therefore, while in this regard the appeal development

¹⁴⁷ As shown on the various illustrative documents submitted by the appellant, including Indicative Drainage Strategy drawing no TE/1177/400/D and Landscape Strategy drawing no 04658.00003.004.4

would have a limited effect beyond the immediate area of the site, the reasonably substantial quantum of development proposed and the resulting marked reduction in the undeveloped area of the site would significantly diminish and damage the countryside character of Farleigh Fields. For these reasons and in this context, the appeal development would be excessive in size and cause significant harm to the setting and character of Backwell. Given the site's local importance, as outlined above, that harm carries considerable weight against the appeal proposal.

355. Consequently, while matters of detailed design, layout and scale of the built form could be carefully controlled at the reserved matters stage and notwithstanding NSC's landscape officer's comments, the introduction of development of the extent and type proposed to the site would be at odds with Policies CS5 and CS32 of the Core Strategy, Policy DM10 of the DMPP Pt1, and Policy Development 1 of the NP. Although I do not see that the appeal scheme would conflict with Policy DM25 of the DMPP Pt1 in terms of the usability or safety of the rights of way, the amenity associated with their use would be detrimentally affected such that the scheme would also conflict with this development plan policy.
356. I also note that the Oldmixon Road appeal Inspector found that Core Strategy Policy CS12 and Policy DM32 of the DMPP Pt1 have no direct applicability to an outline planning application with all matters reserved but would be relevant at the reserved matters stage. I agree with him in respect to Policy CS12. However, while 'linked' to Policy CS12, I find Policy DM32 to be broader in its scope. For instance, it states, among other things, that 'proposals which cause unacceptable harm to the character or appearance of the area will not be permitted'. Accordingly, for the reasons identified, the appeal development would also conflict with DMPP Pt1 Policy DM32.
357. As explained in my 'Location Strategy for New Development' section above, there is no conflict with Policy H/7 of the NSRLP, as it is concerned with development within rather than beyond Settlement Boundaries, or with Core Strategy Policy CS33, as it is concerned with development proposed outside the areas covered by other area based policies of the Core Strategy, including CS32.
358. The evidence, both written and oral makes reference to the site being use as open space. However, the land is in private ownership and as such I have considered the appeal on the basis of public access within the site currently being formally limited to the two public rights of way that cross it.
- d) Other Issues and Planning Balance* [2, 5, 7-15, 18, 19, 29, 32, 40, 42, 93-101, 103-109, 128-147, 149-164, 192-197]
359. In undertaking the planning balance I have considered the weight to be given to the relevant development plan policies and made an assessment of whether the appeal proposal would amount to sustainable development in the terms of the Framework. In doing so I have had regard to, among other things, the absence of a Framework compliant supply of housing land and the contents of the Framework as a whole, as well as to the WMS given that I have found there to be a greater than a three-year supply of housing land. I deal with this latter point first.
360. In the context of housing land supply, the WMS states that relevant policies for

the supply of housing in a neighbourhood plan should not be deemed to be 'out-of-date' under para 49 of the Framework where all of three criteria apply. The WMS is considerably less than two years old and I have found that NSC can demonstrate a three-year supply of deliverable housing sites such that the first and third criteria are met. The second criteria relates to whether or not the NP allocates sites for housing.

361. While none of its policies specifically allocate development sites, the NP at large does nonetheless allocate sites for housing. I have come to this view primarily on the basis that the NP contains a plan entitled 'Development sites A to E' on page 13 and those five sites are identified, and that plan is referenced, at para 8.9 of the NP as *sites where residential development and in the case of Sites A and B, residential and employment development, is supported*. The 'Backwell Neighbourhood Plan Map' at page 22 of the NP, which amounts to a proposals map, also shows these sites labelled as 'potential development site', which I accept as being a 'perfectly good' description of an allocation. That Map and the NP, when read as a whole, indicates clearly what kind of development, including housing, will be permitted on each site, such that it does allocate sites for housing for the purposes of the WMS.
362. Therefore, all three criteria of the WMS are met and, consequently, any relevant policies for the supply of housing in the NP should be deemed to be 'up-to-of-date' under para 49 of the Framework. I would add that the WMS refers to policies of the NP only in this regard and makes no mention of relevant policies for the supply of housing within the wider development plan. Consequently, as NSC cannot currently demonstrate a five-year supply of deliverable housing sites relevant policies for the supply of housing in the wider development plan should not be considered 'up-to-of-date'. I return to the effect of and weight to be given to the WMS a little later, but first I deal with the effect of Framework para 49.
363. As relevant policies are 'out-of-date' or not 'up-to-of-date', the effect of para 49 of the Framework is to take the decision-taker to Framework para 14. In these circumstances and as I have not found any specific policies in the Framework indicate that the appeal development should be restricted, para 14 states that, unless material considerations indicate otherwise, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. In other words, notwithstanding the WMS, the absence of a Framework compliant supply of housing land triggers the operation of the 'tilted balance' in para 14.
364. I have identified, as outlined above, that the appeal development would conflict with Core Strategy Policies CS5 and CS32, DMPP Pt1 Policies DM10, DM25 and DM32, and NP Policy Development 1. Policies DM10, DM25 and DM32 post-date the publication of the Framework, and like Policy CS5 are now not said to be policies for the supply of housing by any of the parties. Consequently, while bearing in mind the evidence, I see no reasons why these four Policies should not carry full weight in this case.
365. Notwithstanding the Supreme Court Judgment the appellant maintains that Core Strategy Policy CS32 and NP Policy Development 1 are relevant policies for the supply of housing. Both are policies 'affecting', or at least potentially affecting, the supply of housing. However, following the 'narrow' interpretation

- now required by the Supreme Court Judgment, neither is a policy 'for' the supply of housing.
366. I am also mindful that the NP was prepared at a time when the housing requirement in North Somerset was, due to the issues I have described with the Core Strategy, markedly lower than is the case now. Consequently, I broadly agree with the appellant's case that the NP is likely to plan for less housing than is required by the current version of the Core Strategy. [23, 151, 160]
367. I have, nonetheless, concluded that Policy Development 1 of the NP, as well as Core Strategy Policy CS32, carry full weight in this case. I have come to this view bearing in mind that the wider development plan provides mechanisms for the delivery of further, currently unallocated, housing development via the flexibility offered by its policies through the development management process and more significantly via the opportunities afforded by the eSAP process to identify and allocate further housing sites should they be required. When viewed in the context of the WMS and bearing in mind that I have found that NSC can demonstrate a supply of deliverable housing sites which comfortably exceeds the three-years identified in the WMS, those Policies should carry full weight.
368. I also recognise that the Settlement Boundary of Backwell is established by the NSRLP, which was adopted in 2007. Nonetheless, its retention and continued use is provided for in much more recent development policy documents, notably the Core Strategy, which also provides a mechanism for its review/alteration, for instance via the eSAP. Consequently, I see no reason to reduce the weight to be given to the Settlement Boundary or its associated development plan policies, particularly in the context described in the preceding paragraph.
369. The proposals would deliver a range of social, economic and environmental benefits including the provision of market and affordable housing in a sustainable location – particularly relative to the other Service Villages - with access to a good level and range of services and transport options, expenditure on construction and investment in the area, the creation of construction jobs, financial contributions towards off site infrastructure, the provision of public open space and green infrastructure, the enhancement of public rights of way and delivery of new public footpaths, and enhancements to biodiversity. While I recognise that those matters that would be secured via the S106 Agreement are primarily intended to respond to the needs arising from the proposed development they would also be of benefit for the wider community.
370. Assuming the development were to come forward in a timely manner¹⁴⁸, overall, I consider that, particularly bearing in mind the government's objective to boost significantly the supply of housing along with the identified need for market and affordable housing¹⁴⁹ in North Somerset, these benefits should collectively carry very significant weight in favour of the appeal proposal. Nor am I am persuaded by the evidence - largely due to the considerations summarised in the preceding paragraph - that the scale of development proposed would necessarily be disproportionate to the existing settlement or that, as a matter of

¹⁴⁸ While I note the comments of the owners of 58 Farleigh Road [300], for the purposes of the balancing exercise I have assumed that any such negotiations would not delay delivery of the proposed development.

¹⁴⁹ Overall housing need is outlined in the *Supply of Housing* sub-section above and for the purposes of this exercise I have used, as a benchmark, the appellant's position regarding affordable housing need in North Somerset and Backwell, as set out in Mr Tiley's Proof of Evidence, particularly at paras 12.7 to 12.24

principle, it would have a significant effect in terms of community cohesion. I also note that many aspects and effects of the proposed scheme have been addressed to the satisfaction of NSC, statutory authorities and other consultees.

371. There are those matters which I have identified – the conflict with NSC's location strategy for new development, the harm to the character and appearance of the area, and the associated conflict with the development plan – which must be weighed against the benefits applying the 'tilted balance'.
372. Given the extent of harm that would arise, particularly in respect to the effect of the development on the character and appearance of the area, that I have found that the relevant Policies of the development plan carry full weight, and bearing in mind the contents of the WMS, these considerations carry substantial weight against the appeal scheme in the circumstances of the case. On this basis I find that the adverse impacts of granting the appeal development planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
373. Although not determinative, to these adverse impacts must be added the other, lesser disbenefits of the scheme which include the loss of BMV, the potential effect on the designation of the proposed LGS and the residual effect of traffic on the road network. These add further, albeit limited, weight against the scheme.

Conditions

374. Conditions to be imposed on a grant of permission were discussed at the Inquiry, which are agreed by the main parties¹⁵⁰. A set of conditions, incorporating the agreed amendments and minor improvements to wording, which are recommended in the event of the appeal being allowed is included in an Annex. I set out below a justification for the conditions.
375. In order to provide certainty, conditions requiring that the development is carried out in accordance with the approved plans, insofar as they relate to details of access including sight lines, and that the reserved matters are in general accordance with the proposed development parameters would be necessary. In the interests of highway safety and to secure an acceptable living environment for residents, conditions to secure appropriate on-site parking and circulation arrangements, and the implementation of the proposed access arrangements would also be necessary. A condition to control ground floor slab levels would also be necessary to help the development harmonise with its context and to reduce flood risk. For this latter reason conditions would also be necessary to control surface water run-off and drainage arrangements.
376. To protect the environment and to secure acceptable living conditions for residents a condition to control foul water drainage would be necessary. Conditions would also be necessary to secure the proposed arboricultural and biodiversity mitigation including details of lighting to protect the character and appearance of the area as well as trees and hedgerow and wildlife and their habitat. A condition to safeguard against unsuspected contamination that might affect the site, along with any requisite remediation, would be necessary to protect the health and well-being of future occupiers.

¹⁵⁰ CD11.1a

377. A condition would be necessary to ensure that features of archaeological interest are properly examined/recorded. A condition to secure the provision of storage refuse, recycling and composting materials would be necessary in the interests of character and appearance and of supporting recycling. The submission and approval of a Construction Method Statement would also be necessary to safeguard the living conditions of local residents and in the interests of highway safety.
378. A condition to secure micro renewable and low-carbon measures are part of the development would be necessary to safeguard the environment. To promote sustainable modes of transport and reduce the need for travel and in the interests of highway safety, conditions to secure the implementation of a Travel Plan would also be necessary.
379. However, as suggested condition Nos 15, 16, 17 and 18 relate to matters directly reserved for future consideration, they would not be necessary.

Obligations

380. I have considered the S106 Agreement in light of Regulation 122 of The Community Infrastructure Levy (CIL) Regulations 2010 (as amended) and government policy and guidance on the use of planning obligations. Having done so, I am satisfied that the obligations therein would be required by and accord with the policies set out in NSC's Planning Obligations Statement. Moreover, notwithstanding the concerns expressed locally including by BPC, having regard to the wider contents of the Planning Obligations Statement I also consider that those obligations are directly related to the proposed development, fairly and reasonably related to it and necessary to make it acceptable in planning terms. [305-306]

Overall Conclusion

381. The WMS was published considerably less than two years ago. I have found that NSC can demonstrate a housing land supply well in excess of the three-years identified therein and that the NP does allocate sites for housing. Consequently, the up-to-datedness of any relevant policies for the supply of housing within the NP are not affected in the terms of Framework para 49. Nonetheless, as NSC cannot currently demonstrate a Framework compliant supply of housing land, and given that as a consequence other policies for the supply of housing within the wider development plan are not to be considered up-to-date, the tilted balance of para 14 of the Framework is engaged.
382. The site is located adjacent to but outside of the Settlement Boundary of Backwell as established in the development plan. Consequently, given its scale and type, the appeal scheme would be at odds with the location strategy for new development in the District, contrary to Core Strategy Policy CS32 and NP Development Policy 1.
383. Although the proposals would have a limited effect beyond the immediate area and notwithstanding that matters of detail would be controlled at the reserved matters stage, given the scale and type of development proposed and the resulting marked reduction in the undeveloped area within Farleigh Fields, there would be significant harm to the character and appearance of the area resulting from the appeal development. Consequently, in that regard, it would also conflict with Core Strategy Policies CS5 and CS32, Policies DM10 and DM25 of the DMPP

Pt1 Policy, and Policy Development 1 of the NP. Moreover, I have found that all of these Policies carry full weight in the circumstances of the case.

384. In applying the 'tilted balance' I acknowledge that there are numerous matters that weigh in favour of the appeal development. Most notable among these are the delivery of affordable and market housing, and collectively these benefits weigh very significant in the appellant's favour.
385. In many respects the proposal would contribute positively to sustainable development objectives as set out in the Framework, particularly in respect to the benefits associated with housing delivery, and planning conditions and obligations could deal satisfactorily with infrastructure and many of the impacts arising.
386. Nonetheless, the WMS is clearly intended to support community-led planning and to allow communities, such as Backwell, who brought forward neighbourhood plans in advance of the WMS time to review their plans. There will also be opportunities to allocate further sites for housing via the eSAP process. As outlined above, in this context and bearing in mind that there is a four-year supply of housing sites along with the identified conflict with NSC's location strategy for new development, harm to the character and appearance of the area and development plan conflict, combined with other matters that weigh against the appeal scheme, these matters significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

Recommendation

387. I recommend that the appeal be dismissed. In the event that the Secretary of State disagrees, I recommend that the conditions set out in the attached Annex be applied to any permission granted and that the provisions of the S106 Agreement are viewed as being necessary.

G D Jones

INSPECTOR

Appearances

FOR THE APPELLANT:

Paul Cairnes, of Queens Counsel	Instructed by Pegasus Planning Group
He called	
Julian Cooper BSc(Hons)	Director of Landscape Architecture, SLR
DipLD FLI	Consulting - landscape
Graham Eves BSc CEng	Director of PFA Consulting Ltd – highways
MICE MCIHT	and transport
Neil Tiley Assoc RTPI	Associate, Pegasus Group – housing land
	supply
David Hutchison BSc(Hons)	Executive Director, Pegasus Group - planning
DipTP MRTPI	
Joshua Ashwin ¹⁵¹	Planner, Persimmon Homes

FOR THE LOCAL PLANNING AUTHORITY:

Timothy Leader, of Counsel	Instructed by Richard Kent Head of
	Development Management, North Somerset
	Council (NSC)
He called	
Michael Reep DipTPS	Planning Policy Manager, NSC – planning
BSc(Hons) MRTPI	policy
Natalie Richards	Research and Monitoring Supervisor, NSC –
	housing land supply
David Tate DipTP MA	Principal Planning Officer, NSC –
	environmental impact, sustainability and
	planning balance

FOR BACKWELL PARISH COUNCIL:

Polly Reynolds	Instructed by Backwell Parish Council
She called	
Mr M Rose	Backwell Parish Council
Mr C Perry	Backwell Parish Council

INTERESTED PERSONS:

Martin Powell	Local Resident
David Andrew	Local Resident
Rachel Beckingsale	Local Resident
Peter Hoare	Local Resident
Peter Hemmings	Local Resident
Bob Taylor	Local Resident and Chairman of BPC
Jayne Kearney	Local Resident
Norma Knight	Local Resident
Mark Mallet	Local Resident
Cyril Routley	Local Resident
Colette Howard	Local Resident

¹⁵¹ Mr Ashwin contributed to the session on Planning Conditions and S106 Agreement only

Alistair Ireland	Local Resident
James Harwood BSc(Hons)	Local Resident
MCOptom	
Richard MacLeavy	Local Resident
Geoff Wells	Local Resident
Mike Phillis	Local Resident
Chris Miles	Local Resident
Sarah Rees	Local Resident
Lorraine Hopkinson-Parker	Local Resident
Bill Charnock	Local Resident
Keith Riches	Local Resident
Jayne Kirkbride	Local Resident
Lisa Bates	Part owner of part of the appeal site

Documents

Core Documents

CD1 Application and Appeal Documents

CD1.1	Covering letter with application – 22.1.2015
CD1.2	Application forms – 22.1.2015
CD1.3	Notices to Owners and Tenants – 22.1.2015
CD1.4	Site Location Plan - 500-03_D
CD1.5	Concept Masterplan - 500-002_02_M
CD1.6	Constraints and Opportunities Plan - 500-002_1_E
CD1.7	Land Budget Parameter Plan - 500-002_1_H
CD1.8	Scale & Massing Parameter Plan - 500-005_E
CD1.9	Access & Movement Parameter Plan - 500-006_C
CD1.10	Density Parameter Plan - 500-007_F
CD1.11	Swept Path Analysis – P706-14_B
CD1.12	Proposed Access Cross Section Plans – P706_15
CD1.13	Proposed Pedestrian/Cycle & Crossing Points on Farleighs Road – P706_10_C
CD1.14	Proposed Access Priority Junction with Ghost Island Right Turn Lane – P706_13_C
CD1.15	Agricultural Assessment Report (Reading Agricultural Consultants, Nov 2014).
CD1.16	Archaeological Geophysical Report (Pre-Construct Geophysics – November 2014)
CD1.17	Bat Survey Report (MWA – dated January 2015).
CD1.18	Breeding Bird Report (MWA – dated January 2015).
CD1.19	Revised Design and Access Statement (RPS Group - dated July 2015).
CD1.20	Ecology Report (MWA – dated January 2015).
CD1.21	Reptile Survey Report (MWA – dated January 2015).
CD1.22	Energy Statement (E2S Consultants – dated November 2014).
CD1.23	Flood Risk Assessment (Callidus, July 2015) inc Drainage Strategy Plan 400 Rev D
CD1.24	Land Contamination and Geotechnical Risk Assessment Report (NPS Nov 2014)
CD1.25	Health Impact Assessment (RPS Group – dated January 2015)
CD1.26	Heritage Assessment (Cotswold Archaeology – dated November 2014)
CD1.27a	Landscape and Visual Impact Assessment (SLR – dated January 2015) and)
CD1.27b	LVIA Addendum (SLR - dated 29.7.2015)
CD1.27c	Landscape Strategy Plan 416 04658 00003-004_4
CD1.28	Revised Planning Statement (Charles Church - dated July 2015).
CD1.29	Statement of Community Involvement (Charles Church – dated January 2015).
CD1.30	Road Safety Audit (TMS – dated November 2014).
CD1.31	Topographical Survey Plans 1127 (Benjamin Moore Land Surveys Ltd)
CD1.32a	Transport Assessment (PFA – dated January 2015)

CD1.32b	Supplementary Transport Assessment Report (PFA- dated July 2015)
CD1.33	Travel Plan (PFA – dated January 2015).
CD1.34a	Tree Constraints Report (JP Associates – dated July 2014).
CD1.34b	Tree Survey Plan D35-22-P1 Rev A
CD1.34c	Tree Constraints Plan D35 22P2 Rev A
CD1.35	Utilities Report (Callidus – dated November 2014).
CD1.36	Overarching Lighting Strategy (Clarkson & Woods Ecological Consultants, July 15)
CD1.37	Precautionary Working Method Statement (GCN) (Clarkson & Woods Ecological Consultants – dated July 2015)
CD1.38	Applicant Covering Letter revised plans dated 29.7.2015
CD1.39	Applicant Response to Peter Evans Partnership Objection (August 2015)
CD1.40	Emails between Case Officer and Applicant (September & October 2015)
CD1.41	Ecological Letter from Clarkson & Woods dated (20.10.2015)
CD1.42	Officer's Delegated Report
CD1.43	LPA Decision Notice dated 7.6.2016

CD2 Correspondence and Documents Associated with the Appeal

CD2.1	Letter from Appellant to Taylor Wimpey dated 12.1.2017
CD2.2	Email from Taylor Wimpey to Appellants dated 19.1.2017
CD2.3	Letter from Appellant to PINS dated 9.2.2017
CD2.4	Letter from Taylor Wimpey dated 13.2.2017
CD2.5	Letter from North Somerset to Appellant dated 15.2.2017

CD3 National Planning Policy and Guidance

CD3.1	National Planning Policy Framework 2012
CD3.2	National Planning Practice Guide
CD3.3	Written Ministerial Statement by Gavin Barwell, 12 December 2016 (HCW5346)
CD3.4	DCLG "Fixing our broken housing market" February 2017

CD4 Landscape Assessment Guidance Documents

CD4.1	Guidelines for Landscape & Visual Impact Assessment - LI and IEMA 3 rd Edition

CD5 North Somerset Council Local Planning Policies and Guidance and other relevant Local Policy Documents and studies

CD5.1	North Somerset - Replacement Local Plan "Saved Policies" (adopted March 2007
CD5.2	North Somerset - Core Strategy, Version following High Court Judgement March 2013 and Re-adoption of Policy CS13 - September 2015
CD5.3	North Somerset - Core Strategy (adopted April 2012, re-adoption in Jan 2017)
CD5.4	Inspector Report - Re-Examination of Policy CS13, 11 March 2015
CD5.4a	Appendix A - Inspector Report - Re-Examination of Policy CS13, 11 March 2015
CD5.5	Planning Inspectorate Core Strategy - Inspectors Report – 8 November 2016
CD5.5a	Appendix - Planning Inspectorate Core Strategy - Inspectors Report – 8 Nov 2016
CD5.6	North Somerset - Sites and Policies Plan Part 1: Development Management Policies (adopted 19 July 2016)
CD5.7	North Somerset - Sites and Policies Plan Part 2: Site Allocations Plan, Publication Version (October 2016)
CD5.8	North Somerset - Assessing the sustainability and settlement hierarchy of rural settlements in North Somerset, Final Report - February 2016
CD5.8a	Appendix C - Assessing the sustainability and settlement hierarchy of rural settlements in North Somerset, Final Report - February 2016
CD5.8b	North Somerset - Reviewing the sustainability and settlement hierarchy of settlements in North Somerset, Final Report – July 2016
CD5.9	North Somerset - Reviewing the sustainability and settlement hierarchy of settlements in North Somerset, Executive Summary – October 2016
CD5.10	North Somerset - Residential Site Assessments

CD5.11	'Backwell Future' Backwell Neighbourhood Plan 2014-26 (made 24 March 2015)
CD5.12	'Backwell Future' Backwell Neighbourhood Plan 2014-26 A Report to North Somerset Council of the Examination into the Backwell Neighbourhood Plan – October 2014
CD5.13	West of England - Joint Spatial Plan – Towards the emerging spatial strategy – November 2016
CD5.14	North Somerset - CC-ID/07 North Somerset Core Strategy Consequential Changes Examination - Inspector's questions for the examination – 17.6.2016
CD5.15	"Backwell Future" Backwell Neighbourhood Plan 2014-2026 – Pre-examination version – March 2014
CD5.16	Evidence Base G: New Development forming part of the report by the Independent Examiner (Nigel McGurk) October 2014
CD5.17	Evidence Base K: New Development forming part of the report by the Independent Examiner (Nigel McGurk) October 2014
CD5.18	Evidence Base L: New Development forming part of the report by the Independent Examiner (Nigel McGurk) October 2014
CD5.19	Evidence Base T: New Development forming part of the report by the Independent Examiner (Nigel McGurk) October 2014
CD5.20	Long Ashton Neighbourhood Development Plan 2013-2033 – May 2015
CD5.21a	North Somerset Planning Maps for Each Service Village
CD5.21b	North Somerset Planning Maps for Each Service Village
CD5.21c	North Somerset Planning Maps for Moor Lane
CD5.22	Inspectors Letter 6.3.2017 – Examination into the soundness of the North Somerset Site Allocations Plan
CD5.23	North Somerset Housing Strategy 2016-2021

CD6 Housing Land Availability

CD6.1	North Somerset – Residential Land Survey and Five-Year Housing Land Supply Paper April 2016
CD6.2	North Somerset and South West Strategic Development Ltd - Statement of Common Ground for Appeal at Land North of Oldmixon Road, Weston Super Mare (APP/D0121/W/16/3150985)
CD6.3	North Somerset – Five Year Land Supply Position Statement – Dec 2016 Update
CD6.4	North Somerset – Planning and Regulatory Committee Report – Land at Wrington Lane, Conglesbury (16/P/1521/O) – 8.2.2017
CD6.5	North Somerset – Planning and Regulatory Committee Report – Land at Wolvershill Road, Banwell (16/P/152744/OT2) – 8.2.2017
CD6.6	North Somerset – Planning and Regulatory Committee Report – Cothill, Station Road, Sandford, Winscombe (17/P/0023/F2) – 8.3.2017
CD6.7	North Somerset – Planning and Regulatory Committee Report – Withydale Farm, Weston Road, Congresbury (16/P/2490/O) – 8.3.2017
CD6.8	North Somerset Annual Monitoring Report 2016

CD7 Not Used

CD8 Relevant Appeal Decisions, Planning Applications and Legal Judgements

CD8.1	APP/D0121/A/99/1035049 – Land at Farleigh Road, Backwell
CD8.2	APP/D0121/W/15/3139633 - Land north of A368, Sandford, North Somerset
CD8.3	APP/D0121/W/15/3138816 – Land south of Knightscott Road, Banwell, Somerset
CD8.4	Suffolk Coastal District Council v Hopkins Homes Ltd, and Richborough Estates Partnership LLP and Cheshire East Borough Council [2016] EWCA Civ 168 (17 March 2016)
CD8.5	Solihull Metropolitan Borough Council v Gallagher Estates Ltd and Lioncourt Homes [2014] EWCA Civ 1610 (17 December 2014)
CD8.6	Stroud District Council v Secretary of State for Communities & Local Government and Gladman Developments Ltd [2015] EWHC 488 (Admin) (6 February 2015)

CD8.7	East Staffordshire Borough Council v Secretary of State for Communities & Local Government and Barwood Strategic Land [2016] EWHC 2973 (Admin) (22/11/16)
CD8.8	APP/D0121/W/16/3142927 - Land at Bleadon Hill, Weston Super Mare, BS24 9JN
CD8.9	APP/C3105/A/13/2201339 - Land North of Gaveston Gardens and Rear of Manor Farm, Banbury Road, Deddington, Oxfordshire
CD8.10	APP/D3125/W/15/3139687 - Land west of Shilton Road, Burford
CD8.11	APP/G5180/W/16/3144248 - Land to the rear of former Dylon International Premises, Station Approach, Lower Sydenham, London SE26 5HD
CD8.12	APP/W0530/A/13/2207961 - Land to the west of Cody Road, Cambridge CB25 9LS

CD9 Principal Consultation Responses on the appeal application 15/P/0315/0

CD9.1	Backwell Environment Trust - 19.8.2015
CD9.2	Backwell Parish Council – 6.3.2015
CD9.3	Backwell Parish Council – 13.3.2015
CD9.4	Backwell Parish Council – 18.3.2015
CD9.5	Backwell Parish Council – 25.8.2015
CD9.6	Environment Agency – 9.3.2015
CD9.7	Highways Agency – 6.3.2015
CD9.8	Highways England – 10.9.2015
CD9.9	Highways England 4.8.2015
CD9.10	Natural England – 12.3.2015
CD9.11	Natural England – 24.8.15
CD9.12	North Somerset - Access Officer – 25.2.2015
CD9.13	NSC Highway Comments – 17.9.2015
CD9.14	NSC Landscape Comments – 23.9.2015
CD9.15	NSC Natural Environment – 25.8.2015
CD9.16	Wessex Water – 2.3.2015
CD9.17	Wessex Water – 11.8.2015

CD10 Other Inquiry Documents

CD10.1	North Somerset - Pupil Projections for North Somerset Schools 2016-20 (June 16)
CD10.2	North Somerset – Education Provision in North Somerset, A Commissioning Strategy 2015 to 2018 (August 2015)
CD10.3	Pegasus Report to North Somerset Core Strategy Examination of Remitted Policies, Hearing Statement: Matter 2 (May 2016)

CD11 Statements of Common Ground

CD11.1	SofCG on Planning
CD11.1a	Appendix A Planning Conditions
CD11.2	SofCG Housing Land Supply

CD12 Statements of Case

CD12.1	Appellant - Planning Statement of Case - 6 th July 2016
CD12.2	Local Planning Authority - Statement of Case – January 2017
CD12.3	Rule 6 Party – Statement of Case – Backwell Parish Council
CD12.4	Rule 6 Party – Statement of Case – Taylor Wimpey

CD13 Not Used

CD14 Proofs of Evidence

CD14.1	Appellants - Proof of Evidence on Planning Matters – David Hutchison
CD14.2	Appellants – Proof of Evidence on Housing Land Supply – Neil Tiley
CD14.3	Appellants - Proof of Evidence on Transportation Matters – G Eves
CD14.4	Appellants – Proof of Evidence on Landscape – Julian Cooper

CD14.5	NSC- Proof of evidence – Planning – D Tate
CD14.6	NSC- Proof of evidence – Planning Policy – M Reep
CD14.7	NSC- Proof of evidence – Housing Land Supply – N Richards
CD14.8	Rule 6 Party – Proof of Evidence –M Rose, Backwell Parish Council
CD14.9	Rule 6 Party – Proof of Evidence –C Perry, Backwell Parish Council

CD15 Appendices to Proofs of Evidence

CD15.1	Appellants – Appendices to Proof of Evidence on Planning – D Hutchison
CD15.2	Appellants – Appendices to Proof of Evidence on Housing Land Supply – N Tiley
CD15.3	Appellants – Appendices to Proof of Evidence on Transportation Matters – G Eves
CD15.4	Appellants – Appendices to Proof of Evidence on Landscape Matters – J Cooper
CD15.5	NSC- Appendices Proof of evidence – Planning – D Tate
CD15.6	Rule 6 Party –Appendices to Proof of Evidence –M Rose, Backwell Parish Council
CD15.7	Rule 6 Party – Appendices to Proof of Evidence –C Perry, Backwell Parish Council

CD16 Summary Proofs of Evidence

CD16.1	Appellants – Summary Proof of Evidence on Planning Matters – David Hutchison
CD16.2	Appellants – Summary Proof of Evidence on Housing Land Supply – Neil Tiley
CD16.3	Appellants - Summary Proof of Evidence on Transportation Matters – G Eves
CD16.4	NSC- Summary Proof of evidence – Planning – D Tate
CD16.5	NSC- Summary Proof of evidence – Planning Policy – M Reep
CD16.6	NSC- Summary Proof of evidence – Housing Land Supply – N Richards
CD16.7	Rule 6 Party – Summary Proof of Evidence –M Rose, Backwell Parish Council
CD16.8	Rule 6 Party – Summary Proof of Evidence –C Perry. Backwell Parish Council

CD17 Rebuttal Proofs including Appendices

CD17.1	NSC – N Richards Rebuttal – Housing Land Supply
CD17.2	Appellant – N Tiley – Errata
CD17.3	NSC – M Reep Rebuttal – Planning Policy

CD18 Documents Submitted During Inquiry

CD18.1	NSC Map showing Photo Viewpoints dated 9.3.2017
CD18.2	NSC – Habitats Regulation Assessment (Updated and finalised March 2017)
CD18.3a	Appellant Site Specifics – SCOTCH Table
CD18.3b	NSC Site Specifics – SCOTCH Table
CD18.4	Site Allocations Plan 2006-2026: Publication Version November 2016 – Comment from NHS dated 19.12.2016
CD18.5a	Appellant Aerial View of Open Space (416.04658.00003.007.0)
CD18.5b	Appellant Photos (416.04658.00003.008.0)
CD18.5c	Appellant Extract from DAS – Cross Section Plan
CD18.6	Appellant Email – Neil Tiley on affordable housing definitions, 13 March 2017
CD18.7	Site Assessment for Neighbourhood Plans: A Toolkit for Neighbourhood Planners
CD18.8	Pack of scripts read by speakers at the Inquiry
CD18.9a	Section 106 Agreement dated 22.3.2017
CD18.9b	Section 106 Justification
CD18.9c	S106 Summary
CD18.10	2000 Appeal Scheme – Application Boundary and Site Plans
CD18.11	Illustrative Layout from 2000 Appeal Scheme
CD18.12	Woodspring Local Plan – Report of the Public Local Inquiry into Objections to the Plan – relating to Farleighs Field, dated 1998
CD18.13	NSC Woodspring Local Plan Inspectors Report – Statement of Decisions and Reasons dated June 1999.
CD18.14	NSC Table of Record of Delivery
CD18.15	Photograph provided by Mr Miles
CD18.16a	PINS Letter Notifying of Recovery of Appeal dated 21 March 2017

CD18.16b	Notification of SoS recovering the appeal dated 20 March 2017
CD18.16c	Letter from Secretary of State to Dr L Fox MP dated 19.12.2016
CD18.16d	Letter from Dr L Fox MP to the Secretary of State dated 30 November 2016
CD18.16e	Letter from Temple Bright Solicitors to Dr L Fox MP dated 15 November 2016
CD18.17	Previous Planning Application Decision Letters Reference 1016/84 dated 12 th April 1984 and Reference 2116/85 dated 5 September 1985.
CD18.18	Bundle relating to 'Points of Clarification' on 5YRHLS Matters
CD18.19a	Council's Response to Inspector Burden dated 21 March 2017
CD18.19b	Appendix to Council's response to Inspector Burden
CD18.20	Maps of Winscombe Allocation and Planning Permission
CD18.21	Closing Submissions for Aylesbury Vale Appeal and covering note
CD18.22	South Oxfordshire District Council v Secretary of State for Communities and Local Government and Cemex Properties Limited EWHC 1173 (Admin) (19 th May 2016)
CD18.23	Bloor Homes East Midlands Ltd v Secretary of State for Communities and Local Government and Hinckley and Bosworth Borough Council EWHC 754 (Admin) (19 March 2014)
CD18.24	Trustees of the Barker Mill Estate v Test Valley Borough Council and Secretary of State for Communities and Local Government EWHC 3028 (Admin) (25/11/2016)
CD18.25	Approach to Calculating 5 Year Housing Land Supply, Appendix 13 to 'Local Plans Report to Government', Local Plans Expert Group, March 2016
CD18.26	Parking Standards SPD, NSC, November 2013
CD18.27	Plans to be attached to the S106 Agreement
CD18.28	Map of rights of way
CD18.29	Final Suggested Conditions

Plans

- Location: Dwg No 500_003 rev D
- Site Access: Dwg No P706/10 Rev C, and Dwg No P706/13 Rev C
- Illustrative drawings, including Masterplan: Dwg 500_002_2 Rev M

Inspector's Documents

- INSP.1 Wallet of appeal representations
- INSP.2 Closing Submissions on Behalf of North Somerset Council
- INSP.3 Closing Submissions on Behalf of Backwell Parish Council
- INSP.4 Closing Submissions on Behalf of the Appellant
- INSP.5 Responses of (a) Backwell Parish Council, (b) North Somerset Council, and (c) the appellant to the Supreme Court Judgment of 10 May 2017
- INSP.6 Appeal decision ref APP/D0121/W/16/3150985, dated 10 April 2017

Annex: Recommended conditions

1. Application(s) for approval of the reserved matters shall be made to the Local Planning Authority before the expiry of three years from the date of this permission.
2. The development hereby permitted shall be begun before the expiry of two years from the date of approval of the last of the reserved matters to be approved.
3. Approval of the details of the layout, scale and appearance of the buildings, and the landscaping of any given part of the site (hereinafter called 'the reserved matters') shall be obtained from the Local Planning Authority (LPA), in writing before any development in that part of the site is commenced unless otherwise approved in writing by the LPA.
4. The development hereby permitted shall, unless otherwise subsequently approved by the Local Planning Authority in writing, be carried out in accordance with the following approved plans:
 - Site Plan (ref: 500_003-D)
 - Proposed Pedestrian/Cycle & Crossing Points on Farleigh Road (ref: P706/10 Rev C)
 - Proposed Access Priority Junction with Ghost Island Right Turn Lane (ref: P706/13 Rev C)
 - Swept Path Analysis (ref: P706/14)
 - Traffic Calming Scheme (ref: P706/16)
 - Highway Dedication Plan (ref: P706/17)
5. Applications for approval of Reserved Matters submitted pursuant to Condition 3 shall be in general accordance with the following approved Parameter Plans unless variations thereto are approved by the Local Planning Authority (LPA) as part of the Reserved Matter applications or where approved by the LPA to comply with the requirements of the other conditions listed in this decision notice:

• Land Budget Parameter Plan	500_002_1_H
• Concept Masterplan	500_002_2_M
• Scale & Massing Parameter Plan	500_005_E
• Access & Movement Parameter Plan	500_006_C
• Density Parameter Plan	500_007_F
6. No dwelling shall be occupied until sight lines have been provided at the junction between the new means of vehicular access and Farleigh Road in accordance with the approved plans.
7. Before occupation, each dwelling shall be provided with a properly consolidated and surfaced parking area at a ratio of no less than 1 space for a 1 bedroom dwelling, 2 spaces for a 2 or 3 bedroom dwelling and 3 spaces for a 4+ bedroom dwelling unless otherwise approved via the reserved matters. The internal footprint measurements for the garages shall be no less than 3.0 x 7.0 metres. The access and parking spaces shall be used for no other purpose.
8. No development shall commence on site until details of the estate roads, footways, footpaths, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, vehicle overhang margins, embankments, visibility splays, accesses, carriageway gradients, for provision of such works, have been submitted to and approved by the Local Planning

Authority. No dwelling shall be first occupied until the above approved works which serve that dwelling have been implemented in full, unless an alternative timetable is approved in those details.

9. No dwelling shall be occupied until the surface of the public footpath ref. LA2/6/10 has been improved and enhanced in accordance with details to be submitted to and approved by the Local Planning Authority.
10. All reserved matters applications shall include details of the proposed ground floor slab levels for the proposed dwellings.
11. The development hereby permitted shall not commence until details of the design, implementation, maintenance and management of the sustainable drainage scheme which takes water off site at greenfield run off rates and volumes, taking into account climate change, long term storage and urban creep has been submitted to and approved in writing by the Local Planning Authority.
12. The drainage system hereby approved shall not be constructed until the pre-construction requirements have either been; submitted to and approved by the Local Planning Authority, or adhered to as stipulated within the requirement.
13. The drainage system must be maintained by the developer prior to the management company adoption to ensure it functions as designed. The maintenance requirements must have either been submitted to and accepted by the Local Planning Authority or adhered to as stipulated within the requirement prior to handing over to the management company.
14. No dwelling shall be occupied until a scheme for the disposal of foul water has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall, thereafter, be implemented in accordance with its requirements and recommendations.
15. Details of external lighting, including temporary/construction and permanent lighting, shall be provided at Reserved Matters stage including:
 - Details of the type and location of the proposed lighting;
 - Existing lux levels affecting the site;
 - The proposed lux levels; and
 - Lighting contour plans.

This scheme shall ensure that light levels do not exceed 0.5 lux (and ideally are maintained at below 0.04 lux) along the boundary hedgerows and habitats (most importantly the southern and western boundaries) to permit continued foraging and commuting of horseshoe bats across the landscape. Details shall be submitted to and approved in writing by the Local Planning Authority (LPA). Any external lighting shall be installed and operated in accordance with the approved details and shall not be varied without approval in writing by the LPA.
16. Before the commencement of development, a Landscape and Ecological Management Plan shall be submitted and approved in writing by the Local Planning Authority (LPA). The Plan shall include measures for establishment and management of semi-natural habitats within the site, including planting schedules that include early establishment and protection of boundary habitats; a timetable for implementation and details of ongoing management. This shall also include details of design and planting of waterbodies within the site, location of bird nesting and bat roosting features and other measures to maximise biodiversity interest including continued use of part of the site for

cattle grazing as part of the proposed Bat Mitigation. The Plan shall include a pre-commencement badger survey of the site and surrounding area of relevance, and a report detailing the findings and proposed avoidance, mitigation and compensation measures shall be provided to the LPA. The reporting process shall include a timetable for management activities as well as a monitoring schedule.

17. If, during development, contamination not previously identified is found to be present at the site then no further development, unless otherwise approved in writing with the Local Planning Authority (LPA) shall be carried out until the developer has submitted a remediation strategy to the LPA detailing how this unsuspected contamination shall be dealt with and obtained written approval from the LPA. The remediation strategy shall be implemented as approved.
18. The developer shall notify the Local Planning Authority (LPA) not less than seven days before the commencement of development and shall afford access at all times to any archaeologist nominated by the LPA, and allow him or her to observe the initial excavations and record items of interest and finds.
19. No development comprising the erection of dwellings shall commence on site until details of the storage of refuse, recycling and composting, including details of location, size, means of enclosure and materials, have been submitted to and approved in writing to the Local Planning Authority. No dwelling shall be first occupied until the approved refuse, recycling and composting storage for that dwelling has been completed and made available for use in accordance with the approved details and it shall be subsequently maintained in accordance with the approved details thereafter.
20. No development shall take place, until a Construction Method Statement has been submitted to, and approved in writing by, the Local Planning Authority (LPA). The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - The parking of vehicles of site operatives and visitors;
 - Loading and unloading of plant and materials;
 - storage of plant and materials used in constructing the development;
 - The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - Wheel washing facilities;
 - Measures to control the emission of dust and dirt during construction;
 - A scheme for recycling/disposing of waste resulting from demolition and construction works;
 - Measures to control noise from works on the site; and
 - A plan showing measures for habitat protection and retention shall be provided, including protection and retention of at least 5m buffer zones from hedgerows.

Once approved, the CMS shall be adhered to at all times, with any amendments approved in writing by the LPA before proceeding.
21. No dwelling hereby approved shall be occupied until measures to generate 15% or less, if approved by the Local Planning Authority (LPA) of the energy required by the use of the overall development (measured in carbon) through the use of micro renewable or low-carbon technologies and a programme for their implementation have been submitted to and approved in writing by the LPA. Once approved the measures shall be installed on site and become fully operational in accordance with the approved details and programme.

Thereafter, the approved technologies shall be permanently retained unless otherwise first approved in writing by the LPA.

22. The dwellings shall not be occupied until a Travel Plan for the new residents, which seeks to reduce the number of vehicle trips to and from the site, has been submitted to and approved by the Local Planning Authority (LPA). The Travel Plan should include an information pack and green vouchers distribution mechanism and the appointment of a travel plan co-ordinator who shall establish a suitable travel plan review and monitoring framework. Upon approval, the development shall thereafter be in accordance with the proposals in the approved Travel Plan unless amendments to the Travel Plan are first submitted to and approved by the LPA.
23. The development shall proceed in strict accordance with the avoidance, mitigation and enhancement measures set out in the following Michael Woods Associates (MWAs) ecological survey reports: Section 7 of the Bat Survey Report (2015); Section 6 of the Breeding Bird Survey (2015); and Section 6 of the Reptile Survey (2015), which must be implemented through the relevant ecological conditions (site enabling, construction, lighting and landscaping plans). If amendments to the methodology are required, details of the changes must be submitted in writing and approved by the Local Planning Authority before relevant works proceed. The development shall then be implemented in accordance with the approved changes.
24. Prior to the commencement of development, a site enabling/vegetation clearance Plan, to include:
 - Update protected species surveys (bats, reptiles, badgers) /checks required to inform: demolition of buildings, site clearance and species method statements if the existing surveys have become out of date
 - Timings and details of precautionary avoidance and mitigation measures required to avoid harm to legally protected (e.g. bats, reptiles, badgers, nesting birds, great crested newt), Section 41 species (e.g. common toad, brown hare, hedgehog) and wild mammals;
 - A detailed method statement for translocation of reptiles; and
 - Ecological supervision of vegetation and site clearance, with structural vegetation lowered by stages (scrub to 15cm within winter period) and regularly maintained as unsuitable habitat.The use of herbicides is to be avoided. Plan shall be submitted to the Local Planning Authority in writing and implemented in accordance with the submitted details.
25. A Construction Environment Management Plan (CEMP) shall be submitted to and approved by the Local Planning Authority prior to commencement of development. This shall include:
 - Surveys/ walk over checks that may be required to inform avoidance and mitigation measures; methods of works;
 - Siting and installation of services such as drainage;
 - Sensitive storage locations for materials and soils (shown on submitted plans);
 - Measures for dust control, disposal of waste;
 - Prevention of pollution, to protect surface waters and ground waters, in accordance with best practice;
 - All measures for avoidance and mitigation of harm to legally protected and Section 41 species and wild mammals;

- Specification of buffers and fencing for the protection of ecological features and trees; and
- Details of the appointment of an Ecological Clerk of Works with overall responsibility for the successful implementation of the CEMP, to advise project management staff and contractors on ecological issues, and to ensure mitigation measures are implemented correctly.

Works shall be implemented in strict accordance with the approved details/methodology.

26. Prior to the commencement of development, an updated/amended landscaping and ecological management plan (LEMP) for the site shall be submitted to and approved in writing by the Local Planning Authority. The aim of the LEMP is to secure the long term safeguarding and management of on-site retained and created habitats. The LEMP shall include:
- The landscaping specification to including details of species, planting requirements, monitoring and replacement;
 - Site and habitat management objectives;
 - Detail of the annual work plans for ongoing annual management requirements;
 - Specifications for:
 - The creation and monitoring of new habitat features; and
 - An on-site notice board detailing habitats and management (with exception of bat roost which is sensitive);
 - Sign-off completion statement by ecological consultant;
 - Monitoring proposals, to include monitoring of light levels within retained bat habitats in years 1, 2 and 5 of the operational phase; with provision for remedial additional planting should light levels exceed 1 lux within retained horseshoe bat habitats;
 - A planting and maintenance schedule for the SuDS scheme; and
 - A plan of showing locations of bird, bat and hedgehog boxes and provision for annual checks and replacement where necessary of bird nesting and bat roosting features.
- Ongoing management shall be carried out in accordance with the approved details.
27. No other development hereby approved shall commence until the first 20m of the proposed Farleigh Road access works shown on drawing P706/13C, or other such arrangement approved in writing by the Local Planning Authority, has been completed to at least binder course level.
28. Prior to the first occupation the pedestrian and cycle access on drawing P706/10, or other such arrangement approved by the Local Planning Authority (LPA), has been constructed to the satisfaction of the LPA.



Ministry of Housing, Communities & Local Government

www.gov.uk/mhclg

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.

IN THE MANCHESTER CIVIL JUSTICE CENTRE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Manchester Civil Justice Centre,
1 Bridge Street West, Manchester,
Greater Manchester,
M60 9DJ

Date: 25/03/2013

Before:

THE HONOURABLE MR JUSTICE STUART-SMITH

Between:

**WAINHOMES (SOUTH WEST) HOLDINGS
LIMITED**

Claimant

- and -

**(1) THE SECRETARY OF STATE FOR
COMMUNITIES AND LOCAL GOVERNMENT**

Defendant

**(1) WILTSHIRE COUNCIL
(2) CHRISTOPHER RALPH CORNELL AND SARAH CECILIA CORNELL**

Interested Parties

David Manley Q.C. (instructed by **Ashfords LLP**) for the **Claimant**
Lisa Busch (instructed by **The Treasury Solicitor**) for the **Defendant**

Hearing date: 11 March 2013

Judgment

Mr Justice Stuart-Smith:

Introduction

1. This is a claim under s.288 of the Town and Country Planning Act 1990. The Claimant (“Wainhomes”) challenges a decision dated 5 October 2012 by which inspector Mike Robins dismissed an appeal against the non-determination by Wiltshire Council (“the Council”) of a proposal to build up to 50 houses on land at Widham Farm, Widham Grove, Station Road, Purton, in Wiltshire. The inquiry was undertaken on the appeal of Mr and Mrs Cornell, who are now interested parties in these proceedings, against the Council’s non-determination of their application for planning permission. Wainhomes has an interest in the land the subject of the challenge by reason of an option agreement dated 13 November 2012.

2. The inspector indentified as one of the main issues in the case, whether or not there were material considerations that would outweigh the development plan presumption against development in the countryside. Central to that issue was whether or not there was a supply of specific deliverable sites sufficient to provide five years worth of housing against the Council's relevant housing requirements with an additional buffer of five per cent to ensure choice and competition in the market for land, as required by paragraph 47 of the National Planning Policy Framework ("NPPF"). As discussed in greater detail below, that issue involved consideration of whether the strategic sites included in Wiltshire's draft Core Strategy and AMR should be included by the inspector when determining the supply of deliverable sites over the next five years. The Council contended that they should be included; the appellants said that they should be excluded. After the hearing of the inquiry two decisions by another inspector (Inspector Papworth) were promulgated in relation to sites in Calne, which is also in Wiltshire. Those decisions decided, in materially identical terms, that strategic sites should be excluded from consideration of the supply of deliverable sites. Those decisions were sent promptly to the inspectorate by those who were at that time advising Mr and Mrs Cornell; but they were not considered by Inspector Robins. When he made his decision on 5 October 2012 he found against the appellants and included the strategic sites. Having done so he concluded that a five year housing supply had been shown.
3. By these proceedings Wainhomes advances five grounds of appeal, namely:
 - i) The inspector failed to have regard to a material consideration namely the two decisions at Calne or give reasons for not following the approach taken in those cases to the five year housing land supply;
 - ii) The inspector failed correctly to interpret the NPPF;
 - iii) The inspector gave inadequate reasons for the inclusion of strategic sites in the five year housing land supply and/ or the inclusion of the site was irrational;
 - iv) The inspector failed to take into account material considerations; gave inadequate reasons for concluding a five year housing land supply existed or otherwise behaved irrationally in so concluding;
 - v) The inspector made a mistake or otherwise reached a conclusion based on no evidence.
4. In summary, this judgment concludes that:
 - i) Ground 1 of the challenge is established. The inspector failed properly to exercise his discretion in deciding whether or not to admit the Calne decisions for consideration and failed to give proper reasons for his decision;
 - ii) The other grounds of challenge fail because when the Decision Letter is read fairly and with the reasonable latitude appropriate to a review of such decisions, it appears that the inspector made no material error of law, reached conclusions that it was open to him to reach on the material he considered, and gave adequate reasons for his decision.

The applicable principles

5. The principles applicable to a challenge under s.228 of the Town and Country Planning Act 1990 have been set out frequently and repeatedly in many decisions including decisions of the highest authority. It is neither necessary nor desirable to provide a comprehensive review in this case, and I merely highlight principles that are directly in point for this challenge.
6. In *Wiltshire Council v Secretary of State for Communities and Local Government and Robert Hitchins Limited* [2010] EWHC 1009 (Admin) Simon J provided a useful summary of the applicable principles at [7-8] which I gratefully adopt without setting it out again. I bear in mind at all times that:
 - a) Where an expert tribunal (such as a planning inspector) is the fact finding body, the *Wednesbury* unreasonable test will be “a difficult obstacle” and poses a “particularly daunting task” for an applicant under s.288;
 - b) A decision letter must be read in good faith and as a whole. It should be construed in a practical manner and not as if it were a contract or statute.
7. The scope and extent of an inspector’s obligation to provide reasons were explained in *South Buckinghamshire DC v Porter (no.2)* [2004] 1 WLR 1953 by Lord Brown of Eaton-Under- Heywood at [36]:

“The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the “principal important controversial issues”, disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in the dispute, not to every material consideration. They should enable disappointed developers to assess their prospects of obtaining some alternative development permission, or, as the case may be, their unsuccessful opponents to understand how the policy or approach underlying the grant of permission may impact upon future such applications. Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision.”

8. A decision maker ought to take into account all matters which might cause him to reach a different conclusion to that which he would reach if he did not take it into account. That includes considerations where there is a real possibility that the decision maker would reach a different conclusion if he did take that consideration into account. If a matter is excluded from consideration and it is clear that there is a real possibility that the consideration of the matter would have made a difference to the decision, a Judge is able to hold that the decision was not validly made. But if the Judge is uncertain whether the matter would have this effect or was of such importance in the decision-making process then he does not have before him the material necessary for him to conclude that the decision was invalid: see *Bolton MBC v SoSE* [1991] P&CR 343, 352-353. This obligation derives from s.70 (2) of the Town and Country Planning Act 1990 which applies to the determination of appeals by virtue of s.79 (4) of the Act: and see *R (on the application of Kides) v South Cambridgeshire DC* [2002] EWCA Civ 1370 at [122-127]. *Kides* establishes that the obligation to have regard to material considerations continues up to the time that the decision maker (in this case the inspector) makes his decision.
9. It is common ground that a previous inspector's planning decision is capable of being a material consideration, though the importance to be attached to a previous decision will depend upon the extent to which the issues in the previous decision and the current decision overlap. In *North Wiltshire DC v SoSE and Clover* [1992] 605 P&CR 137 Mann J addressed the limits of the inspector's obligation to have regard to previous decisions. At page 145 he said that 'an inspector must always exercise his own judgment. He is therefore free upon consideration to disagree with the judgment of another but before doing so he ought to have regard to the importance of consistency and to give his reasons for departure from the previous decision'. Mann J provided what he called 'a practical test for the inspector' which was to ask 'whether if I decide this case in a particular way, am I necessarily agreeing or disagreeing with some critical aspect of the decision in a previous case?' This guidance cannot simply be applied by rote. S.38(6) of the Planning and Compulsory Purchase Act 2004 requires applications for planning permission to be determined in accordance with the development plan, unless material considerations indicate otherwise; and this requirement is reflected and reiterated. The development plan may itself be in a state of flux and development. That being so, previous decisions that were made when the planning regime or development plan were significantly different are likely to be of less materiality than recent decisions made in the same or a closely similar planning context.
10. The Town and Country Planning Appeals (Determination by Inspectors) (Enquiries Procedure) (England) Rules 2000 provides the procedural framework for the conducting of inquiries. They include rules that are intended to ensure that all relevant materials upon which the inspector will make his decision are available both to the inspector and to other parties according to an orderly timetable. The rationale for this procedural framework is self evident: the late submission of additional materials is liable to produce inefficiency, delay, increased expense and, at worst, injustice. However, it is inevitable that there will be occasions when information that is material to an inspector's decision will become available for the first time at a date which prevents compliance with the normal framework and rules. Against that eventuality the inspector has a discretion to admit materials which have not been provided in accordance with the normal procedural timetable. That discretion continues up to the

time that he makes his decision. Rule 18 makes express provision for the admission of material after the inquiry has been held and before he has made his decision as follows:

“(2) When making his decision the inspector may disregard any written representations or evidence or any other document received after the close of the inquiry.

(3) If, after the close of an inquiry, an inspector proposes to take into consideration any new evidence or any new matter of fact (not being a matter of government policy) which was not raised at the inquiry and which he considers to be material to his decision, he shall not come to a decision without first (a) Notifying [in writing] the persons entitled to appear at the inquiry who appeared at the matter in question; and (b) affording them an opportunity of making written representations to him or of asking for the re-opening of the inquiry. And they shall ensure that such written representations or requests to re-open the inquiry are received by the Secretary of State within three weeks of the date of notification.

(4) An inspector may, as he thinks fit, cause an inquiry to be re-opened and he shall do so if asked by the appellant or the local planning authority in the circumstances and within the period mentioned within paragraph (3): and where an inquiry is re-opened – (a) The inspector shall send to the persons entitled to appear at the inquiry who appeared at it a written statement of the matters with respect to which further evidence is invited;...”

11. The inspector’s power to admit material after an inquiry and the basis upon which he should exercise his discretion when asked to consider further material is the subject of Planning Inspectorate Good Practice Advice Notes. Advice Note 07 says at [67]:

“At any point before deciding the appeal the inspector may exercise his/her powers to seek further information from the parties if it is considered necessary to enable a properly informed, and reasoned, decision to be made.”

Advice note 10 says (at [7]) that, if new matters arise which are considered likely to be material to the inspector’s consideration of the case, the relevant material should be submitted at the earliest possible stage. At [9] the note says:

“The Secretary of State and Inspectors have discretion as to how to treat new materials submitted with or during the consideration of an appeal. They will apply their discretion on the basis of the relevance of the material to the appeal proposal, whether it simply repeats something that is already before the Inspector (for example, rebuttal evidence which adds nothing to what is already recovered in a proof of evidence) and whether it

would be procedurally fair to all parties “including interested persons” if the material were taken into account...”

12. These being principles that are relevant to apply in this case, I turn to consider the grounds of challenge.

Ground 1: The inspector failed to have regard to a material consideration namely the two decisions at Calne or to give reasons for not following the approach taken in those cases to the five year housing land supply

13. It is necessary to examine the factual background in more detail to put this ground of challenge in context. For convenient reference, the relevant passages of the Decision Letter are reproduced at Annexe A and are not set out again in the body of this judgment.

Factual background

14. The NPPF was introduced in March 2012. Under the heading “Delivering a wide choice of high quality homes”, [47] of the NPPF provides:

“To boost significantly the supply of housing, local planning authorities should:

- Use their evidence base to ensure that their local plan meets the full, objectively assessed needs for market and affordable housing in the housing market area as far as is consistent with the policies set out in this framework, including identifying key sites which are critical to the delivery of the housing strategy over the planned periods;
- Identify and update annually a supply of specific deliverable sites sufficient to provide 5 years worth of housing against their housing requirements with an additional buffer of five per cent (moved forward from later in the planned period) to ensure choice and competition in the market for land...”

15. A footnote attached to the word “deliverable” in the second bullet point (“Footnote 11”) defines what that word means in [47] as follows:

“To be considered deliverable, sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years and in particular that development of the site is viable. Sites with planning permission should be considered deliverable until permission expires, unless there is clear evidence that schemes will not be implemented within 5 years, for example they will not be viable, there is no longer a demand for the type of units or sites have long term phasing plans.”

16. It was central to the appellants' case before the inspector that there was an insufficient supply of deliverable sites and that insufficiency was a material consideration in favour of the appellant's proposal. The importance of the existence or otherwise of deliverable sites sufficient to provide 5.25 years worth of housing against the identified housing requirements was made clear by Tracy Smith, the Council's Area Team Leader, who expressly accepted in evidence that if it were to be concluded that there was a shortfall in the 5 year housing land supply and if it were to be concluded (as the inspector did conclude in the Decision Letter) that prematurity was not a legitimate basis on which to reject the appeal then development of the appeal site would be permissible in principle subject to satisfactory s 106 contributions being made. She also accepted that the Council was not suggesting that any more sustainable sites existed within the settlement boundaries of Purton, that the site had no constraints that would preclude its development, and that the development of up to 50 units could not be characterised as "large scale". Accordingly, given the inspector's conclusion on prematurity, the sufficiency of the housing land supply was of primary importance.
17. Various different sources of data relating to land supply were available. The appellants favoured the evidence base that had underpinned the dRSS while the Council favoured the approach adopted in the emerging Core Strategy for Wiltshire ("eWCS"). A number of reasons were put forward by the parties in support of their respective positions, which were encapsulated in the witness statements of Mr Stephen Harris, a Chartered Town Planner who gave evidence for the appellants, and Mr Neil Tiley, who gave evidence for the Council and who was the Council's Manager of Monitoring and Evidence within Economy and Regeneration.
18. The inspector set out the competing positions at [11-14] of the Decision Letter. In summary, both parties accepted that the data and projections found in the adopted development plan were out of date. Revised housing requirements were promoted during the development of the dRSS, which was subject to Examination in Public and revision for the version that was published for consultation in 2008. However, because of the Coalition Government's antipathy towards RSSs, it was recognised that although the dRSS had reached an advanced stage it was extremely unlikely to be adopted. In response to this state of affairs, the Council reconsidered the housing requirements for Wiltshire and its reconsideration informed the eWCS. The eWCS had reached the stage of being submitted for Examination in Public but that examination had not taken place. The Council preferred to rely on the eWCS evidence base because extensive consultation had already taken place; but the outcome of the EIP was as yet unknown and uncertain, not least because it was subject to objections to proposed housing numbers and because concerns had been raised which suggested a need for the Council to re-consult.
19. A discrete but important argument related to what sites could properly be regarded as "deliverable" within the meaning of Footnote 11. The Council had included in its calculations 1,657 units from sites identified as "strategic sites" in the eWCS. None of these sites had planning permission. Mr Tiley did not know which, if any, were objected to. Mr Harris gave unchallenged evidence that, to the best of his knowledge, all were subject to objection. Mr Tiley was unable to identify any case in which the Secretary of State had deemed it appropriate to include emerging Core Strategy "strategic sites" in a calculation of the 5 year housing land supply where such sites

were subject to objection. At the present hearing, the Court was informed that no such decision of the Secretary of State had been identified but that there are decisions of the Secretary of State going the other way (i.e. excluding strategic sites which were subject to objection from inclusion in the calculation of the 5 year housing land supply). No further details about these decisions have been provided¹.

20. The potential impact of this dispute about strategic sites on the raw figures as found by the inspector emerges clearly from the evidence of Mr Harris for the present proceedings. Inspector Robins included strategic sites in his calculations, which led him to produce a table at [52] of the decision letter as follows:

Plan/Policy	Housing Requirement	5 year Housing Requirement	Housing Supply	Assessment (years)
dRSS Rest of Wiltshire	3,024	1,008	1522	7.5
dRSS North Wiltshire	10,684	3,549	3052	4.3
eWCS North and West HMA	15,249	5,083	6292	6.2

In other words, adopting the Appellant's favoured approach by reference to the dRSS North Wiltshire would support the conclusion that there was a shortfall in supply but adopting the Council's favoured approach by reference to the eWCS North and West HMA would support the conclusion that there was not.

21. Mr Harris, whose evidence is not contradicted, says that "for North Wiltshire the total supply from [strategic sites] in the next 5 years was 990 dwellings ... and 1,657 dwellings for the North and West HMA ..." The effect of excluding these dwellings upon the inspector's table is shown in the right hand column of the adjusted table below:

Plan/Policy	Housing Requirement	5 year Housing Requirement	Housing Supply	Inspector Robins' Assessment (years)	Adjusted assessment excluding strategic sites
dRSS Rest of Wiltshire	3,024	1,008	1522	7.5	7.5
dRSS North Wiltshire	10,684	3,549	3052	4.3	2.9
eWCS North and West HMA	15,249	5,083	6292	6.2	4.6

¹ Save possibly for a reference to one decision in the Calne Decision letters: see [26] below.

In other words, if the strategic sites are excluded there is a much greater shortfall by reference to the dRSS for North Wiltshire and there is also a shortfall by reference to the eWCS North and West HMA.

22. During the inquiry the inspector was referred to three previous decisions which touched on the issue of inclusion or exclusion of strategic sites. The decisions predated the introduction of the NPPF and were referred to at [22-23] of the Decision Letter. The decisions were:

i) The decision of Inspector Youle relating to land at Meadow Lane, Ruands, in Northamptonshire dated 18 January 2010. At [41] of his decision the inspector referred to “impending consents and DPD allocation” which the Council had brought into account in its calculation of the housing land supply. The inspector said:

“This includes a number of sites which are proposed as housing allocations in the Preferred Options versions of the TTP and the RAP. However, these Plans have not been subject to independent testing through an examination and several of the sites do not appear to have planning permission or to be allocated for housing in the Local Plan. In addition, some sites appear to have constraints which could impede deliverability. Consequently I have not been given sufficient evidence to indicate that these sites can be regarded as being available, suitable and achievable as required by PPS3. Therefore, it has not been demonstrated that a five year supply exists.”;

ii) The decision of Inspector Graham relating to land at Moat House Farm, Marston Green, in the area of Solihull MBC dated 21 February 2012. At [11] of her decision she addressed the question of Draft Local Plan sites, which the Council had brought into account in its calculation of the housing land supply. The inspector said:

“The draft Local Plan identifies proposed sites for 1,445 net additional dwellings, and the Council maintains that these should be taken into account when calculating the 5 years supply position. However, it is important to bear in my mind that this emerging Local Plan is still only a draft, which has yet to be the subject of further consultation, representations, and Examination in Public. Paragraph 54 of PPS3 explains that to be considered deliverable, sites should be available, suitable and achievable at the point of adoption of the relevant Local Development Document. There can be no guarantee that sites included in the current draft will remain in the finished version of the Local Plan, which in any event will not be adopted before 2013. As the situation stands at present, I consider that these sites should not be included when calculating the current five year land supply position”

iii) The later decision of Inspector Graham relating to land at Park Road, Malmesbury, Wiltshire dated 15 March 2012. At [18] of her decision she

accepted that “the Council’s 2010/2011 Annual Monitoring Report (AMR) provides the logical starting point for assessing the supply of deliverable housing sites.” She then considered specific sites, and at [23] she addressed the inclusion of three strategic sites at Chippenham which the Council had brought into account in its calculation of the housing land supply. The inspector said:

“It is fair to note that all three sites have physical, environmental and infrastructure constraints that will need to be addressed. However, the council has liaised with the developers of each, and obtained delivery trajectories which update the information provided in AMR. I see no convincing reason to doubt these revised figures, which indicate that within the five year period an additional 420 dwellings will be provided at the north Chippenham site, and a further 110 at the East Chippenham site. ”

23. Certain points may immediately be noted:

- i) Each inspector was prepared in principle to treat sites which did not yet have planning permission as potentially satisfying the PPS3 requirements;
- ii) The inspectors at Meadow Lane and Moat House Farm identified the fact that the Plans in those cases had not been subjected to Examination in Public as a feature weighing against the inclusion of the sites there listed;
- iii) In the Malmesbury decision, the inspector’s reservations about the status of two of the sites² were resolved by the calling of site specific evidence about their availability and deliverability. By contrast, no such evidence had been called in the other two appeals.

24. In the present case it was not suggested before the inspector and is not suggested now that strategic sites which did not yet have planning permission were necessarily to be excluded from the calculation of the housing land supply. The case advanced before the inspector (relying upon the previous decisions from Meadow Lane and Moat House Farm) was that because the eWCS had not been adopted, sites could not be regarded as available by virtue of their inclusion in the eWCS since their deliverability would be assessed through the Core Strategy process³. Inspector Robins dealt with the previous decisions specifically at [22-23] of the Decision Letter. He accepted that he should not prejudge the outcome of the eWCS Examination in Public and that the weight to be ascribed to the eWCS depended upon “the specific stage of preparation of the evidence base and the evidence supporting deliverability.” In contrast to what had happened at Malmesbury, no site specific evidence of deliverability was presented to Inspector Robins. Referring to that decision he said that “the Inspector in that case also accepted the principle of including strategic sites.”

² The reference to “the North Chippenham site, and ... the East Chippenham Site” suggests that they were two of the three strategic sites being considered in [23], with the third site not being named or included. However, it makes no difference to the argument if the North Chippenham and East Chippenham Sites in fact comprised all three sites: whether two or three strategic sites were included by the inspector, they were included after the provision of site-specific evidence.

³ See Mr Harris’ Witness Statement to the inquiry at [7.24-25]

It is evident that he saw the Malmesbury decision as supporting the conclusion (which he ultimately reached) that the strategic sites in the present case should be included.

25. Before Inspector Robins made his decision, two potentially relevant events occurred. First, on 3 September 2012 Mr Harris sent to the inspector a copy of a letter to the Council dated 29 August 2012 from Mr Andrew Seaman, the Senior Housing and Planning Inspector who was to conduct the Examination in Public of the eWCS. That letter raised a number of concerns about the eWCS and its prospects when submitted to the EIP. There were concerns relating to the soundness of the evidence base underpinning the housing chapter and the quality of the sustainability appraisal that had been carried out. Mr Seaman noted that the Council was “undertaking further consultation on its proposed pre-submission changes which will include details of the revised Sustainability Appraisal and an opportunity to comment upon the implications of the [NPPF] and Government Policy for Gypsies and Travellers.” He foresaw that the Examination would certainly extend into 2013. This further information was admitted by Inspector Robins. It seems likely that he had it in mind when he said, at [12] of his Decision Letter, that “the Council’s ambitions for this plan to be adopted by the end of 2012 or early 2013 may, however, be questioned in light of recent concerns and a need to re-consult.”
26. The second potentially relevant event was that Inspector Papworth made two decisions on 18 September 2012. Each decision related to land at Calne, in Wiltshire. Each considered in some depth (and in identical terms) the principles of development to be applied, at and from [9]. At [13-15] Inspector Papworth considered the housing requirement side of the equation established by [47] of the NPPF. He regarded the Malmesbury decision as “an anomaly” and contrasted it with a decision of the Secretary of State at Salisbury which “expressed a different view on a more advanced core strategy.” Turning to the state of development of the eWCS he said that it was “advanced inasmuch as an Examination is imminent, but in view of the extent of unresolved objections, including to the adequacy of the provisions for housing, there must remain doubts over the outcome and the consistency with Framework policies on increasing the supply of housing.” He held that the assumption that the Regional Strategy will not now be taken further does not materially alter the weight that can be attached to that evidence base relative to that presently informing the emerging Core Strategy”; and he concluded that, having regard to the first bullet point of Framework [47] “it is appropriate to regard the figures derived from the evidence for the Regional Strategy as a robust basis for determining the requirement.”
27. Turning to the supply side of the equation at [16], Inspector Papworth took the view that “to ensure a robust appraisal it is necessary to look further at the list of sites as discussed at the hearing.” It is apparent that site specific evidence had been presented in relation to some but not all sites, and that no site specific evidence had been submitted in relation to strategic sites, because Inspector Papworth said at [17-18]:

“17. Of the large permitted areas, there does appear to be doubt over the delivery of the former Bath and Portland Stoneworks site given its past history, not being in the 2009/10 Annual Monitoring Report, and little evidence that matters have moved on substantially since. Similarly with the Blue Hills Site, this appears to have been subject to persistent delays and to being put back in time in the successive Annual Monitoring Reports.

The delivery timescale for land adjacent to the scrap yard at Trowbridge also appears to be receding and reduction here is appropriate.

18. Other sites with permissions that had been previously dismissed have been brought back into the list, but it is apparent that even with the acceptance of these sites in total, a shortfall is possible. The Council has added 183 units in this category where none were previously included. Footnote 11 of the framework does provide for live permissions to be counted unless there is clear evidence that the schemes will not be implemented within 5 years, for example, they will not be viable, there is no longer a demand for the type of units or sites or sites have long term phasing plans. Clearly those where the permission has expired should not be included and where land was bought at or near the height of the market, doubts over viability would be legitimate. The prospect of new permissions on new land being required to replace such stalled schemes was discussed. Windfalls have also been significantly increased and that is provided for in paragraph 48 of the framework subject to certain requirements on historic evidence. There appears to be good reason to reduce the figure on that basis as suggested, *Vision and strategic sites are disputed in their entirety, and given the process to be gone through and the doubts over delivery, a degree of caution is appropriate. The requirement is to identify a supply of specific deliverable sites and to be considered deliverable, sites should be available now. These sites cannot truly be described as being available now.*” [Emphasis added]

28. Inspector Papworth concluded that there were sufficient doubts remaining over a number of included sites and supply provisions to increase further the shortfall which he had already found to have existed by reference to the various evidence bases even if those sites were included.
29. On 26 September 2012 Mr Harris had a conversation with someone at the relevant PINS team who advised him to send the Calne decisions together with a brief note. As a result of that conversation he sent the Calne decisions by email times at 10:35 that day. In that email he provided the suggested note in the following terms:

“Following our conversation earlier, I understand that the Council has not commented on the letter from Wiltshire Core Strategy Inspector and therefore you do not require any further comment from the Appellant.

We also discussed two appeal decisions which were issued last week for the two sites in Calne, Wiltshire. As they are in the same policy area of North Wiltshire we consider that they are relevant to our appeal as they deal with similar issues. However we are conscious that the Inquiry closed a number of weeks ago. Therefore you requested that we send the decisions to you

and you would decide whether or not they can be taken into account on this appeal.

Both of the attached appeals were heard at the same hearing in July this year. The first (APP/Y3940/A/12/2171106/NWF) was for some 154 dwellings and the second (APP/Y3940/A/12/2169716) was for up to 200 dwellings. Therefore both appeals (some 354 dwellings) would meet the 370 dwellings that remain to be planned for in the emerging Core Strategy for Calne. These decisions conclude that:

- The housing requirement to be used is the RSS Proposed Changes;
- The geographical area to determine the supply is the former North Wiltshire;
- Limited weight can be given to the emerging Core Strategy due to the stage it has reached;
- There are concerns on the deliverability of commitments and emerging allocations;
- The appeals would not result in prematurity against the emerging Core Strategy and neighbourhood plan.

Should you require any further information please do not hesitate to contact me”

30. Receipt of Mr Harris’ email was acknowledged at 15:50 on 26 September 2012. The only additional comment made by the person acknowledging receipt was the accurate but inconsequential statement that “The Appeals referred to have now been decided and the Decisions issued on 18 September”, which Mr Harris obviously knew already.
31. No further response was sent until 14:11 on Tuesday 2 October 2012 when a Case Officer from the relevant team at PINS emailed Mr Harris above a copy of the email with which he had sent the Calne decisions:

“Thank you for your email below. Unfortunately it was received too late to be considered by the Inspector.”

32. Inspector Robins’ decision was made on 5 October 2012. No reference was made in the Decision Letter to the Calne decisions; nor has any further information or reason been given to explain why Mr Harris’ email of 26 September 2012 and the Calne decision he had attached to it were not considered by the inspector.
33. The relevant passages in the Decision Letter are set out in Annexe A. The following features may conveniently be highlighted here:
 - i) The Decision Letter addresses the issue of “deliverable” sites and whether strategic sites should be included specifically at [21-24] and [51-54];

- ii) At [21] the inspector's acceptance that allocated sites, including those within emerging plans, could be included was subject to two provisos:
 - a) Acceptance would be "subject to the weight that can be given to that plan and its evidence base"; and
 - b) Acceptance would be "subject to ... the submission of information indicating a reasonable likelihood of them progressing within the five year period."
- iii) At [22] and [24] the inspector accepted that the existence of outstanding objections to sites meant that housing supply from such sites could not be guaranteed; and that he could not prejudge the outcome of the eWCS Examination. He treated these as matters going to the weight that he was able to attach to the Council's assertion that such allocations should be included;
- iv) At [23] he identified the evidential factors supporting his conclusion that exclusion of all the draft allocations was not appropriate, including that the Malmesbury inspector had "accepted the principle of including strategic sites.";
- v) He referred to the Moat House Farm and Meadow Lane decisions at [22]. There was no discussion of the basis or reasoning supporting either of those decisions or the Malmesbury decision. In particular, the Decision Letter does not evidence an appreciation that there was site specific evidence in the Malmesbury decision (but not in the other two) or that this might be a significant factor, despite his statement in [21] that acceptance would be subject to the submission of evidence indicating a reasonable likelihood of sites progressing within the five year period;
- vi) He accepted at [24] that, although exclusion of all the draft allocations was not appropriate, "full weight cannot be given to the precise numbers put forward by the Council"; but he concluded that it was "reasonable to include these sites in absence of specific evidence that they cannot be delivered.";
- vii) At [53], reviewing the contents of his table, he concluded that the Council had shown a 5-year housing supply relative to the dRSS Rest of North Wiltshire figures and the eWCS North and West HMA figures but had failed to demonstrate adequate supply for the dRSS North Wiltshire Area. He concluded that the weight to be given both to the dRSS figures and the eWCS figures was "somewhat lessened", to a similar degree in each case;
- viii) At [54] he stated that he did not rely upon the exact (or raw) figures in his table, but regarded the figures (taken broadly) to demonstrate a 5 year housing supply except in relation to the former North Wiltshire District, where he considered that the 4.3 years, set against an expectation of 5.25 years, did not represent a serious shortfall. As a result, he did not consider that there was an "overwhelming need for development to meet" the specific demand in the former North Wiltshire District. He therefore considered that a 5-year housing supply had been shown.

Discussion

34. The issue for the inspector was whether the strategic sites were “deliverable” as defined by Footnote 11 so that they fell within the meaning of [47] and should have been included in the assessment of housing land supply. Footnote 11 is not entirely straightforward, but the following points are relevant to its interpretation:
- i) It is common ground that planning permission is not a necessary prerequisite to a site being “deliverable”. This must be so because of the second sentence of Footnote 11 and because it would be quite unrealistic and unworkable to suggest that all of the housing land supply for the following five year period will have achieved planning permission at the start of the period;
 - ii) The parties are agreed that a site which is, for example, occupied by a factory which has not been derequisitioned, or which is contaminated so that housing could not be placed upon it, is not “available now” within the meaning of the first sentence of Footnote 11. However, what is meant by “available now” is not explained in Footnote 11 or elsewhere. It is to be read in the context that there are other requirements, which should be assumed to be distinct from the requirement of being “available now”, though there may be a degree of overlap in their application. This suggests that being available now is not a function of (a) being a suitable location for development now or (b) being achievable with a realistic prospect that housing will be delivered on the site within five years and that development of the site is viable. Given the presence of those additional requirements, I would accept Ms Busch’s submission for the Secretary of State: “available now” connotes that, if the site had planning permission now, there would be no other legal or physical impediment integral to the site that would prevent immediate development;
 - iii) Questions as to the viability of the proposed development or, for example, whether a developer had been identified or was in a position immediately to start work, would go to the question whether there was a realistic prospect of delivery within five years, but not to the question whether the site was available now. For the same reason, the fact that a site does not “offer a suitable location” does not affect whether or not it is “available now”, suitability of the location being a separate requirement;
 - iv) Where sites without planning permission are subject to objection, the nature and substance of the objections may go to the question whether the site offers a suitable location; and they may also determine whether the development is achievable with a realistic prospect that housing will be delivered on the site within five years. Even if detailed information is available about the site and the objections, prediction of the planning outcome is necessarily uncertain. All that probably need be said in most cases is that where sites do not have planning permission and are known to be subject to objections, the outcome cannot be guaranteed. Accordingly, where there is a body of sites which are known to be subject to objections, significant site specific evidence is likely to be required in order to justify a conclusion that 100% of all those sites offer suitable locations and are achievable with a realistic prospect that they will be delivered within five years;

- v) For similar reasons, where sites are in contemplation because of being included in an emerging policy document such as the eWCS, and the document is still subject to public examination, that must increase the lack of certainty as to outcome. That is implicitly recognised by [216] of NPPF which requires decision-takers to “give weight to relevant policies in emerging plans according to: the stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given)” and to “the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given)... .” As Inspector Graham pointed out in the Moat House Farm decision, there can be no guarantee that sites included in the current draft will remain in the finished version of the Local Plan. The approach taken by the various inspectors whose decisions have been considered in this case (including Inspector Robins at [22]) is therefore correct: the stage of preparation of the evidence base and the progress of the draft document are important considerations going to the prospects of housing being delivered within five years and therefore being “deliverable” within the meaning of Footnote 11.
35. I would accept as a starting point that inclusion of a site in the eWCS or the AMR is some evidence that the site is deliverable, since it should normally be assumed that inclusion in the AMR is the result of the planning authority’s responsible attempt to comply with the requirement of [47] of the NPPF to identify sites that are deliverable. However, the points identified in [34] above lead to the conclusion that inclusion in the eWCS or the AMR is only a starting point. More importantly, in the absence of site specific evidence, it cannot be either assumed or guaranteed that sites so included are deliverable when they do not have planning permission and are known to be subject to objections. To the contrary, in the absence of site specific evidence, the only safe assumption is that not all such sites are deliverable. Whether they are or are not in fact deliverable within the meaning of [47] is fact sensitive in each case; and it seems unlikely that evidence available to an inspector will enable him to arrive at an exact determination of the numbers of sites included in a draft plan that are as a matter of fact deliverable or not. Although inclusion by the planning authority is some evidence that they are deliverable, the weight to be attached to that inclusion can only be determined by reference to the quality of the evidence base, the stage of progress that the draft document has reached, and knowledge of the number and nature of objections that may be outstanding. What cannot be assumed simply on the basis of inclusion by the authority in a draft plan is that all such sites are deliverable. Subject to that, the weight to be attached to the quality of the authority’s evidence base is a matter of planning judgment for the inspector, and should be afforded all proper respect by the Court.
36. The first limb of the challenge under Ground 1 is that the inspector failed to have regard to the two decisions at Calne. While it is common ground that the inspector had a discretion whether to admit or to refuse to admit the late-submitted material, this limb raises the following questions:
- i) Whether the Calne decisions were material that might have caused him to reach a different conclusion to that he in fact reached without taking them into account; and, if they were

- ii) Whether the inspector's decision not to consider them was a lawful exercise of his discretion. This second question raises two sub-questions:
 - a) Whether the decision not to consider them could be and was a proper exercise of discretion in the circumstances prevailing; and
 - b) Whether the inspector was obliged to give any or proper reasons for his decision and, if so, whether he did so.
37. The Secretary of State accepts that it would have been open to him to submit evidence providing information about the circumstances in which the inspector decided not to consider the Calne decisions. Ms Busch correctly points out that the submission of such evidence could give rise to a risk of retrospective and unreliable justifications being advanced. That point is well made. However, once the risk is recognised, it can be addressed by the witness and should not be exaggerated; and the decision not to submit evidence covers not merely evidence about any reasoning that may have informed the inspector's decision but also primary factual evidence that may have been relevant. As it is, in the absence of such evidence, nothing is known save that the Calne decisions were submitted and received after the inquiry but nine days before the inspector made his decision on 5 October 2012.
38. Turning to the first question, there can be no real doubt that the Calne decisions were material that might have caused the inspector to reach a different conclusion to that he in fact reached without taking them into account. Ms Busch did not argue the contrary. It is, however, important to identify the features of the Calne decisions that gave them particular significance:
- i) While Inspector Robins already had before him three other decisions that were said to be relevant, they all pre-dated the introduction of the NPPF. The Calne decisions directly addressed the requirements of [47] of the NPPF, as Inspector Robins was required to do. It was therefore a previous decision that was directly in point;
 - ii) Inspector Papworth's Decision Letter identified the possibility of site specific evidence and that there had been none submitted in relation to the strategic sites in his case. His conclusion was that Malmesbury (where there had been site specific evidence) was "an anomaly" and he referred to a decision of the Secretary of State in relation to land at Salisbury going the other way, which does not appear to have featured in the material considered by Inspector Robins in his decision letter;
 - iii) Given its timing and the fact that Calne was also in Wiltshire, Inspector Papworth's decision was doubly relevant. It was relevant geographically since it addressed the same eWCS and other aspects of the Development Plan as applied to the Purton appeal; and it addressed them at the same stage of their progress as applied to the Purton appeal;
 - iv) Inspector Papworth had concluded that there were sufficient doubts remaining over a number of included sites and supply provisions to reduce the number of such sites that should be regarded as deliverable.

39. In these circumstances, there must have been (at least) a real possibility that considering the Calne decisions would have led Inspector Robins to a different conclusion. Although it would have been his decision and he would have been entitled to disagree with Inspector Papworth's conclusion, before doing so he would have been obliged to have regard to the importance of consistency and to give his reasons for departure from Inspector Papworth's decision. Given the features identified above, the result of applying Mann J's practical test would have been that he was disagreeing with a critical aspect of Inspector Papworth's decision, namely the conclusion that, there being no site specific evidence, the stage of progress of the development plan and the Council's evidence base did not justify the inclusion of the strategic sites as deliverable.
40. It would have been obvious to anyone receiving and reading the email (even without reading the attached Calne decisions themselves) that the decisions dealt with the same issues as were central to the Purton inquiry, that the decisions had been issued the previous week (and so could not have been provided earlier), and that, as very recent decisions, they were likely to address the same issues as arose in the Purton inquiry by reference to Wiltshire's Development Plan in its current state of development. Even a cursory review of the Calne decisions would have confirmed that this was so. In particular it would have confirmed that Inspector Papworth had produced a very recent assessment of whether, in the absence of site specific evidence, strategic sites included in the eWCS should be regarded as deliverable within the meaning of [47] of the NPPF.
41. That being so, the principle that a decision maker ought to take into account all matters which might cause him to reach a different conclusion and the obligation to have regard to material considerations up to the time that the decision is made weighed heavily in favour of Inspector Robins exercising his discretion in favour of admitting the Calne decisions for consideration.
42. In support of her opposition to Ground 1 Ms Busch submitted that the late submission of the Calne decisions was a breach of the 2000 Rules. That submission is rejected. No sensible interpretation of the rules can require the submission of information before it is in existence. Furthermore, Rule 18(2)-(4) of the 2000 Rules expressly contemplates the submission of late information and that it may be admitted by the inspector in accordance with the rules. Reference to The Good Practice Advice Note 10 also weighed in favour of admitting the decisions for consideration. It provided that the inspector would apply his discretion on the basis of:
 - i) The relevance of the material to the appeal proposal: the material was highly relevant and potentially decisive in persuading Inspector Robins to find in the appellants' favour on the issue of strategic sites. Had he done so the balance of evidence in favour of a finding that the existence of a 5-year land supply was not shown would shift markedly, as Mr Harris' evidence and the revised tables set out above show;
 - ii) Whether it simply repeats something that is already before the inspector: it did not; and
 - iii) Whether it would have been procedurally fair to all parties if the material were taken into account: even if some modest delay were to be incurred in bringing

out the decision (as to which, see below) the admission of the Calne decisions could be handled in a way that was procedurally fair. The Secretary of State has not submitted to the contrary, which is realistic and correct.

43. I would accept that in some cases where information is submitted late there may be a tension between the need for finality and proportionate expense on the one hand and a willingness to admit evidence which has not been submitted in accordance with the normal procedural timetable under the Rules. However, there is no material available to the Court to suggest that there was any significant tension in this case. In particular, there is no evidence to suggest that the Calne decisions, though highly material, would open up any new issues or indicate the need for further evidence or hearings. On the evidence that is available to the Court, it would have been possible for any supplementary submissions to have been made shortly and in writing. It is not realistic to suggest, and it has not been suggested, that it would have been necessary to re-open the inquiry or that significant delay would have been caused by taking the Calne decisions into account. There is therefore no evidential basis upon which it could be said that it was disproportionate or contrary to the wider interests of justice for the Calne decisions to be taken into account.
44. In her oral submissions Ms Busch submitted that there was no obligation upon the inspector to state a reason for his decision not to take the Calne decisions into account because the Rules do not expressly require him to give reasons when exercising his discretion in these circumstances. That submission is rejected. No such implication can be deduced from the silence of the rules. On the contrary, the obligation on a decision maker to give reasons for his decisions (including exercises of discretion) which will or may affect the rights and obligations of parties to legal proceedings over which he is presiding is a general one which covers the exercise of Inspector Robins' discretion in this case. Reasons were required in accordance with the guidance in *South Buckinghamshire DC*: see [7] above.
45. To the extent that any reason can be said to have been given at all, it was the statement in the email of 2 October 2012: "Thank you for your email below. Unfortunately it was received too late to be considered by the Inspector." Taken at face value this says that not merely the Calne decisions but Mr Harris' email were not considered at all by the inspector, but it is plain that the email was read, at least by one or more case-workers. What is neither self-evident nor the subject of evidence is whether the inspector (or anyone to whom he reasonably delegated the task) looked at the Calne decisions themselves before deciding that they would not be taken into account by the inspector for the purposes of reaching his decision.
46. The position confronting the Court when considering this limb of Ground 1 is that there is no evidence to suggest that the inspector (or anyone on his behalf) carried out a reasoned assessment of the materiality of the Calne decisions or whether, applying the approach advocated by Good Practice Advice Note 10 or any other reasonable balancing exercise, the decisions should be admitted and taken into account. For completeness I record that it was not submitted by Ms Busch that he had done so. While she submitted that there was material which could have justified him in reaching a reasoned decision to reject the late submission of the Calne decisions, she did not (and could not in the absence of any reasons being given by the inspector) submit that he in fact did take such a reasoned decision. She concentrated upon the fact that the submission that the information was submitted late and that, as she

submitted, no one with knowledge of planning practice would be surprised to see the submission of the Calne decisions rejected on the basis that it was “just too late”.

47. Whether or not competent practitioners in the field would be surprised to see a late submission of information being knocked back on the basis that it is too late should depend upon the circumstances of the particular case, for two reasons. First, lateness is not of itself necessarily or even probably the determinative consideration. Secondly, the determinative considerations should be those that go into the mix of a reasoned assessment which balances those factors that tend in favour admission or rejection on the facts of a particular case. That assessment may be relatively simple or it may be complex; but in either event, the parties concerned are entitled to reasons that are intelligible and adequate to enable the reader to understand why the matter was decided as it was.
48. On the facts of this case, there is no information to support the suggestion that the Calne decisions were received too late to be considered by Inspector Robins and all the available information contradicts the assertion. The decisions were submitted promptly and were received 9 days before he made his decision on 5 October 2012. There is no evidence to suggest that he required that length of time to take them into account, or that his decision had in fact been taken by 29 September 2012, or that 5 October 2012 was an immutable deadline, or that reasonable accommodation could not have been made to ensure procedural fairness if the decisions were taken into account. In the absence of any reason or other material to explain why the date of the receipt of information trumped all other relevant considerations I am driven to the conclusion that the reason given is unsupportable. At its lowest, there was a failure to give adequate reasons so that the reader could know why, if any reasoned balancing exercise was in fact carried out, it led to the exclusion of the Calne decisions.
49. For these reasons, I therefore uphold Ground 1 of the challenge. In summary, his decision to exclude the Calne decisions from consideration should be set aside because:
 - i) The inspector failed to exercise his discretion properly. A proper exercise of his discretion would have involved a balancing exercise either in accordance with or similar to that advocated by Good Practice Advice Note 10. Had he carried out such an exercise, he should have concluded that the considerations that weighed in favour of admitting the Calne decisions outweighed those that weighed in favour of excluding them;
 - ii) The reason given by the inspector, namely that the material was submitted too late to be considered by the inspector, was unsustainable;
 - iii) The inspector failed to give adequate reasons for his decision not to take the Calne decisions into account.
50. Given that he did not take the Calne decisions into account, it is somewhat academic to advance as a separate head of challenge that the inspector failed to give reasons for not following the approach taken in them. That said, in accordance with the principles established in *North Wiltshire DC v SoSE and Clover*, if he had taken them into account and decided not to follow them, he should have given his reasons for

doing so. This would have been particularly important given the geographical and temporal overlap between the Calne and the Purton decisions.

Ground 2: The inspector failed to correctly interpret the NPPF.

Ground 3: The inspector gave inadequate reasons for the inclusion of strategic sites in the five year housing land supply and/ or the inclusion of the site was irrational.

Ground 4: The inspector failed to take into account material considerations; gave inadequate reasons for concluding a five year housing land supply existed or otherwise behaved irrationally in so concluding.

51. Although these are separate and distinct grounds of challenge, they overlap to the extent that they may be seen as different facets of the same argument, and I shall address them together. These Grounds fall to be considered by reference to the material actually considered by the inspector, without reference to the excluded Calne decisions.
52. Ground 2 is based upon an alleged disparity between the terms of [21] and [24] of the decision letter. In [21] the inspector wrote:

“In order for strategic plans to be put in place to address the housing supply, I consider that allocated sites can be included, including those within emerging plans, subject to the weight that can be given to that plan and its evidence base and the submission of information indicating a reasonable likelihood of them progressing within the five year period.”

In [24] he wrote:

“While full weight cannot be given to the precise numbers put forward by the Council, I consider it reasonable to include these sites in absence of specific evidence that they cannot be delivered.”

53. The Claimant submits that this shows that the inspector failed to apply the test required by [47] of NPPF. It is common ground that the correct test for sites not having planning permission, such as the strategic sites, is that set out in the first sentence of Footnote 11. The Claimant submits that the inspector failed to apply that test. It submits that the inspector has applied a presumption in favour of including sites in the absence of specific evidence that they cannot be delivered and that this is only appropriate in the case of sites having planning permission, where the approach is permitted and mandated by the second sentence of Footnote 11.
54. I have discussed Footnote 11 at [34-35] above. I accept that, for sites which fall to be considered under the first sentence of Footnote 11 to be taken as deliverable, it must be shown that they satisfy the requirements there set out. There is no a priori assumption that sites not having planning permission are deliverable. However, the fact that sites have been included in an emerging policy document or evidence base

may (and often will) be a starting point. In other words, inclusion may be evidence in support of a conclusion that the sites so included are deliverable. Once that is accepted, there is no reason in principle or on the proper interpretation of Footnote 11 why the fact that sites are included in the eWCS or the AMR may not be taken as sufficient evidence that they are deliverable in the absence of evidence (specific or otherwise) that they are not. The weight to be attached to the evidence that they are deliverable will vary from case to case and is a matter of planning judgment for the inspector: see [35] above. So too will be the weight to be attached to any evidence that they are not. Evidence that they cannot be delivered can in principle be specific (e.g. site specific evidence that a site is contaminated or in delay) or general (e.g. evidence that all sites are subject to objection, though this evidence may be refined to the extent that the objections to particular sites are identified and capable of being considered).

55. Once [24] is read in its entirety and in context, it appears that the inspector was adopting this approach. Having set out the Footnote 11 test at the commencement of [21], he acknowledged the existence of objections at [22] and identified that it was for him to decide what weight he should attach to the sites having been allocated. At [23] he identified as a reason for including the sites that they had been identified by the Council in the course of the development of the eWCS. He acknowledged the weakness inherent in that process at the start of [24] but came to a planning judgment that sufficient weight could be given to the evidence in favour of inclusion so that the sites could be included in the absence of other, specific, evidence that they could not be included. Seen in this light, it is apparent that he did not misinterpret Footnote 11 in the way suggested by the Claimant. While other inspectors may have given different weight to particular aspects of the evidence, that does not cast doubt on the interpretation adopted.
56. Two further questions need to be considered. The first is the significance or otherwise of the cited passage from [21] of the Decision Letter. Bearing in mind the obligation on the Court to read the Decision Letter in good faith and as a whole, construing it in a practical manner, the cited passage does not subvert the conclusion that the inspector did not misinterpret Footnote 11. If anything it states too demanding a test, since it suggests that the plan and evidence base can never be enough to support a finding that sites are deliverable in the absence of additional information indicating a reasonable likelihood of them progressing within the five year period. However, the passage should not be taken in isolation and, viewed overall, it appears that the inspector applied the correct test.
57. The second question is how an inspector should deal with the fact that, as Inspector Robins acknowledged, the housing supply from the sites could not be guaranteed. The logical consequence of this lack of certainty at first blush appears to be that the raw numbers should be discounted for the probability or certainty that not all included sites are in fact deliverable. Inspector Robins dealt with this in terms of weight, both at [21]-[24] and when tying his findings together at [51]-[54]. On a fair reading, at [54] he carried out a balancing exercise which started with the express recognition that “the exact numbers cannot be relied upon.” Prudently, in my judgment, he did not try to apply a precise numerical discount to reflect the uncertainty that he had identified. Instead, having acknowledged the uncertainty and after rehearsing the context in which the raw figures were generated, he reached the conclusion that the Council had

demonstrated a 5-year housing supply. On a detailed semantic analysis, his reference to 4.3 years set against an expectation of 5.25 years not representing a serious shortfall may be criticised on two grounds. First, it suggests that, despite his balancing exercise, he is still adhering to the raw and exact figure of 4.3 years. Second, it may fairly be pointed out that the issue was whether there was adequate provision and, on the basis of a finding of 4.3 years supply, there was not. However, while it might have been preferable for the inspector to have inserted a qualification to show that he was not “sticking” at 4.3 years, a fair reading of the relevant paragraphs as a whole shows that he did in fact recognise the weakness of the raw figures and was not committed to them; and the thrust of the sentence was that no overwhelming need for development had been shown, which was a conclusion that was open to him on his findings.

58. In summary, I would accept that the inspector could have included an additional sentence or two which would have made [54] more transparent; but in my judgment, fair reflection upon [54] shows that he has carried out a balancing exercise to reflect the lack of certainty he had identified.
59. In support of Ground 3 of the challenge, the Claimant criticises [23] of the Decision Letter. The first criticism, as advanced in the Claimant’s skeleton argument, is that the inspector failed to engage with the issue whether Malmesbury inspector’s approach was still valid in the light of the NFFP and the fact that it was designed to address economic stagnation and boost the housing land supply. At the hearing, however, although the Claimant again pointed out the broad economic purpose of the NPPF, its focus on the Malmesbury decision was different: it is now alleged that the significance of the Malmesbury decision is that there was site specific evidence justifying the inclusion of the sites. That observation is correct, but does not advance the criticism that had been advanced in the Skeleton Argument. In my judgment, while there is no sign that Inspector Robins identified the distinguishing feature that there had been site specific evidence available to the Malmesbury inspector in relation to strategic sites, that does not vitiate his decision. Furthermore, there is substance in the Secretary of State’s submission that the thrust of the second half of [23], including the reference to the Malmesbury decision, was to support the undoubtedly correct view that the weight to be attached to an emerging plan and its evidence base depended upon the stage of progress it had achieved.
60. The Claimant’s second criticism under Ground 3 is that [24] is opaque. If the Decision Letter had been a statute, it might have been profitable to observe that it could have been more detailed and precise; but it is not a statute. Having had the opportunity to reflect again upon the Decision Letter as a whole, I conclude that the inspector gave adequate reasons which were well capable of being understood by the parties. His reasons were not irrational, though other inspectors may have given different weight to the materials which he considered. On the contrary, having interpreted Footnote 11 correctly, he was entitled to reach the conclusions he did on the materials he considered and for the reasons he gave. The Court should in those circumstances be slow to interfere and I am not persuaded to do so.
61. Ground 4 is supported by a direct challenge to [54], which is said to be opaque. I reject that criticism. The Claimant points specifically to the words “...within the context of a strategic approach focussing sites on larger settlements or a housing market area that responds to the existing settlement pattern rather than political

boundaries ...”. When read fairly and in context those words are identifying the source and provenance of the “exact” figures that the inspector had set out in his table at [52] and which he had just acknowledged could not be relied on as such. Identifying the source and provenance of the figures served a useful and not unduly opaque purpose by giving some qualitative colour to the figures that he was balancing in that paragraph. Once again, the Court should be slow to interfere, and I am not persuaded to do so.

62. For these reasons I reject Grounds 2, 3 and 4 of the challenge. In summary, when read fairly, it appears that the inspector did not misinterpret Footnote 11, his reasons were adequate and rational and, on the basis of the materials that he considered, reflected planning judgments with which the Court should not interfere.

Ground 5: The inspector failed to take into account material considerations; gave inadequate reasons for concluding a five year housing land supply existed or otherwise behaved irrationally in so concluding.

63. This challenge relates to [58] of the Decision Letter where the inspector stated that the appropriateness of Purton’s settlement boundaries had been considered as part of the eWCS. He therefore concluded that the boundaries were up to date. On the evidence of Mr Harris, this was not based on any evidence and was wrong. It is alleged that this caused him to place more than limited weight on Policy H4 of the Local Plan which provided that New Dwellings in the Countryside outside the Framework boundaries will be permitted in strictly limited circumstances w were not applicable to the Purton proposals.
64. In my judgment there is no substance in this ground of challenge. Although his belief that the settlement boundaries had been considered as part of the eWCS was incorrect, the central fact was that the boundaries remained and were not changed by the eWCS. He was therefore entitled to conclude that the Policy H4 was not out of date and conformed to the Framework.
65. Ground 5 of the challenge is therefore rejected.

Conclusion

66. For the reasons set out above, Ground 1 of the grounds of challenge is established. Grounds 2, 3, 4, and 5 are rejected.

Annexe A **RELEVANT EXTRACTS FROM DECISION** **LETTER** **DATED 5 OCTOBER 2012**

Background

...

11. In terms of housing supply both main parties accepted that the data and projections found in the adopted development plan are out of date. In this respect

revised housing requirements were promoted during the development of the draft Regional Spatial Strategy, (dRSS). This was subject to Examination in Public, incorporation of proposed changes and a version was published for consultation in July 2008. Although reaching an advanced stage, the likelihood of this plan being adopted is considered extremely low in light of the Secretary of State's avowed intention to revoke Regional Strategies, and the enactment of the Localism Act, which prevents further Regional Strategies from being created.

12. In response to the Government's position on Regional Strategies, the Council indicated that they moved to reconsider the housing requirements for Wiltshire to inform an emerging Core Strategy, (eWCS). This document has now reached a relatively advanced stage with a resolution by the Council and its submission for examination. The Council's ambitions for this plan to be adopted by the end of 2012 or early 2013 may, however, be questioned in light of recent concerns and a need to re-consult.

13. Notwithstanding this the Council point to an extensive consultation process involved in the development of evidence base and suggest that the eWCS is preferable, both in terms of the housing requirement and the strategic approach to delivery, to either the out of date WSSP or the figures promotes in the dRSS.

14. The appellant raised concerns over the weight that should be afforded to the eWCS in light of the objections to the proposed housing numbers, declaring a preference for the publicly tested dRSS. However, the appellant goes further, suggesting an additional proposition that irrespective of the housing land supply position, the proposal represents a sustainable development. As such it would benefit from the Frameworks' presumption in its favour, in light of a contention that the development plan policies are out of date.

...

Sites

...

19. Thus the appellant suggests a difference between the Council's housing supply and their own of some 4,045 dwellings, made up in part by site specific differences and in part by a disagreement over which elements should be included. Some 80% of the difference relates to the strategic sites, the Vision Sites, windfalls and previously discounted sites.

20. The Council refer to paragraph 47 of the Framework and its footnote regarding the inclusion of strategic sites, specifically allocations in the eWCS. This paragraph seeks to significantly boost the supply of housing and requires that local planning authorities should use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area". It specifically includes "key sites critical to the delivery of the strategy over the plan period".

21. The footnote sets out a definition for specific, deliverable sites: that they should be available now, offer a stable location for development now, and be achievable with a realistic prospect of delivery within five years. While on the face of it the requirement for sites to be available now would appear to preclude

sites without permission, the definition continues by addressing permitted sites directly. In order for strategic plans to be put in place to address the housing supply, I consider that allocated sites can be included, including those within emerging plans, subject to the weight that can be given to that plan and its evidence base and the submission of information indicating a reasonable likelihood of them progressing within the five year period.

22. I accept that where there are outstanding objections to sites, such matters need to be addressed and resolved, however, it is not for me to prejudge the outcome of the eWCS examination. I must decide on what weight I can give to the Council's assertion that these allocations should be included. In doing this it is necessary to separate the weight that can be given to the emerging plan from that associated with the evidence base associated with that plan. While I have been given examples from East Northampton and from Preston where draft allocations have not been included, the relevant weight must be ascribed based on the specific stage of preparation of the evidence base and the evidence supporting deliverability.

23. In this case I consider that exclusion of all the draft allocations is not appropriate. The Council have identified the sites following public consultation and they report that they have been subject to a Sustainability Appraisal. The sites are included within the AMR. While I note the appellant's concern over the recent appeal decision in Malmsbury the Inspector in that case also accepted the principle of including strategic sites. The Council relied on this decision to support their position that the sites were available and deliverable. The appellant referred me to a slightly earlier decision by the same Inspector which discounted draft Local Plan sites, however, it strikes me that this differs in the progress of the emerging plan and the evidence therefore available to the Inspector. The decision clearly refers to the need for consultation and representations on the emerging plan.

24. I accept that until planning permission is secured and the sites are built out, the housing supply from the sites cannot be guaranteed. Nonetheless to exclude such sites risks Councils having to plan to meet housing supply in a dynamic market on the basis of only sites with planning permission or from relatively old plans. This would risk devaluing the process of strategic planning. While full weight cannot be given to the precise numbers put forward by the Council, I consider it reasonable to include these sites in absence of specific evidence that they cannot be delivered.

25. Turning to Vision Sites similar arguments apply, albeit that they are not formally proposed as allocations. They are included in the AMR and the eWCS sets out a specific policy for their delivery. The Council presented evidence that two sites, Foundary Lane and Hygrade Factory, while not currently having permission, are likely to be delivered within the five year period. While there may be some matters to be resolved on these sites, and the appellant points to part of the Foundary Lane site and the Hygrade site as being still partly occupied, this does not mean they cannot be delivered. On balance I consider that the dwellings associated with these sites can be included.

...

Housing Requirements

39. This is not therefore, as the Council set out, a simple case of “a stark choice” between the dRSS and the eWCS. Although I favour the RSS figures at this stage, which furthermore provide a conservative approach to ensuring adequate provision of housing, I must give some weight to the emerging evidence base in light of its more up to date projections and the extent of more local engagement in assessment of needs.

...

Conclusions on the 5-Year Housing Supply

51. It has been necessary to carefully consider the housing requirement and supply situation in Wiltshire as a result of the changes being introduced at both national and local level. My conclusions are by necessity based on the evidence put before me and can in no way prejudice the outcome of the eWCS Examination in Public which may take place later in this year or early 2013.

52. I consider that the principal assessment should be made between the housing requirement for the RoNW and the housing supply presented by the Council, amended in response to the evidence provided at the Inquiry. This must be further considered in light of the housing demand across North Wiltshire and the emerging strategic approach for the North and West HMA. I have summarised this in the following table:

Plan/Policy	Housing Requirement	5-year Housing Requirement	Housing Supply	Assessment (years)*
dRSS Rest of North Wiltshire	3,024	1,008	1,522	7.5
dRSS North Wiltshire	10,684	3,549	3,052	4.3
eWCS North and West HMA	15,249	5,083	6,292	6.2

*5.25 years required to meet the 5% buffer

53. This indicates that the appellant’s proposition that even using the eWCS figures the Council cannot demonstrate a 5-year housing supply is not well founded. The Council have shown a 5-year housing supply relative to the RoNW dRSS figures and the eWCS North and West HMA, but have failed to demonstrate adequate supply for the dRSS North Wiltshire area. As set out above, I consider that the weight that can be given to the dRSS figures is somewhat lessened by the length of time since their preparation and examination, but also that the weight I can give to the emerging figures is similarly limited.

54. Nonetheless, although the exact numbers cannot be relied on, I am satisfied that the resulting figures indicate that within the context of a strategic approach focussing sites on larger settlements or a housing market area that responds to

the existing settlement pattern rather than political boundaries, the Council have demonstrated a 5-year housing supply. Furthermore I do not consider that the 4.3 years, set against an expectation of 5.25 years, represent a serious shortfall in the former North Wiltshire District, such that there is an overwhelming need for development to meet the specific demand.

55. In such circumstances I consider that there is sufficient evidence to support that, for this location, a 5-year housing supply has been shown.

...

58. My reading of the previous appeal decision on this site suggests that the boundaries were considered in both the preparation and Examination of the Local Plan in 2006, and while they do not appear to have been assessed against the significant increase in supply sought by the dRSS, they have been against the large increase currently promoted in the eWCS. This process has not led to a redrawing of the boundaries, consequently I do not consider that Policy H4, which they inform, is out of date or fails to conform with the Framework.



Ministry of Housing,
Communities &
Local Government

Patrick Downes
Harris Lamb Ltd
75-76 Francis Road
Birmingham
B16 8SP

Our ref: APP/R0660/A/13/2197532
APP/R0660/A/13/2197529

15 July 2020

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY MULLER PROPERTY GROUP
LAND OFF AUDLEM ROAD/BROAD LANE, STAPELEY, NANTWICH AND LAND OFF
PETER DE STAPELEIGH WAY, NANTWICH
APPLICATION REFS: 12/3747N AND 12/3746N**

1. I am directed by the Secretary of State to say that consideration has been given to the report of David L Morgan BA MA (T&CP) MA (Bld Con IoAAS) MRTPI IHBC, who held a public local inquiry on 20-24 February 2018 into your client's appeal against the decision of Cheshire East Council to refuse your client's application for outline planning permission for Appeal A: Proposed residential development for up to a maximum of 189 dwellings; local centre (Class A1 to A5 inclusive and D1) with a maximum floor area of 1,800 sq.m Gross Internal Area (GIA); employment development (B1b, B1c, B2 and B8) with a maximum floor area of 3,700 sq. m GIA; primary school site; public open space including new village green, children's play area and allotments, green infrastructure including ecological area; access via adjoining site B (see below) and new pedestrian access and associated works; and against the failure of Cheshire East Council to determine your client's application for Appeal B: Proposed new highway access road, including footways and cycleways and associated works, in accordance with applications 12/3747N and 12/3746N.
2. The Secretary of State issued his decisions in respect of the above appeals by way of his letters dated 17 March 2015 and 11 August 2016. Those decisions were challenged by way of an application to the High Court and were subsequently quashed by orders of the

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Court dated 3 July 2015 and 14 March 2017. The appeals have therefore been redetermined by the Secretary of State following a new inquiry into this matter. Details of the original inquiry are set out in the 17 March 2015 and 11 August 2016 decision letters.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeals be allowed and planning permission should be granted.
4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated, and agrees with his recommendation. He has decided to allow the appeals and grant planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Procedural matters

5. The Secretary of State notes that, prior to the opening of the Inquiry the appellant submitted a revised layout of the proposals which omitted the proposed access off Audlem Road and that this has necessitated an amendment to the description of development to reflect the changes (IR7). The Secretary of State also notes that the Inspector subsequently received comments on the revisions following consultation by the appellant. For the reasons given in IR7-8, the Secretary of State agrees with the Inspector that the proposed revisions should be taken into account in the determination of this case and he is satisfied that no interests have thereby been prejudiced.
6. The Secretary of State has noted that a reference to policy RG6 of the Cheshire East Local Plan Strategy (CELPS) in IR424 should refer to policy PG6.

Matters arising since the close of the inquiry

7. On 21 February 2019, the Secretary of State wrote to the main parties to afford them an opportunity to comment on:
 - The Written Ministerial Statement on housing and planning, issued on 19 February 2019.
 - The publication, on 19 February 2019, of the 2018 Housing Delivery Test (HDT) measurement by local planning authorities and a technical note on the process used in its calculation.
 - The Government's response to the technical consultation on updates to national planning policy and guidance, published 19 February 2019.
 - The revised National Planning Policy Framework, published on 19 February 2019.
 - Updated guidance for councils on how to assess their housing needs.

The representations that were received in response were circulated to the main parties on 11 March 2019. Further representations were subsequently received, including an assessment of the 5-year housing land supply submitted on 23 April 2019 by Harris Lamb on behalf of the appellant and the Cheshire East Annual Housing Monitoring Update Report (HMU) (Base Date March 2018) received on 24 April 2019 submitted by Cheshire East Council. Further representations were received in response to the HMU 2018.

Subsequently the Cheshire East Annual Housing Monitoring Update Report (Base Date March 2019) was submitted by Cheshire East Council on 8 November 2019. Representations received were circulated with the final correspondence received on 12 February 2020. All representations are listed at Annex A. Copies of these letters may be obtained on written request to the address at the foot of the first page of this letter.

8. The 2019 Housing Delivery Test results were published on 13 February 2020. The Council's score was assessed as 230%, requiring no further action. The Secretary of State is satisfied that this does not affect his decision and does not warrant further investigation or a referral back to parties.

Policy and statutory considerations

9. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
10. In this case the development plan consists of the Cheshire East Local Plan Strategy 2010 – 2030, adopted July 2017 (CELPS), the Stapeley and Batherton Neighbourhood Plan, made in 2018 (S&BNP) and the saved policies from Crewe and Nantwich Replacement Local Plan (February 2005) (CNLP). The Secretary of State considers that relevant development plan policies include those set out in paragraph 5.1 of the Planning Statement of Common Ground (IR26).
11. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'), as well as those listed in IR28-29. The revised National Planning Policy Framework was published on 24 July 2018 and further revised in February 2019. Unless otherwise specified, any references to the Framework in this letter are to the 2019 Framework.

Main issues

12. The Secretary of State agrees with the Inspector that the main considerations are those set out at IR380-381.

Character and appearance

13. For the reasons given in IR382-387 and IR418 the Secretary of State agrees with the Inspector at IR388 that the proposals are in conflict with the letter and principles of Policies PG6, SD1 and SD2 of the CELPS, Policy RES5 of the CNLP and Policy GS1, H1 and H5 of the S&BNP. However, he also agrees that the appeal sites are now effectively bordered on three sides by existing and emerging development. The Secretary of State also agrees with the Inspector that the rural hinterland, anticipated by the plan vision has, in the circumstances of these cases, been extensively eroded. The Secretary of State agrees with the Inspector that the degrees of harm to visual amenity here, because of the very specific urbanised context of the site and the contribution green space makes to the scheme, would, in actuality, be limited in extent (IR418). Overall the Secretary of State affords the harm to character and appearance, and visual amenity, limited weight in the planning balance.

BMV Agricultural land

14. As set out in IR389-390 and IR419 the Secretary of State agrees with the Inspector that the proposed development would result in the loss of best and most versatile agricultural land and is contrary to Policy SE2 of the CELPS. The Secretary of State further agrees that the area of land is modest and predominantly at lower grade, and that its loss cannot be judged significant. He agrees it merits only modest weight against in the planning balance.
15. The Secretary of State notes that no other substantive harms have been identified and agrees with the Inspector that the other effects of the development can be effectively mitigated through the provisions of the section 106 obligations, thus rendering them neutral in the planning balance (IR419).

Highway safety

16. The Secretary of State acknowledges that there was a significant degree of apprehension amongst local residents over any increase in traffic numbers in the locality as a result of the development proposed. For the reasons given in IR391–392 and IR416 the Secretary of State agrees with the Inspector that such concerns must be afforded no more than very limited weight.

Housing land supply

17. The Secretary of State has considered the Inspector's assessment of housing land supply at IR393-409 and has also taken into account the revised Framework, Housing Delivery Test (HDT) and material put forward by parties as part of the reference back processes set out in paragraph 7 of this letter. As part of this, the Council submitted their Annual Housing Monitoring Update Report (HMU) (base date March 2019) which concludes that the Council can demonstrate 7.5 years of housing land supply, assessed from 2019-2024. The appellant disagrees with this figure and concludes that the Council can demonstrate 4.72 years of housing land supply.
18. For the reasons given in IR393 the Secretary of State agrees that the basic housing requirement for Cheshire East Council is 1800 dwellings per annum (9000 over 5 years) and notes that this was agreed in a statement of common ground between the parties and was also set out in the CELPS. The shortfall to be addressed is now 3582 dwellings, which is set out in the Council's HMU 2019 and also referred to in the appellant's correspondence of 4 December 2019. The Secretary of State, therefore, uses this figure of 3582 dwellings as the shortfall rather than 5635 dwellings set out in IR393. For the reasons given in IR397-398, the Secretary of State agrees with the Inspector that any backlog should be made up within the first 8 years of the plan period as determined by the CELPS and the Examining Inspector, and that this 8-year period should not be rolled forward. As the 8-year period began on 1 April 2016, and concludes on 31 March 2024, the shortfall of 3582 should therefore be made up in the 5-year period on which the current HMU is based, with the housing requirement at this stage of the calculation being 12,582.
19. The Secretary of State notes that since the closure of the Inquiry the revised Framework and updated HDT 2019 figures have been published. The HDT figures mean that the Council is only required to add a 5% buffer in line with paragraph 73 of the Framework rather than the 20% buffer that was required at the time of the Inquiry. Including this buffer, the housing requirement is 13,211.

20. The Secretary of State considers that the Inspector's assessment of housing supply at IR400-409 is now out of date given the new information that has been submitted by parties since the end of the Inquiry.
21. The Secretary of State has reviewed the information submitted by the parties, in particular the sites where deliverability is in dispute between the appellant and the Council. The Secretary of State agrees with the appellant that some of the sites identified by the Council, at the time the evidence was submitted, may not meet the definition of deliverability within the Framework. He considers that, on the basis of the evidence before him, the following should be removed from the supply: sites with outline planning permission which had no reserved matters applications and no evidence of a written agreement; a site where there is no application and the written agreement indicates an application submission date of August 2019 which has not been forthcoming, with no other evidence of progress; and a site where the agent in control of the site disputes deliverability. He has therefore deducted 301 dwellings from the supply of housing figures.
22. The Secretary of State also considers that there are further sites where the evidence on deliverability is marginal but justifies their inclusion within a range of the housing supply figures. This group includes sites where the Council has a written agreement with an agent or developer and this indicates progress is being made, or where there is outline planning permission or the site is on a brownfield register and the Secretary of State is satisfied that there is additional information that indicates a realistic prospect that housing will be delivered on the site within 5 years. The Secretary of State considers that in total the number of dwellings within this category is 2,234.
23. Applying these deductions to the Council's claimed deliverable supply figure of 17,733, the Secretary of State is satisfied therefore, on the basis of the information before him, that the Council has a 5 year deliverable supply of between 15,198 dwellings and 17,432 dwellings. As the Secretary of State also considers that the Council has a total 5 year requirement of 13,211 dwellings, he is satisfied that the Council is able to demonstrate a supply of housing sites within the range of 5.7 years to 6.6 years. The Secretary of State has considered the Inspector's comments in IR423-425, and considers that in the light of his conclusion that there is a 5 year housing land supply, the presumption in favour of sustainable development does not apply in this case.

Need for a mixed use development

24. The Secretary of State agrees with the Inspector at IR410 that the right approach is to consider the proposal as a whole, as to do otherwise would be to invite independent evaluation of the constituent elements across the board.

Distortion of the Council's spatial strategy

25. For the reasons given in IR411, the Secretary of State agrees with the Inspector that the development proposed here cannot be considered of such a magnitude as to distort the spatial vision. He therefore agrees with the Inspector that there is no breach of policies PG2 and PG7 of the CELPS.

The benefits of the scheme

26. For the reasons given in IR412 and IR421, the Secretary of State agrees with the Inspector that the proposal would bring economic benefits, in terms of direct and indirect

employment during its construction and expenditure into the local economy. The Secretary of State also agrees with the Inspector that the site is in a sustainable location and notes that Nantwich is one of the preferred locations for development in the CELPS. He agrees that these benefits should be afforded medium weight.

27. For the reasons given in IR413 and IR421, the Secretary of State agrees with the Inspector that there will be a number of social benefits including extensive areas of public open space embracing a new village green and an enlarged Landscape and Nature Conservation Area, the scope for the development of a further primary school and improvements to sustainable transport connectivity. He agrees that these would represent significant additional social benefits, not just to new occupiers of the development, but to those in the locality as well. He also agrees with the Inspector that these benefits should be afforded medium weight.
28. For the reasons given in IR414 and IR420 the Secretary of State agrees with the Inspector that the delivery of significant numbers of market housing in a sustainable location is a significant benefit. Whilst the Secretary of State has concluded that the Council can demonstrate a 5 YHLS, he has taken into account that nationally it is a government policy imperative to boost the supply of housing, as set out at paragraph 59 of the Framework, and he considers that this benefit should be afforded significant weight.
29. The Secretary of State also agrees with the Inspector at IR415 and IR420 that the scheme will include 30% affordable homes which will help meet the need in Cheshire East. The Secretary of State agrees that this is a tangible benefit and merits significant weight.

Planning conditions

30. The Secretary of State has given consideration to the Inspector's analysis at IR368-372, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 55 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 55 of the Framework and that the conditions set out at Annex B should form part of his decision.
31. Having had regard to the Inspector's analysis at IR373-378, the planning obligation dated 2 March 2018, paragraph 56 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR374-378 that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 56 of the Framework.

Planning balance and overall conclusion

32. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with PG6, SD1, SD2, SE2 of the CELPS, Policy RES5 of the CNLP and Policies G5, H1 and H5 of the S&BNP and is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

33. Weighing against the proposal, the harm to character and appearance, and visual amenity, is afforded limited weight and the loss of BMV agricultural land is afforded modest weight. Any concerns due to increase in traffic are afforded only very limited weight. No other substantive harms have been identified.
34. Weighing in favour of the proposal, the provision of market housing in a sustainable location is afforded significant weight. The provision of affordable housing to help meet a need in Cheshire East is also given significant weight. The economic benefits in terms of direct and indirect employment during its construction and expenditure into the local economy of the proposal are given medium weight. The social benefits, including extensive areas of public open space, the scope for the development of a further primary school and improvements to sustainable transport connectivity are given medium weight.
35. The Secretary of State has found that the Council can now demonstrate a 5 year housing land supply. However, having carefully taken into account the factors weighing for and against this scheme, he considers that the overall balance of material considerations in this case indicates a decision which is not in line with the development plan – i.e. a grant of permission for both proposals.
36. The Secretary of State therefore concludes that the appeals should be allowed and planning permission should be granted.

Formal decision

37. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeals and grants planning permission subject to the conditions set out in Annex B of this decision letter for Appeal A: Proposed residential development for up to a maximum of 189 dwellings; local centre (Class A1 to A5 inclusive and D1) with a maximum floor area of 1,800 sq.m Gross Internal Area (GIA); employment development (B1b, B1c, B2 and B8) with a maximum floor area of 3,700 sq. m GIA; primary school site; public open space including new village green, children's play area and allotments, green infrastructure including ecological area; access via adjoining site B (see below) and new pedestrian access and associated works; and Appeal B: Proposed new highway access road, including footways and cycleways and associated works, in accordance with applications 12/3747N and 12/3746N.
38. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

Right to challenge the decision

39. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
40. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.

41. A copy of this letter has been sent to Cheshire East Council, Stapeley and District Parish Council and Nantwich Town Council.

Yours faithfully

Jean Nowak

Jean Nowak

Authorised by the Secretary of State to sign in that behalf

Annex A – List of representations

Annex B – List of Conditions

Annex A

Representations received in response to the Secretary of State's Rule 19 letters of 12 April 2017 and 10 May 2017

Party	Date
Cheshire East Council	5 May 2017
Patrick Cullen	5 May 2017
John Davenport	8 May 2017
Stapeley & District Parish Council	9 May 2017
Hill Dickinson (on behalf of Muller Property Group)	19 May 2017
Patrick Cullen	7 June 2017
Muller Property Group	9 June 2017

Secretary of State's letter: 21 February 2019

Party	Date
Cheshire East Council	5 March 2019
Knights plc (on behalf of Muller Property Group)	6 March 2019

Circulation of responses of 11 March 2019

Harris Lamb (on behalf of Muller Property Group)	15 March 2019
Cheshire East Council	18 March 2019

Letter from Planning Casework Unit: 19 March 2019

Hill Dickinson	22 March 2019

Letter from Planning Casework Unit: 27 March 2019

Harris Lamb	23 April 2019
Cheshire East Council	24 April 2019
Nantwich Town Council	23 April 2019

Circulation of responses: 30 April 2019

Cheshire East Council	1 May 2019

Variation of timetable: 2 May 2019

Harris Lamb	29 May 2019
Cheshire East Council	29 May 2019

Circulation of responses: 4 June 2019

Hill Dickinson	6 June 2019

Letter from Planning Casework Unit: 12 June 2019

Hill Dickinson	25 June 2019

Circulation of Hill Dickinson letter: 26 June 2019

Cheshire East Council	4 July 2019

Response to Cheshire East Council and circulation: 9 July 2019

Harris Lamb	11 July 2019

Cheshire East Council	8 November 2019

Circulation of documents received from Cheshire East Council 13 November 2019

Harris Lamb	4 December 2019

Circulation of Hill Dickinson response: 9 December 2019

Cheshire East Council request for extension	10 December 2019

Cheshire East Council	13 January 2020

Circulation of Cheshire East Council response: 14 January 2020

Hill Dickinson	31 January 2020

Circulation Hill Dickinson response: 4 February 2020

Hill Dickinson	7 February 2020

Cheshire East Council	12 February 2020

Note: Entries in bold indicate letters/circulation of information by the Secretary of State

Annex B

Schedule of Conditions

Appeal A

1. Details of appearance, access landscaping, layout and scale (hereinafter called “the reserved matters”) shall be submitted to and approved in writing by the local planning authority (LPA) before any development begins, and the development shall be carried out as approved.
2. Application for approval of all the reserved matters shall be made to the LPA not later than three years from the date of this permission. The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.

3. This permission shall refer to the following drawing numbers unless any other condition attached to the permission indicates otherwise:

Mixed Use and Access Applications Diagram – dwg SK15 Rev C
(11 November 2017)

Mixed Use and Access Applications Diagram – dwg SK16 Rev C
(11 November 2017)

Mixed Use and Access Applications Diagram – dwg SK17 Rev C
(11 November 2017)

Mixed Use and Access Applications Diagram – dwg SK19 Rev D
(11 November 2017)

4. No development shall commence until details of a scheme for the disposal of foul and surface water from the development has been submitted to and approved in writing by the LPA. The scheme shall make provision, inter alia for the following:
 - a. this site to be drained on a totally separate system with all surface water flows ultimately discharging in to the nearby watercourse
 - b. a scheme to limit the surface water run-off generated by the proposed development
 - c. a scheme for the management of overland flow
 - d. the discharge of surface water from the proposed development to mimic that which discharges from the existing site.
 - e. if a single rate of discharge is proposed, this is to be the mean annual run-off (Qbar) from the existing undeveloped greenfield site. For discharges above the allowable rate, attenuation for up to the 1% annual probability event, including allowances for climate change.
 - f. the discharge of surface water, wherever practicable, by Sustainable Drainage Systems (SuDS).
 - g. Surface water from car parking areas less than 0.5 hectares and roads to discharge to watercourse via deep sealed trapped gullies.

- h. Surface water from car parking areas greater than 0.5 hectares in area, to have oil interceptor facilities such that at least 6 minutes retention is provided for a storm of 12.5mm rainfall per hour.

The development shall not be occupied until the approved scheme of foul and/or surface water disposal has been implemented to the satisfaction of the LPA.

5. No development shall commence until a scheme for the provision and management of an 8 metre wide buffer zone alongside the watercourse on the northern boundary measured from the bank top (defined as the point at which the bank meets the level of the surrounding land) has been submitted to and approved in writing by the LPA. The scheme shall include:

- plans showing the extent and layout of the buffer zone
- details of any proposed planting scheme (for example, native species)
- details demonstrating how the buffer zone will be protected during development and managed/maintained over the longer term including adequate financial provision and named body responsible for management plus production of detailed management plan.

This buffer zone shall be free from built development other than the proposed access road. Thereafter the development shall be carried out in accordance with the approved scheme and any subsequent amendments shall be agreed in writing with the LPA.

6. No development shall commence within the application site until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved by the LPA.
7. No development shall take place until a Construction Method Statement (CMS) has been submitted to and approved in writing by the LPA. The approved CMS shall be adhered to throughout the construction period. The CMS shall provide for:
- a. the hours of construction work and deliveries
 - b. the parking of vehicles of site operatives and visitors
 - c. loading and unloading of plant and materials
 - d. storage of plant and materials used in constructing the development
 - e. wheel washing facilities
 - f. measures to control the emission of dust and dirt during construction.
 - g. details of any piling operations including details of hours of piling operations, the method of piling, duration of the pile driving operations (expected starting date and completion date), and prior notification to the occupiers of potentially affected properties

- h. details of the responsible person (e.g. site manager / office) who could be contacted in the event of complaint
 - i. control of noise and disturbance during the construction phase, vibration and noise limits, monitoring methodology, screening, a detailed specification of plant and equipment to be used and construction traffic routes
 - j. waste management: there shall be no burning of materials on site during demolition/construction.
8. No development shall take place on the commercial and retail element until a detailed noise mitigation scheme to protect the proposed dwellings from noise, taking into account the conclusions and recommendations of the Noise Report submitted with the application, shall be submitted to and agreed in writing by the LPA. The approved mitigation measures shall be implemented before the first occupation of the dwelling to which it relates.
9. Prior to the commencement of development:
- a. A contaminated land Phase 2 investigation shall be carried out and the results submitted to, and approved in writing by the LPA.
 - b. If the Phase 2 investigations indicate that remediation is necessary, a Remediation Statement including details of the timescale for the work to be undertaken shall be submitted to, and approved in writing by, the LPA. The remedial scheme in the approved Remediation Statement shall then be carried out in accordance with the submitted details.
 - c. Should remediation be required, a Site Completion Report detailing the conclusions and actions taken at each stage of the works including validation works shall be submitted to, and approved in writing by, the LPA prior to the first use or occupation of any part of the development hereby approved.
10. No development shall commence until a scheme of destination signage to local facilities, including schools, the town centre and railway station, to be provided at junctions of the cycleway/footway and highway facilities shall be submitted to and agreed in writing by the LPA. The approved scheme shall be provided in parallel with the cycleway/footway and highway facilities.
11. No development shall commence until schemes for the provision of MOVA traffic signal control systems to be installed at the site access from Peter Destapleigh Way and at the Audlem Road/Peter Destapleigh Way traffic signal junctions, has been submitted to and approved in writing by the LPA. Such MOVA systems shall be installed in accordance with approved details prior to the first occupation of the development hereby permitted.
12. The Reserved Matters application shall include details of parking provision for each of the buildings proposed. No building hereby permitted shall be occupied until the parking and vehicle turning areas for that building have been

constructed in accordance with the details shown on the approved plan. These areas shall be reserved exclusively thereafter for the parking and turning of vehicles and shall not be obstructed in any way.

13. Prior to the first occupation of the development hereby permitted a Travel Plan shall be submitted to and approved in writing by the LPA. The Travel Plan shall include, inter alia, a timetable for implementation and provision for monitoring and review. None of the building hereby permitted shall be occupied until those parts of the approved Travel Plan that are identified as being capable of implementation after or before occupation have been carried out. All other measures contained within the approved Travel Plan shall be implemented in accordance with the timetable contained therein and shall continue to be implemented, in accordance with the approved scheme of monitoring and review, as long as any part of the development is occupied.
14. No development shall take place until a scheme (including a timetable for implementation) to secure at least 10% of the energy supply of the development from decentralised and renewable or low carbon energy sources shall be submitted to and approved in writing by the LPA. The approved scheme shall be implemented and retained as operational thereafter.
15. Prior to first occupation of each unit, Electric Vehicle Infrastructure shall be provided to the following specification, in accordance with a scheme, submitted to and approved in writing by the LPA which shall including the location of each unit:
 - A single Mode 2 compliant Electric Vehicle Charging Point per property with off road parking. The charging point shall be independently wired to a 30A spur to enable minimum 7kW charging.
 - 5% staff parking on the office units with 7KW Rapid EVP with cabling provided for a further 5% (to enable the easy installation of additional units).

The EV infrastructure shall be installed in accordance with the approved details and thereafter be retained.

16. Prior to any commencement of works between 1st March and 31st August in any year, a detailed survey shall be carried out by a suitably qualified person to check for nesting birds and the results submitted to the LPA. Where nests are found in any hedgerow, tree or scrub to be removed (or converted or demolished in the case of buildings), a 4m exclusion zone shall be left around the nest until breeding is complete. Completion of nesting shall be confirmed by a suitably qualified person and a further report submitted to LPA before any further works within the exclusion zone take place.
17. Prior to the commencement of development detailed proposals for the incorporation of features into the scheme suitable for use by breeding birds shall be submitted to and approved in writing by the LPA. The approved features shall

be permanently installed prior to the first occupation of the development hereby permitted and thereafter retained, unless otherwise agreed in writing by the LPA.

18. The reserved matters application shall be accompanied by a detailed Ecological Mitigation strategy including a great crested newt mitigation strategy informed by the recommendations of the submitted Protected Species Impact Assessment and Mitigation Strategy dated 2013 prepared by CES Ecology (CES:969/03-13/JG-FD). The development shall be implemented in accordance with the measures of the approved ecological mitigation strategy.
19. Prior to the commencement of each phase of development details of the proposed lighting scheme should be submitted to and approved in writing by the Local Planning Authority.
 - a) The details shall include the location, height, design and luminance and ensure the lighting is designed to minimise the potential loss of amenity caused by light spillage onto adjoining properties. The lighting shall thereafter be installed and operated in accordance with the approved details.
 - b) The scheme should include dark areas and avoid light spill upon bat roost features, boundary hedgerows and trees. The scheme should also include details of: Number and location of proposed luminaires; Luminaire light distribution type; Lamp type, lamp wattage and spectral distribution; Mounting height; Orientation direction; Beam angle; Type of control gear; Proposed lighting regime; and Projected light distribution maps of each lamp. The lighting scheme shall be installed in accordance with the approved details.
20. All trees with bat roost potential as identified by the Peter Destapleigh Way Ecological Addendum Report 857368 (RSK September 2017) shall be retained, unless otherwise agreed in writing by the Local Planning Authority
21. The first reserved matters applications shall include a Design Code for the site and all reserved matters application shall comply with provisions of the Masterplan submitted with the application and the approved Design Code.
22. Prior to the commencement of each phase of development a scheme for landscaping shall be submitted to the Local Planning Authority and approved in writing. The approved landscaping scheme shall include details of any trees and hedgerows to be retained and/or removed, details of the type and location of Tree and Hedge Protection Measures, planting plans of additional planting, written specifications (including cultivation and other operations associated with tree, shrub, hedge or grass establishment), schedules of plants noting species, plant sizes and proposed numbers/densities and an implementation programme.

The landscaping scheme shall be completed in accordance with the following:-

- a) All hard and soft landscaping works shall be completed in full accordance with the approved scheme, within the first planting season following completion of

the development hereby approved, or in accordance with a programme agreed with the Local Planning Authority.

- b) All trees, shrubs and hedge plants supplied shall comply with the requirements of British Standard 3936, Specification for Nursery Stock. All pre-planting site preparation, planting and post-planting maintenance works shall be carried out in accordance with the requirements of British Standard 4428 (1989) Code of Practice for General Landscape Operations (excluding hard surfaces).
 - c) All new tree plantings shall be positioned in accordance with the requirements of Table 3 of British Standard BSD5837: 2005 Trees in Relation to Construction: Recommendations.
 - d) Any trees, shrubs or hedges planted in accordance with this condition which are removed, die, become severely damaged or become seriously diseased within five years of planting shall be replaced within the next planting season by trees, shrubs or hedging plants of similar size and species to those originally required to be planted.
23. An Arboricultural Impact Assessment, Tree Protection Plan and Arboricultural Method Statement in accordance with BS5837:2012 Trees in Relation to Design, Demolition and Construction – Recommendations shall be submitted in support of any reserved matters application which shall evaluate the direct and indirect impact of the development on trees and provide measures for their protection.
24. No phase of development shall commence until details of the positions, design, materials and type of boundary treatment to be erected have been submitted to and approved in writing by the LPA. No building hereby permitted shall be occupied until the boundary treatment pertaining to that property has been implemented in accordance with the approved details.
25. The Reserved Matters application for each phase of development shall include details of bin storage or recycling for the properties within that phase. The approved bin storage facilities shall be provided prior to the first occupation of any building.
26. Notwithstanding the details shown on plan reference no. BIR.3790.09D (September 2012) access to the development herein permitted shall be exclusively from Peter Destapeleigh Way as shown on plan reference no. dwg SK16 Rev C (11 November 2017)
27. Unless otherwise agreed in writing, none of the dwellings hereby permitted shall be first occupied until access to broadband services has been provided in accordance with an action plan that has previously been submitted to and approved in writing by the LPA.

Appeal B

1. The development hereby approved shall commence within three years of the date of this permission.

2. This permission shall refer to the following drawing numbers unless any other condition attached to the permission indicates otherwise:
 - a. Site Location Plan reference no. BIR.3790_13
 - b. Site Access General Arrangement Plan reference no. SCP/10141/D03/Rev D (May 2015).
3. No development shall commence until there has been submitted to and approved by the LPA a scheme of landscaping and replacement planting for the site indicating inter alia the positions of all existing trees and hedgerows within and around the site, indications of those to be retained, also the number, species, heights on planting and positions of all additional trees, shrubs and bushes to be planted.
4. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the completion of the development whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the landscaping scheme die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species unless the LPA gives written consent to any variation.
5. Prior to the commencement of development or other operations being undertaken on site a scheme for the protection of the retained trees produced in accordance with BS5837:2012 Trees in Relation to Design, Demolition and Construction : Recommendations, which provides for the retention and protection of trees, shrubs and hedges growing on or adjacent to the site, including trees which are the subject of a Tree Preservation Order currently in force, shall be submitted to and approved in writing by the Local Planning Authority.
 - (a) No development or other operations shall take place except in complete accordance with the approved protection scheme.
 - (b) No operations shall be undertaken on site in connection with the development hereby approved (including any tree felling, tree pruning, demolition works, soil moving, temporary access construction and / or widening or any operations involving the use of motorised vehicles or construction machinery) until the protection works required by the approved protection scheme are in place.
 - (c) No excavations for services, storage of materials or machinery, parking of vehicles, deposit or excavation of soil or rubble, lighting of fires or disposal of liquids shall take place within any area designated as being fenced off or otherwise protected in the approved protection scheme.
 - (d) Protective fencing shall be retained intact for the full duration of the development hereby approved and shall not be removed or repositioned without the prior written approval of the Local Planning Authority.
6. No excavations for services, storage of materials or machinery, parking of vehicles, deposit or excavation of soil or rubble, lighting of fires or disposal of liquids shall take place within any area designated as being fenced off or otherwise protected in the approved protection scheme.

7. Prior to development commencing, a detailed Ecological Mitigation strategy including a great crested newt mitigation strategy informed by the recommendations of the submitted Protected Species Impact Assessment and Mitigation Strategy dated MARCH 2013 REVISION) prepared by CES Ecology (CES:969/03-13/JG-FD) shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the measures of the approved ecological mitigation strategy.
8. Prior to any commencement of works between 1st March and 31st August in any year, a detailed survey shall be carried out by a suitably qualified person to check for nesting birds and the results submitted to the LPA. Where nests are found in any building, hedgerow, tree or scrub to be removed (or converted or demolished in the case of buildings), a 4m exclusion zone shall be left around the nest until breeding is complete. Completion of nesting shall be confirmed by a suitably qualified person and a further report submitted to LPA before any further works within the exclusion zone take place.
9. Prior to the commencement of development details of the proposed lighting scheme should be submitted to and approved in writing by the Local Planning Authority. The scheme should include dark areas and avoid light spill upon bat roost features, boundary hedgerows and trees. The scheme should also include details of: Number and location of proposed luminaires; Luminaire light distribution type; Lamp type, lamp wattage and spectral distribution; Mounting height; Orientation direction; Beam angle; Type of control gear; Proposed lighting regime; and Projected light distribution maps of each lamp. The lighting scheme shall be installed in accordance with the approved details.
10. Prior to the commencement of development, and to minimise the impact of the access road on potential wildlife habitat provided by the existing ditch located adjacent to the southern site boundary, the detailed design of the ditch crossing shall be submitted to and approved in writing by the LPA. The access road shall be constructed in full accordance with the approved details.
11. No development shall commence on site unless and until a Deed of variation under s106A TCPA 1990 (as amended) has been entered into in relation to the S106 Agreement dated 20 March 2000 between Jennings Holdings Ltd (1), Ernest Henry Edwards, Rosemarie Lilian Corfield, James Frederick Moss, Irene Moss, John Williams and Jill Barbara Williams (2), Crewe and Nantwich BC (3) and Cheshire County Council (4) to ensure that the Local Nature Conservation Area is delivered, maintained and managed under this permission.



Report to the Secretary of State for Housing, Communities and Local Government

by David L Morgan BA MA (T&CP) MA (Bld Con IoAAS) MRTPI IHBC
an Inspector appointed by the Secretary of State

Date: 14 January 2019

Town and Country Planning Act 1990

Appeals by Muller Property Group

Cheshire East Council

Inquiry Held on 20-24 February 2018

Land off Audlem Road/Broad Lane, Stapeley, Nantwich, Cheshire
Land off Peter Destapeleigh Way, Nantwich, Cheshire

File Ref(s): APP/R0660/A/13/2197532 & APP/R0660/A/13/2197529

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List of Abbreviations

5YS	5 year housing land supply
appx	Appendix
AF	Adrian Fisher – 5YS witness for CEC
BMV	Best and most versatile agricultural land
b/p	bullet point
CEC	Cheshire East Council
Cllr	Councillor
CNRLP	Crewe and Nantwich Revised Local Plan 2006
DPD	Development Plan Document
FN	Footnote
FOI	Freedom of Information
GLVIA	Guidelines for Landscape and Visual Assessment (3rd edition)
HMU	Housing Monitoring Update 2017, published Aug 2017 with a base date of assessment at 31/3/17
JB	Jon Berry – landscape architect for Appellants
LCA	landscape character area
LCT	landscape character type
LDS	Local Development Scheme
LHA	Local Highway Authority
LP	Local Plan
LPA	Local Planning Authority
LPI	Local Plan Inspector – Stephen Pratt
LPS	Local Plan Strategy
LPpt2	Emerging Local Plan Part 2 – containing allocations and development management policy synonymous with the SADPPD
LVIA	Landscape and Visual Impact Assessment
MW	Matt Wedderburn – 5YS witness for the Appellant
NP	Neighbourhood Plan
NPPG	National Planning Practice Guidance
OAN	Objectively Assessed Needs (usually housing)
OPP	Outline Planning Permission
PD	Pat Downes – planning witness for Appellant
PoE	Proof of evidence
PP	Planning Permission
PTQC	Paul G Tucker QC – counsel for the Applicants
PPG	Planning Policy Guidance
ReX	re-examination
RfR	reason for refusal
rNPPF	revised National Planning Policy Framework
RJ	Reasoned Justification of the Development Plan
RM	reserved matters
RTQC	Reuben Taylor QC – counsel for LPA
RT	Richard Taylor – planning witness for the LPA
SADPD	the Site Allocations and Development Plan D (aka LP pt2)
SHLAA	strategic housing land availability assessment
SOCG	statement of common ground
SoS	the Secretary of State for the Ministry of Housing Communities and Local Government
SPB	Spatial Planning Board – CEC’s planning committee

SPD Supplementary Planning Document
TA Transportation Assessment – here undertaken by SCP
XC examination in chief
XX cross examination
XX'd cross examined
WB William Booker – the Appellant's highway consultant
WMS Written Ministerial Statement

Appeal A: File Ref: APP/R0660/A/13/2197532
Land off Audlem Road/Broad Lane, Stapeley, Nantwich,
Cheshire CW5 7DS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant [outline] planning permission.
- The appeal is made by Mr Carl Davey, Muller Property Group against the decision of Cheshire East Council.
- The application Ref 12/3747N, dated 28 September 2012, was refused by notice dated 16 April 2013.
- The development proposed is Proposed residential development for up to a maximum of 189 dwellings; local centre (Class A1 to A5 inclusive and D1) with a maximum floor area of 1,800 sq.m Gross Internal Area (GIA); employment development (B1b, B1c, B2 and B8) with a maximum floor area of 3,700 sq. m GIA; primary school site; public open space including new village green, children's play area and allotments, green infrastructure including ecological area; access via adjoining site B (see below) and new pedestrian access and associated works.

Summary of Recommendation: that the appeal should be allowed and planning permission should be granted subject to conditions.

Appeal B: File Ref: APP/R0660/A/13/2197529
Land off Peter de Stapeleigh Way, Nantwich, Cheshire CW5 7HQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Mr Carl Davey, Muller Property Group against Cheshire East Council.
- The application Ref 12/3746N is dated 28 September 2012.
- The development proposed is Proposed new highway access road, including footways and cycleways and associated works.

Summary of Recommendation: that the appeal should be allowed and planning permission should be granted subject to conditions.

Procedural matters

1. The application to which Appeal A relates was submitted in outline form with all matters reserved except for access. The extent of development is set out in the Design and Access Statement (DAS). An agreed Schedule of Drawings is listed in the Statement of Common Ground (SoCG) appendix X. Appeal B was not determined but Council members resolved that it would have been refused because it would be unsustainable and result in a loss of habitat for protected species and part of an area allocated for tree planting, landscaping and subsequent management, contrary to various policies.
2. Section 106 Agreements were submitted under section 106 of the Town and Country Planning Act 1990 (s106) in respect of both applications. As agreed, signed and dated versions were submitted after the Inquiry closed. All parties had the opportunity to comment on an unsigned though otherwise identical

agreement during the Inquiry. I deal with the contents of the Agreement below.

3. The Inquiry sat for 4 days. I held an accompanied site visit held on 24 February. Evidence regarding housing land supply (HLS) was heard as a round table discussion on Thursday 22 February 2018.
4. This is a redetermination following the quashing of the previous decision of the Secretary of State in the HC.
5. Since the last determination of the appeals the Cheshire East Local Plan Strategy (CELPS) has been formally adopted (20 September 2017).
6. Also since the last determination of the Appeals the Stapley & Batherton Neighbourhood Plan (S&BNP) has also been made following Referendum in February 2018 and now forms part of the Development Plan.
7. Prior To the opening of the Inquiry the appellant submitted a revised layout of the proposals which omitted the proposed access off Audlem Road; this has necessitated an amendment to the description of development to reflect the changes. Whilst such amendments have been considered and accepted by the Council, acknowledged in the SoCG, they had not been the subject of formal consultation in accordance with standing regulations. After the close of the Inquiry this consultation was undertaken by the Appellant, comments collated and submitted to the Planning Inspectorate to an agreed timetable.
8. I have taken the subsequently received comments on the revisions into account whilst writing my report. Having considered the proposed revisions and the commentary on them I conclude that as they represent a diminution in the scope of the proposals and indeed address a number of previously expressed concerns on this aspect of the proposals, it would be appropriate for them to be taken into account in the determination of the appeals. I therefore recommend the Secretary of State duly take them into account in the determination of this case.
9. The revised National Planning Policy Framework (hereafter referred to as the rFramework) was published on the 24 July 2018. In light of the revisions contained therein parties were invited to comment on them insofar as relevant to both appeals. Their responses have been taken into account below.
10. There appear to be different ways of spelling Destapeleigh. I have adopted that used on the application form.
11. Although concerns over highway safety do not form part of the Council's case, given the degree of concern expressed on this matter by other parties at the Inquiry this issue is included in the main issues and is addressed in the reasoning that follows.
12. In accordance with the Town and Country Planning (Pre-commencement Conditions) Regulations 2018 the Appellant was consulted on all the pre-commencement conditions provisionally considered at the Inquiry. They

confirmed in writing that they were content with the terms of each of such conditions and these are therefore included in the report.

The Site and its Surroundings

13. The site is 12.06 hectares of flat agricultural land located to the south of the main built up area of Nantwich. It principally comprises of two fields bounded by native hedgerows with some tree cover within them. There is a field ditch along the northern boundary. The land is currently in agricultural use, primarily arable and some grazing. It is bounded to the north by Peter Destaplegh Way (A5301) and the ecology mitigation/woodland landscape area for the Cronkinson Farm development although the obligations associated with the extant consent and s106 agreement have yet to be met.
14. To the west it is bound by residential properties accessed off Audlem Road, including an approved residential development for 11 dwellings and to the east by the recently constructed residential development. The upper floors and roofs of some of the new properties may be seen from the Appeal Site. The principal length of the southern boundary runs to the south of an existing hedgerow. Part of the site runs further south, adjoining existing residential development to the west.
15. To the north of Peter Destaplegh Way is the Cronkinson Farm residential development. This includes a small parade of five shops including a Co-Operative convenience store and a public house. Pear Tree Primary School and a community hall are also situated within this residential development. To the north of the Cronkinson Farm development is the railway line connecting Nantwich / Crewe / Chester and beyond, with the town centre to the north west.
16. Existing residential development in ribbon form is situated along Audlem Road. It comprises of a mix of properties from different eras. Within this housing is The Globe public house. Bordering the south west of the application site (and accessed off Audlem Road) is Bishops Wood housing development constructed in the 1970's. Audlem Road turns into Broad Lane south of the Bishops Wood cul-de-sac and has ribbon residential development along it as well as Stapeley Broad Lane Primary School further to the south.
17. London Road, an arterial route into Nantwich, is located to the east of the former Stapeley Water Gardens site and there is residential ribbon development to the south of that site. The land between the London Road and the Appeal Site has been infilled by residential development and open space. Further to the south along London Road are more dwellings together with Stapeley Technology Park, a small employment site with a mix of office uses based around the former Stapeley House.
18. There are a number of bus stops in close proximity to the site located off Audlem Road. These bus stops are served by the No. 73 and 51 bus service. These bus services provide direct connections to Nantwich bus station and rail station continuing on to Whitchurch.

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19. Nantwich train station is approximately 1.4 km to the north of the site, accessed via Audlem Way and Wellington Road. Nantwich Town Centre is approximately 1.3 km to the north-east of the site, to the north of Nantwich train station. Nantwich Town Centre provides a range of services, facilities and job opportunities. The site is, therefore, well served by a range of services, facilities and public transport opportunities, and comprises a location which is accessible to modes of transport other than the private car.
 20. The Appeal B site is approximately 1.71 hectares in size and comprises part of a single field which adjoins Peter Destaplegh Way to the north. The site comprises of a mixture of unmanaged semi-improved grassland, bramble / scrub and a drainage ditch. There are two existing ponds within the site and to the west and south east of the site are areas set aside for Great Crested Newt mitigation. This relates to the Cronkinson Farm development and to the Stapeley Water Gardens scheme.
 21. The western and southern boundaries of the site comprise hedgerows interspersed in places with trees. The eastern boundary of the site runs through the centre of the field and will follow the edge of the proposed new highway.
 22. Further to the east of the site is recently constructed residential development. To the north of the site beyond Peter Destaplegh Way is a predominantly residential area. To the west of the site are two fields, the built up edge of Nantwich and the A529 Audlem Road which is flanked by development on either side. To the south of the site is the site of the proposed mixed use led development subject to planning appeal APP/R0660/A/13/2197532.
 23. The site will connect to the Peter Destaplegh / Pear Tree Field signalised junction in the form of a fourth arm to the signalised junction. The spur for the fourth arm is already in place with signals, street lighting and tactile paving. It is agreed by the parties that this planning permission is, therefore, extant.
 24. Planning permission was granted on the 4th January 2001 for the "construction of new access road into Stapeley Water Gardens" (planning application reference: P00/0829). This permission allowed the construction of a carriageway on a north-south alignment similar to that now proposed in this planning application with a connection to the Peter Destaplegh Way / Pear Tree Field highway junction via a fourth arm.

Planning Policy

25. The revised National Planning Policy Framework (the rFramework) was published on the 24 July 2018. Paragraphs 7-14 and 59-76 of the rFramework, together with their attendant footnotes (as paragraph 3 affirms), are particularly relevant to HLS. The rFramework also sets out the position with regard to weight and conformity of existing development plan policies. The PPG confirms that any shortfall in HLS should be made up over the next 5 years.

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26. The Development Plan for Cheshire East comprises for the purpose of the appeals the recently adopted Cheshire East Local Plan Strategy 2010 - 2030, and the saved policies from Crewe and Nantwich Replacement Local Plan (February 2005). The relevant policies from each of the plans considered relevant are set out in the Planning SoCG¹.
 27. As a result of a Referendum held on the 15 February 2018 the Stapley & Batherton Neighbourhood Plan was approved and consequently is now considered 'made', and thus now forms part of the Development Plan.
 28. The Planning SoCG also identifies the following as material planning policy considerations: Interim Planning Statement: Affordable Housing (Feb 2011), Strategic Market Housing Assessment (SHMA), Strategic Market Land Availability Assessment (SHLAA), Article 12 (1) of the EC Habitats Directive and the Conservation of Habitats and Species Regulations 2010.
 29. High Court cases referred to include Suffolk Coastal Appeal Court Judgement², Suffolk Coastal Supreme Court³, St Modwen Appeal Court Judgment⁴, and the Shavington High Court Judgement⁵.

Planning history

30. The planning application for Appeal A scheme was submitted to the Council in September 2012 and it was registered on 9th October 2012. It was assigned planning application reference number 12/3747N. The application was determined at Committee on 3rd April 2013 and was refused planning permission by Members in accordance with the planning officer's recommendation⁶.
31. The original appeal was considered at a public local inquiry between 18th and 21st of February 2014 in association with Appeal B. Both appeals were recovered by the Secretary of State following the close of the public inquiry. The inquiry Inspector recommended in his report dated 18th June 2014 that planning permission be granted for both appeals but in his decision letter dated 17th March 2015, the Secretary of State rejected this Inspector's recommendation and refused both appeals. (The '**Original Decision**') The Original Decision of the Secretary of State was subject to an application to the High Court and was subsequently quashed by order of the court dated 3rd July 2015. The appeals were, accordingly, re-determined by the Secretary of State and he issued a new decision on 11th August 2016. (The '**Second Decision**').
32. In the Second Decision the Secretary of State refused planning permission Appeal A on two grounds, the first being that, *'the proposals would cause*

¹ Paragraph 5.1 ID2.

² CDQ1.

³ CD C12.

⁴ CDQ2

⁵ [2018] EWC 2906 (Admin) Case Number: CO/1032/2018.

⁶ CD K2

harm to the character and appearance of the open countryside, for the reasons at Paragraph 27 to 28 above. This harm will be in conflict with Paragraph 7 and the fifth and seventh bullet points of Paragraph 17 of the Framework. Having given careful consideration to the evidence to the inquiry, the Inspector's conclusions and the parties' subsequent representations, the Secretary of State considers that the harm to the character and appearance of the open countryside should carry considerable weight against the proposals in this case. He further considers that the loss of BMV land is in conflict with Paragraph 112 of the Framework and carries moderate weight against the proposals for the reasons given at Paragraphs 31 to 34 above.

33. *The Secretary of State concludes that the environmental dimension of sustainable development is not met due to the identified harm, especially to the character and appearance of the countryside. He concludes that the development does not deliver all three dimensions of sustainable development jointly and simultaneously, and is therefore not sustainable development overall.*
34. *For the reasons given above, the Secretary of State concludes that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies and the Framework taken as a whole.'*
35. The Second Decision was challenged by the Appellant and in a Consent Order issued by the High Court on 14th March 2017 the Second Decision was also quashed. In the letter of 12th April 2017 from DCLG confirming that the Second Decision had been quashed, the Secretary of State invited further representations in respect of the following matters:
 - a) Progress of the Emerging Cheshire East Local Plan Strategy;
 - b) The current position regarding the five year supply of deliverable housing sites in the Council's area;
 - c) Any material change in circumstances, fact or policy, that may have arisen since the decision of 11th August 2016 was issued and which the parties consider to be material to the Secretary of State's further consideration of this application.
36. Having requested that written representations be submitted in respect of these matters, the Secretary of State determined that, in the light of representations received the inquiry should be re-opened, by way of correspondence dated 3rd August 2017.
37. The purpose of the planning application for the Appeal B scheme was to provide access to the adjoining mixed use proposal that is subject to Appeal A. Originally, Appeal A had a separate access arrangement but it is now agreed between the parties that the Appeal Site A should be accessed solely from Appeal Site B and the original access arrangements suggested for Appeal Site A (via Audlem Road / Broad Lane) are no longer pursued. Thus, Appeal Site A falls to be determined on the basis that access will be achieved through Appeal Site B alone. The process by which this is to be achieved is explained in Section 3 below.

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38. The planning application for the Appeal B scheme was submitted to Cheshire East Council in September 2012. It was registered by the authority on 5th October 2012. The target date for the determination was 30th November 2012 but the application was not determined prior to the appeal being lodged.
39. The process by which the Appeal B scheme was determined by the Secretary of State is the same as for Appeal A above. The appeal will be heard alongside Appeal A. It is agreed that the merits of the two appeals stand or fall together.

The proposals

40. The details are confirmed in the Planning SoCG. The concept for Appeal A is also set out in the Design and Access Statement (DAS)⁷. Most of the houses would be on the western side of the site. On the eastern side, linking in with the new highway access road in Appeal B, would be land for employment, public open space including a new village green with an equipped play area, a local centre and a primary school. Allotments would back onto the existing houses to the west. The DAS confirms the amount of development as 189 dwellings at an average density of just over 30 dwellings per hectare with up to 57 affordable dwellings in a series of clusters.
41. These would comprise five elements as follows:
- Parcel 1 is on the northwest side of the site and could contain up to 51 dwellings.
 - Parcel 2 is located to its south and could have up to 62 dwellings.
 - Parcel 3 is to the south of the employment area could deliver 15 dwellings.
 - Parcel 4 is along the main southern boundary and could contain up to 36 dwellings.
 - Parcel 5 is on the eastern side of application site and could provide up to 25 dwellings.
42. The application proposals will be a mix of 2, 3, 4 and 5 bedroom dwellings. The affordable housing mix would be based on 2 and 3 bedroom homes, split between 35% intermediate tenure for sale and 65% social rented. The total affordable housing provision represents 30% of the total number of units. Parcel 5 forms part of a new village centre. Located around a village square and adjoining the village green, the residential element forms the eastern side of the village centre with the new primary school site and local centre forming the western side. The village green will have both general open space (with appropriate pathways and street furniture sited on the edges) and a children's equipped play area in the form of a LEAP. The primary school site will be reserved for future education expansion.
43. The local centre comprises of up to 1,800 sq m (19,375 sq ft) and would accommodate a range of uses. It is envisaged that the local centre will

⁷ CD H12.

comprise of 8 – 10 separate units with a single A1 unit of 1,000 sq m (10,764 sq ft) and the remaining floorspace split between units ranging from 50 sq m to 150 sq m (538 sq ft to 1,615 sq ft). The employment accommodation is situated adjacent to the local centre. Comprising of 3,700 sq m (39,826 sq ft) in total, it is envisaged this will be divided into units based on 100 sq m (1,076 sq ft). 2.7 Located on the south western side of the application site is an allotment area of 0.5 hectares. The allotments will be available to both new and existing residents. The provision of open space will be controlled by planning conditions.

44. In addition to the public open space there are two principal interlinked areas of green infrastructure. The first is along the northern boundary in the vicinity of the new village centre and the employment area. This will include the planting of a new hedgerow. At its western end, it connects to the second principal green infrastructure area which runs on a north-south axis to the east of residential parcels 1 and 2. This reflects an existing mature hedgerow.
45. The development would include a pedestrian/cycle network which, taken with its close proximity to the established community, would be intended to provide safe, direct, convenient and interesting routes through the site. The single vehicular access now proposed utilises the putative infrastructure already established on Peter Destapeleigh Way. This is now supported with linkages to the new realigned access road giving access to the greater site. This in effect comprises Appeal B, which differ from the extant and part implemented scheme previously granted planning permission⁸.
46. Appeal B proposes an access onto Peter Destapeleigh Way at its junction with the Pear Tree Field signalised junction in the form of a fourth arm to the signalised junction. The application subject to Appeal B is similar in nature to the approved scheme (P00/0829) for access on this site, albeit with some amendments. The spur of the fourth arm is already in place with signals, street lighting and tactile paving.
47. Planning permission was granted on the 4th January 2001 for the “construction of a new access road into Stapeley Water Gardens” (planning application reference P00/0829). This permission allowed the construction of a carriageway on a north – south alignment, similar to that now proposed as part of Appeal B. The spur of the fourth arm junction has been constructed so that the permission has been implemented. A copy of the correspondence from CEC which confirms this position is in the Core Document List (CD E2).
48. Appeal B is similar in nature to the extant scheme, albeit with some minor amendments. Appeal B realigns the road further east in order to create a direct route into the land to the south, subject to Appeal A. The position of the roundabout has also been relocated further south. A plan showing the road layout for the extant scheme, Appeal B and a composite plan showing Appeal B overlaid on the approved scheme is included in the appeal documents.

⁸ Planning application ref. P00/0829

Other matters agreed between the Parties

49. The parties have also agreed a Sustainability Analysis⁹ in relation to key facilities and services in the context of the site, which include:
- Primary Schools – Pear Tree Primary School, St Annes Catholic Primary School and Stapeley Primary School;
 - Secondary Schools – Brine Leas Secondary School;
 - Health Facilities – Kiltarn Medical Centre, a pharmacy and numerous dentists;
 - Retail – Morrisons Supermarket, Coop Convenience Store and numerous non-food retail units located to the south of Nantwich; and Public Transport Facilities – Nantwich Railway Station and numerous bus stops
50. The site has been assessed against the North West Sustainability Toolkit. Whilst some of the distances vary slightly between the Appellant's assessment, the Council concluded in the committee report to the original application that *'on the basis of the above assessment the proposal does appear to be generally sustainable in purely locational terms'*. The Council has reaffirmed this position in the report to committee of 22nd November 2017.
51. In terms of connectivity to higher order centres, Crewe lies 6.4 km (4 miles) to the north east of Nantwich and Newcastle-under-Lyme is 21 km (13 miles) to the east. These settlements have employment, advanced educational facilities, retail, leisure and entertainment venues. These settlements can be accessed via a variety of routes, which avoid the town centre. These include Broad Lane, London Road and Newcastle road.
52. In addition to the topics set out above further additional matters are agreed between the parties;
- The original planning permission in respect of appeal B is acknowledged as extant by CEC (P00/0829). It, therefore, represents a fall-back position.
 - Access to Appeal Site A will only be achieved through Appeal Site B if Appeal A is allowed.
 - Since it is no longer necessary to access the site via Audlem Road / Broad Lane, the masterplan and the red line area for Appeal A can be amended. This reduces the extent of Appeal Site A. The parties agree that updated plans L9 should now form part of the Appeal Scheme A if planning permission is granted.
 - It is agreed that 25% of the aggregated sites constitute best and most versatile land 6% of the site is grade 2 and 19% of the site is grade 3a.
 - It is agreed that there is no reason to resist the scheme in terms of ecology and that a suitable mitigation package can be provided as part of the proposed planning obligation under s.106.

⁹ 4.13 Planning SoCG ID2.

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- It is agreed that there are no technical reasons to resist a development in terms of highways, drainage, residential amenity and environmental health matters.
 - The Council's Landscape Officer does not consider that the proposals will have a significantly adverse landscape impact.
53. The Housing Land Supply SoCG also covers other significant areas of agreement. This advises that: the LPA's current position on 5 year HLS is set out in the Housing Monitoring Update published August 2017, base date 31st March 2017; the Housing Monitoring Update takes the housing requirement of 1,800 dwellings per annum set out in the Cheshire East Local Plan Strategy (LPS) as the relevant housing target for the calculation of 5 year HLS; The Housing Monitoring Update has a base date of 31st March 2017. The relevant five year period in HMU is therefore 1st April 2017 to 31st March 2022; that the backlog should be calculated over the plan period to date (1 April 2010 – 31 March 2017) and amounts to 5,365 dwellings and that in accordance with paragraph 47 of the first published version of the NPPF it is agreed that it is necessary to apply a 20% buffer, reflecting persistent under-delivery against the housing requirement.
54. Paragraph 73 of the rFramework revises the format of applying the buffer to the requirement, indicating a range of percentages to be applied in different scenarios. This matter is addressed in detail through each party's submissions in relation to the rFramework NPPF below.

The Case for the Muller Property Group

55. At the time that these proposals were submitted almost 5.5 years ago, there was no Local Plan Strategy in place, and CEC at the time undoubtedly couldn't demonstrate a 5YS. As matters stand now, whilst the LPS is now in place, the next part of the Local Plan, which considers the merits of non-strategic allocations and which will review settlement boundaries, is still a long way from adoption. Of more concern is that CEC are still lack a sense of urgency about the need to bring forward additional housing in sustainable locations now, despite two recent appeals which have concluded that a 5YS cannot be demonstrated. And despite the fact that even on its best case that CEC has only a marginally above 5 years supply. In fact for the reasons articulated in evidence by the appellant, CEC has significantly less than 5YS of deliverable housing, and this site is needed now.
56. Thus, residential development on this site was originally recommended for refusal but was refused by members at a time when there was no plan and no 5YS. Then, after appeal it was recommend for grant by an Inspector when there was no plan and no 5YS. It was refused by the SOS whose decision was then quashed, re-determined only to be quashed in the High Court again both when there was no plan and no 5YS. In the same month that the LPS was adopted instead of re-determining the appeal the SOS decided to reopen this inquiry. That was a disappointment to the Appellant, however ironically it has provided the opportunity for the SOS to determine the appeal based upon a properly robust scrutiny of CEC's housing supply. Back in July 2017 CEC were robustly contending that their assessment of 5YS had been

endorsed by the LPI who had concluded that CEC should have a 5YS on adoption, however his conclusions were caveated with the following warning:

"Much will depend on whether the committed and proposed housing sites come forward in line with the anticipated timescale and amended housing trajectory."

57. The essential reason why two Inspectors concluded that there was not a robust 5YS after two inquiries in 2017 was that the 2017 HMU, published at the end of August 2017 demonstrated that the anticipated delivery rates for last year (ie 2016/17) were significantly below those being put to the LPI, demonstrating a failure in the first year after the period being assessed by the LPI. Predictive exercises tend to become less accurate the further one looks into the future. Here the prediction being put forward by a combination of private sector evidence being put to the examination and the application of the LPA's standard methodology on lead in times and build rates has gone wrong immediately. Moreover there is strong evidence to conclude that has gone wrong in relation to 2017/18 as well.
58. It is notable that the LPI concluded that CEC should be able to demonstrate a 5YS on adoption. Had he known about the substantial under-delivery when compared to the trajectory he endorsed in the LP, then he would plainly have been far more circumspect. As was put in cross examination, based on what we now know to have been the actual delivery in 2016/17, then the supply position before the LPI was that CEC couldn't demonstrate a 5YS based on their own trajectory. It was for that reason that CEC sought to downplay the importance of the trajectory as predictive tool for assessing the overall realism of CEC's claimed supply (past and future). The problem with that is not only that it was based upon an erroneous understanding of the St Modwen case (see below), and that it is at odds with the role of a housing trajectory in national guidance and policy, but most importantly, it ignores the fact that the housing trajectory in CEC was the yardstick that the LPI uses to gauge whether or not the supply position in CEC is realistic.
59. Properly understood CEC cannot demonstrate a robust 5YS and their anticipated delivery rates claimed before the LPI are untenable. Yet instead of reacting to the recent appeals with an immediate reassessment of its standard methodology on build rates and lead in times and an immediate sense check of likely delivery from its various components of supply CEC has instead done a further trawl of agents/developers to try to make good its evidential deficit, it has sought to down play quite how wrong its LP trajectory was, and how implausible its HMU trajectory is. It now contends that the Park Road Inspector got the supply figure wrong by well over 1000 units.
60. This mixed use scheme brings benefits which are diverse and considerable – ie not simply the provision of much needed homes, but deliverable commercial development which will provide opportunities for local businesses and for the local population, which will result in a sustainable pattern of development, as well as a small local centre which will meet the needs of both the proposed housing and employment but also recently consented housing which is being constructed nearby. The reality of the position is that

the appeal proposals are a sustainable form of development and that the only objection to them is the in principle one that the proposals are an unjustified incursion into the countryside beyond the settlement boundary. Contrary to that position the development is plainly needed now, the tilted balance is engaged and there are no adverse effects which significantly and demonstrably outweigh the benefits.

5 year land supply

61. For the reasons explained in evidence the issue of 5YS is not a determinative one in relation to the outcome of this appeal. Even if the LPA were to be able to just demonstrate a 5YS then it is firmly submitted that the appeals should still be allowed, since on the LPA's best case the position is a marginal one given its substantial under-delivery compared to the position endorsed by the LPI.
62. However on the evidence, it is clear that CEC cannot demonstrate a robust 5YS and therefore paragraph 11 (by means of footnote 7) is triggered. Prior to the exchange of evidence the Appellant invited CEC to agree to this appeal being determined on the same basis as the Park Road Inspector ie that there is a range which is just above or just below 5 years but the LPA can't demonstrate a robust 5YS therefore the presumption is triggered. This was thought to be a proportionate course of action, mindful that consistency in decision making is a material consideration of considerable importance. CEC declined this invitation.

Planning Policy Guidance context

63. Before turning to the detail of the current land supply position in Cheshire East, it is worth setting out the correct approach to guidance covering the subject; the provisions in the PPG supplement the NPPF and, do not have the same status as NPPF policy. Of most relevance to this appeal are 3-031 and 3-03311. From those paragraphs the following points arise:
 - a. Deliverable sites include those with permissions in the LP, unless there is clear evidence that the site won't be implemented within 5 years. From this:
 - i. Once a site is included as deliverable then there remains a requirement to assess the likely yield from sites with permission or an allocation. It is simply wrong to say, as the Council does in closing at paragraphs 31 and 32, that an assessment of yield is not required. PPG 3-031 is clear the "robust, up to date evidence" is required on the deliverability – i.e. the yield. It is difficult to see how an assessment of supply can be undertaken if that an assessment of yield is not undertaken. On AF's approach the decision maker would be obliged to accept the LPA's judgments when assessing delivery from sites with an allocation or permission, absent contrary evidence. However this is no more than an approach to assessing yield which –without policy support– presumes that the Council is always right. Not only is that not supported in policy it belies the repeatedly experience of this particular LPA's predictive ability over many years.

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- ii. This means that sites with PP are presumed to be deliverable unless there is evidence to the contrary. It does not mean that if a site has planning permission, then there is a rebuttable presumption that its yield is whatever the Council says it will be.
 - iii. This approach does not include allocated sites with the presumption that they are to be treated as deliverable, but the PPG does. There may be an interesting question at some future point in time as to whether that makes any difference, but in this case there is almost no dispute as to which sites are the ones which are considered to be deliverable – the dispute revolves around the likely yield from those sites.
- b. When assessing whether a site should be included in the 5YS and the yield from that site, the decision maker must consider the time it will take to commence development (lead in time) and the build out rate.
 - c. The PPG makes clear (3-033, paragraph 2) that the yield of sites as well as the deliverability of sites forms part of the annual assessment of the 5YS that the LPA is required to conduct. It self-evidently points out to an authority that deliverability and then likely yield are two separate exercises.
 - d. If an LPA does the following, then it will be able to demonstrate a 5YS (from PPG 3-033):
 - i. A robust annual assessment;
 - ii. A timely annual assessment;
 - iii. Using up to date and sound evidence;
 - iv. Considering the proposed and actual trajectory of sites in the supply;
 - v. Considering the risks to a proposed yield;
 - vi. Include an assessment of the local delivery record;
 - vii. All of the above assessments must be realistic; and,
 - viii. The approach must be thorough.
64. Drawing all of this together, it is not right to suggest that Inspectors in the Park Road and White Moss cases were wrong and that there is no requirement on the Council that their assessment of the 5YS is robust. The questions seemed to be put on the basis that the word “robust” is not included in the NPPF. This cannot possibly be correct. The language of the PPG (as above) clearly indicates that the LPA must demonstrate a 5YS – within that the evidence must be sound and it must stand up to scrutiny. If the Council’s approach was right (which no Inspector has to our knowledge endorsed) then Appellants up and down the country have been wasting time and money arguing contrary land supply positions; provided the Council can show some sort of evidence that would suffice.
65. CEC advanced an argument that when trying to assess the yield from a site, that the correct test was the capability of the site to deliver the expected numbers, and not the probability. His basis for this argument was paragraph 38 of *St Modwen*. This is, simply put, wrong and counter to common sense.

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66. CEC fell into the trap that Lindblom LJ was warning decision makers of in paragraph 39 of the same judgment:

One must keep in mind here the different considerations that apply to development control decision-making on the one hand and plan-making and monitoring on the other. The production of the "housing trajectory" referred to in the fourth bullet point of paragraph 47 is an exercise required in the course of the preparation of a local plan, and will assist the local planning authority in monitoring the delivery of housing against the plan strategy; it is described as "a housing trajectory for the plan period " (my emphasis). Likewise, the "housing implementation strategy" referred to in the same bullet point, whose purpose is to describe how the local planning authority "will maintain delivery of a five-year supply of housing land to meet their housing target" is a strategy that will inform the preparation of a plan. The policy in paragraph 49 is a development control policy. It guides the decision-maker in the handling of local plan policies when determining an application for planning permission, warning of the potential consequences under paragraph 14 of the NPPF if relevant policies of the development plan are out-of-date. And it does so against the requirement that the local planning authority must be able to "demonstrate a five-year supply of deliverable housing sites", not against the requirement that the authority must "illustrate the expected rate of housing delivery through a housing trajectory for the plan period".

67. CEC were unable to say whether or not they were identifying the "likely yield", the "possible yield" or the "almost certain yield" from the sites assessed. This from an apprehension not to give up the interpretation of the St Modwen case in which they failed to understand that the case revolved around the meaning of the term "deliverable"— a point which just doesn't arise in this case. This inability to explain the yield from sites within 5 years fundamentally undermines the utility of his exercise and means that it is not comparable to the appellant's approach to "probable yield". If CEC's position is merely what the site is "capable of delivering" then it is bound to be higher than what is probable and therefore betrays a fundamental error on the part of CEC which may explain why the LPA's predictive ability has proven to be wrong.

68. On the application of the above analysis, the following points are agreed:

- It is agreed that the requirement is 1800 dpa.
- The agreed five year period runs from 31 March 2017 (the base date of HMU) to 31 March 2022.
- The agreed backlog in delivery between 2010 and 2017 amounts to 5635 dwellings, which equates to 3 years of the overall requirement for the first 7 years of the plan.
- It is agreed that a 20% buffer applies in relation to paragraph 47 of the Framework and that 10% applies in relation to paragraph 73 of the rFramework, if appropriate.

69. From the examination of the sites claimed to be within the supply the following is clear:

- i. The appellant's assessment of the sites the Council seeks to include in the supply are identified in evidence. A number are drawn-out to illustrate the key arguments against the sites being included in the supply to the extent claimed by the Council:
- ii. LPS 1 and the Crewe opportunity area is not a "*specific deliverable site*" in NPPF§47 terms and should not be included within the supply.
- iii. The Appellant's assessment of lead in times to construction in Cheshire East (Appendix MW 6) the following should be applied – 1 year from submission to the grant of outline permission; 1 year to a reserved matters application; 6 months to determine the reserved matters application; and, one year to the completion of the first dwelling. This is a total lead in time of 3.5 years. This is vital to deciding what is in the supply as it allows for an assessment of yield. Unlike CEC's standard methodology for lead in times and build rates, MW's evidence is transparently evidenced and is palpably more reliable than CEC's "black box" approach. Thus, whilst MW accepts these conclusions on average lead in times can be rebutted by specific evidence, it requires sound, realistic and up to date evidence (see para 2.5(d) above and PPG 3-033). No such evidence was forthcoming from the Council. Instead the Council offered a partial assessment of lead in times from a self-serving data set in Mr Fisher's rebuttal proof of evidence (Appendix 2). Mr Fisher's assessment is partial as it completely fails to take into account sites started before the adoption of the LPS and the lead in times between application and between construction starting and the first unit emerging from the ground (conceded by Mr Fisher XX).
- iv. Despite the policy requirements in the Framework/rFramework and PPG (see paragraph 2.4 and 2.5 above), Mr Fisher thought it appropriate for the Council to make assumptions about sites being delivered by multiple builders without any supporting evidence. Whilst that may be a correct statement that doesn't mean it comprises evidence! The Secretary of State cannot as a matter of law (given the clear interpretation of policy and guidance above) adopt this approach when evidence not an aphorism is needed. If the Council cannot produce evidence to support their assumptions on build rates, yield or commencement timelines then the Secretary of State must prefer the reasoned and evidenced approach put forward by the Appellant, which precisely mirrors the concerns of the last 2 inspectors to consider this topic in detail. Indeed Mr Fisher continued to make unsubstantiated assertions – "*we increasingly see single builders doing 50+ units a year on a site*". The Council's own assessment of build out rates in the 2017 HMU (Appendix MW17) does not support Mr Fisher's statement. Statements such as this cannot be given any weight when the Council's only evidence does not support them.

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- v. The 'sense check' for the use of the LPA's standard methodology as to lead in times and build rates is what it has predicted will be delivered and what has actually been delivered. As noted below the prediction for 2016/17 in the LP trajectory of 2955 (presumably based on the optimism of those making representations to the hearing) has proven to be groundless, and this year looks set to be similarly wrong compared to the LP and the HMU trajectory.
- vi. MW and the Inspectors in the WMQ¹⁰ and Willaston¹¹ inquiries are in agreement on the yield from many of the sites. Mindful of the materiality of consistency of decision making, the SOS should be slow to deviate from those conclusions without the clearest possible evidence for so doing (the sites are noted in Appendix MW4), with respect AF asserting that he thinks that the Inspector's got it wrong is not a such a reason.
- vii. AF at one point made the bold point that both Mr Inspector Rose in the White Moss Quarry ("WMQ") inquiry¹² and Mr Inspector Hayden in the Willaston inquiry¹³ both fell into serious error by concluding that a 5YS could not be demonstrated having concluded that the supply was either just above or just below 5 years. Whilst the language used was that of 'precaution', in fact both Inspectors reached an orthodox conclusion with regard to paragraph 47¹⁴, having determined that the supply was within that range. Thus, the conclusion reached by those senior Inspectors was that they were unable to determine with confidence that the Council had a 5YS. That means no more than that they could not be satisfied that the LPA could demonstrate that it had a deliverable 5YS. Therefore they approached the evidence on the assumption that Framework paragraphs 49 and 14 were engaged – deciding those appeals using the tilted balance. Both Inspectors' reasons were impeccable.

It was notable by its absence in relation to the sites where MW allies himself with the conclusions of those previous Inspectors' that time and again the Council failed to bring forward evidence to rebut the Inspectors' conclusions, reached after an exhaustive analysis of the evidence before them, in those inquiries from 8 November 2017.¹⁵

Even if the Council is correct on their least attractive argument that they are not required by policy to rely upon "robust" evidence to demonstrate a 5YS, they nonetheless are forced to accept that these appeal decisions are material considerations. Furthermore they accepted in XX the fundamental importance of the consistency of

¹⁰ C.D29 Appendix MW1.

¹¹ CD D29 Appendix MW2 at [103].

¹² Ibid.

¹³ Ibid.

¹⁴ Subsequently paragraph 11 incorporating footnote 7.

¹⁵ CD29 / Appendix MW1 at [28] – [59] and Willaston - CD D29 / Appendix MW2 at [58]– [89]).

decision taking, and that the Secretary of State in this appeal would need to give reasons (and therefore have supporting evidence) for deviating from those decisions. Whilst this is trite law, it makes it all the more baffling that having accepted those principles, they failed to produce any evidence to properly rebut conclusions of the WMQ and Willaston Inspectors.

The Council has comprehensively failed on both counts – they have failed to produce robust evidence to demonstrate a 5YS; and, they have not produced any evidence to rebut the Inspectors' conclusions in the early appeals, either evidence arriving post those decisions or to explain why those Inspectors got it wrong. Instead they continue to rely upon the approach in the LPS, the same arguments that failed in the WMQ and Willaston inquiries.

viii. What is interesting is to consider the predictive confidence with which sites were said to be on the verge of progressing in the HMU in August 2017 and then again at inquiries in late 2017, but where there has been yet further slippage. Time and again sites where applications were on the verge of being made haven't resulted in applications (e.g. the promise in the Park Road inquiry made by AF that the Handforth Growth Village application would be lodged in January, when there is still not even a masterplan in the public domain in March let alone an application), and for sites where applications were on the verge of determination then they remain on the verge of determination (e.g. the reserved matters application on White Moss phase 1).

ix. The Council has adopted a hybrid "Sedgepool 8" approach to addressing its backlog. Mr Fisher sought to explain the approach as meaning that the 8 year period rolled forward throughout the plan period. This approach runs counter to the specific conclusions on the matter by the Local Plan Inspector¹⁶. The LP Inspector concludes at paragraph 72:

"CEC therefore proposes to fully meet the past under-delivery of housing within the next 8 years of the Plan period ("Sedgepool 8"). This would require some 2,940 dw/yr (including buffer) over the next 5 years, which would be ambitious but realistic and deliverable, as well as boosting housing supply without needing further site allocations."

It is plain from this part of the LP Inspector's report that he envisioned the Council meeting its under-delivery in the first 8 years of the Plan – i.e. by April 2024. As Mr Wedderburn made clear, Sedgepool 8 is not Sedgefield, it is unique to Cheshire East. In the absence of an accepted approach that everyone understands, Sedgefield or Liverpool, the words of the LP Inspector carry a great deal of significance as the only direction for how this unique

methodology should be applied. Had the Inspector wanted the 8 year period in Sedgpool 8 to have rolled forward, he would have explicitly said so. Not to do so in effect means that the backlog keeps getting rolled ever forward, at least on the Liverpool method the backlog has to be addressed within the LP period. Thus if Sedgpool 8 means rolling the shortfall forward over a perpetually rolling 8 year period then it will be a longer period than the Liverpool methodology, if it means doing so until the 8 years hits the end of the plan period then it is the Liverpool methodology by stealth – either way it is a distortion of the grace afforded by the LPI to deal with the shortfall within the next 8 years. It is of course recognised that the Park Road Inspector didn't agree with this argument – but his argument was based upon giving the Council some leeway in the early years after adoption of the plan. With respect that is not grappling with the issue properly, and the SOS is therefore respectfully invited to do so.

- x. Instead of the high delivery rates that were contended for as being realistic before the LPI (evidenced by the LP trajectory and noted by the LPI at paragraph 72 of his report) delivery rates thus far are well below those needed by CEC to plausibly claim a robust 5YS. To use a different metaphor, wheels have come off the Cheshire East Local Plan Strategy ("CELPs") in the first year after that assessed by the LPI. As at the base date of 1/4/17, it has under-delivered by 5365 units (equating to a deficit of 3 years of the requirement in the first 7 years of the plan), already.
- xi. The LP trajectory identifies that to secure a 5YS the LPA needs to deliver 2466dpa each year from 1/4/17. That figure is comparable under the HMU because the rolling Sedgfield 8 lets the LPA off the hook from not reducing a single unit from its shortfall last year (1796 – essentially equating the requirement but not eroding the shortfall at all – which is still then spread over the next 8 years). AF projects in his evidence that this year there will be delivery of 2000 units based on current information – which means delivery way below the ~2500 figure needed each year for the next 5 and pushing back meeting the shortfall by yet another year. In the real world this is woeful under-delivery and yet AF sought to argue it as if things were on-track.

Mr Fisher accepted that the LP Inspector put weight on the anticipated delivery described in the LP trajectory¹⁷. However, he somewhat inexplicably sought to argue against the 2955 figure being CEC's realistic prediction on the basis that there was no adopted plan during the first 3 years of the plan period – something the LP Inspector would have been well aware.

The only sensible conclusion is that the LP Inspector saw Sedgpool 8 as meeting the undersupply by 2024, and therefore having rolled the base date forward by one year the shortfall should be met within the

¹⁷ CD A40 paragraph 68.

next 7 years resulting in an annual requirement (including shortfall) of 2955. On this basis alone CEC cannot demonstrate a 5YS.

70. The yardstick of the LPA's judgment is of course its own predictive ability, and in this case it has been found wanting in the starkest possible terms within the first year of the period considered by Inspector Pratt. The figures could not be more telling, contrasting the case being put last year before Inspector Pratt and that being put this year at this inquiry. Thus comparing the trajectory at the end of the 2016 Housing Topic Paper, which might usefully be considered to be its 2016 HMU against the trajectory at the back of the HMU, the following obvious points can be made:
- (i) in the 2016 HMU, the LP predicted that its delivery for 2016/17 would be 2955, in fact it was 1762 (ie 40% less than it predicted and told Mr Inspector Pratt). Even if the target was 2466 as AF now maintains, that is still 27% below the level it should have been;
 - (ii) both AF and MW provide evidence which triangulates upon around 2000 units as the likely delivery in 2017/18, against a requirement of 2466 on AF's case or 2955, which is either 19% or 32% below where it should be. That is also 2 years out of the 5 years considered by Inspector Pratt where the prediction of the LPA has failed – one wonders at what point the LPA go back to re-read the serious caution that Inspector Pratt issued in paragraph 68 of his final report?
 - (iii) in the 2017 HMU it predicts that delivery in 2017/18 will be 3373, which is double that actually achieved in 2016/17 (1762), and is way above any trendline of delivery. It is also 33% higher than CEC were predicting would be delivered in 2017/18 in its 2016 HMU (which predicted 2549 being delivered). In fact it is likely to be around 2000 units. That difference alone should lead anyone to seriously question whether its predictive methodology is flawed;
 - (iv) other figures for the 5 year period under consideration at this inquiry (ie 5 years from 1/4/17) also vary wildly from the 2016 HMU to the 2017 HMU; for example in 2016 it was predicted that 2019/20 would deliver 3,501 but in 2017 it is predicted that it will be only 3032;
 - (v) both trajectories (the LP and the HMU 2017) reveal that in no year has the LPA ever achieved its requirement (1800 pa) in the seven years since the plan started (2010), which means that year on year the backlog has been increasing until it is now the equivalent of 3 years supply. Had delivery taken place as planned in 2016/17 the backlog would have reduced by 1155 units, as it is, it has increased and is not now proposed to be removed for a further 8 years despite it relating to need arising now;
 - (vi) to be blunt, both trajectories have an air of unreality to them since both are predicated on an immediate and dramatic upturn in delivery – ie they assume imminent delivery way in excess of past delivery rates for a decade after which delivery rates will once again fall back

to pre-2017 rates. The LPA's case was tough before the LPI but is now implausible. In order to achieve a 5YS now it needs to take a far more positive attitude to the release of deliverable sites without land use constraints in sustainable locations, and not to assume an ever more ostrich-like approach to what has actually taken place compared to its predictions since Inspector Pratt's assessment based on a base-date of April 2016.

(vii) Importantly, the failure of the LPA's predictive ability has been in the first year of delivery – if a plan fails that badly, this early the need for intervention is acute. There is no warrant to give the plan a bit more time to play out – the need for action is an immediate one and is overwhelming on the evidence. It is depressing that having been told that implicitly by two Inspectors that CEC are trying ever harder to man the bilge pumps on their own private Titanic that is their claimed 5YS.

71. The supply of housing land is not a ceiling and given the current state of affairs in this LPA, they should be actively searching out new sites with manageable planning harms to come forward. The Council's closing submissions (paragraphs 63 – 67) argues that permitting this site would reduce the allocations going forward to meet more local needs. This argument is wafer thin, and completely unsupported by any evidence provided at the inquiry. The figures contained in a local plan (including CELPS where this point is recognised at 8.73) are a floor and not a ceiling, and there is no support in policy or evidence to support this argument. Given there are no technical objections to this appeal site, its locationally sustainable and its intrinsic merits have already been endorsed by one Inspector (in the context of there being an immediate need), it is an obvious candidate to come forward now to help this Council meet its needs and to help to address its already significant under supply.
72. The Council's closing go on to say that if the SoS concludes that the LPA has failed to demonstrate a 5YS, then settlement boundaries will need to flex, but it contends that it should not be at this site (paragraph 153). This approach shies away from meeting an immediate problem. This approach has no founding in policy; it suggests that some sort of sequential test should be applied when a 5 year housing land supply problem arises. The appropriate approach is to consider whether or not the development being put forward to rectify the 5 year housing land supply problem is acceptable in planning terms and constitutes sustainable development. If it is, then it should be permitted. Sustainable sites should not be precluded from being developed when there is an immediate need on the basis that the Council thinks that there might be better sites to meet the need that it has denied, and based on evidence it has not presented! This is an abrogation of proper decision making.
73. The Council sought to argue that lapse rates shouldn't be applied, when it accepts that permissions do in fact lapse at a rate which is presently unknown. It's reasons for rejecting MW's approach in this regard is that it is said to duplicate the buffer – which it plainly doesn't – one relates to appraising supply, whereas the other relates to establishing the requirement.

CEC bases its argument on a fundamental misunderstanding of *Wokingham BC v SOSCLG* [2017] EWHC 1863 (Admin). When that case is examined correctly, the issue was whether the Inspector was right in law to apply a lapse rate despite no party raising it during the inquiry (at paragraph 55). When the judge went on to consider whether lapse rates could be law *per se*, he concluded (paragraph 69):

It is for the decision-maker to determine in the first instance whether or not the application of a "lapse rate" to the estimated five-year supply of deliverable housing to reflect the Council's "record of tending to over-predict delivery" involves an unwarranted adjustment, given an increase in the housing requirement by 20% "where there has been a record of persistent under delivery of housing", in each case in order "to provide a realistic prospect of achieving the planned supply.

Therefore, provided the issue is fully ventilated before the Inspector, as it was at this inquiry, then the conclusion can be made to add a lapse rate onto the requirement. Given this Council's history of under delivery and continuing over estimation of future performance, a lapse rate of 5% as proposed by the Applicant is entirely appropriate. Indeed, it will be a vital tool to pushing this Council to meeting its need to provide homes.

74. In conclusion, on both methodology and content, the evidence before this Inspector confirms the Appellant's case that the LPA can demonstrate at most 4.25 YS. If the Council's approach to Sedgemoor 8 is applied, the land supply position on the LPAs approach to yield goes to 4.42 years. It follows from such an outcome on the land supply position that paragraph 49 of NPPF is engaged (subsequently paragraph 11 of the Framework through footnote 7) and the decision necessarily should be taken based upon the tilted balance therein. The SOS will undoubtedly be told by CEC that the recently adopted local plan can, and is, delivering the houses to meet the identified need. However, it is not that straightforward. One cannot say that simply because there is a recently adopted LP, that the land supply position is safe. The following points are of note:

- a. The Appellant is not seeking to "go behind" the conclusions of the LPS Inspector which were based upon an analysis of Housing Supply position as at April 2016. Rather this inquiry is charged with critiquing the 2017 HMU which has rolled the position forward by one year;
- b. AF at one point in his evidence seemed to run an argument that has repeatedly failed at inquiry – that the task of an inquiry is to review the position as it was known at the base date and then close one's mind to knowledge of what has come to light in relation to the various components of supply since the base date. With respect that position is wrong:
 - i. It is not the approach of the LPA in its 2017 HMU which relies on information which has come to its attention after the base date;
 - ii. It is not the approach of AF who also relied upon information which has come to his attention after the base date, and indeed he has

sought to gather more evidence after the LPA lost the 5YS argument at 2 previous appeals;

iii. It is not the approach of Inspectors in countless appeals across the Country;

iv. It is contrary to the approach required as a matter of law in the *Stratford on Avon DC v SOSCLG* [2013] EWHC 2074 (Admin);

v. It literally makes no sense – a decision maker is required to form a view on what the 5YS is on the evidence before him/her a s.78 appeal is not a form of quasi-judicial review to review the LPA's assessment at a point in time.

75. Inspectors in the White Moss and Willaston decisions¹⁸ both concluded that a precautionary approach should be taken to the 5YS issue and that the tilted balance should be engaged. It is just wrong to contend (as AF now seeks to) that the LPA was constrained in how it wished to put its case, or that there was a misunderstanding of the implications of the St Modwen case. To the contrary in both appeals there was no constraint on the information that the LPA was able to bring forward, noting that it had failed to provide much of the base information on which the 2017 HMU was predicated AND submissions on the St Modwen case were made by leading counsel for CEC in the latter case which followed the reporting of the decision of the Court of Appeal.

76. As noted above the St Modwen case is in any event something of a red herring. It deals with what should be the components of supply and essentially concludes that the footnote to the then paragraph 47 means what it says; but it says nothing about how to approach what is the expected yield that should be assessed from those components of supply, where the PPG requires robust evidence to be provided where PP is not in place.

77. The Inspector's decision in Shavington is being challenged, as the Council is eager to point out. The basis of challenge seeks, through the Shavington decision, to impugn the rational and unimpeachable approach to calculating 5YLS in the WMQ and Willaston decisions. This challenge is being robustly defended, by both the Secretary of State and the Land Owners. Until the claim is heard, those decisions stand and the approach to 5YLS they adopt should be followed – not just in the interests of consistency in decision making, but because it is the correct approach in law and a failure to do so would be unlawful. The presumption of legality applies, and the Inspector is invited to give precisely no weight to the fact of the challenge (just as was the case in relation to the local plan challenge which was live at the time of the White Moss Quarry and Park Road appeals). Moreover, insofar as some of the arguments raised in that challenge mirror the fallacious arguments being raised by CEC in this case then the Secretary of State is respectfully invited to have regard to the rejection of those self-same arguments being raised on his behalf by the Government Lawyers. It is apprehended that the challenge will

¹⁸ Ibid.

have long failed by the time that this decision is ultimately made by the Secretary of State in any event. It has of course not been welcome news to the LPA that it cannot demonstrate a robust 5YS, and as a professional one can have a degree of sympathy for the LPA which has gone through a very long process to secure adoption of the LPS only to discover that houses aren't being delivered sufficiently quickly to ensure a 5YS. However, what is startling is that rather than taking steps to remedy the position (e.g. advancing the pt2LP, and releasing more deliverable sites) the LPA has chosen instead to deploy its resources into defending the obviously indefensible. Based on a robust and objective assessment AF is wrong and the LPA cannot demonstrate a 5YS, and the deficit can only be made good in the short-term by the release of additional sustainable and deliverable sites without technical constraints such as this one.

Appellant's supplementary comments on revisions to the National Planning Policy Framework

78. Paragraph 73 of the revised Framework states:

"Local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than five years old".

79. The requirement to assess the housing supply as set out previously in NPPF para 47 therefore remains. In the case of Cheshire East the housing requirement is established in the Cheshire East Local Plan Strategy ("the LPS"). Policy PG 1 sets a housing requirement of 1,800 dwellings per annum. This plan was adopted on 27 July 2017 and is therefore less than 5 years old. In accordance with paragraph 73, this housing requirement should therefore form the basis of the assessment. The housing requirement set out in the LPS was used in the appellant's evidence heard at the Inquiry in February 2018 and indeed it was common ground at the Inquiry that this housing target should be applied. The appellant's approach is therefore considered appropriate with regard to the revised NPPF.

Identifying the Base Date and Five Year Period

80. The rFramework does not comment on the base date or the 5 year period to apply to the assessment. The appellant's evidence on 5 year HLS applied a base date of 31st March 2017 and a five year period of 1st April 2017 to 31st March 2022, which aligned with the Local Planning Authority's Housing Monitoring Update (published August 2017, base date 31st March 2017). This based date of 31st March 2017 was therefore agreed, and is contained within the Statement of Common Ground (SoCG). This approach is considered appropriate with regard to the rFramework.

The Appropriate Buffer

81. Paragraph 73 of the rFramework states:

"The supply of specific deliverable sites should in addition include a buffer (moved forward from later in the plan period) of:

- 5% to ensure choice and competition in the market for land; or*
- 10% where the local planning authority wishes to demonstrate a five year supply of deliverable sites through an annual position statement or recently adopted plan, to account for any fluctuations in the market during that year; or*
- 20% where there has been significant under delivery of housing over the previous three years, to improve the prospect of achieving the planned supply."*

82. Footnote 39 of the rFramework explains that from November 2018 "significant under delivery" of housing will be measured against the Housing Delivery Test, where this indicates that delivery was below 85% of the housing requirement. At the time of writing, the relevant section of the PPG which may provide further guidance on this matter has not been updated to reflect the revised NPPF.

83. As above, footnote 39 is clear that the Housing Delivery Test will not be used to measure significant under delivery until November 2018 or thereafter. Paragraph 215 of the rFramework also explains that the Housing Delivery Test will apply from the day following the publication of the Housing Delivery Test results in November 2018.

84. Paragraph 73(b) advises that a 10% buffer can be applied by a LPA where it wishes to demonstrate a five year land supply of deliverable sites through an annual position statement or recently adopted plan, to account for any fluctuations in the market that year. The reader is then directed to footnote 38 which states:

"For the purposes of paragraph 73B and 74 a plan adopted between 1st May and 31st October will be considered recently adopted until the 31st October of the following year; and a plan adopted between the 1st November and the 30th April will be considered recently adopted until 31st October in the same year".

85. As set out in evidence at the inquiry, in the first seven years of the LPS plan period, net housing completions in Cheshire East had been on average 1,034 dwellings per annum, and did not reach the 1,800 target at any point. It was therefore common ground at the inquiry earlier this year that a 20% buffer be applied, reflecting persistent under delivery as identified in the Framework.

86. In respect of the implications of the rFramework, the Local Plan Strategy was adopted by Cheshire East on 27 July 2017. As such it qualifies as "recently

adopted” until 31 October 2018. Whilst the PPG has not been updated to provide detailed guidance upon this matter, the rFramework indicates that a 10% buffer to housing land supply is appropriate in any decision taken up to 31 October 2019.

87. From 1 November 2018, whether there has been a significant under delivery of housing will then be a matter for the decision maker to determine. Therefore the appellant maintains that a 20% buffer should apply from 1 November 2018 given the previous under delivery throughout the plan period.
88. It is also noted however that the Housing Delivery Test will then be used to measure significant under delivery from the day following its publication in November 2018. It is expected to use the national statistics for net additional dwellings, which have typically been published in mid-November over the last few years. Consequently, it seems likely to be later in November or thereafter before the Housing Delivery Test is in place.
89. The Framework is clear that the measurement of what amounts to “significant” under-delivery will be based upon the publication of the Housing Delivery Test that will be November 2018. In this case, the 10% buffer should apply as a minimum as the LPA have a recently adopted local plan in accordance with footnote 38 of the Framework. rFramework paragraph 73 gives flexibility to allow the decision maker to apply judgement as to whether or not criteria a) b) and c) applies based upon the evidence before them.
90. Whilst footnote 39 may not apply until November 2018, and because the Framework is silent on how one should determine what is “significant in the interim, it is considered that the 20% buffer should apply as until this time, the application of a 20% buffer is a matter for the decision maker to determine.
91. “Significant” under-delivery is defined as being below 85% of the annual housing requirement. It should be noted here that the transitional arrangement identified at paragraph 215 of Annex 1 only applies to the application of footnote 7 in terms of triggering the tilted balance of paragraph 11d of the Framework. It does not affect the determination of whether or not the 20% buffer applies. The appellant’s 5 year HLS calculation is therefore resupplied below showing both a 20% and also a 10% buffer to cover NPPF para 73b.

Addressing the under-provision

92. The rFramework does not specifically state how the backlog should be addressed, however it does set out the Government’s objective of “*significantly boosting the supply of homes*” (paragraph 59). Addressing the backlog as soon as possible would be consistent with this paragraph. The supporting Planning Practice Guidance (PPG) has not been updated at the time of writing. Paragraph 3-035 of the PPG: “*How should local planning authorities deal with past under-supply?*” provides the guidance that was set out in the evidence for the appeal. It states:

"Local planning authorities should aim to deal with any undersupply within the first 5 years of the plan period where possible. Where this cannot be met in the first 5 years, local planning authorities will need to work with neighbouring authorities under the 'Duty to Cooperate'."

93. Consequently, the PPG is clear that Local Planning authorities should aim to deal with the backlog within five years. Whilst the PPG does appear to recognise that there may be circumstances in which this is not possible, it does not suggest that the backlog should be addressed over any other period in those circumstances. Instead it states that local planning authorities will need to work with neighbouring authorities under the 'Duty to Co-operate', presumably with adjacent authorities looking to help to address the backlog by making immediate provision.

94. A draft HLS section of the PPG was made available in association with the consultation on the draft rFramework. The draft PPG proposes to remove the reference to the Duty to Co-operate and replace it with reference to the plan making and examination process. It states (on page 14):

"Local planning authorities should deal with deficits or shortfalls against planned requirements within the first five years of the plan period. If an area wishes to deal with past under delivery over a longer period, then this should be established as part of the plan making and examination process rather than on a case by case basis on appeal".

95. This draft guidance is consistent with the appellant's position given in evidence and maintained at the inquiry. The appellant's position was to acknowledge that the matter of undersupply of housing delivery had been considered at the Local Plan examination and that the first year of the 'Sedgepool 8' period had elapsed. The appellant's position is that the LPA's "rolling" 'Sedgepool 8' approach would result in the shortfall continuing to be moved backwards and not actually be addressed at all, rather than being addressed within the 8 years as the LPS Inspector intended. The appellant's approach to addressing the under-provision therefore is considered appropriate with regard to the rFramework.

Assessing the Deliverable Supply

96. Paragraph 67(a) of the rFramework is particularly relevant to the appellant's 5 yr HLS case in this appeal. At the Inquiry, there were a number of sites contested at inquiry between the Council and the appellant over whether they should be expected to deliver housing within five years. The assessment of the parties and the supporting evidence was provided within the context of footnote 11 of paragraph 47 of the previous version of the NPPF where 'deliverable' was defined. That footnote was the subject of a number of Court Judgements, in particular the *St Modwen* judgement, which was discussed at the Inquiry. In the rFramework, the definition of "Deliverable" is set out in the Glossary at Annex 2, and this states:

"To be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five

years. Sites that are not major development, and sites with detailed planning permission, should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years (e.g. they are no longer viable, there is no longer a demand for the type of units or sites have long term phasing plans). Sites with outline planning permission, permission in principle, allocated in the development plan or identified on a brownfield register should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years."

97. The definition of deliverable has now been clarified and sets out the expectations for both local planning authorities and others in assessing the supply of housing land. This change is significant in that it sets out separate tests for two categories of sites as follows:
- Category A - Sites that are not major development (i.e. 9 dwellings or less¹⁹) and sites with detailed planning permission: these should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years (some examples are given as to what constitutes clear evidence).
 - Category B - Sites with outline planning permission, permission in principle, allocated in the Development Plan or identified on a Brownfield Register: these should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years.
98. In summary, sites under Category A are to be considered deliverable unless the appellant, in challenging the LPA's 5 year HLS, provides clear evidence that those sites are not deliverable. Conversely sites in Category B should not be included in the five year housing land supply by the LPA unless there is clear evidence that housing completions will begin on these sites within five years. This is a significant change as the test has now been reversed for sites with outline permission or development plan allocations. Previously under footnote 11 sites were deemed to be deliverable unless there is clear evidence that they were not. Therefore, national policy now stipulates that these should no longer be included unless there is specific evidence that they are deliverable.
99. The appellant considers that this change in approach to considering whether a site is deliverable gives overall support to the appellant's position and undermines the Council's approach to the supply in the evidence before this appeal.
100. In general, it does not alter the appellant's position on the sites that were challenged in the appellant's evidence in this appeal. Without seeking to introduce new evidence or reopen the detailed consideration of sites undertaken at the inquiry, the appellant's approach at the inquiry was

¹⁹ As per the definition of "major development" within Annex 2 of the rFramework.

generally not to challenge whether sites should be considered deliverable, but to challenge whether sites had a realistic prospect of delivering of the number of units indicated by the Council within 5 years. The change in approach in the rFramework would add weight to our concerns for Category B sites, that the Council has not demonstrated (to quote the rFramework) with *"clear evidence that housing completions will begin on site within five years"* (and without seeking reopen the detailed consideration of sites undertaken at the inquiry it may also provide a reason to challenge further sites in the supply).

101. The appellant provided evidence disputing 41 sites and the majority of these were sites within category B. Of these sites, 34 were sites without planning permission, sites with outline planning permission or sites with outline permission subject to S106. In the case of these sites, the onus would now be on the Council to demonstrate in evidence why it should be considered that housing completions will begin on site within five years. A summary of the sites falling within Category A and Category B are set out in the table below.

Site Name / Reference	Category A	Category B
LPS1 Central Crewe		✓
LPS2 Basford East Crewe (Phase 1)		✓
LPS4 Leighton West (part a)		✓
LPS5 Leighton		✓
LPS6 Crewe Green		✓
LPS8 South Cheshire Growth Village		✓
LPS10 East Shavington	✓	
LPS11 Broughton Road, Crewe		✓
LPS13 South Macclesfield Development Area		✓
LPS14 Kings School, Fence Avenue		✓
LPS15 Land at Congleton Road		✓
LPS16 Land south of Chelford Road, Macclesfield		✓
LPS17 Gaw End Lane, Macclesfield		✓
LPS18 Land between Chelford Road and Whirley Road		✓

LPS20 White Moss Quarry, Alsager		✓
LPS27 Congleton Business Park		✓
LPS29 Giantswood Lane to Manchester Road		✓
LPS33 North Cheshire Growth Village		✓
LPS36 Land north of Northwich Road and land west of Manchester Road, Knutsford		✓
LPS37 Parkgate Industrial Estate, Knutsford		✓
LPS38 Land south of Longridge, Knutsford		✓
LPS42 Glebe Farm, Middlewich		✓
LPS43 Brooks Lane, Middlewich		✓
LPS46 Kingsley Fields	✓	
LPS48 Land adjacent to Hazelbridge Road, Poynton		✓
LPS57 Heathfield Farm, Wilmslow		✓
LPS61 Alderley Park	✓	
1934 Land off Dunwoody Way, Crewe	✓	
2991 Land adjacent to 97 Broughton Road, Crewe	✓	
3535 Santune House, Rope Lane, Shavington	✓	
3574 Land west of Broughton Road, Crewe	✓	
3612 Land south of Old Mill Road, Sandbach		✓
2896 Land to the north of Moorfields, Willaston		✓
4302 Kings School, Macclesfield		✓
4752 Land off East Avenue, Weston		✓
4725 Abbey Road, Sandbach		✓
5672 Land off Church Lane Wistaston		✓
5709 Land off London Road, Holmes Chapel		✓
406 Victoria Mills		✓
3175 Chelford Cattle Marker and Car Park		✓

102. The change in approach to considering whether a site is deliverable does however run very much counter to the LPA's approach in this appeal with regard to assessing the deliverable supply. The Council's evidence to the appeal set out a number of observations on the *St Modwen* judgement and the consideration of whether a site is deliverable. The Council essentially suggested that the *St Modwen* Court of Appeal Judgement is a 'game changer' in that the threshold for calculating 5 year HLS had been lowered in some significant respect and contending that, given the strategic sites are allocated and these sites are 'capable' of having homes built on them, *St Modwen* obviated the need for the LPA to evidence that their yields in the 5 year period are 'realistic'. Clearly the rFramework now makes absolutely clear that Category B sites should no longer be included in the supply unless there is specific evidence that they are deliverable. It is therefore it is clear that robust evidence on delivery is needed, as was argued by the appellant.
103. In summary, the supply of deliverable sites must be determined within the context of the rFramework which is a material change from that in the superseded Framework. It is for this reason, and the test in paragraph 67A (and associated definition of what comprises a deliverable site provided within Annex 2) that means that the Appellant's housing land supply position should be favoured over the Councils.

Housing land supply calculation

104. The above comments in respect of the approach to 5 year HLS in the rFramework refer to each of the key stages of assessment. The final stage is to undertake the calculation itself. The appellant's calculation was set out in the Appellant's 5 year HLS Proof of Evidence in Table 16 entitled "Conclusions on 5 year land supply CEC / Appellant". At the end of the Inquiry on 23 February 2018 a revised version of this table was submitted at the Inspector's request, updated to reflect the concessions on supply made by both parties in the 5 year HLS Statement of Common Ground (SoCG).
105. It is considered that, given the reference to a 10% buffer in rFramework para 73(b), it may be of assistance to now provide a table showing the appellant's position updated to reflect the concessions on supply made by both parties in the SoCG with a 10% buffer applied.

Updated version of Table 16 of the Appellant's Proof of Evidence "Conclusions on 5 year land supply CEC / Appellant" to reflect the concessions on supply made by both parties in the 5 year HLS Statement of Common Ground in this appeal and also showing the calculation applying a 10% buffer

		Appellant's position when the 20% buffer is applied (supply addressed in 7 years) (updated to reflect SoCG on sites)	Appellant's position when the 10% buffer is applied (supply addressed in 7 years) (updated to reflect SoCG on sites)
A	Net annual requirement (2010 to 2030)	1,800	1,800
B	Housing requirement 1 April 2017 – 31 March (A x 5)	9,000	9,000
C	Shortfall 1 April 2010 - 31 March 2017	5,365	5,365
D	Shortfall to be addressed in 5 years	3,832	3,832
E	Requirement + shortfall (B+D)	12,832	12,832
F	Buffer (20 % of E)	2,566	n/a
	Buffer (10 % of E)	n/a	1,283.2
G	Requirement + buffer (E+F) = supply required	15,398	14,115.2
H	Assessment of Supply (updated)	13,101	13,101
I	Supply demonstrated (H/G x 5) in years	4.25 years	4.64 years

106. The table above sets out that, where the appellant's approach to supply is preferred, even if a 10% rather than 20% buffer is applied the Council's 5 year HLS figure remains below the requirement.
107. The appellant's position in the light of the rFramework therefore remains that the LPA cannot demonstrate a deliverable five year housing land supply, as was set out in evidence to this appeal and at the inquiry. Therefore, in accordance with paragraph 73 of the rFramework it remains the position of the appellant that the Council are unable to robustly demonstrate a 5 year supply of deliverable housing sites. Therefore, the tilted balancing exercise required by paragraph 11d of the rFramework is engaged as per footnote 7. The conclusions reached by the appellant in the evidence heard before the inquiry therefore remain valid in the context of policies contained within the revised Framework.

Landscape

108. The application site carries no designation, nor is anyone arguing that it is a valued landscape in rFramework terms. In local landscape policy terms

(SE4), the scheme is compliant for the reasons explained by Mr Berry. Moreover, it is clear from the proposed Landscape Strategy principles that the development will respond to the existing landscape with good legibility and a strong sense of place. Any marginal criticisms that have been raised over the course of the last 4 years have been fully taken on board in the latest revisions to the illustrative masterplan. In JB's view the appeal site is an unremarkable and ordinary parcel of land with no particular features that would set it out of the ordinary. Its relationship to the urban area, especially following recent planning permissions granted to the east and west and illustrated on JB's appendix 1, drawing SK19, underscore the site's obvious capacity to accommodate the proposed development. Importantly, that capacity has only increased since the application was first refused (contrary to officer's recommendations) as a result of the adjacent development (especially the DWH land to the east which will have been evident on site); and also as a result of the scheme no longer proposing its own dedicated access to the south, but through an access from the north of the site, the junction with Peter Destapeleigh Way already having been completed.

109. Given that CEC have never refused this application on landscape grounds and have never raised a freestanding landscape impact case against the proposals either at this inquiry or its precursor, one might legitimately ask why the Appellant has sought to present a fully articulated landscape case. Indeed, Mr Gomulski CEC's landscape architect who is habitually called at housing appeals in this borough reiterated his advice back in November 2017 that there would be no significant adverse landscape and visual impacts (after mitigation) and that a landscape reason for refusal could not be substantiated.

Local Plan considerations

110. The Council's case is in essence that there is no need for additional housing and that there are breaches of the recently adopted Local Plan Strategy ('CECLP') whose policies should be treated as not out of date and therefore the application must be refused. To put it mildly, that is an oversimplification of the situation of the task that is before this Inquiry, and takes a myopic view of the actual position that CEC finds itself. Unarguably, in accordance with s.38(6) of the 2004 Act the SOS must determine this appeal in accordance with the development plan unless material considerations indicate otherwise. As PD pointed out in his evidence, whether the policies of the development plan remain relevant and up to date is a material consideration that must be taken into account. Further, the question of whether or not the appeal proposal is in accordance with the relevant policies of the development plan is not simply a yes or no question the answer to which determines the outcome of this appeal. The degree of conflict is plainly relevant and an essential question to consider. Similarly, the actual land use consequence of a policy breach has to be interrogated.
111. That is particularly important here when the alleged harm is the principle of development beyond settlement boundaries, and not any particular significant land use harm, such as landscape, ecology, drainage etc, other than the loss of an area of BMV agricultural land (which is agreed not to be a determinant issue in any event). However the loss of BMV is not significant

and the site is not currently farmed. As recorded in the note submitted to the Inquiry by the Appellant, and not disputed by the Council, only 17% of the appeal site A is BMV (sub-grade 3a). As set out in appendix 2 to PD's POE (the POE of M J Reeve on BMV for the original inquiry at para 6.1), the site "would primarily use one of the few areas dominated by poorer non-flooding land on the margins of Nantwich, so meets the requirements of the NPPF to use poorer quality land in preference to that of a higher quality. The LP at policy SE.2 requires that BMV is "safeguarded". It is agreed that the site will result in the loss of BMV it is a small amount (2.6ha in total across Appeals A and B) and that this loss is not determinative (see SoCG). Taking these points together, in the context of a county where most of the land is of similar grade (see RT PoE at 6.33), the poor quality of the other land in site A and that the parties agree that the loss of BMV is not determinative, the loss of BMV must accord no more than limited weight (as PD concludes in his POE at page 60). Furthermore, if the SoS concludes that the Council cannot demonstrate a 5YHLS, then greenfield sites will need to be delivered and he should reach the same conclusion as the original inspector at paragraph 12.1626 that in those circumstances the release of the BMV on this site to development causes no harm.

112. The starting point for considering whether the relevant policies are up-to date and the weight to be afforded to any breaches of them is a consideration of the basis upon which the plan was adopted. It is agreed by both of the main parties planning witnesses that the settlement boundaries used in the CECLP are those from the previous Crewe and Nantwich local plan. PD explained that the LP settlement boundaries that were set in 2006 were only ever intended to last until 2011, by which time there would have been expectation that they would have been reviewed.
113. The only modifications that were made to these boundaries during the recent LPS process was to incorporate the strategic allocations into them. This did not constitute a review of the boundaries and it is agreed by both planning witnesses that there is therefore a need for the boundaries to be reviewed as part of the next stage of plan preparation SADPPD/LPpt2, which will also consider allocating additional sites so as to meet CEC's needs, for a plan whose plan period started back in 2010. This was acknowledged by the LPI in his report at paragraph 111 and is expressly acknowledged in Policy PG 6 itself along with its supporting text²⁷.
114. As a matter of sensible planning, as a matter of logic and as a matter of mere common sense the geographical extent of these settlement boundaries are therefore obviously "out of date", even if the text of the policies themselves correspond to the approach of the rFramework – a distinction which goes unremarked in the LPA's evidence. This is further evidenced, by the number of dwellings that have been granted planning permission by the Council and at Appeal over the last 5 years and in the overall approach adopted in the LPS itself that involves very significant development outside of settlement boundaries of the saved Local Plan – thereby underscoring it's out of datedness. In a situation where it is acknowledged that development will be required outside of adopted boundaries to meet identified development needs it is nonsensical of the Council to argue that those boundaries are up to date.

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115. One final point is that the position is not altered by the making of the NP. That is because Inspector Jonathan King in emasculating the draft NP rewrote the housing chapter of the NP to mirror the settlement boundary in the saved LP and the NP expressly notes that the boundaries will be reviewed as part of the Ppt2. It follows that policies RES-5 and Policies PG-6 are out of date in their geographical extent and this must reduce the weight to be attached to them and the weight to be attached to any breaches of them. This is precisely the approach of the Park Road Inspector who at paragraph 16 observed:

"Whilst, for the time being, the settlement boundaries and extent of the Open Countryside in the CNRLP as amended continue to carry weight as part of the development plan, there is clearly an acceptance in Footnote 34 and the CELPS Inspector's report that they will be subject to further change. This may be to accommodate non-strategic sites allocated for development as part of the SADPPD or where planning permissions have been granted for development beyond existing boundaries or in the light of other criteria yet to be defined. To this extent the current boundaries cannot be considered to be fully up to date."

Thus, it is accepted by the Appellant that these policies are breached but as the Appellant correctly contends the extent of that breach has to be assessed to determine what weight to be attached to the breach. The appeal site lies in the defined open countryside but is in no way an isolated or irregular intrusion into the open countryside. It is an obvious extension to the settlement of Nantwich with development on three sides. Importantly, other than the fact of the breach, the Council does not identify any land use harm arising from the breaches of policies RES-5 and PG-6. That there is no land use harm that arises from the breach of these policies must reduce still further the weight to be attached to these policy breaches.

116. There is an allegation within the RfR as well as RT and AF's proof that to allow the appeal proposals would somehow place the Spatial Vision of the LPS 'out of whack'. That is founded upon the proposition that Nantwich has already delivered the amount of housing that was anticipated as part of the LPS spatial distribution. The point is however nonsensical and belied by the words of the LPS itself, since policy PG7 sets out figures for each settlement that are expressly said to be "neither a ceiling nor a target". And yet RT purports to interpret PG7 in precisely that way, at one point even alleging that there was a conflict with the policy (despite it not being cited in the RfR). Moreover, the table following paragraph 8.77 in the LPS is expressed to be an 'indicative distribution'. Thus whilst it may be that CEC could contend that it would be a powerful material consideration against a scheme which was grossly out of kilter with the overall distribution of the LPS, it is an abuse of the express language of the plan to contend that there is a breach of policy PG7 as RT alleges.

117. However, to arrive at that point one has to come to the view that the proposals would indeed be sufficiently at variance with the indicative distribution to be said to result in a land use distribution contrary to the objectives of the LPS. In White Moss Quarry, Inspector Rose seems to have

arrived at the conclusion albeit for a much bigger proposal close to a much smaller settlement. However, merely being a little above the indicative figure of 2050 when that figure is not a ceiling nor a target does not lead to the inexorable conclusion of an offence against the distribution contended for by RT.

118. Moreover, RT was unable to answer the “so what?” point – i.e. even if there is development in excess of the notional distribution, if there is an immediate need for more housing in CEC there are no land use consequences identified which arise as a result why is there a consequence which even weighs into the ‘harmful’ side of the scales. In XC it was argued that the position is directly analogous to the White Moss Quarry appeal – however that decision bears close reading, since the Inspector there was dealing with an argument that the proposals (which were much bigger than those proposed here close to a much smaller settlement) would give rise to harmful out-commuting– whereas here no such allegation is made.
119. As RT was at pains to emphasise in his proof, PG-7 does not identify maximum limits on housing numbers in any location, nor does it identify targets. For a breach of PG-7 to arise it cannot simply occur as a result of a numbers game, there has to be a consequence of that number of housing units coming forward in the location in question. Here there has been no attempt at all to identify any such harm. Thus there was no alleged (unmitigated) infrastructure harm to Alsager and there was no harm to social cohesion, further there is therefore no technical justification for withholding consent.
120. It is all well and good to allege that a proposal is contrary to the spatial strategy of the development plan but in order for such an allegation to be credible the proposal in question must actually be contrary to the spatial strategy and even if it is there must be some consequence of that. Here, the appeal proposal is not contrary to the spatial strategy because the numbers identified in PG-7 are not maxima, and harm has not been shown if panning permission is granted.
121. The appeal proposal should be decided in accordance with the development plan unless material considerations indicate otherwise. When looking at the development one looks at whether the proposal is in overall accordance with the development plan. The appellant accepts there are some breaches of development plan policies, but these are limited³⁰, where the breaches arise as a result of settlement boundaries the geographical extent of these policies are out of date and when harm is considered, there is none. This proposal does not give rise to harm to the spatial strategy, gives rise to not meaningful land use harm and comprises sustainable development. Consequently, regardless of the 5yrHLS situation the appeal proposal should be approved.

Other considerations

Deliverability

122. In something of an unexpected turn of events CEC ran a surprising and misguided case against the appeal proposals, namely that even if panning permission was granted that the proposals would not deliver very much within the plan period in any event.
123. The first attack was both an attack “ad hominem”, or in modern parlance, the LPA sought to play the man and not the ball. AF presented 3 examples of where consents had been granted to the Appellant but where delivery had not come forward as expected. However, in XX he readily accepted that he had presented a deeply partial picture and had identified only those sites which had under-delivered and that he had said nothing at all about sites where the Appellant had brought forward sites which had readily delivered units. That of itself should have compromised AF’s credibility. However, he also failed to point out that the third of the sites that he cited (Old Mill Sandbach) hadn’t delivered because of a land dispute with the Council, where the latter (as landowner) were essentially holding-out for ransom value for land which had been compulsory purchased as part of a highway scheme but was never needed. The picture painted was a disingenuous and partial one.
124. The argument was then put that based upon MW’s delivery rates, and assuming that the SOS wouldn’t issue his decision quickly that the delivery rates for the site would be low. AF’s picture painted in his proof of a dilatory land-banking strategic land company is with respect ludicrous;
- (v) agents have been appointed as PD explained in XC and the likely purchaser for part of the residential component will be DWH, who are building homes rapidly next door – this will be a continuation of that site, resulting in obvious benefits in terms of lead in time as well as evidencing a clear local market;
- (vi) there is clear evidence of a demand for the employment units – see letter from RWR Walker Surveyors - 15 March 2018.
125. There is no basis for the pessimism expressed by AF (which may be contrasted with gross over-optimism elsewhere), there is compelling evidence that this site will deliver within the 5 year period.

Neutral outcomes and Benefits

126. The Transport Assessment concludes without challenge from the highway authority that the existing road network has the capacity to readily accommodate the traffic anticipated from the scheme. There would therefore be neither severe adverse effects nor deleterious impacts on the safety of other road users. This matter therefore, despite the recognised apprehension of local people, would be rendered neutral in the planning balance. If permitted this scheme will bring forward much needed market and affordable homes. The delivery of these homes will provide employment opportunities.

The employment site will provide employment opportunities and strengthen the local economy generally. The services such a site will be a benefit in terms of those services and by reducing trips.

127. The provision of a site for a primary school represents a potential long term benefit of the proposal which could be provided as and when future development requirements for Cheshire East are assessed.

128. The scheme includes extensive areas of open space and landscaping (see CD L9), including habitats with biodiversity benefits. 7.3.4 The section 106 agreement provides, in addition to the affordable housing, for an education contribution and a highways contribution to improve public transport facilities.

Overall Conclusions

129. It is the Appellant's case that the LPA can demonstrate at most 4.25 YS (with a 20% buffer. If a 10% buffer is applied the land supply is 4.64 years. If a more critical view on delivery post-rFramework is factored-in the supply drops further²⁰. On any of the outcomes above, the Council cannot demonstrate a 5YS as required by rFramework paragraph 11 (footnote 7). Therefore the consequences flow from this and the tilted balance in NPPF in paragraph 11.

130. Even if it was concluded that the LPA's optimism was well founded and that it could (just) demonstrate a 5YS, then that does not mean that the appeal should necessarily be dismissed:

- a. on its best case, at 5.45 years the LPA is only just able to demonstrate a 5YS, and even that based upon heroic assumptions about future delivery;
- b. the settlement boundaries were established in the C&NLP over ten years ago and have not been reviewed, save for account being taken of strategic allocations since then;
- c. the settlement boundaries will need to be reviewed and updated as part of the CELPpt2 which is still not even at the earliest stage of preparation;
- d. there is no technical objection to the appeal proposals, including any allegation that there is no capacity to meet infrastructure requirements; and,
- e. the existence of a 5YS is not a ceiling nor is it a proper basis to withhold consent for otherwise sustainable development, especially

²⁰ These account for the revised figures submitted after the revisions to the Framework have been accounted and differ from the Appellant's assessment in closings after the Inquiry.

when as at 1/4/17 there has been an under-delivery of over 5300 homes or more than 3 years of the adopted LP requirement. Indeed even the figures in the CELPS are firmly expressed as not being maxima, and it would be perverse to treat them as such in the manner implicitly asserted by CEC.

131. The scheme complies with the settlement hierarchy by locating in a Key Service Centre. Furthermore, the scheme complies with the terms of the Neighbourhood Plan as it provides important residential development next to the existing boundary of Nantwich, as the plan envisions (despite the revisionist approach now being taken to interpretation). The Council's arguments in closing (paragraph 156) that this scheme, if permitted, would skew the strategy for Nantwich simply ignores that the CELPS directs residential and employment development to Nantwich as a Key Service Centre. Therefore if the Council has failed to demonstrate a 5YS, then Nantwich would be a prime candidate for flexing settlement boundaries to deliver the homes that are being held up by this Council.
132. Furthermore, the Council's claim that permitting this site would lead to housing provision of 18% above the level identified as appropriate in terms of spatial distribution in the CELPS is misleading. The 18% is presumably (the Council conveniently don't show their working) arrived at by taking the 2246 allocated plus the 189 on this site, giving 2434. This equals 18.7% more than the 2050 in policy PG7. What the Council fails to mention is that as 2246 has already been allocated, CEC has shown they are happy to go over the 2050 and are already over it by 12%. Therefore the percentage increase on the allocated sites (2246) of this proposed scheme (189) is 8.4%. So the Council is not only misleading in paragraphs 61 – 65, but they have also got their arithmetic wrong.
133. The Scheme also provides significant employment, housing and social benefits set out in Mr Downes' evidence. Despite the Council's protestations in closing, there is no policy requirement that weight should not be given to economic proposals if they are not accompanied by a clear indication of the occupier, that would stifle development across the UK were the proposition to have any force. The Appellant has made a planning application and there is no reason to suggest that development will not be forthcoming, indeed it is understand that correspondence has been provided by the landowner in response to the latest consultation exercise from a local commercial agent which demonstrates exactly this point. There is therefore no reason not to place significant weight to the benefit of the economic aspect of the scheme.
134. A section 106 agreement has been concluded providing for affordable housing education, public open space and transportation.
135. Given there are no identified harms that could significantly and demonstrably outweigh the benefits of this scheme, the Inspector is respectfully invited to recommend to the Secretary to (finally) allow the appeal and to grant permission to these applications which propose a sustainable form of development in the context of clear evidence of need.

The case for the Council

The Starting Point

136. The starting point for any decision in the present case is, of course, section 38(6) of the 2004 Act. This requires assessment of whether the proposed development accords with the Development Plan.

137. The Development Plan consists of:

- a. Saved Policies of the Crewe and Nantwich Plan 2011;
- b. The Stapeley and Batherton Neighbourhood Plan adopted in February 2018; and
- c. The Cheshire East Local Plan Strategy 2017 ("the CELPS").

138. The CELPS was, of course, only adopted in July 2017 and sets out the strategy to meet the needs of this area including housing needs. The Examination Inspector concluded:

"I consider the Overall Development Strategy for Cheshire East, including the provision for housing and employment land, is soundly based, effective, deliverable, appropriate, locally distinctive and justified by robust, proportionate and credible evidence, and is positively prepared and consistent with national policy." (Examination Inspector's Report p21 para 78)

139. In reaching that conclusion the Examination Inspector considered a wide range of objections including a number presented by housing developers and their advisors. They raised wide-ranging concerns including those relating to:

- a. Lead-in times; and
- b. Deliverability of sites.

140. After a lengthy and detailed consideration of those concerns and after considering the views of all stakeholders in the Local Plan process, the Examination Inspector rejected them. He concluded that:

"CEC has undertaken much detailed work in establishing the timescales and delivery of these sites, including setting out the methodology for assessing build rates and lead-in times, using developers' information where available and responding to specific concerns [PS/B037]. Although there may be some slippage or advancement in some cases, I am satisfied that, in overall terms, there are no fundamental constraints which would delay, defer or prevent the implementation of the overall housing strategy...

I am satisfied that CEC has undertaken a robust, comprehensive and proportionate assessment of the delivery of its housing land supply, which confirms a future 5-year supply of around 5.3 years." (Examination Inspector's Report p19 para 69)

Subsequent appeal decisions

141. Since then matters have moved on. The Council has been party to a number of planning appeals not least those relating to Sites at White Moss and at Willaston. The Inspector's in those appeals reviewed the evidence presented to them and concluded that there was a range of realistic views. That range, they said, straddled the five-year housing land boundary.
142. They then both adopted what they described as a precautionary approach. We submit that there is no policy guidance which supports this. There is nothing in the NPPF or the NPPG that indicates that where the realistic range of deliverable sites falls either side of the five-year supply line the decision maker should assume that there is no five-year housing land supply.
143. The Inspectors in these decisions both dismissed the appeals and refused to grant planning permission. As a result, the Council was not a person aggrieved and could not challenge the lawfulness of the approach adopted to five year housing land supply issues.

A Precautionary Approach is Unlawful

144. In the Claim relating to the Shavington Appeal, the Council contends that the adoption of a precautionary approach is unlawful. The reasons why are set out in the Statement of Facts and Grounds but are summarised below.
145. Paragraph 14 of the NPPF explains that the presumption in favour of sustainable development means for decision taking:

“where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:

- any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
- specific policies in this Framework indicate development should be restricted.”

146. Thus, in order to apply the tilted balance, a decision maker must conclude that the development plan is absent, silent or relevant policies are out of date.
147. As Lord Carnwath explained in *Hopkins Homes v Secretary of State for Communities and Local Government* [2017] 1 W.L.R. 1865 at paragraph 59:

“The important question is not how to define individual policies, but whether the result is a five-year supply in accordance with the objectives set by paragraph 47. If there is a failure in that respect, it matters not whether the failure is because of the inadequacies of the policies specifically concerned with housing provision, or because of the over-restrictive nature of other non-housing policies. The shortfall is enough to trigger the operation of the second part of paragraph 14. As the Court of

Appeal recognised, it is that paragraph, not paragraph 49, which provides the substantive advice by reference to which the development plan policies and other material considerations relevant to the application are expected to be assessed”.

148. It is submitted that, as a result of the words of paragraph 14 and Hopkins Homes, in order to apply the tilted balance, the decision maker has to determine that relevant policies in the development plan are out of date. In order to do that by reference to five-year housing land supply considerations, a decision maker must conclude that there is currently no five-year housing land supply of specific deliverable sites.

Determining Deliverability

149. The decision in *St Modwen Developments Ltd. v Secretary of State for Communities and Local Government* [2017] EWCA Civ 1643 was delivered by the Court of Appeal on the 20th October 2017. It provides significant clarification as to the approach to adopt to the consideration of what is meant by a deliverable site within the NPPF.
150. Paragraph 47 of the NPPF provides that local planning authorities are to “identify and update annually a supply of specific deliverable sites sufficient to provide five-years’ worth of housing against their housing requirements...”
151. Footnote 11 of the NPPF then explains what a “specific deliverable site” is as follows:

“To be considered deliverable, sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years and in particular that development of the site is viable. Sites with planning permission should be considered deliverable until permission expires, unless there is clear evidence that schemes will not be implemented within five years, for example they will not be viable, there is no longer a demand for the type of units or sites have long term phasing plans.”

152. Further guidance is provided in the National Planning Practice Guidance:

“What constitutes a ‘deliverable site’ in the context of housing policy?

Deliverable sites for housing could include those that are allocated for housing in the development plan and sites with planning permission (outline or full that have not been implemented) unless there is clear evidence that schemes will not be implemented within 5 years.

However, planning permission or allocation in a development plan is not a prerequisite for a site being deliverable in terms of the 5-year supply. Local planning authorities will need to provide robust, up to date evidence to support the deliverability of sites, ensuring that their judgements on deliverability are clearly and transparently set out.

If there are no significant constraints (eg infrastructure) to overcome such as infrastructure sites not allocated within a development plan or without planning permission can be considered capable of being delivered within a 5-year timeframe”.

153. The size of sites will also be an important factor in identifying whether a housing site is deliverable within the first 5 years. Plan makers will need to consider the time it will take to commence development on site and build out rates to ensure a robust 5-year housing supply.” (emphasis added)

154. In St Modwen, Lindblom LJ explained at paragraph 38:

“The first part of the definition in footnote 11 – amplified in paragraphs 3-029, 3-031 and 3-033 of the PPG – contains four elements: first, that the sites in question should be “available now”; second, that they should “offer a suitable location for development now”; third, that they should be “achievable with a realistic prospect that housing will be delivered on the site within five years”; and fourth, that “development of the site is viable” (my emphasis). Each of these considerations goes to a site’s capability of being delivered within five years: not to the certainty, or – as Mr Young submitted – the probability, that it actually will be. The second part of the definition refers to “[sites] with planning permission”. This clearly implies that, to be considered deliverable and included within the five-year supply, a site does not necessarily have to have planning permission already granted for housing development on it. The use of the words “realistic prospect” in the footnote 11 definition mirrors the use of the same words in the second bullet point in paragraph 47 in connection with the requirement for a 20% buffer to be added where there has been “a record of persistent under delivery of housing”. Sites may be included in the five-year supply if the likelihood of housing being delivered on them within the five-year period is no greater than a “realistic prospect” – the third element of the definition in footnote 11 (my emphasis). This does not mean that for a site properly to be regarded as “deliverable” it must necessarily be certain or probable that housing will in fact be delivered upon it, or delivered to the fullest extent possible, within five years.”

155. Thus, to be included in the supply side of the five-year housing land assessment, a site needs to be one where there is a realistic prospect of housing coming forward within the 5 year period. Lindblom LJ then went on to contrast that approach with the approach required to produce a housing trajectory “of the expected rate of delivery”:

“One must keep in mind here the different considerations that apply to development control decision-making on the one hand and plan-making and monitoring on the other. The production of the “housing trajectory” referred to in the fourth bullet point of paragraph 47 is an exercise required in the course of the preparation of a local plan, and will assist the local planning authority in monitoring the delivery of housing against the plan strategy; it is described as “a housing trajectory for the plan period” (my emphasis). Likewise, the “housing implementation strategy” referred to in the same bullet point, whose purpose is to describe how the local

planning authority "will maintain delivery of a five-year supply of housing land to meet their housing target" is a strategy that will inform the preparation of a plan. The policy in paragraph 49 is a development control policy. It guides the decision-maker in the handling of local plan policies when determining an application for planning permission, warning of the potential consequences under paragraph 14 of the NPPF if relevant policies of the development plan are out-of-date. And it does so against the requirement that the local planning authority must be able to "demonstrate a five-year supply of deliverable housing sites", not against the requirement that the authority must "illustrate the expected rate of housing delivery through a housing trajectory for the plan period".

156. Thus, a housing trajectory is undertaking a different task from the exercise that must be undertaken when looking at deliverable sites for purposes of a 5 year housing land supply assessment.

157. *St Modwen* has been applied in an important Inspector's decision in the East Riding of Yorkshire. In that decision an Inspector, in the light of *St Modwen* explained:

"the decision maker has to have clear evidence to show that there is not simply doubt or improbability but rather no realistic prospect that the sites could come forward within the 5-year period."²¹

158. *Accordingly*, *St Modwen* clarifies that the test to be applied to sites with planning permission or which are allocated is whether there is clear evidence to show that there is no realistic prospect that a site would come forward (see footnote 11 and the NPPG guidance set out above).

159. *Assuming* that both the Inspectors in the White Moss and Willaston appeals applied to the correct approach to identifying the realistic number of units that sites are capable of delivering over 5 years, there appears to be no basis for asserting that sites are incapable of delivering at the top of the range. i.e. the top of the range must be realistic since it is included in a range which sought to identify what sites were capable of delivering on that basis. It follows necessarily that the White Moss and Willaston Inspectors both reached a conclusion which must mean that a five-year housing land supply of specific deliverable sites was demonstrated.

160. *The Framework* does not state anywhere that a precautionary approach to the identification of a 5 year housing land supply is to be applied. Such a proposition cannot be inferred from the indication that the policy intention is to significantly boost supply since that intention is fulfilled by the inclusion of a 20% buffer in the housing requirement.

161. It is submitted that the application of a precautionary approach was thus unwarranted on the basis of the policy set out in the Framework and unjustified on the evidence. It is submitted that to adopt the same approach

²¹ Appeal Ref: APP/E2001/W/16/3165930 Land north and east of Mayfields, The Balk, Pocklington, East Riding of Yorkshire YO42 1UJ paragraph 12)

as the Inspectors in the White Moss, Willaston and Shavington decisions would be to err in law.

162. Instead, what must be undertaken is an appraisal of the sites at issue on the basis identified in St Modwen. Where the site has planning permission or is allocated then the approach that the Council has adopted (which was accepted by the Examination Inspector) should be accepted unless the Appellant has proven that there is no realistic prospect that the site would come forward.

Robust Evidence

163. The Inspector in the Willaston appeal also made another material error and this too was adopted by the Shavington Inspector. He adopted the position that the local planning authority had to present “robust and up to date” evidence as to the likely contribution that a particular site would make to five-year housing land supply. This was based upon a misreading of the NPPG and a failure to apply the words in the Framework.
164. Footnote 11 and the NPPG make it clear that sites which have planning permission or are allocated are to be included in the 5 year supply unless there is clear evidence that there is no realistic prospect that they be implemented within 5 years. The emphasis is on realism. Thus, a different approach to that adopted by a local planning authority can be adopted when there is clear evidence that the Council’s approach to sites with planning permission or with an allocation is unrealistic (see the East Riding of Yorkshire case).
165. The part of the NPPG that the Willaston Inspector relied upon as the foundation of his test for “robust and up to date evidence” is not dealing with sites with planning permission or with an allocation as Mr Wedderburn properly accepted in XX – if it were it would contradict the approach set out in the previous earlier paragraph in the NPPG and also footnote 11 of the Framework. Accordingly, the Willaston Inspector approached the sites on the basis that the Council had to adduce robust and up to date evidence to justify its approach to sites with planning permission and/or which were allocated when this was not the case.
166. The Appellants would have you reject all of the above in favour of an approach that there is some two tiered test:
- Whether a Site is specifically deliverable – the Appellant appears to content that the test of whether a Site would realistically contribute to the 5 year housing land supply position is to be applied here simply to identify the pool of sites examined in the second test.
 - If so, the Appellant contends that the second test is what is the likely number of units a site will contribute to housing land supply within the five-year period.

You and the SofS would err in law if you were to accept this position since it is found upon a grievous misinterpretation of National Planning Policy.

167. Mr Wedderburn in his evidence described the second-tier test as “the more central issue” in housing land supply cases (see Wedderburn p26 footnote 19). He adopted the position that the evidence to support the yield produced by a local planning authority has to be robust and up date.
168. The first point to note is that Mr Wedderburn was totally unable to identify where his second-tier test was addressed in National Planning Policy. If the approach really were “the more central issue” and really did form part of National Planning Policy in such an important area it is submitted that it would be set out in the Framework; it is not and Mr Wedderburn accepted that it is not. It must be remembered that the guidance in the NPPG is just that; the NPPG does not contain planning policy and must not be applied as if it does.
169. The second point is that the Appellant’s approach is totally logically inconsistent.
170. It applies the same test to sites with planning permission and with an allocation as those without either. This conflicts with the Framework which makes it plain that the evidential burden in relation to sites with planning permission and which are allocated is reversed – they are included unless there is no realistic prospect of them coming forward.
171. It is not logical to include a site with planning permission/allocation if there is not clear evidence that it will not be implemented only to then apply a test which requires robust and up-to-date evidence to prove it will actually yield any development.
172. If that were the intent of Policy, there would only be a need for a single test namely, is there robust and up-to-date evidence that a site will yield housing within the 5 year period. However this is not what the Framework actually says.
173. Indeed, as can be seen from the analysis above, to apply the Appellant’s approach thus subverts the intent of the Framework and footnote 11 – it renders the presumption specifically contemplated by Policy in respect of deliverability of housing from sites with planning permission/allocation wholly otiose.
174. The third point is to have in mind why the Framework would include such a presumption in the first place. The answer is obvious. It is included in order to reduce the scope for debate in determining five-year housing land supply in relation to Sites with planning permission/allocation. The adoption of the Appellant’s approach would have precisely the opposite consequence. It would mean that the yield from every single site (whether one with planning permission/allocation or not) would have to prove in every single case. The administrative burden that this would create for local planning authorities

and the Inspectorate cannot be underestimated and cannot have been the intention behind the Framework.

175. The only approach to sites with planning permission/allocation which is consistent with the words of the NPPF, St Modwen and the NPPG is that presented by the Council in this Appeal, namely is there clear evidence that there is no reasonable prospect of the yield identified by the local planning authority being delivered.
176. Mr Wedderburn's assessment of the likely contribution of sites is thus flawed since he applied an incorrect test based upon a fundamental misunderstanding of National Planning Policy. His site appraisal conclusion must therefore be rejected; at the very least his appraisal of individual sites must be approached with great caution lest one draws conclusions similarly contaminated by an error of law.

Additional Evidence

177. A further difference in the present appeal to previous appeals has been the fact that Mr Fisher has produced evidence which was not available to the previous Inspectors. In particular the material produced to the CELPS Inspector has been produced and further and updated evidence has been given in relation to specific sites.
178. It is submitted that, as a result of all of the matters above, the Secretary of State is entirely free to reach a different conclusion of five-year housing land supply to that reached by his Inspectors in recent months. Indeed, the Council submits that, if the appraisal of sites undertaken by the White Moss and/or Willaston Inspectors were accepted given that the top end of the range must be taken to be a realistic figure, the only conclusion, once their error regarding a precautionary approach is jettisoned, must be that they should have concluded that there is a five-year supply of housing sites.

THE CONFLICT WITH THE DEVELOPMENT PLAN

Policy PG6 of the CELPS

Policy RES5 of the CNLP and Policy PG6 both seek to restrict housing in the "open countryside".

179. Policy PG6 defines the Open Countryside as the area outside of any settlement with a defined settlement boundary. The Appeal scheme lies outside of the settlement boundary and is within the Open Countryside.
180. Policy PG6 provides that within the Open Countryside only development that is essential for the purposes of agriculture, forestry, outdoor recreation, public infrastructure, essential works undertaken by public service authorities or statutory undertakers, or for other uses appropriate to a rural area will be permitted. The appeal scheme does not fall within this paragraph.

181. PG6 also goes on to reference to a number of exceptions that might enable development in the open countryside to proceed. None apply to the proposed development. The Appeal scheme is thus contrary to Policy PG6.

182. In considering Policy PG6 (Although it was then referred to as Policy PG5), the Examination Inspector explained:

“Policy PG5 seeks to provide for development required for local needs in the open countryside to help promote a strong rural economy, balanced with the need for sustainable patterns of development and recognising that most development will be focused on the main urban areas. The “open countryside” is defined as the area outside any settlement with a defined settlement boundary; a footnote confirms that such boundaries will be defined in the SADPDPD, but until then, settlement boundaries defined in the existing local plans will be used, as now listed in Table 8.2a. Issues about the detailed extent of specific settlement boundaries can be addressed in the SADPDPD. This is an appropriate and effective approach, given the strategic nature of the CELPS. ” (Examination Inspector’s Report p28 para 111)

He concluded:

“Consequently, with the recommended modifications, the approach to the Green Belt, Safeguarded Land, Strategic Green Gaps and the Open Countryside is appropriate, effective, positively prepared, justified, soundly based and consistent with national policy.” (Examination Inspector’s Report p29 para 113)

Policy RES.5 of the CNLP

183. Policy RES.5 of the CNLP is the sister policy to PG6. It provides:

“Outside settlement boundaries all land will be treated as Open countryside. New dwellings will be restricted to those that:

- A) meet the criteria for infilling contained in policy NE.2; or
- B) are required for a person engaged full time in Agriculture or forestry, in which case permission will not be given unless...”

The Policy then lists a series of exceptions.

184. The proposed development is located in the “open countryside” as defined for this policy also. It does not fall within Part A (i.e. it is not infilling as referred to in Policy NE.2) and it does not fall within Part B. the proposed development is then contrary to Policy RES.5 of the CNLP.

185. Although not considered by the Examination Inspector, the policy approach set out in RES.5 is wholly consistent with the approach in PG6 that he found to be “appropriate, effective, positively prepared, justified, soundly based and consistent with national policy”

Policies PG2 of CELPS

186. Policy PG2 defines the settlement hierarchy of the newly adopted CELPS. It creates four tiers. Nantwich lies within the Key Service Centres tier in respect of which Policy PG2 states:

“In the Key Service Centres, development of a scale, location and nature that recognises and reinforces the distinctiveness of each individual town will be supported to maintain their vitality and viability.”

187. The Examination Inspector explained at paragraph 79:

“This settlement hierarchy recognises the size, scale and function of the various towns, as well as their future role in the development strategy. In my earlier Interim Views (Appendix 1), I considered the proposed settlement hierarchy is appropriate, justified and soundly based, and no new evidence has been put forward since then to justify any further changes to the settlement hierarchy as set out in Policy PG2.”

188. At paragraph 82 of his report the Examination Inspector concluded:

“the Settlement Hierarchy and Visions for each town and settlement are appropriate, effective, locally distinctive, justified and soundly based, and are positively prepared and consistent with national policy.”

Policy PG7 of CELPS

189. Policy PG2 needs to be read alongside Policy PG7 of the CELPS which defines the spatial distribution anticipated by the CELPS. Whilst the nature of settlements in Cheshire East is diverse, each with different needs and constraints, Policy PG7 sets indicative levels of development by settlement. These figures are intended as a guide and are expressly neither a ceiling nor a target. The explanatory text explains that provision will be made to allocate sufficient new sites in each area to facilitate the levels of development set out in the policy.

190. The explanatory text to Policy PG7 (paragraph 8.75) makes clear that the distribution of development between the various towns of the borough is informed by the Spatial Distribution Update Report. This has taken into account a large number of considerations including Settlement Hierarchy, various consultation stages including the Town Strategies, Development Strategy and Emerging Policy Principles, Green Belt designations, known development opportunities including the Strategic Housing Land Availability Assessment, Infrastructure capacity, Environmental constraints, Broad sustainable distribution of development requirements.

191. Indeed, the distribution also takes into account the core planning principles set out in the Framework, which states that planning should take account of the varied roles and character of different areas, and actively manage patterns of growth to make the fullest possible use of public transport,

walking and cycling and focus significant development in locations that are or can be made sustainable.

192. The Examination Inspector considered Policy PG7 (then known as Policy PG6) and explained that it is

“a key policy setting-out the spatial distribution and scale of proposed development at the Principal Towns, Key Service Centres, Local Service Centres and Other Settlements & Rural Areas. In my Further Interim Views (Appendix 2), I considered that the revised spatial distribution of development represents a realistic, rational and soundly-based starting point for the spatial distribution of development; it is justified by a proportionate evidence base and takes account of the relevant factors, including the crucial importance of the Green Belt and the outcome of other studies undertaken during the suspension period. It is also based on sound technical and professional judgements and a balancing exercise, which reflects a comprehensive and coherent understanding of the characteristics, development needs, opportunities and constraints of each settlement. Since that time, there is no fundamental or compelling new evidence which suggests that these conclusions should be reviewed.” (Examination Inspectors Report para 83 – Emphasis added)

193. The Examination Inspector’s overall conclusion in relation to the Spatial Distribution contained in the CELPS at paragraph 92 of his report was:

“Consequently, with the recommended modification, I conclude that the Spatial Distribution of Development and Growth to the various towns and settlements is appropriate, effective, sustainable, justified with robust evidence and soundly based, and fully reflects the overall strategy of the Plan. I deal with specific issues relating to particular settlements on a town-by-town basis, later in my report.” (emphasis added).

194. The text of Policy PG7 explains in respect of Nantwich this level would be in the order of 3 hectares of employment land and 2,050 new homes.

195. Appeal Site A was considered during the plan process as a potential site for meeting this requirement but was rejected. This decision was upheld by the Examination Inspector who concluded that (paragraph 252 Examination Inspector’s Report):

“Some participants argue that more housing development should be allocated to Nantwich, given the absence of other new sites and its close relationship to Crewe. However, Nantwich has seen significant new housing development in the recent past and, with existing commitments and future proposals, is well on the way to meeting its overall apportionment. Further development would almost inevitably involve additional greenfield sites, which could adversely affect the character and setting of the town and the adjoining Strategic Green Gap. The Plan

already provides some flexibility in housing provision (6.4%) and no further sites are needed to meet currently identified housing needs.”

196. The result of the adoption of the CELPS is that 2246 units have been allocated over the plan period. In addition, there is currently provision for 4.15 ha of employment land. It follows, as Mr Taylor explain in his evidence (paragraph 6.25), that there is then no requirement to allocate further sites to meet employment or housing needs through the SADDPDP.
197. Thus, the Appeal Scheme would radically and significantly reduce the allocations going forward to meet more local needs elsewhere within the Council’s administrative area in the remaining plan period.
198. The Appeal scheme if permitted would add 189 units and 0.37 ha of employment space to the land already allocated/committed for housing an employment needs. In other words this would lead to housing provision of 18% above the level identified as appropriate in terms of spatial distribution in the CELPS and would add some 10% to the appropriate employment floorspace required resulting in employment provision some 50% above the appropriate requirement.
199. These are very significant levels of unplanned growth. It is so significant that it must necessarily undermine the careful balance between employment growth and housing that forms the basis of the strategy for Nantwich within the CELPS.
200. The only reasonable conclusion is that the proposed development would significantly undermine the settlement hierarchy and spatial distribution set out in the CELPS. It is contrary to Policies PG2 and PG7.

Best and Most Versatile Land

201. Paragraph 112 of the NPPF states:

“Local planning authorities should take into account the economic and other benefits of the best and most versatile agricultural land. Where significant development of agricultural land is demonstrated to be necessary, local planning authorities should seek to use areas of poorer quality land in preference to that of a higher quality.”

202. CELPS Policy SE2 provides that the loss of BMV should be minimised.

203. It is submitted that the policy approach requires consideration of:

- a. Whether there is a need for the development proposed?
- b. If so, has it been demonstrated that development of BMV is “necessary” i.e. that there is no area of poorer quality agricultural land to locate the development upon?

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204. The Council submits that, since it has a five-year supply of specifically deliverable housing sites, it cannot be contended that the housing element of the proposed development is needed.
205. So far as the commercial element is concerned, some 0.37 ha of commercial floorspace is proposed. Mr Taylor has explained and was not challenged that 3ha of employment land was identified as required for Nantwich in the CELPS. 4.15 ha is already anticipated to come forward. The grant of Appeal Scheme would mean some 4.52 ha would come forward i.e. 50% provision over and above the CELPS expectation. Mr Downes in XX accepted that he was not contended that there was a local need for additional commercial floorspace in this location.
206. Remarkably, the Appellant is seeking planning permission for some 3600 sq m of commercial floorspace on a greenfield site which includes BMV in the open countryside without any justification whatsoever.
207. It follows that it has not been established that the proposed development is needed.
208. Even if this is rejected, however, the next stage in applying policy is to ask whether it has been established that the development could not be accommodated on poorer quality agricultural land.
209. The Appellant, as Mr Downes confirmed in XX, has presented no evidence on this point. There has been no study undertaken. No assessment has been made. In short, no attempt whatsoever to show that the development could not be accommodated elsewhere on poorer quality agricultural land.
210. This is particularly important in respect of the commercial element of the proposed development; there has been no attempt to examine whether that could be provided on poorer quality agricultural land within the Borough.
211. It is submitted that as a result of the above it has not been established that it is necessary to develop the BMV that would be permanently lost to the proposed development. Nor that development needs could not be met by utilising poorer quality agricultural land.
212. The proposed development is contrary to paragraph 112 of the NPPF and to Policy SE2 of the CELPS.

Neighbourhood Plan

213. The most recently adopted element of the statutory development plan is the Stapeley and Batherton Neighbourhood Plan adopted in February 2018.
214. Policy GS1 can only be sensibly construed as preventing development in the open countryside unless it falls within the exceptions delineated in paragraphs (a) to (i). The proposed development does not fall within any of those paragraphs as an exception. Accordingly, it is contrary to the Stapeley and Batherton Neighbourhood Plan.

215. In terms of housing, the Neighbourhood Plan sets out in policy H1 and H2 the kinds of housing that accords with the Plan. The proposed development does not fall within the scope of the development that is supported and is thus contrary to these policies.

216. There was an attempt to suggest that the proposed development accords with Policy H5. This policy provides:

“Subject to the provisions of other policies in the Neighbourhood Plan, the focus for development will be on sites within or immediately adjacent to the Nantwich Settlement Boundary, with the aim of enhancing its role as a sustainable settlement whilst protecting the surrounding countryside.

Outside the settlement boundary any development is subject to the Cheshire East Local Plan Strategy Countryside Policy PG 6 and other relevant policies of this Plan.”

217. The proposed development is outside the settlement boundary. As such as Policy H5 provides it is subject to Policy PG6 and “other relevant policies of this Plan”. Since there is conflict with Policies GS1, H1 and H2 of the Neighbourhood Plan then the proposed development cannot accord with Policy H5 either.

THE WEIGHT TO BE GIVEN TO THE CONFLICT WITH POLICY

218. Mr Downes properly accepted that the overall aims and objectives of these policies are broadly consistent with the aims and objectives of the Framework (Taylor p17 para 5.3). Indeed, given the conclusions of the Examination Inspector he could hardly do otherwise.

219. Nevertheless, it appears to be the Appellant’s case that, notwithstanding the adoption of the CELPS only last year and the Neighbourhood Plan only a few weeks ago, the policies addressed above should all be given “very limited weight” (see Downes XX and Taylor Proof p 18 para 5.6). This is a remarkably brave contention.

220. In summary, the Appellant contends that:

- a. the Council cannot demonstrate that it has a 5-year housing land supply of deliverable sites;
- b. the settlement boundary must flex in order to bring sites forward in order to provide a 5-year housing land supply of deliverable sites;
- c. the settlement hierarchy similarly must flex in order to enable sites to come forward to provide a 5-year housing land supply of deliverable sites;
- d. Accordingly, in order to meet 5-year housing land supply needs these policies must be given very little weight so that the appeal scheme

can come forward to assist in providing the 5-year housing land supply which is required.

A 5 Year Housing Land Supply

221. As already outline above, the Examination Inspector considered a wide range of evidence on housing land supply from numerous parties. This included points raised relating to the methodology used in relation to build out rates and lead in times.

222. Mr Fisher explained to the Inquiry the work undertaken to inform the Examination on these issues. The Council has looked at every application over a 10 year period, looking at thousands of sites. Further, in terms of delivery, the Council had contacted and obtained information from the land owners/developers of all of the strategic sites.

223. The Examination Inspector explained at paragraph 65:

“Housing land supply was not covered in my earlier Interim Views, since the latest figures and assessments were not available. This issue was discussed regularly throughout the examination hearings, with developers, housebuilders and local communities challenging the deliverability of specific sites, particularly the larger strategic sites. By the end of the hearings, CEC had undertaken a considerable amount of work to establish the timescale and deliverability of its housing land, including those strategic sites proposed in the CELPS-PC.” (emphasis added)

224. In this same vein, the Inspector continued at paragraph 69:

“CEC has undertaken much detailed work in establishing the timescales and delivery of these sites, including setting out the methodology for assessing build rates and lead-in times, using **developers’ information where available and responding to** specific concerns [PS/B037]. Although there may be some slippage or advancement in some cases, I am satisfied that, in overall terms, there are no fundamental constraints which would delay, defer or prevent the implementation of the overall housing strategy. The monitoring framework also includes specific indicators related to housing supply with triggers to indicate the need for review. I deal with site-specific issues later in my report on a town-by-town basis. On the basis of the evidence currently available, I am satisfied that CEC has undertaken a robust, comprehensive and proportionate assessment of the delivery of its housing land supply, which confirms a future 5-year supply of around 5.3 years.” (emphasis added)

225. It is very important to note that the Appellant in the present case has not contended that any of the triggers in the monitoring framework referred to by the Inspector are engaged.

226. At paragraph 76 the Examination Report, the Inspector concluded:

"On the basis of the evidence before me, I conclude that the CELPS-PC, as updated and amended, would provide a realistic, deliverable and effective supply of housing land, to fully meet the objectively assessed housing requirement, with enough flexibility to ensure that the housing strategy is successfully implemented. Similarly, CEC should be able to demonstrate that there is at least a 5-year supply of housing land when the CELPS is adopted."

227. He concluded in terms that the provision for housing and employment land within the CELPS including the 5-year housing land supply position "is soundly based, effective, deliverable, appropriate, locally distinctive and justified by robust, proportionate and credible evidence, and is positively prepared and consistent with national policy." (Examination Inspector's Report p21 para 78)

The Inspector's Decisions

228. The approach adopted in the White Moss, Willaston and Shavington decisions was wrong in law for reasons set out above. The approach set out in those decisions must not be followed in this one. The proper approach is:

- a. In respect of sites with planning permission/allocation is to ask whether there is clear evidence that there is no realistic prospect of the Site delivering housing as assessed by the Council;
- b. In respect of sites without planning permission/allocation is to ask whether there is robust and up to date evidence that there is a realistic prospect of the Site delivering housing as assessed by the Council.

229. It is also submitted that there is no policy requirement for the Council to demonstrate that it has a "robust" five-year housing land supply. Nor is there any policy requirement that a "precautionary approach" should be adopted to five-year housing land supply considerations.

The Housing Monitoring Update August 2017

230. The Council's Housing Monitoring Update August 2017 sets out in detail a re-appraisal of the position. The Housing Monitoring Update which shifts the base date to 31 March 2017 utilises the same methodology employed in the CELPS Examination process. This methodology was described by the Examination Inspector as resulting in a "robust, comprehensive and proportionate assessment" housing delivery (Examination Inspector's Report p19 para 69).

231. The HMU reveals that completions have increased to a level more than double that delivered in 2013/14 and for the fourth year in a row. In addition, there has been a net increase in commitments of some 3157 units compared to the position in March 2016 – a 19% increase on the position in March 2016. Indeed, the level of planning permissions granted/resolutions to approve in the last 12 months stands at 5269 units. Thus, not only have completions increased since March 2016 but also the pool of planning

permissions to enable additional housing to come forward has increased very substantially.

232. It is submitted that this demonstrates that the pool of deliverable sites has increased since March 2016 and not decreased as the Appellant contends.

The Appellant's Case on Housing Land Supply

233. The 'big picture issues' between the parties are as follows.

Backlog

234. Mr Wedderburn contended that the "Sedgpool 8" method of addressing backlog adopted by the Council and accepted by the Examination Inspector is to be applied so that the period it relates to shrinks year on year i.e. in the second year it is to be applied to a 7 year period in the third a six year period and so on until it shrinks to no period at all.
235. Mr Wedderburn has got this badly wrong. It is well established that the Sedgfield approach to backlog is a rolling approach and there is no reason not to apply this approach to the backlog in Cheshire East. He produced no appeal decision which supported the approach of a gradually shrinking period over which backlog should be applied.
236. Further and more significantly, Mr Wedderburn's point was taken and rejected in the Willaston appeal where the Inspector concluded (document D30 para 45):

"The Sedgpool 8 method was agreed by the examining Inspector for the CELPS on the basis that the backlog would be met within the next 8 years of the plan period from 1 April 2016. I note the appellant's concern that applying Sedgpool 8 from April 2017 effectively rolls the backlog forward another year. However, the CELPS Inspector agreed to vary the Sedgfield method because delivering the backlog over 5 years in Cheshire East would result in an unrealistic and undeliverable annual housing requirement. Dealing with a shortfall in housing delivery since the start of the plan period is a rolling requirement in the calculation of the 5 year housing requirement at any point in the plan period. The Council has factored the backlog for 2016-17 into the calculation of the current 5 year requirement. It would be unreasonable at such an early stage in the life of the new CELPS to depart from the Sedgpool 8 approach, given the basis for it in Cheshire East. To do so would in effect impose a further variant of the Sedgfield and Liverpool methods outside of the local plan examination process."

237. The Council submits that there has been no relevant change in circumstances since that decision. It continues to be unreasonable to adopt a different approach outside of the Plan process. The Appellant's case in this regard must be rejected.

Build Rates

238. Mr Wedderburn's position accepted the build rates on sites adopted by the Council (which reflected the approach accepted by the Examination inspector) other than on larger sites. On these larger sites he explained that he only accepted a 50 dpa yield where there is specific evidence to show that two builders would be on-site. In other words, he relies upon an absence of evidence to prove there would be two builders on site rather than any assessment of the realism of the assertion that two builders on site would not be realistic.
239. This is a perfect example of an approach at odds with the Policy position in the Framework. The policy compliant approach (as set out above) in relation to sites with planning permission/allocation is to ask whether there is clear evidence that there is no realistic prospect of two builders on site. Mr Wedderburn produced no evidence on this whatsoever.
240. Indeed, it is entirely unclear what evidence he would accept. For example, in relation to his approach to site LPS4 he explained that evidence from site promoters cannot be relied upon. If the evidence of the likely manner of build out of a site from those promoting a site cannot be relied upon, it is difficult to see how a local planning authority could evidence justify an assumption that two builders would actually come forward.
241. The evidence presented by Mr Fisher (rebuttal p13 table below paragraph 68), however, was that in practice the build rate is frequently significantly higher than the Council's methodology assumed in many cases by a factor of more than 100%. Even a small increase in the build rate over all of say 10% would produce an increase of supply of 1295. It cannot be said that there is no prospect of an increase in overall build rate of 10% or more than the Council has assumed.
242. It is submitted that Mr Wedderburn's evidence on this issue should be rejected. Only where there is specific evidence that there is no reasonable prospect of a large site being developed out by two builders should an assumption of anything less than 50 dpa be adopted.

Lead-In Times

243. Mr Wedderburn also attacked the Council's approach to examining sites by reference to a study of lead-in times he had undertaken. This examined some 70 sites through the planning process (see his appendix MW6). He then applied timings for various stages of the planning process to sites in the future i.e. he applied timings from the past and assumed they would be comparable in the future; his approach is flawed.
244. Firstly, 20 sites out of his 70 (29%) were sites which obtained planning permission on appeal. That was because prior to the adoption of the CELPS there were considerable issues relating to the principle of development on sites within Cheshire East. This gave rise to much argument, many appeals and many delays.

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245. With the adoption of CELPS, the basis for these in principle arguments has been removed. The whole point of adopting a Local Plan is, after all, to provide a reliable basis for decision making which minimises scope of in principle disagreement. Indeed, Mr Wedderburn accepted in XX that he would not expect the same proportion of appeals going forward as had been experienced in his sample of sites.
246. As Mr Fisher explained in his rebuttal evidence (page 7 paragraph 35), the circumstances are very different now. Virtually all sites in the supply are either committed or are allocated. Accordingly, the number of appeals has also reduced – with no further residential inquiries programmed after the current one. Further, Local plan adoption not only resolves the principle of development (a major stumbling block previously – hence the number of appeals) – but it also assists in agreement on matters of detail (education, highways, landscaping etc) as all now relate to clear adopted policies. Added to this the Council has also adopted SPD on design guidance (May 2017), which again makes the position on detailed layouts clearer. In addition, the s106 process is assisted since the planning obligations are now linked to adopted policies (e.g affordable housing).
247. These are all reasons why the timing adopted in the past in relation to particular stages of the planning process are unlikely to be continued in the future. Thus, pointing to the past, as Mr Wedderburn has, does not establish that the approach adopted by the Council to lead in times is clearly unrealistic.
248. Indeed, they cannot be viewed as such given that the lead-in times utilised in the Council's evidence were accepted by the Examination Inspector as appropriate. That Inspector has the evidence now present in the present appeal and had the benefit of representations from all stakeholders, not just Mr Wedderburn. The lead-in times presented were the product of discussion with those stakeholders. In confirming that the lead-in times utilised were appropriate the Examination Inspector would have been aware of the points relating to the effect of adoption of CELPS and timings.
249. To reject the lead-in times adopted by the statutory plan process via the s78 appeal process is a radical step. It wholly undermines the basis on which the CELPS housing land supply was calculated and found sound. In other words, it undermines the strategic basis for the CELPS at its core. It would leave the man in street wondering how a Local Plan can be sound one month and then some 9 months later be found to have been adopted on a basis which can no longer be supported. What a colossal waste of public resources it would be to have promoted a Plan which is then effectively jettisoned less than a year later?
250. It is submitted that great care needs to be taken to ensure that such a significant step is not taken lightly or else it will bring national planning policy and the planning system as a whole into disrepute. It must only be a rare case indeed, when a methodology accepted at Examination a few months before is deemed inappropriate a few months later only on the basis of the sort of generalised evidence presented by Mr Wedderburn. The time for consideration of that generalised evidence was in pursuit of objection to the

CELPS at Examination when all stakeholders involved could have their views aired and considered and not subsequently in a s78 appeal where other stakeholders views are not provided.

251. But of course, unlike Mr Wedderburn, the Council's appraisal is not simply reliant upon the application of generic time periods from a study of 70 sites in the past.
252. Mr Fisher set out in his evidence an exercise which sought to look at the lessons to be learned from recent post adoption data. He analysed major applications that commenced between 1 April and 31 December 2017. He considered that he had obtained a decent but not comprehensive sample of what is currently taking place.
253. His evidence showed that for the 16 Major developments that have started by Q3 of 2017/18 the median timeline between the date of detailed consent and the start of construction is 0.43 years – or just over 5 months. A similar picture applies to both larger and smaller developments. For those applications that featured an outline the median timeline between the date of outline consent and the start of work is 1.47 years. Once again, the picture is similar for both larger and smaller applications. This data is set out in Appendix 2 to Mr Fisher's rebuttal.
254. The most up to date information reinforces the timelines employed in the standard methodology and demonstrates that sites can commence and deliver initial units within relatively short timescales. Whilst not every site may deliver in this way, those starting in 2017/18 follow this pattern.
255. The data also reveals that of the sites of 100 units or more, 44% of sites have started ahead of the timescales in the HMU. It is submitted that this illustrates the reasonableness of the Council's approach and that sites are not only capable of meeting the timescale in that approach but also of improving upon them. It is submitted that this provides a good indicator of what will happen in future. It demonstrates that sites are fully capable of delivering to the timescales anticipated by the Council and that those timescales are realistic.
256. A further and important point to note from Mr Fisher's analysis of this data is that full applications (as opposed to reserved matters) were made on more than 50% of the sites. This includes half of the sites over 100 units. This shows that on allocated sites, companies are willing to use the greater certainty that the development plan provides to proceed straight to a detailed application.
257. By contrast Mr Wedderburn confirmed in XX that he had assumed that all sites without planning permission would come forward as outline applications. The evidence that Mr Fisher has adduced demonstrates that this assumption is not realistic. As a result timescales are applied to sites on a basis that an outline planning permission will be obtained when the evidence shows that for a large proportion that will not be the case. The result is that Mr Wedderburn's approach is seriously unrealistic.

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258. Further, the Council has relied upon site specific evidence and has specifically contacted site owners and promoters. Such site-specific evidence must constitute better evidence than the generalised approach of Mr Wedderburn.
259. In particular, there may be a number of site specific reasons why a site would come forward faster or slower. In looking at the position, it is submitted that site owners/promoters must be in the best position to advise on a number of factors including, the likely phasing and thus timing of reserved matters applications since phasing is often tied to funding issues. They have knowledge of timing issues arising out option agreements which no other party knows and which can include the need for certain stages to be met by certain dates. They also have access information relating to construction including implications for financing, and labour supply and materials.
260. These are all matters known by site owners/promoters and no-one else. Yet Mr Wedderburn's approach was to ignore this. He negated all of this by asserting that statements by promoters were not reliable. Admittedly caution has to be applied to statements made prior to the adoption of a Local Plan which allocates sites, since there may be a desire for some to present a rosier picture of deliverability of their site in order to secure allocation. Indeed, this point is crucial because it undermines any reliability in the exercise conducted by Mr Wedderburn (his rebuttal page 5 paragraph 4.7) looking at outturn against comments. The comments he examined were all made prior to the adoption of the CELPS and the allocation of the sites concerned.
261. It is the case, however, that after allocation that motivation is simply removed. Indeed, Mr Wedderburn struggled to identify why post allocation a site owner/promotor would make unreliable statements regarding the yield of units from their site in XX.
262. All of these matters point to a single conclusion; there is no basis for accepting that there is clear evidence that there is no realist prospect of the lead-in times adopted by the Council and accepted by the Examination Inspector coming about. The reality here is that there is ample evidence to establish that they are robust, up to date and realistic.
263. It is submitted that the approach advocated by the Appellant must be rejected and the approach that lies behind the recently adopted Local Plan and utilised by Mr Fisher in his appraisal must be accepted.

5 % Discount

264. Mr Wedderburn adopted an approach in which he was entirely alone; no other planning consultant in any of the appeals post-adoption of CELPS has contended that a percentage discount to the total supply should be applied to take account of planning permissions which expire. He is a lone voice in this. The reason why is that it is a thoroughly bad point.
265. Firstly, his figures were miscalculated even if it were right to apply the discount. He had applied it to permissions that were already implemented;

once implemented a planning permission cannot expire. Mr Wedderburn agreed that his discount should not be applied to implemented permissions.

266. Secondly, Mr Wedderburn has identified his 5% figure by reference to data from the Council which contained an error. Mr Fisher explained in his rebuttal evidence that the consequences of that error meant that a figure of 5% expiry could not be supported from the data; rather a figure of 4% (Fisher rebuttal paragraph 45). But this is before an allowance is made for sites which obtain a new planning permission after expiry. Mr Wedderburn allowed 1% for this. That would get one to a 3% discount figure.
267. However, Mr Wedderburn had made no investigation of the extent to which the sites where consent had lapsed in the past had obtained planning permission post expiry. Mr Fisher explained that in practice many sites regain consent in short order and are subsequently developed. This illustrates that even if a site lapses it is capable of development. Further, the NPPG indicates that where there is robust evidence a site without planning consent can be included in the supply. Where planning consent has been given in the past and there are no significant physical impediments, it is in line with national guidance to include sites within the deliverable supply.
268. As Mr Fisher explained in his rebuttal at paragraph 47 the Council only employs 63% of commitments within its 5-year supply. It is very far from counting every last house from consent. There is plenty of scope for other commitments to deliver better than expected.
269. Even more significantly, however, Mr Wedderburn's approach if adopted would result in a double counting. The effect of applying a lapse rate to a housing requirement is that additional sites need to be found to make up the shortfall. However, the housing requirement in Cheshire East already includes a 20% buffer. Paragraph 47 explains that the purpose of the 20% buffer is to "to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land". Thus the 20% buffer rate is already applied in order to achieve the objective of Mr Wedderburn's discount. There is no reason to both increase the housing requirement and to decrease to pool of available sites for the same purpose. To do so results in double counting.
270. Mr Wedderburn was unable to identify any coherent reason why in the circumstances pertaining to Cheshire East both a 5% discount and a 20% buffer should be applied when he was questioned on the point in cross-examination.
271. The dangers of applying a discount for the decision maker can be seen in the case of *Wokingham Borough Council v Secretary of State* [2017] EWHC 1863 where the High Court quashed an Inspector's decision for failing to explain why in a 20% buffer context it was appropriate to apply a discount lapse rate. Indeed, in that case reference is made to a decision of the Secretary of State in respect of a proposed development in Malpas, Cheshire. In that case the Secretary of State agreed with the Inspector's reasoning on certain points including these. The Inspector considered the objective of the 20% "buffer" was to provide a realistic prospect of achieving the planned

supply and to ensure choice and competition in the market and that “the buffer figure thereby allows for some uncertainty and slippage in the delivery of some sites”. He added:

“there is no evidence to support the arbitrary 6 month or 12 month slippage rate assumed by the Appellant across all developments. To apply such an assumption, or the alternative 10% discount (which is equally arbitrary), would result in double counting in that the 20% buffer would also allow significant slippage or non-implementation.”

272. The same reasoning applies to the present case. For all these reasons Mr Wedderburn’s suggested 5% lapse rate must be rejected.

Windfall

273. Mr Wedderburn has adopted an inconsistent approach to windfall. He included an allowance for windfall in areas not including Crewe. There was no rational reason for this and this needs to be taken into account when looking at the “allocation” for windfall for the Crewe area.

A Comparison between Trajectory and Actual Delivery

274. The Appellant has placed significant emphasis on a comparison between the actual delivery of housing and that which was anticipated in the housing trajectory. A number of annotated graphs were produced on behalf of the Appellant to illustrate the points being made. These points were put forward as a basis for suggesting that the Council’s identification of housing land supply is suspect in some way. The comparison in fact does not such thing.

275. As the Court of appeal emphasised in *St Modwen*, paragraph 49 of the NPPF requires a local planning authority “demonstrate a five-year supply of deliverable housing sites”. This is not the same things as comparing against the requirement that the authority must “illustrate the expected rate of housing delivery through a housing trajectory for the plan period” as part of Plan preparation. A housing trajectory is undertaking a different task from the exercise that must be undertaken when looking at deliverable sites for purposes of a 5 year housing land supply assessment. Accordingly, the comparative exercise undertaken is of only very limited utility in a decision taking context.

276. Further, it has to be remembered that the issue here relates to the delivery of houses over a five-year period. As the Examination Inspector recognised there will inevitably be slippage or advancement of some sites in reality compared with any forecast. However, over a five-year period this effect is, absent particular evidence relating to a particularly significant and large strategic site, likely to even out. For example, a site where delivery slips will simply deliver in the next year. Thus, overall delivery in the next year is likely to be higher than anticipated unless units in that next year have come forward in an earlier year in significant number. That is why the Council’s trajectory in the HMU for next year increases; that is entirely logical and indeed an obvious consequence of slippage in the year to 1 April 2017.

Conclusion on Housing Land Supply

277. For the reasons set out above, the Appellant's case on housing land supply must be rejected. If the White Moss and Willaston Inspectors had applied the correct legal approach and not the unlawful "precautionary" one that they did, they would have concluded that the Council had a 5-year housing land supply. Mr Wedderburn's attempt to argue that the position is far worse than these Inspectors identified must be rejected.
278. The reality here is that the CELPS was only found sound because there was accepted to be a five-year housing land supply. To find the opposite but a few months later as a result of adopting a different approach to that accepted by the CELPS examination Inspector without any material change in circumstances is to fall into error and worse to undermine the public's faith in the plan led system; what is the point of communities accepting the loss of greenbelt land in order to produce a Plan if the basis of that Plan is undermined by s78 Appeal decisions but a few months later? It is submitted that the public's faith in the planning system will be wholly undermined if section 78 decisions conclude so lightly that a five year supply is lost so soon after plan adoption. It submitted that the conclusions of an Examination Inspector that a methodology is robust and that there is a five-year housing land supply must be treated as of significant weight. Those conclusions should only be undermined if there is strong evidence to demonstrate that there has been a fundamental change of circumstances in the intervening period. There is not such evidence and no such change of circumstances in the present case. The only reasonable conclusion in this appeal is that the Council has demonstrated that it has a five-year housing land supply of deliverable sites.

Flexing the Settlement Boundaries

279. Since the Council has a 5-year housing land supply of deliverable sites, there is no policy imperative to "flex" the settlement boundaries and the Appellant's contention in that regard must be rejected. Indeed, Mr Downes accepted in XX that if there is a five-year housing land supply the settlement boundaries must be up to date.
280. It is incorrect to assert, as the Appellant has done, that the settlement boundaries are out of date in any event since their review is foreseen in the CELPS itself. As Mr Taylor explained, the CELPS anticipates a review of boundaries in order to facilitate development later in the plan period; the settlement boundaries right now are up to date.
281. Indeed, the Examination Inspector himself necessarily considered the question of whether the settlement boundaries were up to date. He must have, since a number of policies depend upon them and could not be sound unless the boundaries were up to date. Further, he considered numerous objections including those of the Appellant in relation to the Appeal site that sought to change the settlement boundaries. Since he concluded that the Council had a 5 year supply of housing, he must have concluded that, with the adjustments proposed, the settlement boundary was up to date.

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282. It is submitted that, if you conclude that the Council has demonstrated that it has a five-year supply of deliverable housing sites, you must conclude that the settlement boundary is up to date.
283. On the other hand, if you conclude that the Council has not demonstrated that it has a five-year supply of deliverable housing sites, then logically it must be the case that settlement boundaries must flex somewhere in order for further housing to come forward. In such circumstances, Policies PG6 and RES.5 must be given reduced weight; what has not been established, however, is that they must flex here in order to allow the Appeal scheme to come forward given its location and position in the settlement hierarchy.

Flexing the Settlement Hierarchy and Spatial Distribution

284. There is no evidence that the settlement hierarchy and spatial distribution anticipated in the CELPS has to flex in the absence of a five-year supply of deliverable housing sites. If you conclude that there is a five-year supply of deliverable housing sites then there can be no basis for such "flexing".
285. If there is a need for further sites to meet 5 year housing needs in the short term, it is obviously preferable that these are met at sites which do accord with the settlement and spatial distribution hierarchy; to accept otherwise is to subvert the newly adopted CELPS and the plan led system.
286. As set out above, the Appeal Scheme is contrary to Policies PG2 and PG7. The Appeal scheme if permitted lead to housing provision of 18% above the level identified for this part of the District as appropriate in terms of spatial distribution in the CELPS and would add some 10% to the appropriate employment floorspace required resulting in employment provision some 50% above the appropriate requirement. These are very significant levels of unplanned growth. It is so significant that it must necessarily undermine the careful balance between employment growth and housing that forms the basis of the strategy for Nantwich within the CELPS.
287. It is submitted that even if there is no 5-year housing land supply of deliverable sites, Policies PG2 and PG7 of the CELPS should be given significant weight.

The Planning Balance

288. In order to assist in undertaking the planning balance these submissions address the planning balance on two alternative bases:

If there is a five-year housing land supply; and

If there is no five-year housing land supply

There is a Five-Year Housing Land Supply

289. If there is a five-year housing land supply then the policies in the development plan are up to date. There is then no basis for applying the tilted balance. Instead paragraph 14 of the NPPF requires the development to

be assessed against the policies in the Development Plan. The significant conflict with the development plan has been identified in above. In a context where the development plan is up to date, the breaches of policy identified above must be given full weight.

290. Section 38(6) of the 2004 Act falls to be applied. This indicates that given the breach of development plan policy planning permission should be refused unless material considerations indicate otherwise.
291. The development would provide market and affordable housing. However, as set out above, the Council is in a position where a 5-year supply can be demonstrated and the Council is meeting its market housing needs and has made the necessary strategic provision for the future. Therefore only limited weight can be given to this benefit, particularly given that the CELPs have addressed Nantwich's housing needs, including through the strategic allocations at Kingsley fields and Snow Hill.
292. The provision of affordable housing is a benefit of the proposed development and would result in 57 affordable properties being provided based on a 189 house development. However, affordable housing is required to be delivered by all housing developments. As set out above, the appeal scheme is not needed in order to secure a five-year supply of housing, and the Examination Inspector concluded that the CELPS, by delivering its planned housing numbers, appropriately meets affordable housing needs. Nevertheless, given local housing need, it is accepted that the delivery of affordable housing in an accessible location is an important benefit of the scheme.
293. Overall the proposal would also provide social and economic benefits. These would include employment opportunities generated in construction, spending within the construction industry supply chain and indirectly as a result of future residents contributing to the local economy. There would also be a boost to the local economy through additional spending and support for existing facilities and services.
294. Although economic benefits from the construction of the site would be limited as these would cease upon completion of the development. Indeed, it has not been established that the economic benefits here would be additional to those which would arise in any event. For example, if the construction workers were not on this site, it is likely they would be employed elsewhere.
295. The appeal site (A) proposes a package of development in addition to the housing. This includes a local centre incorporating a convenience store with 7 other small shop units, a potential new primary school and the provision of employment units. However, there is no commitment to these actually being provided and no evidence that they would be. Accordingly, it is submitted that only limited weight should be attributed to the benefits arising from the proposed local centre.
296. So far as the new employment provision is concerned, the evidence has established that there is no commitment to delivering this aspect of the scheme. Further, there is already substantial overprovision of employment

land in Nantwich. The benefits associated with this element of the scheme are also to be given only limited weight.

297. Subject to a suitable Section 106 package, the proposed development would provide adequate public open space and highways improvements. However, these are not considered benefits of the development as they are required to make the development acceptable in planning terms. Therefore, whilst these factors do not weigh against the proposal they also do not weigh in favour.
298. In the light of the above, in a context where it is accepted that there is a 5-year supply of housing sites, the proposed development would lead to a very significant breach of the Development Plan. That breach must be given substantial weight against the grant of planning permission. Whilst there would be some benefits of granting planning permission these are of the kind that would arise from any housing scheme. There is nothing particular about the material considerations associated with the Appeal scheme which is of such particular benefit that it can be considered to outweigh the breach of the Development Plan.
299. As a result, the only reasonable conclusion is that, applying section 38(6), planning permission must be refused.

No Five Year Housing Land Supply

300. If, contrary to the Council's case it is concluded that there is no five-year housing land supply, then policies which are policies for the supply of housing are out of date and the tilted balance must be applied.
301. It is submitted that none of the policies identified above as being in breach by the proposed development are policies for the supply of housing in the narrow sense identified in Hopkins Homes. However, in Hopkins Homes it was recognised that the weight of policies that would operate to constrain development to meet housing needs could be affected by a conclusion that there is no five-year housing land supply; otherwise the policy objective of meeting housing needs might be frustrated.
302. It is then necessary to carry out an exercise of:
- Examining harm against benefits in order to apply the tilted balance; and
- Undertaking the exercise required by section 38(6) of the 2004 Act.
303. The appeal scheme will have material economic and social benefits as set out above. I also acknowledge that the actual delivery of housing to meet needs within 5 years in a context where there is no 5-year supply of housing is a factor to which weight should be given. How much weight depends upon the extent to which the proposed development is likely to deliver housing within this time-scale. In the present case there are a number of factors that are likely to mean that the actual contribution towards the current five-year supply will be very limited.

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304. There is likely to be a substantial delay in the decision-making process given the time taken for decisions to be made previously in this case. Following the Public Inquiry held in February 2014 the appeals were not dismissed by the Secretary of State until 17th March. Subsequent to the quashing of this decision by the High Court on 3rd July 2015, the appeals were re-determined by the Secretary of State with the decision issued on 11 August 2016.
305. As set out by Adrian Fisher when applying the Council's assumed lead-in times, a site with outline planning permission of the size of the appeal proposal would start on site at 2 years with 15 dwellings being completed that year. A completion rate of 30 dwellings/year would be assumed for years 3, 4 and 5. With this in mind, if the Secretary of State was to allow this appeal, say, twelve months on from this Inquiry, the site would at best, on the Council's lead in times contribute 45 completions to the 5 year supply.
306. However, if Mr Wedderburn's approach to standardised lead-in times followed there would be even less of a contribution made to supply within five years. The additional year's delay that that approach would deliver would reduce the Appeal scheme's contribution to just 15 homes in the five-year period (see Taylor proof paragraph 6.58). Thus, whilst the development might make some contribution towards the five-year housing land supply it is likely to be small, and at best 45 dwellings but likely less.
307. It is on this point that the Appellant's evidence performs a remarkable volte face; instead of applying the standard approach to sites with outline planning permission that Mr Wedderburn applied to every other site, the Appellant adopts a bespoke timetable which results in a much faster rate of delivery. It is even more remarkable that the Appellant should do this in the face of Mr Wedderburn's evidence that decision makers should be wary of site owners/promoters overselling the rate of delivery from their sites. The Appellant's wholly inconsistent case must be rejected in this regard.
308. Whilst the Appeal scheme would deliver a limited number of homes to meet five-year housing land supply needs, it would remain housing that is not justified spatially. For reasons set out above, the conflict with the settlement hierarchy should still be given significant weight. In addition, the conflict with development plan policies seeking to protect the loss of BMV should also be given significant weight since it has not been established that needs could not be met on less valuable agricultural land.
309. In relation to affordable housing, the position here is the same as set out above. Against this it is necessary to weigh the benefits of the proposed development. The benefits associated with the provision of a local centre are to be given only limited weight for the reasons set out above. In addition, it is to be noted that no need for a local centre has been asserted or established by the Appellant. In relation to the employment, as set out above, there is no established need for the employment aspect of the proposed development. The benefits associated with it are to be given limited weight as already explained. As a consequence, the additional benefits compared to the situation where there is a five-year housing land supply only change by reference to the weight attributable to the actual contribution the

proposed development would make supply, which is likely to be limited for reasons set out above.

Impacts

310. It is acknowledged that in the absence of a five-year housing land supply the geographic extent of the settlement boundaries can be regarded as out of date, but nonetheless the proposals would harm the Policy objectives of recognising the intrinsic character and beauty of the open countryside for the reasons set out above.

311. The Secretary of State has considered the extent of that harm previously and there has been no material change in circumstances which means that a different conclusion should be reached. The decision letter of August 11th 2016 concludes:

“Weighing against the proposals, the Secretary of State considers that the proposals would cause harm to the character and appearance of the open countryside, for the reasons given at paragraphs 27-28 above. This harm would be in conflict with paragraphs 7 and the 5th and 7th bullet points of paragraph 17 of the Framework. Having given careful consideration to the evidence to the Inquiry, the Inspector’s conclusions and the parties’ subsequent representations, the Secretary of State considers that the harm to the character and appearance of the open countryside should carry considerable weight against the proposals in this case. He further considers that the loss of BMV land is in conflict with paragraph 112 of the Framework and carries moderate weight against the proposals, for the reasons given at paragraphs 31-34 above.” (para. 46).

312. It is important to remember that much of this harm is likely to be caused by housing that would not contribute to 5-year housing supply and thus would not contribute to any identified shortfall in that supply. In addition, no justification for the local centre or employment provisions has been proffered as Mr Downes accepted in XX. Thus, granting planning permission would result in adverse impact upon the open countryside from housing which is not required to meet any 5-year housing land supply needs and from other development which is not required to meet retail/employment floorspace needs. As a result, it is submitted that the weight to be given to such adverse impacts from unjustified development in the open countryside, on BMV and in a location which conflicts with the adopted settlement hierarchy is very substantial.

313. As explained above, the proposed development will result in the loss of BMV for a scheme which is not necessary since the greater part of it is not required to meet any identified need. Further, there has been no assessment which has established that the part of the scheme which may be needed (the small number of housing units that might come forward to meet five-year housing needs) cannot be accommodated on less valuable agricultural land.

314. Overall, it is submitted that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed

against the policies in the Framework taken as a whole. It is thus submitted that the proposed development is not sustainable development and is not supported by the NPPF.

315. So far as the section 38(6) exercise is concerned, it is submitted that the proposed development would give rise to significant breaches of the Development Plan. Where there is no five-year housing land supply however, it is necessary to identify the appropriate weight to give to those policies.
316. The Court of Appeal in the Suffolk Coastal case, in a passage which is not affected by the Supreme Court decision gave some guidance as to factors which are relevant to a decision makers consideration of the weight to give to policies in this context at paragraph 49:

“One may, of course, infer from paragraph 49 of the NPPF that in the Government’s view the weight to be given to out-of-date policies for the supply of housing will normally be less than the weight due to policies that provide fully for the requisite supply. The weight to be given to such policies is not dictated by government policy in the NPPF. Nor is it, nor could it be, fixed by the court. It will vary according to the circumstances, including, for example, the extent to which relevant policies fall short of providing for the five-year supply of housing land, the action being taken by the local planning authority to address it, or the particular purpose of a restrictive policy – such as the protection of a “green wedge” or of a gap between settlements. There will be many cases, no doubt, in which restrictive policies, whether general or specific in nature, are given sufficient weight to justify the refusal of planning permission despite their not being up-to-date under the policy in paragraph 49 in the absence of a five-year supply of housing land. Such an outcome is clearly contemplated by government policy in the NPPF. It will always be for the decision-maker to judge, in the particular circumstances of the case in hand, how much weight should be given to conflict with policies for the supply of housing that are out-of-date. This is not a matter of law; it is a matter of planning judgment (see paragraphs 70 to 75 of Lindblom J.’s judgment in *Crane*, paragraphs 71 and 74 of Lindblom J.’s judgment in *Phides*, and paragraphs 87, 105, 108 and 115 of Holgate J.’s judgment in *Woodcock Holdings Ltd. v Secretary of State for Communities and Local Government and Mid-Sussex District Council* [2015] EWHC 1173 (Admin)).”

317. It is then relevant to consider;

- The extent to the shortfall;
- The action being taken by the local planning authority to address that shortfall; and
- The particular purpose of a restrictive policy.

318. In this context, to the extent that a shortfall can be identified, it must be very small indeed. As Mr Fisher explained the next stage of the development plan is for the identification of additional housing sites. Any shortfall now is

likely to be addressed very shortly, and in all probability before the Appeal Scheme is likely to deliver any housing units.

319. So far as the particular purposes of the relevant restrictive policies are concerned, the protection of the open countryside and of the best and most versatile land are objectives wholly supported by the Framework. In addition, the sustainable distribution of development via appropriate settlement hierarchy is supported by the Framework.
320. Accordingly, in a context where there is no 5-year housing land supply, the relevant restrictive policies cannot be given full weight, however they can be given weight at a level just below that since any shortfall identified will be very small, is likely to be addressed very quickly indeed and before the Appeal Scheme could contribute units and seek to achieve objectives supported by the Framework.
321. Against this the benefits of the scheme must be weighed. These have been addressed above. In essence, the Appeal scheme would only deliver a very limited number of units to meet five-year housing land supply needs. The remaining housing units, the local centre and the employment use proposed would not meet any identified need and are wholly unjustified. In this context, the harm that they would cause and the breach of development plan policy they give rise to is not justified by reference to any public interest need for them.
322. As a result, it cannot be the case that there is a justification for the proposed development. The Council submits that even where there is not five-year housing land supply, the conflicts with the development plan identified above are not outweighed by any material considerations. Thus, it must be concluded that planning permission should be refused and the appeal dismissed.

Supplementary evidence submitted following the publication of the revised National Planning Policy Framework

STATUS OF THE DEVELOPMENT PLAN

323. The rFramework does not change the statutory status of the development plan as the starting point for decision making. Planning law requires that applications for planning permission be determined in accordance with the development plan. Where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted (paragraph 2, 12 and 47 of the rFramework). The adopted development plan for Cheshire East currently comprises of the following documents:

- The Cheshire East Local Plan Strategy (adopted 27 July 2017) (CELPS)
- The saved policies of the Borough of Crewe and Nantwich Replacement Local Plan (adopted 17 February 2005) (CNLP)

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- The Stapeley and Batherton Neighbourhood Plan (made on the 15th February 2018).

324. These plans were adopted prior to the introduction of rFramework. Paragraph 213 confirms that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).

CONSISTENCY OF ADOPTED POLICIES WITH THE NPPF

Spatial Strategy

325. The CELPS sets out the overall vision and planning strategy for the Borough. It is an up-to-date plan that provides a positive vision for the future and provides a framework for addressing housing needs and other economic, social and environmental priorities in accordance with paragraph 15 of the rFramework. The plan clearly sets out an overall strategy for the pattern, scale and quality of development, and makes sufficient provision for housing to meet the objectively assessed needs of the area. Policy PG1 states that sufficient land will be provided for a minimum of 36,000 new homes over the 20 year plan period, in accordance with rFramework paragraph 20. It should be noted that this figure is significantly higher than that previously published by MHCLG in its indicative assessment of housing need of 1,142 dwellings per annum (22,840 over 20 years). The CELPS therefore seeks to significantly boost housing supply, having regard to paragraph 59, providing a clear strategy for bringing sufficient land forward, and at a sufficient rate, to address objectively assessed needs over the plan period, in line with the presumption in favour of sustainable development.

Settlement hierarchy

326. The CELPS establishes a settlement hierarchy for development. In essence, this ensures that the majority of development takes place close to the borough's Principal Towns and Key Service Centres to maximise use of existing infrastructure and resources and to allow homes, jobs and other facilities to be located close to one another. The plan therefore plays an active role in guiding development towards sustainable solutions having regard to paragraph 7 of the rFramework. As at the 31.3.2017, some 37,196 dwellings were committed, completed or allocated, leaving a small residual requirement to be addressed through the subsequent Site Allocations and Development Policies Document (SADPD) which will be published for consultation in September 2018. It should be noted that through existing allocations, completions and commitments, sufficient deliverable and developable land and sites to meet the housing requirement of 36,000 homes has already been provided. The additional allocations identified through the future SADPD will therefore serve to provide for local housing needs in particular settlements.

Open countryside

327. The Council's evidence demonstrates that the development will result in harm to the intrinsic character and beauty of the open countryside. This harm was acknowledged in the previous decision letter of the Secretary of State. The appeal proposal conflicts with Policy PG6 of the CELPS and Policy RES5 of the CNLP. These policies are considered to be consistent with Paragraph 170 of the rFramework which states that planning policies and decisions should contribute to and enhance the natural and local environment by:

'recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland'.

Best and Most Versatile Agricultural Land

328. CELPS Policy SE.2 encourages the re-use/ redevelopment of previously developed land and also seeks to safeguard natural resources, including high quality agricultural land. The supporting text advises that agricultural land is a finite resource which cannot be easily replicated once lost. Policy SD2 (v) also states that the permanent loss of areas of agricultural land quality 1,2 or 3a should be avoided unless the strategic need overrides these issues. These policies are considered to be consistent with the rFramework as they recognise the economic and other benefits that are derived from best and most versatile land. Furthermore, the Council has recognised through Policy SD2 that there may be occasions where a strategic need may override such loss.

329. These policies are considered to be consistent with the rFramework. Paragraph 170(b) of the rFramework states that planning policies and decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland. Best and Most Versatile Land is also relevant to plan making. Paragraph 171 states that plans should allocate land with the least environmental or amenity value, where consistent with other policies in the Framework. Footnote 53 advises that where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality.

Stapeley & Batherton Neighbourhood Plan

330. The Stapeley and Batherton Neighbourhood Plan forms part of the development plan. Where a planning application conflicts with a made neighbourhood plan, planning permission should not normally be granted in accordance with Paragraph 12 of the rFramework. At Paragraph 29, the rFramework states that neighbourhood planning gives communities the power to develop a shared vision for their area. Neighbourhood plans can shape, direct and help to deliver sustainable development, by influencing local planning decisions as part of the statutory development plan.

Neighbourhood plans can play an important role in identifying the special qualities of each area and explaining how this should be reflected in development (paragraph 125).

331. The Stapeley Neighbourhood Plan was made on 15th February 2018 and is a recently adopted plan that includes local policies which seek to ensure that the special qualities of the area are recognised in the planning system. The plan contains notable policies on the landscape and open countryside, housing and design that should influence planning decisions, ensuring that development is appropriate to the area. The Neighbourhood Plan does not preclude residential development but rather it sets out the circumstances in which development will be permitted in order to ensure that it is commensurate with the character of the Parish and avoids intrusion into the open countryside.
332. As submitted in evidence, the appeal proposal clearly conflicts with adopted policies GS1, Policies H1 and H2. These policies are considered to be consistent with paragraphs 77 – 79, 83, 125 and 170 of the rFramework and full weight should therefore be given to them.

THE WEIGHT TO BE GIVEN TO ANY CONFLICT WITH POLICY

333. The appellant's case is that the Council cannot demonstrate a 5 year supply of deliverable housing sites. In these circumstances, footnote 7 and paragraph 11 of the NPPF apply. The NPPF states that where the policies that are most important for determining the planning application are out of date, planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole. As submitted in evidence, the Council has demonstrated that a sufficient 5 year supply of housing sites to meet identified requirements can be demonstrated. Any implications from revised NPPF on matters of housing requirements, delivery and supply are identified below.

The Cheshire East Local Plan Strategy

334. Paragraph 74 of the rFramework states that a five year supply of deliverable housing sites, with the appropriate buffer, can be demonstrated where it has been established in a recently adopted plan which:
- a) has been produced through engagement with developers and others who have an impact on delivery, and been considered by the Secretary of State; and
 - b) incorporates the recommendation of the Secretary of State, where the position on specific sites could not be agreed during the engagement process.
335. As submitted in evidence, the CELPS was adopted on the 21 July 2017. Therefore it should be considered a recently adopted plan having regard to paragraphs 73 & 74 and footnote 38. The Cheshire East housing requirement and the five year supply of housing sites were subject to lengthy and thorough examination, involving engagement with those stakeholders that

have an impact upon the delivery of sites. The adopted plan incorporated the recommendations of the Secretary of State. Upon adoption, the Inspector concluded that the Local Plan would produce a five year supply of housing, stating that:

'I am satisfied that CEC has undertaken a robust, comprehensive and proportionate assessment of the delivery of its housing land supply, which confirms a future 5 year supply of around 5.3 years'.

336. Full weight should therefore be given to the CELPS as a recently adopted plan in accordance with paragraph 74. It should also be noted that the 5 year supply of specific deliverable sites considered by the Examining Inspector incorporated within it the maximum possible buffer – 20% (see Paragraph E.9, Appendix E of the CELPS). This buffer is double that now required to be applied to recently adopted plans having regard to paragraph 73(b) of the NPPF. If a 10% buffer had been applied to the Cheshire East 5 year housing supply requirement at the point of the adoption, this would have the effect of reducing the overall 5 year requirement by some 1,235 dwellings.

337. The intention of the rFramework guidance appears to be to try and limit endless debates over 5 year housing supply, most particularly where the Secretary of State has recently ruled on the matter. This can be done either through the new annual assessment process or through the adoption of a local plan. National Policy now weighs heavily against attempts in S78 planning appeals to re-examine housing supply where a definitive conclusion has been reached through the Local Plan process. The NPPF sets clear time limits on the currency of those conclusions. In the case of Cheshire East, it is evident that a 5 year supply can be demonstrated up to 31 October 2018 based on the recent Local Plan adoption.

338. The Council therefore respectfully requests that the Appeal Inspector and Secretary of State follows rFramework guidance in this regard and concludes that a 5 year supply can be demonstrated for the purpose of this appeal.

The housing requirement

339. Paragraph 60 of the rFramework states that strategic policies should be informed by a local housing need assessment, conducted using the standard method in national planning guidance – unless exceptional circumstances justify an alternative approach. As submitted in evidence, the adopted CELPS housing requirement for Cheshire East over the plan period is some 36,000 homes, equivalent to 1,800 per annum. This is significantly higher than that previously published by MHCLG in its indicative assessment of housing need of 1,142 dwellings per annum. By adopting a significantly higher figure, the Council has clearly not shirked its responsibilities to significantly boost housing delivery within the Borough.

340. The Council's 5 year housing land supply assessment is based on a very generous assessment of need compared to the standard approach. The purpose of having a specific 5 year deliverable supply of housing sites is to ensure that sufficient land is available to enable homes to be built to meet housing need. In using a significantly higher figure than that produced by

standard methodology, even if the calculated supply was exactly 5 years (or as in this case, that supply exceeds the 5 year requirement), it would fully achieve the objective of ensuring that there is sufficient land available to meet housing need.

Presumption in favour of sustainable development

341. Paragraph 11 and footnote 7 concerns the application of the presumption in favour of sustainable development to both plan making and decision taking. For decision-taking, the presumption in favour of sustainable development means:

- a) approving development proposals that accord with an up-to-date development plan without delay; or
- b) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:
- c) the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
- d) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

342. Footnote 7 explains that for the purposes of d) that out of date policies includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 73); or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years. Transitional arrangements for the Housing Delivery Test are set out in Annex 1.

343. As submitted in evidence, the appeal proposal does not accord with the adopted development plan. The CELPS is a recently adopted plan having regard to Paragraph 73 & 74 and footnote 38. Its adoption established a 5 year supply of specific deliverable housing sites with the maximum buffer. The Council has submitted detailed evidence to the Inquiry to demonstrate that a continued 5 year supply of deliverable housing sites can be demonstrated since the adoption of the CELPS.

The Housing Delivery Test

344. The Housing Delivery Test (HDT) will apply from the day following the publication of the Housing Delivery Test results in November 2018 (see paragraph 215 of the rFramework). The HDT result will have a number of implications for decision-taking, including the circumstances in which the presumption in favour of sustainable development applies as explained at footnote 7. Under transitional arrangements, delivery of housing considered to be 'substantially below' the housing requirement will equate to delivery below 25% of the housing required over the previous three years.

345. The accompanying Housing Delivery Test Measurement Rule Book provides the methodology for calculating the HDT result. The Housing Delivery Test is effectively a percentage measurement of the number of net homes delivered against the number of homes required, over a rolling three year period. The number of net homes delivered is taken from the National Statistic for net additional dwellings over a rolling three year period, with adjustments credited for net student and net other communal accommodation. The national statistics are published annually in November.

346. The number of net homes required, will be the lower of the latest adopted housing requirement (excluding any shortfall³) or the minimum annual local housing need figure. Under transitional arrangements, for the financial years 2015-16, 2016-17 and 2017-18, the calculation of the minimum annual local housing need figure is to be replaced by household projections only. This is shown below.

Year	Adopted annual CELPS Requirement	Household projections (annual average over 10 year period) ⁴	Net additional dwellings
2015/16	1800	1,100	1573
2016/17	1800	1,100	1763
2017/18	1800	900	1509 dwellings
TOTAL	5400	3,100	4,8457

347. What is clearly evident from the above table is that net additional dwellings over the three year period already comfortably exceeds the housing requirement calculated using 2012 and 2014 household projections. When the housing delivery test is applied against the completions data set out in the Council's proof of evidence, it is evident that the test is met and exceeded by a significant margin (1,745 homes) even without the full year data for 2017/18.

348. While the Council has not yet published its annual housing monitoring update for 2017/18, as submitted in evidence, completions continue to show a positive direction of travel and it is likely that the final total of completions for the year ending 31 March 2018 will exceed that of previous years. However based simply on the evidence before the Inquiry, the November 2018 HDT result, using the formula in the published rule book, will show that housing delivery significantly exceeds the minimum number of net homes required.

The buffer

349. Paragraph 73 requires that Local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need

where the strategic policies are more than five years old. The supply of specific deliverable sites should in addition include a buffer (moved forward from later in the plan period) of:

- a) 5% to ensure choice and competition in the market for land; or
- b) 10% where the local planning authority wishes to demonstrate a five year supply of deliverable sites through an annual position statement or recently adopted plan, to account for any fluctuations in the market during that year; or
- c) 20% where there has been significant under delivery of housing over the previous three years, to improve the prospect of achieving the planned supply

350. Footnote 39 advises that from November 2018, the requirement to apply a 20% buffer will be measured against the Housing Delivery Test result, where this indicates that delivery was below 85% of the housing requirement.

351. As submitted in evidence, net completions over the past three years have continued to increase in Cheshire East. For the monitoring years 2015/16 and 2016/17, net completions have exceeded the household projections result by as considerable margin.

When the CELPS was adopted, it should be noted that the Council applied the maximum possible buffer to its calculation of the 5 year housing land supply requirement and with this buffer, the Examining Inspector confirmed that a 5 year supply could be demonstrated. The 20% buffer was also applied to the 5 year supply of deliverable sites identified in the subsequent Housing Monitoring Update (base date 31 March 2017). Evidence submitted to the Inquiry robustly demonstrates that a continued five year supply including the maximum buffer can be identified. It goes without saying, that if the buffer was to drop to 10 or 5 per cent, taking account of delivery over the past three years, the 5 year housing land supply requirement would also drop significantly.

Definition of deliverable

352. As per earlier guidance, the rFramework definition retains the previous requirement for sites to be available, suitable and achievable with a realistic prospect that housing will be delivered on the site within 5 years. As submitted in evidence, the relevant test is whether there is a realistic prospect of a site coming forward, i.e. is the site capable of being delivered within 5 years rather than it being absolute certainty that it will be delivered. The revised definition makes a distinction between sites that are small or have full planning permission and those that have outline planning permission or are allocated in a development plan or otherwise have planning permission in principle or identified through a brownfield land register. For small sites (less than 10 dwellings) and all sites with full planning permission should be considered deliverable until the permission expires, unless there is clear evidence that they will not come forward. For those sites with outline planning permission or planning permission in principle, allocated in the development

plan or sites identified in the brownfield land register. These can be considered deliverable where there is clear evidence that housing completions will begin within five years.

353. The Council has submitted detailed evidence not only through the recent examination of the Local Plan Strategy, particularly in relation to strategic allocations but also to the Inquiry. A considerable body of evidence has been submitted on the deliverability of sites to respond to the very the detailed scrutiny of sites undertaken by the appellant. The Council's evidence has been fully revised and updated, looking afresh at the latest position on key sites and the housing sector generally and this included evidence on many sites including those with outline planning permission and allocated through the CELPS. The evidence submitted included an updated 5 year housing land supply assessment, taking into account a small number of concessions made following the Park Road, Willaston appeal decision. It should be noted that evidence was submitted both in relation to the current appeal and a second appeal, APP/R0660/W/17/3176449: Land to the West of New Road, Wrenbury, which has now reported and a copy of the Inspector's Decision Letter is appended. Based on the latest available evidence, the Inspector concluded that a deliverable 5 year supply was in place.

354. Therefore the Council remains of the view that in light of the revised NPPF, a deliverable supply of housing sites to meet the five year requirement can be demonstrated.

355. To conclude:

- Adopted development plan policies are up-to-date and consistent with the rFramework
- The appeal proposal conflicts with up-to-date policies and full weight should be given to the findings of the Inspector who confirmed that upon adoption, a five year supply could be demonstrated. In accordance with the rFramework, the CELPS should be considered recently adopted until 31 October 2018. In line with NPPF paragraph 74 this shows that a 5 year supply of can be demonstrated at the time of writing. The rFramework effectively settles the matter.
- In addition, to the above, a considerable body of updated evidence has been submitted to the Inspector on the specific supply of deliverable sites. The Council has demonstrated that a five year supply of housing sites can be demonstrated. This view is collaborated by the recent findings of the Inspector in 'Land to the West of New Road, Wrenbury'. The Inspector and Secretary of State therefore has all relevant information to enable the determination of the appeal.
- The five year housing requirement built in the maximum possible buffer. The rFramework indicates that a lower buffer of 10% should be used where the local planning authority wishes to demonstrate a five year supply of deliverable sites through a recently adopted plan.
- Housing completions over recent years have shown a continued positive direction of travel. Delivery over the last 3 years is likely to exceed by some margin, the local housing need requirement established through the Housing Delivery Test in November 2018.

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- The applicable buffer to be applied to the 5 year supply requirement will reflect the HDT result from November 2018 onwards. It is very unlikely that given past performance over the last 3 years, that a 20% buffer will be applied.
 - Notwithstanding any changes that may take place in the future to the buffer, in submitting evidence to the Inquiry, the Council has robustly demonstrated that a five year supply of deliverable sites can be demonstrated with the maximum 20% buffer.
 - Very detailed evidence has been submitted in relation to the supply of specific sites to support the conclusions reached about 5 year supply.
 - Having regard to the rFramework and the matters outlined above, the Council remains firmly of the view that a 5 year supply of deliverable housing land can be demonstrated and as such paragraph 11d is not engaged.

Overall Conclusion

356. The Council submits that where there is a five-year housing land supply or not, the application of section 38(6) of the 2004 act results in the conclusion that planning permission for the proposed development must be refused and the appeal dismissed.

The Case for the Interested Parties

The material points are:

357. Councillor Mathew Theobald, Chairman of Stapeley & District Parish Council²², seeks to emphasise the newness of the Stapeley and Batherton Neighbourhood Plan, it having been Made on the 15 February 2018. After setting out the relevant policies of the plan, Councillor Theobald goes on to identify the key areas of conflict the proposals have with these policies. Whilst accepting that Policy H5 directs development to within or directly adjacent to the Nantwich Settlement Boundary (where the proposed development is proposed), such proposals also have to be considered 'subject to the provisions of other policies of the Plan'. When the proposals are considered against the provisions of Policy H1 that can be held to be in clear conflict with all criteria contained in the policy (criteria H1.1- H1.4)

358. Councillor Theobald goes on to identify further concerns over the provision of local facilities, specifically the absence of a formal mechanism to secure their delivery, and shortcomings in the Appellant's Air Quality Document and Acoustic Planning Report. The Council also made further submissions on the contents of the draft section 106 agreement. Concerns were expressed over the potential conflict of ecological provisions and community based aspirations for publicly accessible community orchards, an aspiration of the plan.

²² ID10 and ID32.

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359. Mr Patrick Cullen²³, a local resident, also expressed concerns in relation to the section 106 agreement and the effect of cumulative local housing development on local infrastructure. Concerns relating to the 106 agreement covered the outstanding commitments on land within the appeal site (Appeal B) and the desire of the community to secure a Community Orchard on the land to reflect local preference. Evidence relating to local housing development draws attention to the number and scale of housing sites currently under construction and draws attention to the effect such will have on local infrastructure and services.
360. Mr Philip Staley also submitted evidence to the Inquiry in respect of levels of traffic in the locality and the effect of further housing development on these levels and on the extend of public transport provision adjacent to the appeal sites. He also presented a short video in addition to a written submission.²⁴ Mr Staley suggests that traffic congestion on Peter de Stapeleigh Way at peak times (0800-0900hrs and 1500-160hrs) is sever, and quotes an Inspector's conclusions in respect of this issue in relation to a dismissed appeal on Audlem Road²⁵. The cumulative effects of this and other proposals will cause harm to the local area and to local residents. Mr Staley also advised that sense the submission of the Appellant's evidence local bus services in the vicinity of the site had bed reduced, limiting the local service to only 4 journeys each way during normal shop hours. The provisions of the draft section 106 agreement to fund an increase in local bus services for a specified period would therefore have limited effect in mitigating the increased demand for such local services.
361. Ms Gilian Barry also made representations to the Inquiry supporting the statements in respect of the effects traffic generation by the proposed development²⁶. She also made objections on the grounds of adverse effect on air quality, the prospect of flooding on the site, loss of habitat, including trees and hedgerows, and the effects of the development on public safety.

Written Representations

362. There is a large body of correspondence in respect of the initial applications and the subsequent appeal, the body of which has been set out in the previous Reports to the Secretary of State.
363. Most correspondence came from objectors. They were particularly concerned with increased traffic, including the access, on adjoining road and at nearby level crossings, and the effects on the open countryside, the proposed loss of trees, recently felled trees, planned wildlife mitigation, lack of medical, dental and other facilities, shortage of school places, loss of privacy at the proposed roundabout, noise, air and light pollution, poor house design, and the potential for much more development.

²³ ID11.

²⁴ ID12.

²⁵ APPEAL ref: APP/R0660/W/15/319474.

²⁶ ID13.

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364. These themes are repeated in the written responses to the current appeals, though they also refer to the adoption of the current local plan and the establishment of a five year land supply inherent in that and the advanced state of the Stapely and Batherton Neighbourhood Plan.
365. Further correspondence has been received in respect of the current appeals and, following the advertisement of amendments to the scheme during the Inquiry, further representations made in respect of these matters.
366. Mr Paul Tomlinson states the appeals are flawed due to 'flawed' traffic data as a result of being based on material over ten years old. Mr Andrew Hale states that the commercial units proposed in Appeal A would not contribute to the local economy or culture. He also states the proposals would fail to make use of the existing access to Peter de Stapeleigh Way. Mr David Wall refers to the site being within the Green Belt and expresses concerns over the ability of emergency services being able to access the site. Ms Jane Emery states there is a need for the development to mitigate the effects it will have on local infrastructure.
367. Mr D Roberts and Mrs H S Thompson Also raise objection on the basis that the traffic assessment is flawed and that the proposals represent a considerable risk to the safety of highway users²⁷.

Conditions

368. A discussion was held as to the suitable wording of, and reasons for, any conditions on 23 February with reference to the tests for conditions in the *Framework*. Following these discussions, with only a few exceptions which I set out below, in the event that the appeals are allowed, the conditions in the attached Schedule should be imposed, for the reasons set out below. Some conditions have been adjusted from those suggested in the interests of precision, enforceability or clarity.

Appeal A

369. As well as the standard conditions 1-3, control is required over matters in the other conditions for the following reasons:
- 4, 5 & 9: flood risk reduction, contamination mitigation and ecological enhancement, including concerns raised by the Parish Council
 - 6: protection of archaeological remains
 - 7, 8 & 10: residential and visual amenity and sustainability
 - 11, 12, 13 & 27: highway safety and sustainability
 - 14 & 15: sustainability
 - 16-20: protected and other species mitigation
 - 21-25: reserved matters clarification and implementation

²⁷ ID34.

370. For clarity and for the avoidance of doubt, condition 26 establishes the sole vehicular access to the site will be through the junction with Peter Destapeleigh Way.

Appeal B

371. As well as the standard conditions 1& 2, control is required over matters in the other conditions for the following reasons:

- 3-6: the visual amenity and landscape quality of the area
- 7-10: protected and other species mitigation and public amenity

372. Condition 11 is necessary in order that the Local Conservation Area is appropriately delivered, maintained and managed under the terms of this planning permission. This is all the more the case in view of Mr Cullen's concerns for its future management and the challenges to ensuring this identified in the previous report to the Secretary of State.

Planning Obligations

373. The draft s106 agreement was discussed at the Inquiry during the same sessions as the conditions. A final signed and dated versions were submitted, as agreed, after the Inquiry closed. The agreement makes provision for the revocation of previous obligations in respect of the previous applications and also, in conjunction with condition 11 in relation to Appeal B, makes a commitment to the submission of a scheme for the Local Nature Conservation Area (LNCA) should the appeals be granted. The Council, in support of their request for financial and physical contributions to local infrastructure, have presented a detailed Community Infrastructure Levy Regulations 2010 Compliance Statement which evidences their necessity in relation to the regulatory requirements and the expectations of the rFramework. The agreement submitted by the Appellant reflects these requirements.

374. Firstly the agreement confirms that 30% of the proposed homes will be affordable which is policy compliant. The agreement also sets out the mix of tenure types reflecting local need in the area. Such a contribution therefore fully accords with the regulations and expectations of the rFramework and may be taken into account.

375. A further obligation facilitates contributions to secondary special needs education in the area. Again this recognises that future families occupying the development will place demand on local education facilities that will require mitigation. This is also calibrated through established formulae and is thus proportionate, related to the development and necessary to make it acceptable in planning terms. It too therefore may be taken into account.

376. For related reasons there is also an obligation securing open space and children's play areas, justified on the basis of the increased numbers of people anticipating use of such facilities. These provisions are also justified against policy, calculated to agreed formulae and proximate to the site. This too may therefore be taken into account.

377. A key obligation securing an enlarged LNCA is also presented which also makes provision for its ongoing management. Not only, given the ecological interest of the site, is this provision necessary to make the development acceptable in planning terms, it addresses one of the key concerns of interested parties who have made representations in respect of both appeals. On all counts therefore it may properly be taken into account.

378. There are a further three obligations securing funding for an additional pedestrian crossing of Peter Destapleigh Way, two additional bus stops and a subsidy for the local bus service. The first enhances the safe pedestrian connectivity of the development, the second brings it within ready access to a sustainable transport service whilst the latter enhances that service for residents. All are necessary to make the development acceptable in planning terms, are proportionate and are directly related to the site. They may also therefore be taken into account.

Inspector's Conclusions

379. I have reached the following conclusions based on all of the above considerations, the evidence and representations given at the Inquiry, and my inspection of the appeal sites and their surroundings. At the beginning of each topic for consideration the relevant paragraphs of the respective parties are identified to assist in an understanding of the reasoning set out therein.

Main considerations

380. In respect of Appeal A these are:

- a) The effect of the development on the character and appearance of the area with particular regard to the open countryside and policies PG6, SD1 and SD2 of the Cheshire East Local Plan Strategy (CELPS); policy RES.5 of the Borough of Crewe and Nantwich Replacement Local Plan (BCNRLP) and Policies GS1, H1 and H5 of the Stapeley & Batherton Neighbourhood Plan (S&BNP) and;
- b) the loss of BMV agricultural land and;
- c) the effect of the development on the safety of highway users and;
- d) whether or not the Council can demonstrate a 5 year HLS and the implications of this with regard to policy in the rFramework.

381. In respect of appeal B these are the effects of the proposals on:

Its effect on the character and appearance of the area with regard to policy PG6 of the above.

Character and appearance

The relevant preceding paragraphs for the Appellant are 108-109.

The relevant preceding paragraphs for the Council are 310-312 & 327-329.

The relevant preceding paragraphs for the other parties are 357-359.

382. Policy PG6 explains that 'open countryside' is defined as the area outside of any settlement with a defined settlement boundary. It goes on to established that within such designations, development will be restricted to that essential for the purposes of agriculture, forestry, recreation and infrastructure, though with exceptions listed in 6 criteria. The supporting justification for the policy also confirms inter alia that ...'the intrinsic character and beauty of the countryside will be recognised'.
383. The proposals as presented in Appeal A, as a mixed use scheme, are both outwith the Nantwich settlement boundary as currently defined, and do not conform with any of the types of exceptional forms of development identified in the criteria. The proposals are therefore, as the Council maintain in conflict with policy PG6 of the CELPS and with sub- paragraph b) of paragraph 170 of the rFramework.
384. In common with the conclusions of the Secretary of State in his previous (now quashed) decision, set out in his letter of 17 March 2015, the Council also assert the proposals would result in harm to the intrinsic character and beauty of the open countryside. This view is supported, perhaps more in relation to natural habitat, by other representations made by local residents.
385. Although the degree to which the site as an element of countryside may be considered open, its character is nevertheless agrarian and naturalistic in character. The construction of the proposals, with its mix of uses (notwithstanding the areas of open space and areas of habitat) would certainly change this established agrarian character, transforming it into an urban enclave – an extension of the settlement. Insofar as this would result in the loss of an element of countryside of intrinsic character, this would cause a degree of harm to that character, compounding the technical breach of the policy.
386. Insofar as they would also fail to protect or enhance the natural environment, they would also conflict with criterion 14 of Policy SD1 and, the same reasons, it may be held to conflict with Policy SD2 (criteria ii and iii thereof) of the same. Policy RES.5 of the CNLP, as sister policy to PG6 also relates to the restriction of development in the open countryside. For the same reasons therefore the proposals presented in Appeal A may also be considered in conflict with it.
387. It is the case that Policy H5 of the S&BNP acknowledges that 'the focus for development will be on sites within or immediately adjacent to the Nantwich settlement boundary' and as a consequence of the proposed development being so adjacent garners some support from this element of the policy. However, this is a narrow reading of the policy, as its prefix makes clear that such an expectation will be subject to the provisions of other policies of the S&BNP. This clearly engages Policy H1, which, inter alia, anticipates (at H 1.1) development being 'limited infilling in villages or the infill of a small gap with one or two dwellings in an otherwise built up frontage'. Neither does the proposed development conform to the other exception criteria of the policy nor with Policy GS1, which only permits development in the countryside in

limited circumstances. Moreover, as the plan explains these policies follow 'a consistent theme around conserving and maintaining the character of the Neighbourhood Area'.

388. It may quickly be concluded that the proposals are in conflict with the letter and purpose of these Policies PG6, SD1 and SD2 of the CELPS, Policy RES5 of the CNLP and Policies GS, H1 and H5 of the S&BNP. However, the specific circumstances of the site and its context do need to be taken into account. The fact of the matter is that the appeal sites are now effectively bordered on three sides by existing and emerging development. Whilst the purpose of the policies is to maintain character it is evident that the rural hinterland anticipated by the plan vision has, in the circumstances of these cases, been extensively eroded. Such circumstances necessarily calibrate the actual harm to existing countryside character accordingly. Nevertheless, the proposals remain in breach of the policies and this needs to be accounted for in the final planning balance.

BMV agricultural land

The relevant preceding paragraphs for the Appellant are 111.

The relevant preceding paragraphs for the Council are 201-212, 312-314 & 328.

389. The proposed development would result in the loss of 2.6 hectares of the best and most versatile agricultural land (25% of the aggregated site is designated as such, 6% being Grade 2, 19% being 3a). Accordingly such a loss would render it contrary to Policy SE2 of the CELPS which expects development to safeguard high quality agricultural land. The rFramework, through paragraph 171, and specifically through footnote 53, makes clear that where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred.
390. Although technically in breach of policy SE2, the area of land is modest and predominantly at lower grade. Moreover, the engagement of the consideration of the rFramework is contingent on the loss of such designated land being significant. By any reasonable measure the loss identified here cannot be judged as such. Moreover, in the light of the conclusions below in relation to the supply of housing land, it is inevitable that the use of BMV will become a consideration in help correcting supply. Nevertheless the breach of policy and the loss of such land does represent a harm, though in light of the above, one meriting only modest weight in the planning balance.

Highway safety

The relevant preceding paragraphs for the Appellant are 126-128.

The relevant preceding paragraphs for the other parties are 359-361.

391. It was clear from the representations made at the Inquiry that there was a significant degree of apprehension amongst local residents over any increase in traffic numbers in the locality as a result of the development proposed. Both written and video evidence was presented at the Inquiry to support the notion

that any development on this site would exacerbate already challenging highway usage in the locality.

392. Video evidence of peak-time congestion in any given area is inevitably compelling; who has not experienced the frustration of not being where we want to be at any given time in a car? Be that as it may, the expression of such frustration does not equate to a robust argument or justification, as paragraph 109 of the rFramework requires, for the rejection of the proposals as they are presented. None of the detailed evidence of the appellant, nor the considered acceptance of it by the Council, is convincingly rebutted by the heartfelt, though non-empirical submissions of those opposing the scheme. In the absence of such substantial rebuttal, such concerns must inevitably be afforded no more than very limited weight. Moreover, the mitigation through transport infrastructure provision and the creation of enhanced pedestrian and cycle routes through the site for the use of residents, workers and others further increase the opportunities for non-car transport modes.

Housing Land Supply

The relevant preceding paragraphs for the Appellant are 55-107.

The relevant preceding paragraphs for the Council are 149-178, 218-278 & 333-355.

The Requirement

393. A statement of common ground (SoCG) on housing land supply (HLS) (thus HLSSoCG) was submitted by the appellant at the inquiry²⁸. It confirms as a starting point that the housing requirement for Cheshire East Council is 1800 dwellings per annum. Elsewhere it is common ground that the five year period runs from the 31 March 2017 to 31 March 2022. Such agreement extends also to the extent of the backlog in delivery between 2010 and 2017, which stands at 5635 dwellings, equating to three years of the overall requirement for the first seven years of the plan.
394. It is also agreed in the HLSSoCG that, reflecting a pattern of historic under delivery, a 20% buffer also applies to the aggregated numbers. This consensus reflects the position of parties in two key previous appeals referred to in evidence²⁹.
395. Paragraph 73 of the rFramework, replacing paragraph 47 of the previous addition, requires local planning authorities to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing supply. This number should include a buffer of either:
- a) 5% to ensure choice and competition in the market for land; or
 - b) 10% where the local planning authority wishes to demonstrate a five year supply of deliverable sites through an annual position statement or

²⁸ CD3.

²⁹ White Moss Quarry and Park Road, CD29 & CD30.

recently adopted plan, to account for any fluctuations in the market during that year; or

- c) 20% where there has been significant under delivery of housing over the previous three years, to improve the prospect of achieving the planned supply.

396. The Council predicts in its submissions in relation to the revisions to the framework that after November 2018 and the initiation of the Housing delivery Test it is unlikely that a 20% buffer will be required as a result of increased housing delivery. Indeed, in their further representations they set out variations of the supply position referencing the 5% and 10% scenarios, each of which correspondingly indicate and increase in the supply: 6.11 years @5% and 5.38 years @10%. Even if the Council's expectations in relation to the Housing Delivery Tests were to be met, it remains apparent that in the first seven years of the LPS plan period housing completions within Cheshire East have averaged 1,034 dpa, considerably below the expected, 1800 target. Under the terms of the third bullet point of paragraph 73 of the revised Framework therefore, there would still be a compelling case to apply the 20% buffer. Be that as it may, that is in the future. For current purposes, both parties agree in the HLSSoCG that a 20% buffer should be applied. Notwithstanding this point, the appellant maintains, again in light of the evidence before the Inquiry, that even if the scenario b) of a 10% buffer were applied in this case, the Council would remain unable to demonstrate a five year supply of housing land, indicated as being 4.64 years.

397. Thus the net annual requirement, plus the shortfall (including that to be met in the first five years) in addition to the 20% buffer, in both the Council's and the Appellant's 'Sedgpool8' methodology agreed and applied by the CELPS Examining Inspector, both equate to a requirement of 14,842 over the supply period. The Appellant also goes on to model a scenario whereby the agreed eight year delivery period is not rolled forward (ie the supply period remains fixed and diminishes as time moves forward), the requirement increases. The net figure is increased by 574 dwellings, which in turn impacts on the final supply figure.

398. The Council interpret the 'pool' element of the calculation to facilitate the rolling forward of the backlog in the calculation, thus allowing the number of units to be made up over the greater part of the plan period. However, this runs counter to the current position set out in the rFramework and the PPG which anticipates that any backlog should be made up within the first five years of the plan period (or in this case the 8 year period as determined by the CELPS and the Examining Inspector)³⁰. This has to be the right approach unless where express circumstances dictate otherwise³¹. Whilst such an approach would not be consistent with that applied in Park Road Appeal³² it is consistent with the expectations of the Local Plan Inspector, who anticipated that the Council fully

³⁰ CD40 Examining Inspector's Report paragraph 72.

³¹ PPG/NPPF ref.

³² Ibid.

meet past under-delivery within the next 8 years of the plan period³³. Whilst not supported by the Wrenbury decision³⁴, a rolling deferment of meeting the shortfall beyond the anticipated eight year cycle is at variance with the Government's policy commitments to boost significantly the supply of new homes.

399. The difference in the calculation of backlog delivery of 574 dwellings is a significant number, in the view of the appellant contributing to a depleted five year supply figure of 4.24 years. However, even if the Council's calculation is preferred, in combination with anticipated delivery rates, the Council's five year supply position stands at just 5.37 years or as advised in their last submissions 5.35 years. That said, as in the two other recent appeals³⁵ the greater divergence of view in respect of the supply position is focused on the delivery of housing sites that will help meet the anticipated trajectory. The Council's assessment of supply (recalibrated after the round table discussion at the Inquiry) 15,908 over the defined period, whilst the Appellant calculates a number of 13,101 (again recalibrated) applying the Sedgemoor methodology, a difference of 2,807 dwellings. These respective positions are reached on the one hand by standard methodology (previously referred to as the 'in principle' approach)³⁶ and more specifically though narrow analysis by the Council, and a detailed exploration of a wider range of larger sites (previously defined as above as 'performance') by the appellant. These matters are now considered below.

Supply

400. With regard to the 'in principle' differences between the parties, the Council applies a standard methodology to predict the lead in times for site delivery and build rates for strategic and non-strategic sites, basing these on past experience. For strategic sites without planning permission, the standard methodology anticipates an average of 2.5 years to the point of completion of the first dwellings. These are calibrated by applying information from site promoters or agents where evidence supports a site coming forward more quickly or the reverse.

401. The Examining Inspector was clear that a lot depends on whether the committed and proposed sites come forward in line with the anticipated timescale in the housing trajectory. Since March 2016 it is evident there has been slippage in the anticipated timescales for delivery of a number of the strategic sites when the March 2017 HMU and the March 2016 position are compared. Delivery in 2016/17 of 1,762 dwellings also fell short of the anticipated trajectory of 2,955 dwellings and in 2017/18 the target of 3,373 dwellings looks like being short by approximately 130 units. Although the CELPS is only two years old, and inertia caused by such factors as the absence of the plan and the unpredictabilities of appeal-based permissions are no longer present, thus potentially hastening delivery, it is difficult to

³³ Paragraph 72 Local Plan Inspector's Report (CD A40).

³⁴ Appeal Ref: APP/R0660/W/17/317649.

³⁵ Ibid

³⁶ CD29, Paragraph 13 White Moss Appeal.

escape the conclusions of the two previous Inspectors³⁷ that the assumed delivery rates of the housing trajectory have in fact failed.

402. Although there are positive signals that delivery is picking up, also recognised in the two previous appeals, it is inevitably perhaps in the light of their wider conclusions the Council also presents an analysis of 16 specific sites to demonstrate that on-the-ground delivery is in fact meeting or exceeding the expectations of the trajectory.
403. The evidence here is initially compelling. The Council suggest a commencement period post-detailed consent averaging around 5 months and for those with outline consent around 1.47 years. Such evidence suggests that just under half the chosen sites have started ahead of expectations in the HMU (the 'in principle' expectation time of 2.5 years), an indicator, the Council suggest, of likely commencement rates in the future. This evidence is also supported by feedback from developers and promoters, offering a site specific record of particular circumstances. With the 'in principle' figures consolidated by these accelerated lead-in times delivering above expectation numbers, the Council maintain a 5 supply of 5.35 years with a 20% buffer and 5.83 years with 10% buffer applied, as identified in their post rFramework submissions.
404. However, by the Council's own admission this assessment, though 'decent' was not 'comprehensive'. Indeed, numbering just 16 sites, and without a transparent methodology for selection, it is difficult to avoid the conclusion offered by the appellant that there may have been an element of inadvertent self-selection in the process, and that such evidence does not, of itself, convincingly establish a significant upward trend in delivery. Moreover, this, and the 'in principle' evidence, needs to be considered against that presented (and recalibrated following the round table discussion at the Inquiry) in the context of the site specific evidence presented by the appellant, covering a total of 41 sites within the district. Without reference to each detailed site-specific analysis the sum of the appellant's conclusions on lead in time to construction anticipates 1 year from submission to grant of outline consent; 1 year to reserved matters application; 6 months to their determination and 1 year to the completion of the first dwelling, a total lead-in time of 3.5 years. Such an analysis, as the appellant points out, correlates with the broad conclusions of both Inspectors in the White Moss and Park Road cases, with the Park Road Inspector identifying an average of between 3 and 4 years for strategic sites without planning permission to first completion³⁸.
405. With such lead-in times applied to the 41 sites identified in the appellant's case and the commensurate reduction in the number of units accounted), the broad slippage in delivery previously identified repeated, the appellant identifies a 4.25 year supply with the 20% buffer applied and a 4.64 year supply with the lower 10% buffer used. Even if one were to add the 5% of the total discounted by the appellant to account for lapsed planning permissions as the Council advise (or any part lesser %), this would still not achieve the five year supply threshold, even with a 10% buffer applied.

³⁷ Those who determined White Moss and Park Road.

³⁸ Paragraph 51, APP/R0660/W/17/3168917.

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406. Moreover, and notwithstanding the various submissions to the Inquiry, paragraph 67 of the revised Framework clarifies the definition of the term 'deliverable' in relation to the supply of housing, setting this out in Annex 2 therein. In summary the definition applies to two categories of sites; those lesser sites and those with planning permission, which should be considered deliverable and; sites without planning permission in principle or allocated in development plans. These should now only be considered deliverable where there is clear evidence that housing completions will begin on site within five years. This represents a significant shift in emphasis from the previous Framework position; now the latter sites are no longer to be included unless there is specific evidence that they will indeed deliver within the five year period. These clarifications effectively supersede interpretations around the St Modwen case³⁹ that preoccupied the evidence on housing delivery heard at the Inquiry.
407. 34 of the 41 sites identified by the appellant were those without planning permission, those with outline planning permission or those also subject to section 106 commitments. Whilst the Council, on notification of the revisions to the Framework, chose not to address these sites in any detail, it is clear that by default, those within the latter category, without the clear evidence that completions will begin within five years, must now be at risk of dropping out of the calculation. This being so, to Council's position of asserting a 5.35 year supply with a 20% looks to be increasingly untenable, whilst that of the appellant's assessment of 4.25 years, and even that of 4.64 years with a reduced 10% buffer, looks the more robust. Whilst the conclusions reached by the Inspector in the Wrenbury case⁴⁰ take a contrary view on the 5 year land supply position, this appeal was determined prior to the publication of the Framework and the weight to be conferred it is very significantly reduced as a result.
408. Even if the most generous conclusion is reached, there has to be reasonable doubt that the Council is able to demonstrate a five year supply of housing land. Thus the precautionary approach taken by the two Inspectors in the White Moss and Park Road decisions may equally and rightly apply here. Whilst such a conclusion may not only be viewed as consistent with the previous approach, it also now enjoys the support of the High Court in the form of the dismissal of the Shavington case⁴¹ (previously advised of by the Council) which had sought to demonstrate, by proxy reference to White Moss and Park Road, that the 'precautionary approach' adopted by the two previous Inspectors, and as is applied here, was unlawful. Such a view was comprehensively rejected by the Court. This case however also predated the publication of the revised Framework and the editing-out of paragraph 49 of the former document making reference to the requirement for Councils to demonstrate a five year supply of housing sites. However this changes little beyond the structure of the document. Paragraph 11 at sub paragraph d) though footnote 7 makes clear

³⁹ St Modwen Developments Ltd v Secretary of State for Communities and Local Government [2017] EWCA Civ 1643.

⁴⁰ APP/R0660/W/17/3176449 appended to the Council's NPPF revisions submission IDXX.

⁴¹ [2018] EWHC 2906 (admin). Case No. CO/1032/2018.

that where a local authority cannot demonstrate a five year supply of deliverable housing sites policies most important for determining the application can be considered out-of-date. The delegation of the need to identify a supply to a foot note does not diminish the status of the policy as paragraph 3 of the rFramework makes clear; 'The Framework should be read as a whole (including footnotes and annexes).

409. On the basis of the evidence presented, the Council is unable to demonstrate a five year supply of housing sites. In accordance with paragraph 11 of the rFramework therefore, the policies most important for determining these applications are out-of-date. Their status as such will thus need to be taken into account in the final planning balance.

Need for a mixed use development

The relevant preceding paragraphs for the Appellant are 110-112.
The relevant preceding paragraphs for the Council are 279-283.

410. The Council argue in closing that disaggregating the employment component of the scheme and accounting for it in the context of employment floor space would add some 10% to the appropriate employment floor space required by policy. This would amount the Council suggest to 'very significant levels of unplanned growth'. However, the supply of employment land, over and above development plan targets or otherwise, has hitherto not formed part of the Council's case, that application having always been viewed as a mixed use scheme, led by the significant residential component that has always remained the focus of the Council's and the Secretary of States considerations. This is the right approach as to do otherwise would be to invite independent evaluation of its constituent elements across the board. The Secretary of State is invited to consider the proposal as a whole and against the substantive policy issues hitherto set out.

Distortion of the Council's Spatial Vision

The relevant preceding paragraphs for the Appellant are 112-121.
The relevant preceding paragraphs for the Council are 284-287 & 325-326.

411. The Council argue that as Nantwich has achieved target numbers identified in the CELPS and to allow further development above that number would serve now only to distort the spatial vision of the strategy in conflict with its broad strategic policies PG2 and PG7. However, the numbers set out therein are expressed as neither a ceiling not a target to be reached. Moreover, the supporting material for the policy advises such numbers as being an indicative distribution, and no more. Whilst a development of a scale reaching way beyond these aspirational targets may well be seen as distorting the spatial vision, in the context of the phrasing characterised above, the development proposed here cannot be considered of that magnitude. Indeed, it also remains consistent with the policies of the rFramework in paragraphs 59 and 60, which continue to emphasise the imperative of significantly boosting the supply of homes, and in so doing, determining the minimum, not the maximum number of homes needed in differing circumstances. There is therefore no breach of

policies PG2 and PG7 of the CELPS, and therefore no policy-based harm to consider in the planning balance in this regard.

The benefits of the scheme

The relevant preceding paragraphs for the Appellant are 126-128.

The relevant preceding paragraphs for the Council are 291-294 & 303-322.

412. The construction of new housing would create jobs, and support growth, as would new space for employment development. Notwithstanding the Council's view that the employment component of the scheme is not required, such provision, in close proximity to services, new residential property and transport links is likely to prove an attractive offer, and would readily therefore contribute to the growth of the local economy. Nantwich is also one of the preferred locations for development in the CELPS and there is no dispute that in locational terms at least, the site is in a sustainable location. Such recognised benefits garner a medium measure of weight.
413. The provision of a new primary school site to meet future educational provision, the children's play area, and extensive areas of public open space including a new village green and an enlarged LNCA would represent significant additional social benefits, not just to new occupiers of the development but to those in the locality as well. There would be contributions towards new bus stops and an extensive service linking with the town centre and railway station in addition to new path and cycle path networks offering alternative transport modes to the town and its services. Beyond necessary mitigation, these are also measurable social benefits that weigh in favour of the proposals.
414. In both the local and national context the delivery of significant numbers of market housing in a sustainable location is a significant benefit. Nationally, it is a government policy imperative to boost the supply of housing and this is given fresh emphasis in the recently published rFramework. Locally, although the Council fear the final yield of the site within the five year supply period may be curtailed this is rebutted convincingly by the appellant, and the site will in all probability make a contribution to housing numbers within the anticipated part of the plan period. This has all the more value given the identified shortfall in delivery. In both contexts therefore the delivery of market housing merits substantial weight being afforded in favour of the scheme.
415. The proposal would not provide affordable housing above that anticipated by policy, nor would it be above the level expected on other sites. However, such provision would be a tangible benefit when judged against the identified need in the district. Nor is there a suggestion that the contribution, if lost, would be made up from other developments. In light of the above, this contribution to affordable housing also merits significant weight.
416. It was clear from the representations made at the Inquiry that there was a significant degree of apprehension amongst local residents over any increase in traffic numbers in the locality as a result of the development proposed. However, such apprehension does not have the support of technical evidence that would convincingly rebut the appellant's view, not challenged by the

Council, that no severe highway harms would result from the scheme. Such concerns therefore carry the most minimal of weight.

Planning balance

417. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. Such a consideration of importance is the presumption in favour of sustainable development set out in paragraph 11 of the rFramework. The question of a 5 year housing land supply in relation to these appeals is very finely balanced. It is therefore recommended, in accordance with reasoning adopted in the White Moss and Park Road appeals, and as now endorsed by the Shavington case⁴², that a precautionary approach is applied, taking the worst-case position within the range on housing land supply presented, and apply the 'tilted balance' in sub-paragraph d) of paragraph 11 of the rFramework in the determination of these appeals. This makes clear that where the policies most important for the determination of the proposals are out-of-date, permission should be granted unless other policies of the rFramework dictate otherwise, or the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
418. In terms of the adverse impacts of the proposal, the appeal sites form part of the Open Countryside on the borders of Nantwich. As such the development is in clear conflict with the letter and purpose of Policies PG6, SD1 and SD2 of the CELPS, Policy RES5 of the CNLP and Policies GS, H1 and H5 of the S&BNP. However, the degrees of harm to visual amenity here, because of the very specific urbanised context of the site and the contribution open green space makes to the scheme, would, in actuality, be limited in extent.
419. It is also the case that the proposals would result in the loss of BMV and again this would be in conflict with Policy SE2 of the CELPS. No other substantive harms have been identified and other effects of the development can be effectively mitigated through the provisions of the section 106 obligations, thus rendering them neutral in the planning balance.
420. Set against these identified harms the development would deliver up to 189 dwellings. In the context of the national imperative to significantly boost the supply of homes, the identified shortfall in housing delivery over the plan period, and supported by the indicators that it may come forward to the market relatively quickly, this is a clear benefit meriting significant weight in favour of the scheme. This is the more so in light that the site the scheme would also include up to 30% affordable homes, secured through the S106 agreement. Given that there is an undisputed need for affordable housing in Cheshire East, which the appeal scheme would help meet, this is again a benefit meriting significant weight in favour of the proposals.

⁴² Ibid.

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421. The development would also bring economic benefits in terms of direct and indirect employment during its construction phase, expenditure into the local economy and sustain further enterprise through the mixed uses on offer. Moreover, there are other social benefits in terms of the open space, improvements to sustainable transport connectivity and the scope for the development of a further primary education facility. These latter benefits would accrue not only to occupiers of the residential development proposed, but to others within the vicinity as well. Taken together these positive attributes can be afforded a medium degree of weight.
422. The Secretary of State will be mindful that both the CELPS and the S&BNP are relatively new components of the development plan, each of which has seen the subject considerable investment in terms of local resource and commitment and are which both relatively recently adopted and made. Moreover, there are also incipient signs that delivery of housing sites may indeed pickup more in accordance with expectations later in the plan period. The policies of the development plan should not therefore be set aside lightly. However, against the conflict with these policies, for which there is a presumption development shall be determined in accordance with, there are some material considerations of considerable importance and weight to consider.
423. The first is that despite the conflict with countryside policies, the degree of harm to visual amenity is in fact limited, and reflected in the Council's position on the proposals from the outset. More significantly however, the Council has been found unable to demonstrate a five year supply of housing land and this, in accordance with paragraph 11 of the rFramework and its attendant foot note 7, triggers the presumption in favour of sustainable development heralded therein on the basis that policies most important to the determination of the cases are out-of-date. The policies referred to above (PG6 and SE2 of the CELPS, Policy RES5 of the CNLP and Policies GS1, H1 and H5 of the S&BNP) have to be viewed as being the most import of policies for the determination of these proposals as they are critical to the permitting of residential development in open countryside and immediately adjacent to settlement boundaries. It must follow therefore that in light of the supply position they are out of date, thus diminishing the weight to be afforded them in the planning balance.
424. Moreover, it might be right that the aims and purposes of Policy RG6 remain consistent with those of the rFramework (as the Council maintain). However, in the absence of a five year supply of housing land it has to be considered somewhat Canute-like to argue that the settlement boundaries drawn to reflect the past aspirations of the former local plan (2006-2011) can still be held to be not-out-of date. This is a conclusion all the more compelling given the evidence of appeals being allowed and the Council granting planning permission for development outwith these boundaries in years subsequent to their anticipated utility in order to meet supply. Neither does it come as a surprise that the LP Inspector for the CELPS anticipated that such boundaries would have to be reviewed in the future allocations component of the plan. This position is again reflected in the reasoning of the Inspector in the Park Road Appeal⁴³.

⁴³ Ibid, paragraph 16 thereof.

425. All of these weighty considerations combine to reduce the weight to be applied to these policies in the light of the very particular supply situation identified in this case. Whilst there remains conflict with the policies of the development plan, these proposals would bring forward substantial benefits. These benefits are such that they are not significantly or demonstrably outweighed by the lesser harms identified. The proposals, presented in both appeals, therefore constitute the sustainable development for which the rFramework presumes in favour of.

Recommendation

426. I recommend that both appeals should be allowed and planning permission granted subject to the attached Schedules of Conditions.

David Morgan

INSPECTOR

Schedule of Conditions

Appeal A

1. Details of appearance, access landscaping, layout and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority (LPA) before any development begins, and the development shall be carried out as approved.
2. Application for approval of all the reserved matters shall be made to the LPA not later than three years from the date of this permission. The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
3. This permission shall refer to the following drawing numbers unless any other condition attached to the permission indicates otherwise:

Mixed Use and Access Applications Diagram – dwg SK15 Rev C
(11 November 2017)

Mixed Use and Access Applications Diagram – dwg SK16 Rev C
(11 November 2017)

Mixed Use and Access Applications Diagram – dwg SK17 Rev C
(11 November 2017)

Mixed Use and Access Applications Diagram – dwg SK19 Rev D
(11 November 2017)

4. No development shall commence until details of a scheme for the disposal of foul and surface water from the development has been submitted to and approved in writing by the LPA. The scheme shall make provision, inter alia for the following:
 - a. this site to be drained on a totally separate system with all surface water flows ultimately discharging in to the nearby watercourse
 - b. a scheme to limit the surface water run-off generated by the proposed development
 - c. a scheme for the management of overland flow
 - d. the discharge of surface water from the proposed development to mimic that which discharges from the existing site.
 - e. if a single rate of discharge is proposed, this is to be the mean annual run-off (Qbar) from the existing undeveloped greenfield site. For discharges above the allowable rate, attenuation for up to the 1% annual probability event, including allowances for climate change.
 - f. the discharge of surface water, wherever practicable, by Sustainable Drainage Systems (SuDS).
 - g. Surface water from car parking areas less than 0.5 hectares and roads to discharge to watercourse via deep sealed trapped gullies.
 - h. Surface water from car parking areas greater than 0.5 hectares in area, to have oil interceptor facilities such that at least 6 minutes retention is provided for a storm of 12.5mm rainfall per hour.

The development shall not be occupied until the approved scheme of foul and/or surface water disposal has been implemented to the satisfaction of the LPA.

5. No development shall commence until a scheme for the provision and management of an 8 metre wide buffer zone alongside the watercourse on the northern boundary measured from the bank top (defined as the point at which the bank meets the level of the surrounding land) has been submitted to and approved in writing by the LPA. The scheme shall include:

- plans showing the extent and layout of the buffer zone
- details of any proposed planting scheme (for example, native species)
- details demonstrating how the buffer zone will be protected during development and managed/maintained over the longer term including adequate financial provision and named body responsible for management plus production of detailed management plan.

This buffer zone shall be free from built development other than the proposed access road. Thereafter the development shall be carried out in accordance with the approved scheme and any subsequent amendments shall be agreed in writing with the LPA.

6. No development shall commence within the application site until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved by the LPA.

7. No development shall take place until a Construction Method Statement (CMS) has been submitted to and approved in writing by the LPA. The approved CMS shall be adhered to throughout the construction period. The CMS shall provide for:

- a. the hours of construction work and deliveries
- b. the parking of vehicles of site operatives and visitors
- c. loading and unloading of plant and materials
- d. storage of plant and materials used in constructing the development
- e. wheel washing facilities
- f. measures to control the emission of dust and dirt during construction.
- g. details of any piling operations including details of hours of piling operations, the method of piling, duration of the pile driving operations (expected starting date and completion date), and prior notification to the occupiers of potentially affected properties
- h. details of the responsible person (e.g. site manager / office) who could be contacted in the event of complaint

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- i. control of noise and disturbance during the construction phase, vibration and noise limits, monitoring methodology, screening, a detailed specification of plant and equipment to be used and construction traffic routes
 - j. waste management: there shall be no burning of materials on site during demolition/construction.
8. No development shall take place on the commercial and retail element until a detailed noise mitigation scheme to protect the proposed dwellings from noise, taking into account the conclusions and recommendations of the Noise Report submitted with the application, shall be submitted to and agreed in writing by the LPA. The approved mitigation measures shall be implemented before the first occupation of the dwelling to which it relates.
9. Prior to the commencement of development:
- a. A contaminated land Phase 2 investigation shall be carried out and the results submitted to, and approved in writing by the LPA.
 - b. If the Phase 2 investigations indicate that remediation is necessary, a Remediation Statement including details of the timescale for the work to be undertaken shall be submitted to, and approved in writing by, the LPA. The remedial scheme in the approved Remediation Statement shall then be carried out in accordance with the submitted details.
 - c. Should remediation be required, a Site Completion Report detailing the conclusions and actions taken at each stage of the works including validation works shall be submitted to, and approved in writing by, the LPA prior to the first use or occupation of any part of the development hereby approved.
10. No development shall commence until a scheme of destination signage to local facilities, including schools, the town centre and railway station, to be provided at junctions of the cycleway/footway and highway facilities shall be submitted to and agreed in writing by the LPA. The approved scheme shall be provided in parallel with the cycleway/footway and highway facilities.
11. No development shall commence until schemes for the provision of MOVA traffic signal control systems to be installed at the site access from Peter Destapleigh Way and at the Audlem Road/Peter Destapleigh Way traffic signal junctions, has been submitted to and approved in writing by the LPA . Such MOVA systems shall be installed in accordance with approved details prior to the first occupation of the development hereby permitted.
12. The Reserved Matters application shall include details of parking provision for each of the buildings proposed. No building hereby permitted shall be occupied until the parking and vehicle turning areas for that building have been constructed in accordance with the details shown on the approved plan. These areas shall be reserved exclusively thereafter for the parking and turning of vehicles and shall not be obstructed in any way.
13. Prior to the first occupation of the development hereby permitted a Travel Plan shall be submitted to and approved in writing by the LPA. The Travel Plan shall

include, inter alia, a timetable for implementation and provision for monitoring and review. None of the building hereby permitted shall be occupied until those parts of the approved Travel Plan that are identified as being capable of implementation after or before occupation have been carried out. All other measures contained within the approved Travel Plan shall be implemented in accordance with the timetable contained therein and shall continue to be implemented, in accordance with the approved scheme of monitoring and review, as long as any part of the development is occupied.

14. No development shall take place until a scheme (including a timetable for implementation) to secure at least 10% of the energy supply of the development from decentralised and renewable or low carbon energy sources shall be submitted to and approved in writing by the LPA. The approved scheme shall be implemented and retained as operational thereafter.

15. Prior to first occupation of each unit, Electric Vehicle Infrastructure shall be provided to the following specification, in accordance with a scheme, submitted to and approved in writing by the LPA which shall include the location of each unit:

- A single Mode 2 compliant Electric Vehicle Charging Point per property with off road parking. The charging point shall be independently wired to a 30A spur to enable minimum 7kW charging.
- 5% staff parking on the office units with 7kW Rapid EVP with cabling provided for a further 5% (to enable the easy installation of additional units).

The EV infrastructure shall be installed in accordance with the approved details and thereafter be retained.

16. Prior to any commencement of works between 1st March and 31st August in any year, a detailed survey shall be carried out by a suitably qualified person to check for nesting birds and the results submitted to the LPA. Where nests are found in any hedgerow, tree or scrub to be removed (or converted or demolished in the case of buildings), a 4m exclusion zone shall be left around the nest until breeding is complete. Completion of nesting shall be confirmed by a suitably qualified person and a further report submitted to LPA before any further works within the exclusion zone take place.

17. Prior to the commencement of development detailed proposals for the incorporation of features into the scheme suitable for use by breeding birds shall be submitted to and approved in writing by the LPA. The approved features shall be permanently installed prior to the first occupation of the development hereby permitted and thereafter retained, unless otherwise agreed in writing by the LPA.

18. The reserved matters application shall be accompanied by a detailed Ecological Mitigation strategy including a great crested newt mitigation strategy informed by the recommendations of the submitted Protected Species Impact Assessment and Mitigation Strategy dated 2013 prepared by CES

Ecology (CES:969/03-13/JG-FD). The development shall be implemented in accordance with the measures of the approved ecological mitigation strategy.

19. Prior to the commencement of each phase of development details of the proposed lighting scheme should be submitted to and approved in writing by the Local Planning Authority.
 - a) The details shall include the location, height, design and luminance and ensure the lighting is designed to minimise the potential loss of amenity caused by light spillage onto adjoining properties. The lighting shall thereafter be installed and operated in accordance with the approved details.
 - b) The scheme should include dark areas and avoid light spill upon bat roost features, boundary hedgerows and trees. The scheme should also include details of: Number and location of proposed luminaires; Luminaire light distribution type; Lamp type, lamp wattage and spectral distribution; Mounting height; Orientation direction; Beam angle; Type of control gear; Proposed lighting regime; and Projected light distribution maps of each lamp. The lighting scheme shall be installed in accordance with the approved details.
20. All trees with bat roost potential as identified by the Peter Destapleigh Way Ecological Addendum Report 857368 (RSK September 2017) shall be retained, unless otherwise agreed in writing by the Local Planning Authority
21. The first reserved matters applications shall include a Design Code for the site and all reserved matters application shall comply with provisions of the Masterplan submitted with the application and the approved Design Code.
22. Prior to the commencement of each phase of development a scheme for landscaping shall be submitted to the Local Planning Authority and approved in writing. The approved landscaping scheme shall include details of any trees and hedgerows to be retained and/or removed, details of the type and location of Tree and Hedge Protection Measures, planting plans of additional planting, written specifications (including cultivation and other operations associated with tree, shrub, hedge or grass establishment), schedules of plants noting species, plant sizes and proposed numbers/densities and an implementation programme.

The landscaping scheme shall be completed in accordance with the following:-

- a) All hard and soft landscaping works shall be completed in full accordance with the approved scheme, within the first planting season following completion of the development hereby approved, or in accordance with a programme agreed with the Local Planning Authority.
- b) All trees, shrubs and hedge plants supplied shall comply with the requirements of British Standard 3936, Specification for Nursery Stock. All pre-planting site preparation, planting and post-planting maintenance works shall be carried out in accordance with the requirements of British Standard 4428 (1989) Code of Practice for General Landscape Operations (excluding hard surfaces).

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- c) All new tree plantings shall be positioned in accordance with the requirements of Table 3 of British Standard BSD5837: 2005 Trees in Relation to Construction: Recommendations.
 - d) Any trees, shrubs or hedges planted in accordance with this condition which are removed, die, become severely damaged or become seriously diseased within five years of planting shall be replaced within the next planting season by trees, shrubs or hedging plants of similar size and species to those originally required to be planted.
23. An Arboricultural Impact Assessment, Tree Protection Plan and Arboricultural Method Statement in accordance with BS5837:2012 Trees in Relation to Design, Demolition and Construction – Recommendations shall be submitted in support of any reserved matters application which shall evaluate the direct and indirect impact of the development on trees and provide measures for their protection.
24. No phase of development shall commence until details of the positions, design, materials and type of boundary treatment to be erected have been submitted to and approved in writing by the LPA. No building hereby permitted shall be occupied until the boundary treatment pertaining to that property has been implemented in accordance with the approved details.
25. The Reserved Matters application for each phase of development shall include details of bin storage or recycling for the properties within that phase. The approved bin storage facilities shall be provided prior to the first occupation of any building.
26. Notwithstanding the details shown on plan reference no. BIR.3790.09D (September 2012) access to the development herein permitted shall be exclusively from Peter Destapeleigh Way as shown on plan reference no. dwg SK16 Rev C (11 November 2017)
27. Unless otherwise agreed in writing, none of the dwellings hereby permitted shall be first occupied until access to broadband services has been provided in accordance with an action plan that has previously been submitted to and approved in writing by the LPA.

Appeal B

1. The development hereby approved shall commence within three years of the date of this permission.
2. This permission shall refer to the following drawing numbers unless any other condition attached to the permission indicates otherwise:
 - a. Site Location Plan reference no. BIR.3790_13
 - b. Site Access General Arrangement Plan reference no. SCP/10141/D03/ Rev D (May 2015).
3. No development shall commence until there has been submitted to and approved by the LPA a scheme of landscaping and replacement planting for the site indicating inter alia the positions of all existing trees and hedgerows within and around the site, indications of those to be retained, also the number,

species, heights on planting and positions of all additional trees, shrubs and bushes to be planted.

4. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the completion of the development whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the landscaping scheme die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species unless the LPA gives written consent to any variation.
5. Prior to the commencement of development or other operations being undertaken on site a scheme for the protection of the retained trees produced in accordance with BS5837:2012 Trees in Relation to Design, Demolition and Construction : Recommendations, which provides for the retention and protection of trees, shrubs and hedges growing on or adjacent to the site, including trees which are the subject of a Tree Preservation Order currently in force, shall be submitted to and approved in writing by the Local Planning Authority.
 - (a) No development or other operations shall take place except in complete accordance with the approved protection scheme.
 - (b) No operations shall be undertaken on site in connection with the development hereby approved (including any tree felling, tree pruning, demolition works, soil moving, temporary access construction and / or widening or any operations involving the use of motorised vehicles or construction machinery) until the protection works required by the approved protection scheme are in place.
 - (c) No excavations for services, storage of materials or machinery, parking of vehicles, deposit or excavation of soil or rubble, lighting of fires or disposal of liquids shall take place within any area designated as being fenced off or otherwise protected in the approved protection scheme.
 - (d) Protective fencing shall be retained intact for the full duration of the development hereby approved and shall not be removed or repositioned without the prior written approval of the Local Planning Authority.
6. No excavations for services, storage of materials or machinery, parking of vehicles, deposit or excavation of soil or rubble, lighting of fires or disposal of liquids shall take place within any area designated as being fenced off or otherwise protected in the approved protection scheme.
7. Prior to development commencing, a detailed Ecological Mitigation strategy including a great crested newt mitigation strategy informed by the recommendations of the submitted Protected Species Impact Assessment and Mitigation Strategy dated MARCH 2013 REVISION) prepared by CES Ecology (CES:969/03-13/JG-FD) shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the measures of the approved ecological mitigation strategy.
8. Prior to any commencement of works between 1st March and 31st August in any year, a detailed survey shall be carried out by a suitably qualified person to check for nesting birds and the results submitted to the LPA. Where nests are

found in any building, hedgerow, tree or scrub to be removed (or converted or demolished in the case of buildings), a 4m exclusion zone shall be left around the nest until breeding is complete. Completion of nesting shall be confirmed by a suitably qualified person and a further report submitted to LPA before any further works within the exclusion zone take place.

9. Prior to the commencement of development details of the proposed lighting scheme should be submitted to and approved in writing by the Local Planning Authority. The scheme should include dark areas and avoid light spill upon bat roost features, boundary hedgerows and trees. The scheme should also include details of: Number and location of proposed luminaires; Luminaire light distribution type; Lamp type, lamp wattage and spectral distribution; Mounting height; Orientation direction; Beam angle; Type of control gear; Proposed lighting regime; and Projected light distribution maps of each lamp. The lighting scheme shall be installed in accordance with the approved details.
10. Prior to the commencement of development , and to minimise the impact of the access road on potential wildlife habitat provided by the existing ditch located adjacent to the southern site boundary, the detailed design of the ditch crossing shall be submitted to and approved in writing by the LPA . The access road shall be constructed in full accordance with the approved details.
11. No development shall commence on site unless and until a Deed of variation under s106A TCPA 1990 (as amended) has been entered into in relation to the S106 Agreement dated 20 March 2000 between Jennings Holdings Ltd (1), Ernest Henry Edwards, Rosemarie Lilian Corfield, James Frederick Moss, Irene Moss, John Williams and Jill Barbara Williams (2), Crewe and Nantwich BC (3) and Cheshire County Council (4) to ensure that the Local Nature Conservation Area is delivered, maintained and managed under this permission.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Reuben Taylor of Queen's Counsel

Instructed by the Solicitor to
Cheshire East Council

He called:

Mr Richard Taylor BA (Hons) BTP MRTPI

Mr Adrian Fisher BSc MTPL MRTPI

FOR THE APPELLANT:

Mr Paul Tucker of Queen's
Counsel

instructed by Patrick Downes, Harris
Lamb on behalf of Müller Property
Group

Assisted by Mr Philip Robson
of Counsel

He called:

Mr Jonathan Berry BA (Hons) Dip LA CMLI AIEMA M ArborA

Mr Patrick Downes BSc (Hons) MRICS

Mr Matthew Weddaburn BSc MA MRTPI

Mr William Booker BSc (Hons)

INTERESTED PERSONS:

Councillor M Theobald

Stapeley & District Parish Council

Mr P Cullen

Resident

Councillor P Groves

Cheshire East Council

Mr P Staley

Resident

Ms J Crawford

Resident

Ms G Barry

Resident

Mr K Roberts

Resident

Councillor A Martin

Councillor

INQUIRY DOCUMENTS (IDs)

1. Appearances – Appellant
2. Planning SoCG
3. Housing SoCG
4. Draft s106
5. Revised plans – Appellant
6. Revised Appendix 14 (Mr Fisher) – Council
7. Openings – Appellant
8. Openings – Council
9. Statement Councillor Groves
10. Statement Councillor Theobald
11. Statement Mr Cullen
12. Statement Mr Staley
13. Statement Ms Barry
14. Amended red line drawing
15. Strategic sites list with references
16. Wokingham High Court Decision – Council
17. E mail site LPSA 2
18. Map – LPS 27
19. Appendix E CELPS (Housing trajectory)
20. Appellant's housing evidence amended table 17
21. CD of Traffic issues – Mr Staley
22. Extract PPG paragraph 26
23. Accident Record of area (map) – Appellant
24. Aerial photograph highway improvements – Appellant
25. Bus timetables – Appellant
26. List draft conditions
27. Agricultural land analysis – Appellant
28. Stapley and Batherton Neighbourhood Plan
29. Amended landscape condition
30. CIL compliance schedule
31. Updated s 106
32. Councillor Theobald comments on s106
33. Amended housing supply table – Appellant
34. Letters/email from D Roberts/H Thompson

DOCUMENTS RECEIVED AFTER THE ADJOURNMENT OF THE INQUIRY

- 1a Final list of Core Documents
- 2a Closings Appellant
- 3a Closings Council
- 4a Grounds for Claim to High Court (Shavington case) – Council
- 5a Comments on rFramework – Appellant
- 6a Comments on rFramework – Council
- 7a Final comments on Council's submissions - Appellant

CORE DOCUMENTS

Background (A)	
	National Planning and Ministerial Statement
A9	The Plan for Growth (2011)
A10	Supporting Local Growth (2011)
	Local Plan Policy and Guidance
A11	Extracts of Adopted Crewe and Nantwich Replacement Local Plan (2005) ("CNRLP")
A12	Secretary of State's Direction (Saved Policies) February 2008
A13	Removed
A14	Removed
A15	Removed
A16	Interim Planning Policy on Release of Housing Land (February 2011)
A19	Extract of the Draft Nantwich Town Strategy
	Emerging Local Plan Background Documents
A20A	Extracts from the Cheshire East Local Plan Strategy 2010 – 2030 ("LPS")
A24	Extracts of Cheshire East Strategic Housing Market Assessment (2010)
A25	CEC Strategic Housing Land Availability Assessment (March 2012)
A26	CEC Strategic Housing Land Availability Assessment Letter (4 th December 2013)
A27	Letter of representation from The Home Builders Federation to the SHLAA update methodology (January 2014)
A28	Letter from Muller Property Group to the SHLAA update methodology (January 2014)
A35	Extract from Annual Monitor on Affordable Housing Provision
A36	Stapeley and Batherton Neighbourhood Plan, Referendum Version (SBNP)
A37	Stapeley and Batherton Neighbourhood Plan Examiner's Report
A38	Council Decision on report of SBNP
A39	Cheshire East Local Plan Strategy 2010 – 2030 July 2017
A40	Report on the Examination of the Cheshire East Local Plan Strategy Development Plan Document, 20 June 2017
A41	Inspector's Views on Further Modifications Needed to the Local Plan Strategy (Proposed Changes), 13 December 2016
A42	Inspector's Interim Views on the legal compliance and soundness of the submitted Local Plan Strategy, 6 November 2014
A43	Inspector's Further Interim Views on the additional evidence produced by the Council during the suspension of the examination and its implications for the submitted Local Plan Strategy, 11 December 2015
A44	Cheshire East Local Plan: Nantwich Town Report, March 2016
A45	Crewe and Nantwich Replacement Local Plan, 2011

Technical Papers (B)	
B3	Extract of Manual for Streets 2 – Wider Application of the Principles (CIHT, 2010)
B4	Extract of Manual for Streets (2007)
B17	Transport for Statistics Bulletin
B18	Walking in Britain
B19	South Worcestershire interim conclusions on the South Worcestershire Development Plan
B20	LDC initial findings report (Sept 2013)
B21	Strategic Housing Land Availability Assessment and the development plan document preparation

B22	Cheshire East Council Housing Supply and Delivery Topic Paper (August 2016)
B23	Cheshire East Council Housing Monitoring Update (published August 2017, base date 31st March 2017)

High Court and Supreme Court Cases (C)	
C11	High Court Judgement West Lancashire vs Secretary of State for Communities and Local Government (Neutral Citation Number: [2017] EWHC (Admin))
C12	Supreme Court Judgement Carnworth, Suffolk Coastal District

Appeal Cases (D)	
	Ministerial Appeal Decisions
	Inspector Appeal Decisions
D29	Planning Inspectorate appeal reference: APP/R0660/W/17/3166469. White Moss, Butterson Lane, Barthomley, Crewe CW1 5UJ. 8 th November 2017
D30	Planning Inspectorate appeal reference: APP/R0660/W/17/3168917. Land to the south of Park Road, Willaston, Cheshire. 4 th January 2018
D31	Planning Inspectorate appeal reference: APP/M4320/W/17/3167849. Land to the south of Andrews Lane, Formby L37 27H. 5 th December 2017

Relevant Applications (E)	
E1	Decision Notice for the extant permission - construction of a new access road into Stapeley Water Gardens" (planning application reference P00/0829)
E2	Letter from CEC confirming that planning application reference P00/0829 is extant
E3	Cronkinson Farm Schedule 106 Agreement 2000

Landscape Documents (F)	
F1	Extract of the Guidelines for landscape and Visual Impact Assessment, 3rd Edition The Landscape Institute and IEMA 2013
F2	Extract of the Landscape Character Assessment – Guidance for England and Scotland – Scottish Natural Heritage and the Countryside Agency (2002)
F3	Site Context Plan (2064/P01a JB/JE January 2014)
F4	Site Setting (Aerial Photograph) (2064/P04 JB/JE January 2014)
F5	Extract from the Countryside Agency (now Natural England), Character Area 61 Description
F6	Extract of Cheshire Landscape Character Assessment SPD – Type 7: East Lowland Plain
F7	Extract of Cheshire Landscape Character Assessment SPD – ELP 1: Ravensmoor
F8	Munro Planting Scheme – Appeal B
F9	Tyler Grange Winter Photographs (January 2014) (2064/P03 JB/LG January 2014)
F10	Winter viewpoint locations (TG Ref: 2064/P03)

Ecology & Arboricultural Documents (G)	
G1	Extract of English Nature Great Crested Newt Mitigation Guidelines 2001
G2	Extract of Natural England LPA Standing Advice Species Sheet Great Crested Newts
G3	Extract of Bats {Natural England LPA Standing Advice Species Sheets}
G4	Extract of Badger {Natural England LPA Standing Advice Species Sheets}
G5	Extract of Birds {Natural England LPA Standing Advice Species Sheets}
G6	Extract of Water Vole {Natural England LPA Standing Advice Species Sheets}

G7	Extract of Natural England Advice Note European Protected Species & The Planning Process Natural England's Application of the 'Three Tests' to Licence Applications
G8	Extract of Cheshire East Borough Council (Stapeley – the Maylands, Broad Lane) Tree Preservation Order 2013

APPEAL A

Appeal A - Application Documents (H1)	
H1	Covering Letter September 2012
H2	Application Forms
H3	Site Location Plan
H4	Site Setting (Aerial Photograph)
H5	Indicative Masterplan
H6	Archaeological Report
H7	Transport Assessment
H8	Framework Travel Plan
H9	Statement of Community Involvement
H10	Retail Statement
H11	Nantwich Housing Market Assessment
H12	Design and Access Statement
H13	Planning Statement
H14	Arboricultural Implications Assessment
H15	Movement and topography
H16	Landscape Character Plan
H17	Index to views
H18	Viewpoint Location Plan
H19	Viewpoints
H20	Landscape Visual Impact Assessment
H21	Flood Risk Assessment
H22	Phase 1 Contamination Report
H23	Protected Species Impact Assessment and Mitigation Strategy (2012)

Consultee Responses (I)	
I1	Environmental Health (Noise / Air / Light)
I2	Cheshire Wildlife
I3	United Utilities
I4	Network Rail
I5	Public Rights of Way
I6	Natural England
I7	Bob Hindhaugh Associates Ltd on behalf of Stapeley Parish Council
I8	Nantwich Town Council
I9	Reaseheath College
I10	Highways
I11	Arboricultural
I12	Design
I13	Landscape

Documents submitted after the initial submission (J)	
J1	Revised Arboricultural Impact Assessment Phase 2 – Report Ref NWS/11/10/AIA P2 25 th May 2012

J2	Revised Air Quality Assessment – Report Ref AQ0310 Dec 2012
J3	Tree Plan – Drawing No. NWS/SP/03/12/01 – 12 th March 2013
J4	Tree Constraints Plan Tile 1 – Report Ref NWS/11/10/TCA/01 – 9 th November 2011
J5	Tree Constraints Plan Tile 2 – Report Ref NWS/11/10/TCA/02 – 9 th November 2011
J6	Tree Constraints Plan Tile 3 – Report Ref NWS/11/10/TCA/03 – 9 th November 2011
J7	Tree Constraints Plan Tile 4 – Report Ref NWS/11/10/TCA/04 – 9 th November 2011
J8	Great Crested Newt Survey
J9	Noise Assessment
J10	9.1.13 – SCP Technical Note
J11	11.1.13 – SCP Technical Note – Response to Parish Council
J12	14.1.13 SCP Technical Note – Sensitivity Test
J13	11.3.13 – SCP Technical Note

Reporting and Decision (K)	
K1	Planning Officers Report to Planning Committee
K2	Formal Decision Notice
K3	Secretary of State First Decision letter 17/03/15
K4	Original Inspector's Report
K5	Consent Order 3/07/15
K6	Secretary of State Second Decision letter 11/08/16
K7	Consent Order
K8	DCLG letter of 12/04/17, inviting further representations
K9	DCLG letter of 03/08/17 relating to the re-opening of the inquiry
K10	Updated Officer's Report to Cheshire East Council Strategic Planning Board of 22/11/17
K11	Strategic Planning Board Report on applications 12/3747N and 12/3746N, 31/1/18

APPEAL B

Appeal B - Application Documents (L)	
L1	Covering Letter September 2012
L2	Application Forms
L3	Site Location Plan
L4	Site Access
L5	Transport Statement
L6	Protected Species Impact Assessment and Mitigation Strategy (2012)
L7	Design and Access Statement
L8	Planning Statement
	Updated Application Documents Appeals A and B
L9	Updated Masterplan Documents and Access Drawings
L10	Land Research Letter – BMV – 25/9/17
L11	Redmore Environmental – Air Quality Assessment 29/9/17
L12	Shields Arboricultural Impact Assessment – 26/9/17
L13	RSK Ecological Addendum Report Sept. 2017
L14	Betts Hydro – Flood Risk and Drainage Addendum 26/9/17
L15	SCP – Transport Technical Note 3/10/17
L16	Landscape and Visual Technical Note 26/9/17
L17	Lighthouse Acoustics – Acoustic Note 29/9/17

Consultee Responses (M)

M1	Environment Agency
M2	Environmental Health
M3	Natural England
M4	Public Rights of Way
M5	Nantwich Town Council
M6	Reaseheath College
M7	Bob Hindhaugh Associates Ltd on behalf of Stapeley Parish Council
M8	Highways
M9	Arboricultural
M10	Cheshire Wildlife
M11	Affordable Housing

Documents submitted after the initial submission (N)

N1	Flood Risk Assessment
N2	Great Crested Newt Survey (Revised November 2012)
N3	SCP Technical Note - 11.01.13
N4	Arboricultural Implication Assessment Phase 2
N5	Protected Species Impact Assessment and Mitigation Strategy (March 2013)

Reporting and Decision (O)

O1	1 st Planning Officers Report to Planning Committee
O2	2 nd Planning Officer's Report to Planning Committee
O3	Strategic Planning Board Meeting - 19/6/13 Notes of Planning Application 12/3746N

Supreme Court Judgements (P)

P1	Removed

Appeal Court Judgements (Q)

Q1	Suffolk Coastal Appeal Court Judgement
Q2	St Modwen Appeal Court Judgment



Ministry of Housing, Communities & Local Government

www.gov.uk/mhclg

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.



Ministry of Housing,
Communities &
Local Government

Timothy Waller
Waller Planning Ltd
Suite A, 19-25 Salisbury Square
Old Hatfield
Hertfordshire
AL9 5BT

Our ref: APP/Y0435/W/17/3169314

25 June 2020

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY WAVENDON PROPERTIES LTD
LAND TO THE EAST OF NEWPORT ROAD AND TO THE EAST AND WEST OF
CRANFIELD ROAD, WOBURN SANDS, BUCKINGHAMSHIRE MK17 8UH
APPLICATION REF: 16/00672/OUT**

1. I am directed by the Secretary of State to say that consideration has been given to the report of Tom Gilbert-Wooldridge BA (Hons) MTP MRTPI IHBC, who held a public local inquiry from 14 - 23 January 2020 into your client's appeal against the decision of Milton Keynes Council to refuse your client's outline application, with all matters except the means of access reserved for subsequent approval, for residential development of up to 203 dwellings, a doctor's surgery, open space and landscaping, together with pedestrian, cycle and vehicular access from Newport Road and Cranfield Road and supporting infrastructure, in accordance with application ref: 16/00672/OUT, dated 20 July 2016.
2. On 31 October 2017, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.
3. The Secretary of State initially issued his decision in respect of the above appeal in his letter dated 5 December 2018. That decision was challenged by way of an application to the High Court and was subsequently quashed by order of the Court dated 14 June 2019. The appeal has therefore been redetermined by the Secretary of State, following a new inquiry into this matter. Details of the original inquiry are set out in the 5 December 2018 decision letter.

Inspector's recommendation and summary of the decision

4. The Inspector recommended that the appeal be dismissed.
5. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and agrees with his recommendation. He has decided to dismiss the appeal.

Ministry of Housing, Communities & Local Government
Jean Nowak, Decision Officer
Planning Casework Unit
3rd Floor Fry Building
2 Marsham Street
London SW1P 4DF

Tel: 0303 444 1626
Email: PCC@communities.gov.uk

A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Matters arising since the close of the inquiry

6. On 18 May 2020, the Secretary of State wrote to the main parties to afford them an opportunity to comment on a letter from Milton Keynes Council dated 12 May 2020 which included a recent appeal decision relating to Rectory Farm, Woburn Sands Road, Bow Brickhill, Milton Keynes, MK17 9JY. A list of the representations received in response to this letter is at Annex A. These representations were circulated to the main parties on 27 May 2020 and 3 June 2020. The Secretary of State is satisfied that all representations received have been given full and due consideration, and no other new issues were raised in this correspondence to warrant further investigation or necessitate additional referrals back to parties. Copies may be obtained on written request to the address at the foot of the first page of this letter.
7. In his letter of 16 August 2019, confirming the reopening of the inquiry, the Secretary of State explained that one change in circumstance he considered material to the redetermination was the announcement by Highways England, in September 2018, that corridor B (central option) had been selected as the preferred corridor for the Oxford-Cambridge Expressway (IR1.16). The Secretary of State has noted that, in March 2020 Highways England announced that work had paused on the Oxford-Cambridge Expressway while they undertook further work on other potential road projects that could support the government ambition on the Oxford-Cambridge Arc (<https://highwaysengland.co.uk/project-update-12-march-2020/>). The Secretary of State has also noted that none of the parties have made representations to him on this announcement. The Secretary of State does not consider the pausing of the work raises any matters that would require him to refer back to the parties for further representations prior to reaching his decision on this appeal.

Policy and statutory considerations

8. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
9. In this case the development plan consists of Plan:MK 2016-2031 (Plan:MK), Woburn Sands Neighbourhood Plan 2014 (WSNP) and Site Allocations Plan 2018 (SAP). The Secretary of State considers that relevant development plan policies include those set out at IR3.3-3.9.
10. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance').
11. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the proposals or their settings, or any features of special architectural or historic interest which they may possess.

Main issues

Housing Land Supply

12. The Secretary of State has considered the Inspector's analysis at IR12.4-12.64. For the reasons given at IR12.8-12.12 the Secretary of State agrees with the Inspector that it is acceptable that the evidence can post-date the base date provided that it is used to support sites identified as deliverable as of 1 April 2019 (IR12.11). Like the Inspector, the Secretary of State does not consider it necessary to apply a 1 October 2019 base date (IR12.12). For the reasons given at IR12.13-12.15, the Secretary of State agrees with the Inspector that a proforma can, in principle, provide clear evidence of a site's deliverability (IR12.14). The Secretary of State also agrees with the Inspector that it would not be appropriate to automatically disregard all the sites owned by Homes England and Milton Keynes Development Partnership (IR12.15). For the reasons given at IR12.16-12.25 the Secretary of State agrees with the Inspector that there is no reason to apply a greater discount than the Council's rate (IR12.19). The Secretary of State agrees with the approach the Inspector has taken to prior approval sites in this case (IR12.22).
13. The Secretary of State has noted that the Globe and Castlethorpe Road appeal decisions came to different conclusions on whether the Council could demonstrate a 5-year housing land supply (HLS) (IR12.23), but he agrees that, as the Inspector's conclusions in this case are based on the evidence before him, this should be regarded as being sufficient to explain any difference from the findings of the Castlethorpe Road or Globe Inspectors (IR12.25).
14. The Secretary of State has considered the Inspector's assessment of disputed sites at IR12.26-12.60. For the reasons given, the Secretary of State agrees with the Inspector that the Council can demonstrate a HLS of 5.5 years for the base date of 1 April 2019 (IR12.61). The Secretary of State has also noted that the Inspector finds that, for a base date of 1 October 2019, there would be a 5-year HLS of 5.99 years (IR12.62). However, as already indicated in paragraph 12 above, the Secretary of State agrees with the Inspector that it is not necessary to apply a 1 October base date. The Secretary of State also agrees with the Inspector that the Council's Scenarios 2 and 3 do not affect his findings on HLS (IR12.63-64).
15. Overall, the Secretary of State agrees with the Inspector's conclusion at IR12.65 that the Council can demonstrate a 5-year supply of deliverable housing sites whichever approach is taken in terms of the base date, and even with the application of the Council's lapse rate.
16. The Secretary of State has noted that, in their correspondence of 26 May 2020 and 12 June 2020, the appellant has referred to the potential impact of the current Covid-19 pandemic on house building. He has also noted that the appellant submitted a document with their correspondence of 26 May 2020 issued by the Council entitled 'Rectory Farm decision and the Implications for Five-Year Housing Land Supply', published on 29 April 2020. The Secretary of State considers that, as the quantification in that document is based on the appellant's modelling using a past event and they have not put forward specific evidence about the deliverability of individual sites, it does not affect his judgement in this case.

The location of the development

17. For the reasons given at IR12.66-12.71 and IR12.74, the Secretary of State agrees with the Inspector that the location and type of the appeal development does not comply with Policies DS1, DS2 and DS5 of Plan:MK and WSNP policies WS5 and WS6. He further agrees that there is no inconsistency with the Framework in terms of how WSNP Policies WS5 and WS6 seek to safeguard the countryside and direct developments to specific locations, and that these policies can be given significant weight (IR12.71). The Secretary of State agrees with the Inspector that the housing would not be in an appropriate location having regard to the development plan and national policies (IR12.74). He further agrees that the conflict with the development plan in terms of the location of the proposal carries substantial weight (IR12.101).
18. For the reasons given at IR12.72 the Secretary of State agrees with the Inspector that the proposal does not conflict with the development plan insofar as the proposed Oxford to Cambridge Expressway is concerned. He also agrees with the Inspector that there is no conflict with the development plan or other reason to refuse the proposal in relation to the East-West rail project (IR12.73).

Housing Density

19. For the reasons given at IR12.75-12.82, the Secretary of State agrees with the Inspector that the final density figure cannot be established at this point (IR12.78). Like the Inspector the Secretary of State considers that, while the final layout and density of the development has yet to be fixed, a scheme based on the illustrative layout with a density of 16-20dph would be relatively low but would be acceptable in this instance for this location. It would balance an efficient use of land with respecting the surrounding character and setting and so would accord with Plan:MK Policy HN1 and NPPF paragraph 122 (IR12.81).

Other matters

Best and most versatile agricultural land

20. For the reasons given at IR12.83 the Secretary of State agrees with the Inspector that the loss of Grade 3a agricultural land within the site would conflict with Plan:MK Policy NE7. However, the Secretary of State also agrees with the Inspector that this would not, in itself, be a reason for refusal and carries only moderate weight (IR12.99).

Ecology and drainage

21. For the reasons given at IR12.84-12.87 the Secretary of State agrees with the Inspector that the development would not have an unacceptable effect on ecology or protected species (IR12.86). The Secretary of State further agrees that the development offers the means to alleviate current drainage problems through additional attenuation and the use of a suitable maintenance regime (IR12.87). The Secretary of State considers that the environmental enhancement of ecology and the provision of drainage measures to try to address existing problems are benefits which should be afforded moderate weight (IR12.97).

Highways and parking

22. The Secretary of State notes that the appellant's updated Transport Assessment concludes that there would be very modest impacts on all junctions as a result of the

development (IR12.88 and IR12.96). For the reasons given the Secretary of State agrees with the Inspector that only limited weight can be afforded to any highway benefits (IR12.96).

Facilities and services in Woburn Sands

23. For the reasons given at IR12.89, the Secretary of State agrees with the Inspector that there is little evidence to indicate that the development would have an unacceptable impact on services and facilities in Woburn Sands.

Heritage assets

24. For the reasons given at IR12.90-12.91 the Secretary of State agrees with the Inspector that the development would result in less than substantial harm to the significance of the Grade II listed Deethe Farmhouse. He also agrees with the Inspector that the level of harm would be low due to the existing setting and the proposed mitigation measures. Nevertheless, paragraphs 193 and 194 of the Framework state that great weight should be given to the conservation of listed buildings and any harm weighed against the public benefits (IR12.91).
25. The Secretary of State also agrees with the Inspector that, given the existing screening and distances involved, there would be no harm caused to either the Grade II listed park and garden at Wavendon House or the Grade II* Wavendon House itself (IR12.92).

Character and appearance of the landscape

26. For the reasons at IR12.93 the Secretary of State agrees with the Inspector that the development would have a very limited effect on the character and appearance of the landscape. Therefore, the Secretary of State affords little weight to any harm.

Other benefits

27. For the reasons given in IR12.94 the Secretary of State agrees with the Inspector that the provision of affordable housing beyond the minimum policy requirement should carry significant weight. The Secretary of State also agrees with the Inspector that the provision of market housing should be afforded significant weight given the potential number of dwellings that could be delivered and the eagerness of the appellant as a small to medium sized developer to deliver housing as swiftly as possible.
28. The Secretary of State agrees with Inspector that there are a range of economic benefits (IR12.95) and affords these moderate weight. For the reasons given in IR12.97 the Secretary of State agrees with the Inspector that little weight can be afforded to the appellant's claim of a high-quality living environment given the limited information at outline stage and the policy requirement that all development should be high quality.

Planning conditions

29. The Secretary of State has given consideration to the Inspector's analysis at IR11.1-11.2, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 55 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 55 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for dismissing this appeal and refusing planning permission.

Planning obligations

30. Having had regard to the Inspector's analysis at IR11.3-11.5, the planning obligation dated 27 February 2020, paragraph 56 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR11.6 that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 56 of the Framework. However, the Secretary of State does not consider that the obligation overcomes his reasons for dismissing this appeal and refusing planning permission.

Planning balance and overall conclusion

31. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with Plan:MK Policies DS1, DS2, DS5 and NE7 and WSNP policies WS5 and WS6, and is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

32. Weighing in favour of the proposal, the Secretary of State affords the provision of affordable housing significant weight and also affords the provision of market housing significant weight. The economic benefits are given moderate weight, and the Secretary of State also gives moderate weight to ecology and drainage benefits. The Secretary of State affords limited weight to any highway benefits; and little weight to the appellant's claim of a high quality living environment..

33. Weighing against the proposal, the Secretary of State considers the housing would not be in an appropriate location having regard to the development plan and national policies. He further considers that the conflict with the development plan in terms of the location of the housing carries substantial weight as it would not accord with the spatial strategy in Plan:MK. The Secretary of State affords moderate weight to the loss of BMV agricultural land. The Secretary of State gives little weight to any harm to the landscape or character of the area.

34. The Secretary of State has considered whether the identified 'less than substantial' harm to the significance of the Grade II listed Deethe Farmhouse is outweighed by the public benefits of the proposal. In accordance with the s.66 duty, he attributes considerable weight to the harm. The public benefits have been summarised in paragraph 32 of this letter.

35. Overall the Secretary of State agrees with the Inspector at IR12.98 that the benefits of the appeal scheme are collectively sufficient to outbalance the identified 'less than substantial' harm to the significance of the Grade II listed Deethe Farmhouse. He considers that the balancing exercise under paragraph 196 of the Framework is therefore favourable to the proposal

36. The Secretary of State considers that other matters covered in this decision letter are neutral in the planning balance.

37. Overall the Secretary of State considers that the material considerations in this case indicate a decision in line with the development plan – i.e. a refusal of permission.

38. The Secretary of State therefore concludes that the appeal should be dismissed and planning permission refused.

Formal decision

39. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses outline planning permission, with all matters except the means of access reserved for subsequent approval, for residential development of up to 203 dwellings, a doctor's surgery, open space and landscaping, together with pedestrian, cycle and vehicular access from Newport Road and Cranfield Road and supporting infrastructure, in accordance with application ref: 16/00672/OUT, dated 20 July 2016

Right to challenge the decision

40. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

41. A copy of this letter has been sent to Milton Keynes Council and Woburn Sands Town Council.

Yours faithfully

Jean Nowak

Authorised by the Secretary of State to sign in that behalf

Annex A Schedule of representations

Party	Date
Milton Keynes Council	12 May 2020

Representations received in response to circulation of the Milton Keynes Council correspondence dated 12 May 2020

Party	
Waller Planning Ltd on behalf of Wavendon Properties Ltd	26 May 2020
Woburn Sands Town Council	26 May 2020
Milton Keynes Council	2 June 2020
Waller Planning Ltd	12 June 2020



Report to the Secretary of State for Housing, Communities and Local Government

by Tom Gilbert-Wooldridge BA (Hons) MTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Date 27 March 2020

Town and Country Planning Act 1990

Milton Keynes Council

Appeal by Wavendon Properties Limited

Inquiry Held on 14-17 and 21-23 January 2020

An accompanied site visit was undertaken on 20 January 2020

Land to the east of Newport Road and to the east and west of Cranfield Road, Woburn Sands,
Buckinghamshire MK17 8UH

File Ref: APP/Y0435/W/17/3169314

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GLOSSARY

APPxx	Appellant's proofs of evidence for redetermined inquiry
APS	Annual Position Statement
BMV	Best and most versatile agricultural land
CD	Core Document
CIL	Community Infrastructure Levy
DL	Secretary of State's first decision letter
dpa	Dwellings per annum
dph	Dwellings per hectare
EIA	Environmental Impact Assessment
GPDO	The Town and Country Planning (General Permitted Development) (England) Order 2015
ha	Hectare
HLS	Housing land supply
ID	Inquiry Document
IR	The first Inspector's report
LPAXx	Council's proofs of evidence for redetermined inquiry
LVA	Landscape and Visual Assessment
MKDP	Milton Keynes Development Partnership
MOU	Memoranda of Understanding
NLP	Nathanial Lichfield & Partners
NPPF	National Planning Policy Framework
OB	Optimism bias
PINS	The Planning Inspectorate
Plan:MK	Plan:MK 2016-2031, adopted March 2019 as a development plan document for Milton Keynes
PPG	Planning Practice Guidance
RID	Redetermined Inquiry Document
S106	A legal agreement made under Section 106 of the Town and Country Planning Act 1990
SAP	Site Allocations Plan 2018
SEMK	South East Milton Keynes site
SME	Small and medium-sized enterprises
SOCG	Statement of Common Ground
SoS	Secretary of State
SPD	Supplementary Planning Document
SPG	Supplementary Planning Guidance
TA	Transport Assessment
TCPA 1990	The Town and Country Planning Act 1990
TPO	Tree Preservation Order
WSNP	Woburn Sands Neighbourhood Plan

File Ref: APP/Y0435/W/17/3169314

Land to the east of Newport Road and to the east and west of Cranfield Road, Woburn Sands, Buckinghamshire MK17 8UH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Wavendon Properties Ltd against the decision of Milton Keynes Council.
- The application Ref 16/00672/OUT, dated 20 July 2016, was refused by notice dated 5 December 2016.
- The development proposed is an outline planning application with all matters except the means of access reserved for subsequent approval described as 'residential development of up to 203 dwellings, a doctor's surgery, open space and landscaping, together with pedestrian, cycle and vehicular access from Newport Road and Cranfield Road and supporting infrastructure'.
- This report supersedes that issued on 2 February 2018. The original decision on the appeal was quashed by order of the High Court.

Summary of Recommendation: That the appeal be dismissed.

1. Procedural Matters

- 1.1. This section is based on the first Inspector's report and has been updated as necessary.

Summary of appeal chronology

- 1.2. The original inquiry into this appeal opened on 11 July 2017 and closed on 19 July 2017. Although requests that the appeal be determined by the Secretary of State (SoS) were refused in August 2017¹, the SoS subsequently directed that he should determine this appeal himself in letters dated 31 October 2017². The original Inspector's report was submitted on 2 February 2018 with a recommendation to allow the appeal and grant planning permission subject to conditions. The SoS disagreed and dismissed the appeal³. The appellant challenged the decision in the High Court. The decision was quashed by order of the High Court on 14 June 2019⁴ and sent back to the SoS for redetermination. The SoS decided to re-open the inquiry, which opened on 14 January 2020 and ran for 7 days. The inquiry was closed in writing on 28 February 2020 once outstanding documents were received, including a completed and executed Section 106 (S106) agreement.

The proposal in outline

- 1.3. The appeal site extends across almost 15.2ha. It consists of about half a dozen fields, often enclosed behind mature hedges and trees, that wrap around the assorted residential streets and cul-de-sacs that project behind Newport Road and either side of Cranfield Road at the northern end of Woburn Sands. The main part of the town lies to the south beyond the Bletchley to Bedford railway line and a level crossing. The proposal is made in outline with all matters except the means of access reserved for subsequent approval. An illustrative

¹ ID26

² ID27

³ CD10.33

⁴ CD10.34

layout plan and a parameters plan⁵ show how up to 203 dwellings and a doctor's surgery could be laid out across the site along with associated landscaping and open space.

The application and the Council's decision

- 1.4. The original planning application was reported to the Council's development control committee on 1 December 2016⁶. In the absence of sufficient housing land being identified as available to meet requirements over the next 5 years, the scheme was recommended for approval, subject to conditions and the execution of a S106 Agreement securing contributions towards the provision of health and education facilities, parks, play and community facilities, together with the maintenance of open space. The reasons for the recommendation were as follows:

"With the lack of a five year housing land supply, the strategic policies of the Development Plan are out of date, as outlined by the National Planning Policy Framework. Having weighed all other matters, the proposed development is considered to represent a sustainable form of development in terms of its social, environmental and economic functions and the proposed development is therefore acceptable in principle. Access to the site is considered appropriate and would not put undue pressure on the local road network and there are no other fundamental issues that would warrant a refusal of the application. All other detailed matters would be considered under reserved matters applications at a later date. In the light of these comments and the report above, approval is recommended."

- 1.5. However, the committee decided to refuse the application contrary to the recommendation. The reasons for refusal were⁷:

1. The Committee resolved to refuse planning permission on the basis that any such development of this site would result in the loss of future development and infrastructure options, causing significant and demonstrable harm and is therefore not sustainable development in accordance with Resolution 24/187 of the United Nations General Assembly definition of sustainable development and the National Planning Policy Framework (NPPF) in respect of future generations. The development would also therefore be contrary to paragraphs 14 and 19 of the National Planning Policy Framework, Saved Policy D1 of the adopted Milton Keynes Local Plan 2001-2011 (adopted 2005) and policy WS5 of the Woburn Sands Neighbourhood Plan 2014-2026 (adopted 2014). This does not constitute sustainable development in terms of paragraph 14 of the National Planning Policy Framework.
2. Furthermore the low density of this proposed development would not be considered sustainable given the current objectives of central government and this Council to both optimise use of land and to build both quickly and strategically.

- 1.6. In the Council's Statement of Case for the first inquiry, the first reason for refusal was effectively amended to read:

1. The development would be contrary to policy WS5 of the Woburn Sands Neighbourhood Plan 2014-2016 ([sic] adopted 2014). This does not constitute

⁵ CDs1.4, 1.5 and 1.7

⁶ CD3.2

⁷ CD3.4

sustainable development in terms of paragraph 14 of the National Planning Policy Framework.

The reasons for recovery

- 1.7. An initial request to recover this appeal for determination by the SoS was made on the basis that the development exceeded the threshold of 150 dwellings and on whether the *Liverpool* or *Sedgefield* method of calculating the available provision for housing was the 'correct' approach to adopt in this case; that request was refused on 30 August 2017⁸. However, the SoS subsequently directed that he should determine this appeal himself in letters dated 31 October 2017⁹. The reason for recovery was that:

... the appeal involves proposals for residential development of over 150 units or on sites of over 5 hectares, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.

The need for Environmental Impact Assessment (EIA)

- 1.8. Although this 'urban development project' falls within the descriptions set out at paragraph 10b of Schedule 2 and exceeds the thresholds in column 2 of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 2015, the Screening Opinion issued by the Council on 7 December 2016 indicated that the effects were likely to be mainly local and, given that the site was not in a specially sensitive location, that an Environmental Statement was not necessary, bearing in mind the advice in Schedule 3 to the Regulations. Accordingly, the scheme is not EIA development and an Environmental Statement is not required. Nevertheless, the application was accompanied by the following documents¹⁰:

- Planning Statement
- Design and Access Statement
- Transport Assessment (TA)
- Flood Risk Assessment
- Archaeology Report
- Tree Survey
- Landscape and Visual Assessment (LVA)
- Ecology Assessment
- Protected Species Report
- Noise Survey and supplementary report
- Statement of Community Involvement
- Sustainability Statement
- Geo-environmental Audit

- 1.9. The appellant's evidence to the second Inquiry included updates to the Ecological Assessment, the TA, and the Sustainability Statement, as well as updates to the Heritage Assessment and Economic Benefits Statement that had been presented to the first Inquiry¹¹.

⁸ ID26

⁹ ID27

¹⁰ CD1.10-CD1.29

¹¹ APP9

Public consultation¹²

- 1.10. Pre-application discussion with Council officers together with statutory and non-statutory consultees preceded the application; meetings were held in December 2015 and February 2016. As a result, the intention to pursue a low density scheme, creating a 'soft edge' to the settlement, was endorsed. In addition, the link road through the site between Newport Road and Cranfield Road was considered to help relieve congestion at the junction beside the level crossing. Technical evidence was requested, relating to noise emissions from the Deethe Farm Industrial Estate, surface water drainage, ecological assessments and the setting of the Grade II listed Deethe Farmhouse.
- 1.11. A public consultation event (publicised in advance) was held in the Summerlin Centre, Woburn Sands on Friday 22 January 2016. This attracted 218 people. Concerns were raised about the existing junction between Cranfield Road and Newport Road, considered unsafe and subject to congestion, particularly when the level crossing was closed, and the need for traffic calming on Newport Road and Cranfield Road. There was support for the low density and the large gardens proposed and for the possibility of an additional doctor's surgery to ease perceived capacity problems at the existing facility.
- 1.12. Discussions with officers continued after the submission of the scheme and a revised illustrative site layout responded to specific points made at a meeting in June 2016. In addition, an LVA was undertaken, surveys of protected species carried out and the TA updated.

The first Inspector's report¹³

- 1.13. The first Inspector's report (IR) dated 2 February 2018 recommended that the appeal be allowed and planning permission granted subject to conditions. The Inspector concluded that a 5 year housing land supply (HLS) could not be demonstrated and the development plan policies pulled in both ways at a location he considered to be sustainable (IR9.48). He concluded on matters relating to the character of the landscape and surrounding area, the setting of the listed farmhouse, the traffic, car parking and facilities in Woburn Sands, housing density, ecology, and drainage (IR9.49), and considered that these matters were not sufficient to prevent a sustainable housing development from proceeding especially in the absence of a 5 year HLS (IR9.50). Weighing up the harms against the benefits, he concluded that the planning balance was firmly in favour of the proposed development (IR9.51-IR9.55).

The SoS's decision¹⁴

- 1.14. The SoS's decision letter (DL) dated 5 December 2018 agreed with the Inspector on matters such as the effect of the development on the character of the area (DL27), heritage assets (DL28), traffic, parking and facilities in Woburn Sands, ecology, and drainage (DL30). He disagreed regarding the 5 year HLS and concluded that the supply was approximately 5.9-6.2 years (DL15-18). He also disagreed regarding housing density and concluded that there was conflict with the relevant development plan policy (DL24-26).

¹² Document 11 and CD1.28

¹³ CD10.33

¹⁴ CD10.33

Weighing up the benefits of the scheme against the adverse impacts including the conflicts with the development plan (DL34-37), he disagreed with the Inspector's recommendation and concluded that the appeal should be dismissed.

High Court challenge

1.15. The appellant appealed to the High Court on 6 grounds. It succeeded in the case of 2 which related to the SoS's findings in relation to the estimated deliverable supply of housing. The Court found that the SoS had failed to provide adequate reasons in relation to the HLS figure adopted in his decision. As a consequence, the decision was quashed in a judgment¹⁵ dated 14 June 2019 and the appeal returned to the SoS for redetermination.

Re-opening of the Inquiry

1.16. The SoS wrote to parties on 16 August 2019¹⁶ confirming that the inquiry would be re-opened. He considered that there had been significant changes in circumstances since the first Inquiry which were material to the redetermination of the appeal. These included:

- The adoption of a new local plan (Plan:MK) with the associated identification of housing expansion areas;
- The announcement by Highways England, in September 2018, that corridor B (central option) had been selected as the preferred corridor for the Oxford-Cambridge Expressway; and
- Changes to national policy and guidance.

1.17. A Pre-Inquiry meeting was held on 1 November 2019 which was followed by a note¹⁷ setting out the likely main issues and how they would be addressed. At the meeting, the Council provided a note¹⁸ updating the reasons for refusal to reflect changes in national and local policy. The updated reasons are as follows:

(1) The development by virtue of its location would be contrary to spatial policies DS1 (Settlement Hierarchy), DS2 (Housing Strategy) and DS5 (Open Countryside) of Plan:MK 2016 – 2031 (adopted March 2019) and to policy WS5 of the Woburn Sands Neighbourhood Plan 2014-2026 (adopted 2014). This does not constitute sustainable development in terms of paragraph 11 of the National Planning Policy Framework (2019).

(2) Furthermore, the low density of this proposed development would not be considered sustainable given the current objectives of central government and this Council to both optimise use of land and to build both quickly and strategically, contrary to policy HN1 (Housing Mix and Density) of Plan:MK 2016 – 2031 and paragraph 122 of the National Planning Policy Framework (2019)

1.18. The second Inquiry was held on 14-17 and 21-23 January 2020. I carried out an accompanied site visit on 20 January 2020. On the same day, I also carried out unaccompanied visits to locations in the surrounding area including within

¹⁵ CD10.34

¹⁶ CD10.42

¹⁷ CD10.44

¹⁸ CD12.3

Woburn Sands as highlighted on the site visit itinerary¹⁹. The Inquiry closed in writing on 28 February 2020 once all outstanding documents, including the completed and executed Section 106 agreement, had been received.

2. The Site and Surroundings

- 2.1. The following summary of the site and its surroundings is based on Section 2 of the first Inspector's report and the Statement of Common Ground (SOCG)²⁰ submitted to the second Inquiry which provides a number of updates.
- 2.2. The appeal site is almost 15.2ha. It consists of about half a dozen arable and pasture fields to the east of Newport Road and to the east and west of Cranfield Road. Part of the site is designated as Grade 3a agricultural land²¹ in the Agricultural Land Classification. To the north is the former Wavendon Golf Academy which closed in 2018 and is laid out as a golf course with a formal parkland character. Further to the north of the former academy is the Grade II* listed Wavendon House and a Grade II registered park and garden of the same name which was designated on 1 November 2019. To the east is agricultural land and to the south and west are residential properties at Parkway, Hillway, Tavistock Close and Ridgeway as well as the car park of the Wyevale Garden Centre. The site wraps around the Deethe Farm Industrial Estate. Deethe Farmhouse is listed Grade II and sits in the southern corner of the estate with commercial shed-type buildings to the north.
- 2.3. Internal boundary features include hedgerow and scrub. Mature trees and hedgerows bound the Newport Road and Cranfield Road frontages and the northern boundary with the former golf academy. A hedgerow also marks the boundary with a public footpath which runs through the site between the former golf course and the industrial estate. A Group Tree Preservation Order (TPO) protects trees at the proposed access point with Newport Road. A wider Area TPO²² was designated on 8 January 2020 on land which includes the appeal site.
- 2.4. The site lies on the northern edge of Woburn Sands and beyond the development boundary for that settlement. The site is split between the parishes of Woburn Sands and Wavendon. There are neighbourhood plan areas covering both parishes although only Woburn Sands has a made neighbourhood plan. Woburn Sands is a small town with a range of shops and services including schools and a medical centre. There are bus links to Milton Keynes and a railway station on the line between Bedford and Bletchley. There are plans to upgrade the railway line as part of the east-west rail link between Cambridge and Oxford, while the area surrounding Woburn Sands is within the preferred corridor for the Oxford to Cambridge Expressway road proposal.

3. Planning Policy

- 3.1. The relevant development plan documents for this appeal now comprise Plan:MK 2016-2031 (which has replaced the Milton Keynes Local Plan 2001-2011 and the Milton Keynes Core Strategy 2013) and the Woburn Sands

¹⁹ RID14

²⁰ RID06

²¹ RID24 and LPA4

²² TPO1

Neighbourhood Plan 2014 (WSNP). There is also the Site Allocations Plan 2018 (SAP) which is of relevance for some of the disputed HLS sites (see subsequent sections of this report).

- 3.2. The National Planning Policy Framework (NPPF) was updated in February 2019 and a new section on housing supply and delivery in the Planning Practice Guidance (PPG) was published in July 2019.

*Plan:MK*²³

- 3.3. The appeal site lies adjacent to one of only 3 key settlements (Woburn Sands, Newport Pagnell and Olney) in the rural area of Milton Keynes as identified by Plan:MK. They comprise the second tier of the settlement hierarchy in Policy DS1 and are considered to be the most sustainable rural settlements taking into account their population, constraints, transport links and the capacity of services within each town. Policy DS1 states that most new development within the rural area will be concentrated within these 3 settlements.
- 3.4. Policy DS2 sets out Plan:MK's housing strategy and seeks to deliver a minimum of 26,500 dwellings across the Borough of Milton Keynes over the plan period. The policy states that new housing development will be focused on, and adjacent to, the existing urban area of Milton Keynes as well as the 3 key settlements. There are 13 criteria within the policy setting out how this development will be delivered.
- 3.5. Policy DS5 defines open countryside as all land outside the development boundaries defined on the Policies Map. Planning permission in the open countryside will only be granted for development which is essential for agriculture, forestry, countryside recreation, highway infrastructure or other development, which is wholly appropriate to a rural area and cannot be located within a settlement, or where other policies within this plan indicate development would be appropriate.
- 3.6. Policy HN1 covers housing mix and density. Part C states that net densities of proposals for 11 or more new dwellings should balance making efficient use of land with respecting the surrounding character and context, and that higher density development will be encouraged in locations with good accessibility to facilities, that are well served by public transport, and where it can be accommodated by existing or improved infrastructure.
- 3.7. Although not mentioned in the updated reasons for refusal, Policy NE7 is referenced in the Council's planning proof of evidence which seeks to protect the best and most versatile agricultural land (land in grades 1, 2 and 3a meet this definition in the NPPF). In assessing proposals for greenfield sites, the policy states that the Council will take into account the economic and other benefits of such land. Development involving the loss of agricultural land should seek to use areas of poorer quality land (grades 3b, 4 and 5) in preference to that of a higher quality unless other sustainability considerations suggest otherwise.

*Woburn Sands Neighbourhood Plan*²⁴

²³ CD5.31

²⁴ CD5.3

- 3.8. A small part of the site between Hillway and Ridgway falls within the boundary of the WSNP area²⁵. Policy WS5 states that the preservation of the countryside setting, existing woodland and footpath links into the countryside is key to the future of Woburn Sands. The policy goes on to state that accordingly no extension to the current Woburn Sands Development Boundary will be permitted other than in the following exceptional circumstances:
- Plan:MK identifies a specific need for an amendment to the Development Boundary, and
 - Any proposed amendment is brought forward following full consultation with, and agreement by, Woburn Sands Town Council, and
 - The implications of any revised Development Boundary has been assessed in terms of the need to protect and maintain the character and countryside setting of Woburn Sands.
- 3.9. Although not mentioned in the original, amended or updated reasons for refusal, Policy WS6 was referenced at the second Inquiry. It states that existing housing developments in Parklands and on the Greens' site are expected to meet the needs for large scale housing development in Woburn Sands during the plan period. It goes on to state that additional housing in the plan area will be limited to small scale infilling between existing properties or redevelopment of existing properties other than in the following circumstances:
- The review of the MK Core Strategy [Plan:MK] identifies a specific housing need in Woburn Sands, and
 - Land proposed for development is brought forward after consultation, and agreement, with Woburn Sands Town Council, and
 - Development is of a scale and in a location that complies with the Vision and policies of the Neighbourhood Plan, and
 - Any such development is phased to take place in the latter part of the plan period in order to allow the assimilation of the increased population created by the already approved substantial developments.

National policies and guidance

- 3.10. NPPF paragraph 11 sets out a presumption in favour of sustainable development. For decision-taking this means either approving development that accords with an up to date plan without delay or where there are no relevant development plan policies or the policies which are most important for determining the application are out of date, granting permission unless one of two exceptions apply. The first is whether the application of policies in the NPPF that protect areas or assets of particular importance provides a clear reason for refusing the development. The second is whether any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF taken as a whole.

²⁵ CD12.4

- 3.11. Footnote 7 to paragraph 11 clarifies that out of date includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer set out in paragraph 73).
- 3.12. NPPF paragraph 73 states that local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies that are less than five years old. The supply of such sites should in addition include a buffer of 5%, 10% or 20% depending on the circumstances.
- 3.13. The NPPF glossary defines deliverable as sites for housing that should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years. The definition goes on to state that, in particular:
- (a) sites which do not involve major development and have planning permission, and all sites with detailed planning permission, should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years (for example because they are no longer viable, there is no longer a demand for the type of units or sites have long term phasing plans).
 - (b) where a site has outline planning permission for major development, has been allocated in a development plan, has a grant of permission in principle, or is identified on a brownfield register, it should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years.
- 3.14. NPPF paragraphs 122 and 123 seek to achieve appropriate densities for development within the context of making effective and efficient use of land. Paragraph 122 sets out 5 criteria that need to be taken into account including (d) the desirability of maintaining an area's prevailing character and setting (including residential gardens), or of promoting regeneration and change.
- 3.15. Paragraph 123 states that where there is an existing or anticipated shortage of land for meeting identified housing needs, it is especially important that planning policies and decisions avoid homes being built at low densities and ensure that developments make optimal use of the potential of each site. It then sets out three considerations of which the first two are relevant to plan-making. The third sets out the following:
- (c) local planning authorities should refuse applications which they consider fail to make efficient use of land, taking into account the policies in this Framework. In this context, when considering applications for housing, authorities should take a flexible approach in applying policies or guidance relating to daylight and sunlight, where they would otherwise inhibit making efficient use of a site (as long as the resulting scheme would provide acceptable living standards).
- 3.16. Paragraph 170(b) recognises the intrinsic character and beauty of the countryside and the wider benefits from natural capital and ecosystem services including the economic and other benefits of the best and most versatile

agricultural land. Paragraphs 193-196 deal with the impact of development on designated heritage assets.

3.17. The Housing Supply and Delivery section of the PPG sets out a number of paragraphs relating to demonstrating a 5 year HLS. This includes a paragraph²⁶ on what constitutes a 'deliverable' housing site in the context of plan-making and decision-taking. It states that robust and up to date evidence needs to be available. Sites in category (a) of the NPPF definition are considered deliverable in principle. Sites in category (b) require further evidence to be considered deliverable. The paragraph states that such evidence may include:

- current planning status – for example, on larger scale sites with outline or hybrid permission how much progress has been made towards approving reserved matters, or whether these link to a planning performance agreement that sets out the timescale for approval of reserved matters applications and discharge of conditions;
- firm progress being made towards the submission of an application – for example, a written agreement between the local planning authority and the site developer(s) which confirms the developers' delivery intentions and anticipated start and build-out rates;
- firm progress with site assessment work; or
- clear relevant information about site viability, ownership constraints or infrastructure provision, such as successful participation in bids for large-scale infrastructure funding or other similar projects.

4. Planning History

4.1. Two outline planning applications were previously submitted on land forming part of the appeal site. The first (11/00936/OUT) was for the erection of 102 dwellings and associated garages/parking, creation of two new accesses and provision of open space and associated works, which was refused in July 2011. The second (12/01502/OUT) was a resubmission of the first application and was refused in October 2012. Neither refusal was appealed. Two planning applications similar to the one at appeal were submitted in January and February 2017, but were withdrawn prior to determination.

5. The Proposal²⁷

5.1. The proposal is made in outline with all matters except the means of access reserved for subsequent approval. The access arrangements are shown on drawing nos.WO1188-101 rev.PO5 and WO1188-1021 rev.PO3 indicating junction geometries with, respectively, vehicle tracking and visibility splays. Each access is shown as a simple T-junction with 2.4m x 70m visibility splays. There are 4. Two are designed to serve a new 'spine road' running through the proposed development from Newport Road (at a position north of Frosts landscape business and the Wyevale Garden Centre) to Cranfield Road (at a point beyond the Deethe Farm Industrial Estate and Spinney Lodge); those

²⁶ PPG reference ID: 68-007-20190722

²⁷ Based on section 3 of the first Inspector's report and section 3 of RID06

access points are shown with 9m radii and are intended to serve a road some 6.2m wide suitable to accommodate buses. The access onto Newport Road entails the removal of 2 category A trees and 2 category B trees protected by the Group TPO. It also necessitates the relocation of a badger sett. Other trees protected by the Area TPO may be affected depending on details at the reserved matters stage.

- 5.2. The 2 other access points are shown on Cranfield Road, one on the outside of the bend beyond Ridgeway and the other opposite the Deethe Farm Industrial Estate; they are also shown with 9m radii, but with carriageways only 5.5m wide, as they are mainly intended to serve discrete parts of the scheme.
- 5.3. All other matters are reserved for subsequent approval, although an illustrative layout plan and a parameters plan show how the new road between Newport Road and Cranfield Road could serve a series of residential streets created partly around cul-de-sacs taken from that new road and partly around the 2 additional junctions on to Cranfield Road. Open space would be provided along with additional boundary screening, landscape buffers, play areas and surface water attenuation ponds.
- 5.4. The Design and Access Statement indicates that the dwellings would range in type and size and include both houses and some flats. 33% of the housing would be affordable dwellings equating to 67 units out of the proposed maximum of 203 units (25% would be affordable rented and 8% shared ownership).
- 5.5. The illustrative plans show the potential site for a doctor's surgery which would be provided if NHS England or the local Clinical Commissioning Group indicate that they would be willing to take advantage of such provision. It would either be a standalone facility or a satellite building for the existing surgery in Woburn Sands which has limited room to expand. Should the provision not be taken up, then 3 homes would be provided instead up to the maximum 203. This matter is addressed in the S106 agreement²⁸ and includes a financial contribution either towards the provision of the on-site surgery or expanding capacity at the nearest surgery serving the development. The S106 agreement also makes a range of financial contributions towards matters including education, open space, transport, community assets and social infrastructure. It also secures the provision of affordable housing on site.
- 5.6. Suggested conditions²⁹ are intended to ensure that the scheme would be implemented as intended and that the reserved matters and other details (including hard and soft landscaping and boundary treatments) would be submitted to the local planning authority for approval. In addition, foul and surface water drainage systems would be installed and controlled: a Construction Management Plan (including hours of operation) would be devised and implemented: a Landscape and Ecological Management Plan, including measures to safeguard protected species, would be prepared: a Travel Plan would be instigated: further archaeological investigations would be undertaken: the provision of 'green infrastructure', the retention of trees and the creation of new pedestrian and cycle facilities would be secured.

²⁸ RID37

²⁹ Section A2 of RID06

6. Other Agreed Facts

6.1. The main SOCG³⁰ sets out a number of agreed matters including:

- The proposal would not have an adverse effect of facilities and services within Woburn Sands;
- The proposed highway junctions onto Newport Road and Cranfield Road would have sufficient capacity to serve the development and additional through traffic and there are no objections to the junctions in highway terms;
- The junctions will remain well within capacity and will not create any queuing or congestion issues on the existing highway network;
- The effect on the listed Deethe Farmhouse would result in a low level of less than substantial harm;
- There are no national landscape designations that require consideration, effects on the locally designated area of attractive landscape will be negligible and the site and adjacent areas are not 'valued landscapes' in the context of NPPF paragraph 170;
- The landscape impacts would be limited to the site and immediately adjacent fields and would carry limited weight against the proposal. It is agreed that the same approach should apply at the current Inquiry;
- The proposal should not be refused because of the Oxford-Cambridge Expressway or on the grounds of prematurity;
- The proposal is acceptable with regard to surface water drainage and matters of detailed design can be addressed via planning conditions;
- Matters relating to noise from the adjacent industrial estate can be addressed via planning condition; and
- Matters relating to biodiversity and protected species are not an issue for this appeal and can be addressed via planning conditions and reserved matters applications.

6.2. An addendum to the SOCG³¹ was received after the inquiry addressing the recently designated Area TPO. It confirms that:

- The TPO covers a wide area including the appeal site. It is directed to a wide area rather than in relation to individual trees or groups of trees.
- It is subject to a 28 day legal challenge period up to 5 February 2020 and will remain in effect for 6 months up to 8 July 2020 and thereafter if it is confirmed or replaced in the meantime.
- It is agreed that this new TPO does not materially alter the planning evidence or planning balance as presented by each party

³⁰ RID06

³¹ RID35

- Should outline permission be granted, this would allow for the removal of trees within the area covered by the TPO once details have been fully agreed at the reserved matters stage.
- The TPO protects trees on site until the implementation of the planning permission.

6.3. There is also a SOCG relating to housing land supply³², which sets out the following agreed matters:

- Plan:MK provides the basis for the calculation of the five-year housing land requirement. This states that there is a minimum requirement of 1,767 dwellings a year in the period April 2016 to March 2031;
- There have been 4,529 net completions in the Plan:MK plan period to 31 March 2019;
- There is a backlog of 772 dwellings as at 1 April 2019;
- All of this backlog should be met in the next 5 years (the Sedgefield method); and
- A 5% buffer should be applied to both the annual requirement and the backlog based on the published 2018 Housing Delivery Test results (February 2019).

6.4. The areas of disagreement relating to housing land supply are as follows:

- Whether or not a 5 year supply of deliverable housing sites can be demonstrated
- The timescale of the assessment (1 April or 1 October 2019)
- The timing of meeting the definition of deliverable
- The definition of deliverable
- Forecast completions
- The "optimism bias" (discounting dwellings from the supply)

³² SOCG1

7. The Case for the Appellant³³

The previous decision letter and the first Inspector's report

- 7.1. The Council asserted that the previous SoS decision letter (DL) remained a material consideration relying on *Davison v Elmbridge BC* [2019] EWHC 1409³⁴. That judgment is on appeal to the Court of Appeal and relates to a planning committee's decision not an appeal decision which is an important distinction. The most recent judgment in relation to a challenge against an appeal decision held that the quashed decision is of no legal effect and should not be sub-divided in respect of those matters on which it was quashed: *R (West Lancashire BC) v Secretary of State for Communities and Local Government* [2017] EWHC 3451 (Admin), [27]-[38].
- 7.2. The Council in opening accepted that the SoS DL was not material in terms of HLS and conflict with expired Policies S10 and H8 (location and density respectively) due to the court order and change in circumstances including the adoption of Plan:MK. The Council identified the DL's finding of failure to accord with WSNP Policy WS5 was relevant but made clear that the weight to be accorded to that policy would need to be considered afresh. The appellant accepts there is policy conflict but there remains dispute about datedness.
- 7.3. The Council confirmed that the DL findings on landscape and character, heritage, traffic, ecology and drainage remained relevant where the DL simply endorses the conclusions of the first Inspector's report.
- 7.4. The only basis upon which the Council maintains the SoS is bound by consistency as to both policy conflict and weight is DL paragraph 26 (and the finding that the proposals were contrary to NPPF paragraph 122 and 123)³⁵. That is contentious and fundamentally incorrect. The approach does not correctly reflect the position that a quashed DL is of no legal effect. It ignores important changes in circumstances in the evidence before the Inquiry including:
 - (a) the Appellant's updated evidence at this inquiry as to the actual net density of the scheme and the changes in housing mix;
 - (b) the changes to the development plan following adoption of Plan:MK; and
 - (c) the Council's concession through the evidence of its planning witness³⁶ that density is a matter to be addressed at the reserved matters stage in the context of layout and does not provide a basis for refusal.

The Development Plan

Plan:MK

- 7.5. The Appellant acknowledges that the development is in conflict with Policies DS1, DS2 and DS5 of Plan:MK³⁷. However, it is important to examine the extent of the conflict and how precisely it arises. The development is contrary

³³ Largely taken from the appellant's closing submissions RID33

³⁴ RID03

³⁵ RID02, paragraph 8(d)(iii)

³⁶ Cross-examination and re-examination of Niko Grigoropoulos on Day 5

³⁷ APP8 page 7 para 3.1

to the terminology of the policies, given their reference to Policy DS5. DS5 is a counterpart policy. Where a proposal conflicts with DS5, it will be contrary to DS1 and DS2. However, it accords with the strategy underlying DS1 and DS2 insofar as directing development to the three key settlements in the rural area as locations that the Council has "chosen for development"³⁸.

- 7.6. Woburn Sands is the only key settlement to have its own train station. Plan:MK does not identify any constraint on housing delivery or place any cap on the number of dwellings to be located at Woburn Sands. The first Inspector found Woburn Sands to be a sustainable location for growth (see IR9.48). The WSNP was adopted more than 5 years ago and 3 years prior to Plan:MK. It does not make any allocations and has not been reviewed.
- 7.7. The settlement boundary is tightly constrained. The application of and weight accorded to Policies DS1, DS2 and DS5 must yield to the assessment of HLS. The Council accepted³⁹ that it was to Woburn Sands as a key settlement that development should go in the absence of a 5 year HLS.
- 7.8. The Council has identified conflict with Policies HN1 and NE7 of Plan:MK but confirmed that all other policies weighed in support (including Policy HN2 in respect of affordable housing and Policy EH5 in respect of health facilities) or could be addressed through reserved matters.

Woburn Sands Neighbourhood Plan

- 7.9. It is accepted that the development conflicts with Policy WS5 as none of the named exceptional circumstances are presently met. The weight to be accorded to the policy must however reflect the extent to which the policy remains in accordance with the NPPF and up-to-date, for the purposes of NPPF paragraph 213.
- 7.10. The WSNP was adopted comparatively early in July 2014 and was assessed for general conformity against a now expired Local Plan backdrop and the 2012 version of the NPPF. Policy WS5 was identified at appeal as creating an unacceptable constraint on growth in circumstances where there was no 5 year HLS. It was accorded very little weight in the Frost appeal⁴⁰ and the first Inspector for this appeal stated it was contrary to the advice in the NPPF (see IR9.20).
- 7.11. The policy is not consistent with the NPPF including the second test which requires the agreement of the Town Council. This was added after the examination without the recommendation of the examiner or any further assessment⁴¹. The policy also seeks to protect the countryside for its own sake which is at odds with the more balanced approach in NPPF paragraph 170(b).
- 7.12. The WSNP makes no provision for an up to date housing requirement in line with NPPF paragraph 65 and 66 and contains no allocations or policies to provide for housing. The lack of WSNP review means that the obvious defects of Policy WS5 have not been scrutinised. The Council is incorrect to say that

³⁸ CD5.31 Glossary on page 286

³⁹ Cross-examination of Niko Grigoropoulos on Day 5

⁴⁰ CD6.6

⁴¹ CD5.17 paragraph 7.6.12 and recommendation 2B

the policy has been given a new lease of life by Plan:MK as the Plan Inspector could not and did not make any finding on the soundness of this policy.

- 7.13. The Council's planning witness accepted no conflict with Policy WS6 in cross-examination but the Council's advocate seemed to withdraw that concession in cross-examination of the appellant's planning witness. The policy is parasitic on WS5 and equally inconsistent with the NPPF, requiring the agreement of the Town Council and seeking to delay development to the end of the plan period. This reduces the weight to be accorded to it.
- 7.14. Irrespective of the 5 year HLS position, Policies WS5 and WS6 are out of date for at least two reasons: (1) their wording is highly restrictive and fails to accord with the NPPF and (2) the WSNP was not prepared using an up to date housing requirement and makes no housing allocations.

Housing Land Supply

Overview

- 7.15. The SOCG on HLS sets out a number of agreed matters in terms of housing requirement, net completions, the backlog, the use of Sedgefield, the buffer and the resulting requirement.
- 7.16. Plan:MK was assessed under the tests contained in the old 2012 NPPF and the Plan Inspector made no findings as to deliverability under paragraph 73 and glossary definition of the 2019 NPPF. The Council's HLS witness accepted that the Plan Inspector's Report does not help in determining whether the Council can demonstrate a 5 year HLS now.
- 7.17. The appellant has identified that the deliverable HLS at the base date of 1 April 2019 would be 3.55 years (7,161 dwellings) and at the base date of 1 October 2019 would be 3.76 years (7,579 dwellings).
- 7.18. In comparison, the Council's respective figures are understood to be 6.41 years (12,931 dwellings) for the 1 April 2019 base date and 6.91 years (13,949 dwellings) for the 1 October 2019 base date
- 7.19. Deductions of 2,844 dwellings against the 1 April base date and 3,858 dwellings against the 1 October base date would result in the Council having less than a 5 year HLS.
- 7.20. The appellant submits that a deduction of that scale is justified on three site-specific bases. Firstly, that sites with detailed permission (category (a) in the NPPF definition) require deductions to reflect unrealistic build-out rates. Secondly that sites with outline permissions or allocations (category (b) in the definition) require deductions or removal to reflect the absence of clear evidence to demonstrate deliverability at the base date. Thirdly, other sites which do not fall within either category (principally prior notification sites under Class O) require removal to reflect the absence of clear evidence to demonstrate deliverability at the base date.

Deliverability

- 7.21. The Council refer to the judgments in *St Modwen*⁴² as to the distinction between certainty and a realistic prospect. That latter judgment was considered further and qualified in *Babergh*⁴³. The revised NPPF in 2018 and 2019 altered the definition of deliverable in two key respects. Firstly, the requirement to demonstrate clear evidence and secondly the use of closed categories in the definition with the burden of proof distributed accordingly. These changes have been described as ensuring a stricter approach by Inspectors⁴⁴. *Babergh* is more recent than *St Modwen*.
- 7.22. A site specific approach must be applied to an assessment of deliverability to comply with the NPPF. The SoS DL on this case was quashed based on the failure to provide site specific analysis on any reasons for the final HLS figure. It is permissible to consider the broader context of HLS in terms of the size and type of sites included, historic rates of delivery and the accuracy of past forecasts, but this cannot replace site specific analysis. In this respect, the Council states that their historic use of a generic "optimism bias" no longer meets the requirements of the NPPF nor the PPG⁴⁵. That said, the Council continue to use it and adopt that position in the context of this appeal.

The base date

- 7.23. The appellant's HLS witness explained why it is essential that the evidential position ('clear evidence') is assessed by looking to what existed at the base date. A 'backfilled' approach whereby a site was simply deemed to be deliverable and evidence then adduced and accumulated over the course of the year was not methodically sound and not compliant with the NPPF or PPG. There is Inspectorial authority on this point from the Woolpit decision⁴⁶. It is possible to take into account information that has arisen after the base date, but only where the site passed the test of deliverability at the base date⁴⁷. This was the approach of the last decision within the Milton Keynes area at Castlethorpe Road⁴⁸. The earlier Globe decision cited Woolpit but appeared not to apply it, notably omitting to set out the state of the evidence at the base date for respective sites.
- 7.24. The Council has further cited the Colchester Road decision⁴⁹, but the example cited by the Inspector of a separate full permission being excluded, is not replicated in the instant case. Moreover, that Inspector in disagreeing with Woolpit in respect of new permissions again did not address the specific problem of completions.
- 7.25. In assessing the intention of the NPPF, it is instructive to consider the position of Annual Position Statements requiring research to be complete prior to the necessary consultation with stakeholders which must take place between notification on 1 April and submission on 31 July of the given year. It is

⁴² CD7.1 [2016] EWHC 968 (Admin) and CD7.6 [2017] EWCA Civ 1643

⁴³ RID09 [2019] EWCA Civ 2200 paragraphs 45-50

⁴⁴ CD6.18 for example

⁴⁵ LPA1 page 22 para 4.54

⁴⁶ CD6.16 paragraphs 67 and 70-79

⁴⁷ CD6.13, CD6.14 and CD6.15

⁴⁸ CD6.18 paragraphs 58-61 and 65

⁴⁹ CD6.22, paragraph 63

therefore entirely practical and consistent with the intention of national policy to ensure that the evidence base is assembled prior to a 1 April base date, including the draft written agreements. The appellant referred to two examples from Mid Suffolk⁵⁰ and Babergh⁵¹ District Councils which respectively itemise the extent of prior consultation and evidence collection, resulting in the production of Memoranda of Understanding (MOU).

- 7.26. The fundamental principle at stake is that of robustness in the evidence base to give effect to the policy imperative of boosting the supply of housing. This can only be ensured by looking to the full 5 year period (not a shortened 4 ¼ period) and by ensuring full transparency on the part of the Council when drawing up its Annual Monitoring Report. The Council's HLS witness accepted that none of the evidence provided in its June 2019 HLS Statement contained documentary evidence at the base date of 1 April 2019. They either substantially pre-dated 1 April 2019 (based on Plan:MK information) or substantially post-dated it (such as the proformas). No amount of chasing of proformas or sense checking could repair the fundamental deficit of evidence at the base date. The appellant disputes the Council's claim that the appellant promotes an artificial two stage approach as one stage should suffice.
- 7.27. It is for this reason that the appellant advances an updated base date to 1 October 2019 to allow the most up to date evidence to be adduced, but only in a manner that reflects the level of completions that have occurred since 1 April 2019.

Proformas

- 7.28. The Council's proformas are not written agreements in line with the PPG ID68-007. They present the trajectory with a simple box to check without identifying the extent of the evidence of progress or testing the build out rate. Supporting information by way of covering emails was often sparse. As such, the Council has had to rely on variety of updates from its witness' proof to oral additions in the roundtable session. This is wholly inconsistent with national policy and does not reflect clear evidence to reflect the position as at the base date.

Build-out rates

- 7.29. The evidence of the appellant's HLS witness sets out the national perspective⁵² which identified the highest build-out rates of 268dpa averaged over 5 years at the Eastern Expansion Area in Milton Keynes (Broughton Gate and Brooklands). Based on the local experience of the appellant's HLS witness, any rates significantly in excess of this figure should be treated with scepticism.

Public ownership of land

- 7.30. Another key obstacle for the Council has been the extent to which it relies on sites in public ownership including the Milton Keynes Development Partnership (MKDP), the Milton Keynes Community Foundation and Homes England. The reason for delays in releasing sites are myriad. The proformas submitted by the Council were subject to assessment by a body that included officers of the

⁵⁰ RID10

⁵¹ RID08

⁵² CD11.1 and APP3 appendix 1 paragraphs A1.18-A1.22

Council and MKDP. Contrary to the Council's advocate's suggestion that this impugned their professional judgment, there was an inevitable circularity in the proforma assessments submitted by these bodies, unjustifiably reinforcing misplaced optimism as to delivery rates.

Past forecasts

- 7.31. The Council has had historic difficulties in the accuracy of its forecasting. When tabulating actual completions against forecasts⁵³, there is an under-delivery against forecasts of 28-30%. Current and past trajectories have failed to be met. Historic rates are instructive in identifying persistent trends and providing a sense check with long-range date.
- 7.32. Inspectors have commented on the way the Council's supply assumes very sharp increases in delivery beyond those experienced either locally or nationally⁵⁴. In response to this, the Council have sought to rely on recent short-term uplifts in completion rates to suggest that there has been a change of direction. Such data is too short-term and too limited in any supporting analysis to justify any conclusion that there has been improvement in their forecasting exercise. There is no evidence that Plan:MK is responsible for recent uplift in delivery. Peaks in development activity have historically been attributable to apartment blocks. This provides limited assistance in respect of how sharp and continuing increases can occur on strategic sites.

Consistency with previous decisions in Milton Keynes

- 7.33. The Castlethorpe Road decision, being the most recent and having taken into account the earlier Globe decision remains the most helpful reference point for the Inspector and SoS. The legal challenge to the Castlethorpe Road decision was unsuccessful. The decision sets out robust approach to individual sites at paragraphs 58-60 identifying longstanding delays to delivery and an overall absence of strong evidence. The Inspector in paragraph 63 made clear that he stopped halfway through looking at sites as it was already evident that the Council did not have a 5 year HLS.

Individual site analysis⁵⁵

- 7.34. The appellant's analysis is based on the evidence of its HLS witness in his proof (Appendix 3) and rebuttal (Appendices 3 and 3a)⁵⁶. The errata document⁵⁷ updates the evidence in several respects following the roundtable session.

Site 1: Brooklands (deduct 232 units for 1 April or 267 units for 1 October)

- 7.35. Sites with detailed permission but Council's rate of delivery is excessive, assuming a sharp uplift in delivery from 182 dwellings in 2019/20 to 347 dwellings in the following year with only 2 developers on site across 7 parcels. This would be substantially higher than the highest figures hitherto achieved (268dpa across 12 parcels). Reduce delivery from 222dpa to 175dpa (April) or 168dpa (October).

⁵³ APP3 appendix 2, table 2 and table 3

⁵⁴ CD5.32 paragraph 145 and CD10.33 paragraph 9.9

⁵⁵ The appellant's closing submissions sets out its case for each site in more detail

⁵⁶ APP3, 4 and 6

⁵⁷ RID20

- 7.36. For Phases 1B and 5B-6B, the Council's evidence comprised in proforma responses compiled as late as June 2019. These both assume rates of 60dpa, which are at odds with an average annual rate of 45dpa across Brooklands.
- 7.37. For Land south west of Fen Street, the Council have confirmed that no proforma was submitted for this site and accordingly, the Council have essentially relied on data from other developers on other sites. The appellant's figures reflect the commencement of completions on the site, but deduct the completions on this strategic site as the forecast rates are unrealistic.

Site 2: Tattenhoe Park (deduct 447 units for 1 April or 530 for 1 October)

- 7.38. Sites with outline permission with the Council relying on proformas from Homes England submitted in June 2019. Tender documents for Phases 2 and 3 dated July 2018 do not declare extent of progress at 1 April 2019 base date. Council sought to add extra 83 dwellings as a result of potential delivery agreement. No developer commitment for Phases 4 and 5.
- 7.39. Detailed permissions for Phases 2 and 3 granted on 15 November 2019 and 24 October 2019 respectively after the 1 April. Sites have had outline permission for over 10 years and failed to deliver any units. Proformas insufficient for either 1 April or 1 October base date. Castlethorpe Road Inspector agreed that sites were not deliverable.

Site 3: Western Expansion Area (deduct 1,503 units for 1 April or 1,084 for 1 Oct)

- 7.40. Outline permissions only for Area 10 and Area 11 Remainders at 1 April. Council rely on proformas. Detailed permission for 152 dwellings granted 24 September 2019. Following advice from developer, the Council has removed 306 units from Area 10 and 229 units from Area 11.
- 7.41. No evidence of deliverability at 1 April for either area and no evidence for why delivery rate of 300dpa for Area 10 would be realistic. Very large strategic sites and Council's expectations need reducing. Castlethorpe Road Inspector agreed the site was not deliverable.

Site 4: Strategic Land Allocation (deduct 864 units for 1 April or 743 for 1 Oct)

- 7.42. The disputed sites within this allocation all had outline permission at 1 April. No lead developer. Proformas not supplied for all sites. Belated evidence at roundtable session. Council's average delivery rate of 399dpa should be adjusted to 274dpa based on local and national evidence.
- 7.43. No proforma for Ripper Land site, only an email about access issues, so remove all units from supply for either base date. No proforma for Land West of Eagle Farm South although reserved matters application awaiting legal agreement at 1 April, so reduce supply by 64 units for either base date. No proforma for Eagle Farm site and the information from October 2019 on developer's intentions is not clear evidence and so remove all units from supply for either base date.
- 7.44. For Glebe Farm site, the Council rely on updated proformas and 2 detailed permissions granted in September and October 2019. Appellant taken into account September permission if 1 October base date used. Supply reduced by either 310 units (April) or 142 (October). For the Golf Course Land, the Council

rely on detailed permission for 180 units granted on 1 November 2019 which the appellant accepts could be included in 1 October base date but not April. For the Church Farm site, the Council rely on a proforma where only one condition has been discharged from outline permission so remove all units from supply for either base date.

Site 5: Newton Leys (deduct 80 units for 1 April and 0 for 1 October)

- 7.45. Outline permission at 1 April with reliance on proforma means removal of all units from supply at this base date. Reference to pre-application discussions at roundtable session not sufficient evidence of progress to reserved matters. Detailed permission granted in September so can include 80 units at October base date.

Site 6: Campbell Park Remainder (deduct 300 units for either 1 April or 1 October)

- 7.46. Proforma from MKDP limited and does not even confirm agreement to Council's forecast. Council referred to development brief and ambitions for a mixed use development at roundtable and an email from December 2019 refers to a joint strategy between MKDP and two named developers, but forecasts no planning application until latter half of 2020 and no start on site until 2021. The Castlethorpe Road Inspector agreed that the site was not deliverable.

Site 7: SEMK Strategic Growth Area (deduct 50 units for either 1 April or 1 Oct)

- 7.47. Allocated site in Plan:MK with no outline permission. No evidence of pre-application activity and SOCG from June 2018 is relatively high level and does not provide up to date evidence.

Site 8: Berwick Drive (deduct 16 units for 1 April or 11 units for 1 October)

- 7.48. Allocated site in Plan:MK and Council owned. Council rely on proforma from June 2019 and November update that refers to pre-application discussions and reduces number of units from 16 to 11. Delete site from supply.

Site 9: Wyevale Garden Centre (deduct 328 units for 1 April or 142 for 1 October)

- 7.49. Proforma from June 2019 limited. Permission not granted until July 2019. Delete site from April base date. Can include with October base date but with a deduction to reflect likely delivery rates over 5 years as the Council's rates of 150 and 130 in years 4 and 5 are unrealistic. 62dpa is more realistic.

Site 10: Food Centre (deduct 298 units for 1 April or 200 for 1 October)

- 7.50. Allocated site with no planning application as of 1 April and no proforma until November 2019. No detail of pre-application discussions. Hybrid planning application not submitted until 23 October. Delete site from supply.

Site 11: Redbridge (deduct 19 units for 1 April or 48 units for 1 October)

Site 12: Rowle Close (deduct 18 units for either 1 April or 1 October)

- 7.51. These sites are adjacent and have been considered as one. They are covered by an allocation but no planning application or permission. Reliance on a proforma only. Delete both sites from supply.

Site 13: Agora Redevelopment (deduct 104 units for either 1 April or 1 October)

- 7.52. Allocated site with no extant permission and no application pending. Council rely on amended trajectory in June 2019 proforma. Castlethorpe Road Inspector considered site was not deliverable as at 1 April.

Site 14: Galleon Wharf (deduct 14 units for either 1 April or 1 October)

- 7.53. The main parties agree this site can be deleted from the supply.

Site 15: Railcare Maintenance Depot (deduct 175 units for either 1 Apr or 1 Oct)

- 7.54. Outline application for mixed use development with activity focussed on non-residential uses at both base dates. June 2019 proforma limited and no new information to indicate progress towards implementing the residential elements. Delete site from the supply.

Site 16: Eaton Leys (deduct 308 units for 1 April or 182 units for 1 October)

- 7.55. Outline permission only at 1 April with no proforma until December 2019. Submission of reserved matters application means appellant accepts site is deliverable but with a consequent reduction in completions to reflect local and national data: 52dpa from 2021/22 to reflect that the site competes with other Barrett David Wilson sites locally.

Site 17: Lakes Estate Neighbourhood Plan Sites (deduct 130 units for 1 April or 279 units for 1 October)

Site 18: Phelps Road (deduct 11 units for either 1 April or 1 October)

Site 27: Southern Windermere Drive (deduct 11 units for either 1 April or 1 October)

- 7.56. These sites form part of a phased Council regeneration proposal. June 2019 proforma from Housing and Regeneration Manager reveals complexity of works commencing with demolition and re-housing of Council tenants. Hybrid application mentioned in proforma not submitted in late 2019. Considerable discussion at roundtable on the correct way of assessing impact of demolition and replacement dwellings. Appellant's approach is that the completion of dwellings to replace those that are due to be demolished does not meet housing need and therefore should not be permitted to address the housing requirement. The maximum number of units that can be taken into account is therefore 110, although there is no clear evidence for even this number.

Site 19: Land off Hampstead Gate (deduct 16 units for 1 April or 34 units for 1 Oct)

- 7.57. MKDP site with proforma submitted 13 November after both base dates. The accompanying email sets out project dates but nothing else provided. Delete site from supply.

Site 20: Land off Harrowden (deduct 25 units for either 1 April or 1 October)

- 7.58. Council owned site with June 2019 proforma. Uncertainty of delivery and Council accept trajectory should be pushed back to 2022/23. Delete site from supply.

Site 21: Broughton Atterbury Self Build Plots (deduct 6 units for either 1 April or 1 October)

- 7.59. MKDP site with June 2019 proforma and no further evidence. While Council referred to wider planning permission for wider site, no clear evidence of deliverability for the specific site. Assertion of demand for custom-built plots. Delete site from supply.

Site 22: Hendrix Drive (deduct 10 units for either 1 April or 1 October)

- 7.60. MKDP site with June 2019 proforma limited. No clear evidence of deliverability.

Site 23: Kellan Drive 1 (deduct 10 units for 1 April or 12 units for 1 October)

- 7.61. Council owned site with June 2019 proforma limited. Application submitted by 1 October but not determined and no identified developer. No clear evidence of deliverability.

Site 24: Singleton Drive (deduct 22 units for either 1 April or 1 October)

- 7.62. MKDP site with June 2019 proforma limited. Reference to pre-application advice and development brief not documented by Council. No clear evidence of deliverability.

Site 25: Former MK Rugby Club (deduct 100 units for either 1 April or 1 October)

- 7.63. Council owned site and Plan:MK allocation with land on long leasehold to the Parks Trust. No application submitted. May 2019 proforma from Bellway Homes but not yet the site owner and text of accompanying email states they are not under contract. Council rely on December 2019 email from Property team recording a putative land disposal agreement in an advanced state but no clear evidence of deliverability. Castlethorpe Road Inspector found site was not deliverable.

Site 26: Timbold Drive (deduct 130 units for 1 April or 118 units for 1 October)

- 7.64. MKDP site and SAP allocation. June 2019 proforma limited. New outline permission being sought but no reported progress on any reserved matters applications. No clear evidence of deliverability.

Site 27 (see above)

Site 28: Land north of Vernier Crescent (deduct 14 units for either 1 Apr or 1 Oct)

- 7.65. MKDP site and SAP allocation. June 2019 proforma limited. Pre-application work not documented and disposal plan pushed back. No clear evidence of deliverability.

Site 29: Manifold Lane (deduct 18 units for 1 April or 33 units for 1 October)

- 7.66. MKDP site and SAP allocation. June 2019 proforma limited and simply refers to application for permission. Council latterly referred to email correspondence but site still in MKDP ownership and sale dependent on permission. In roundtable Council only able to say application anticipated in January 2020. No clear evidence of deliverability.

Site 30: Daubeney Gate (deduct 90 units for 1 April or 73 units for 1 October)

7.67. MKDP site and SAP allocation. June 2019 proforma limited and simply refers to site being marketed. Council latterly referred to email correspondence with Taylor Wimpey but site still in MKDP ownership and purchase dependent on board approval and site investigation. Site capacity already reduced to 73 units. In roundtable, Council only able to say application forecast for March 2020. No clear evidence of deliverability.

Site 31: Springfield Boulevard (deduct 12 units for 1 April or 13 units for 1 October)

7.68. Council owned site and neighbourhood plan allocation. June 2019 proforma limited. Application submitted and then withdrawn. Application submitted in November but not registered until 2 December. No clear evidence of deliverability.

Site 32: Hindhead Knoll (deduct 30 units for either 1 April or 1 October)

7.69. MKDP site and neighbourhood plan application. June 2019 proforma limited. Application submitted October 2019 but not yet determined. No clear evidence of deliverability.

Site 33: Land at Walton Manor (deduct 115 units for either 1 April or 1 October)

7.70. MKDP site and SAP allocation. June 2019 proforma limited. Council rely on outline application submitted January 2019 and approved in November. Site remains in MKDP control and further sale to development dependent on progress with site disposal. No clear evidence of deliverability.

Site 34: Land at Towergate (deduct 150 units for either 1 April or 1 October)

7.71. Homes England site with outline permission and SAP allocation. June 2019 proforma merely looks ahead to future marketing activity. Landowner sought to discharge part 1 and 2 of condition 6 in September 2019. Later application to discharge ecological mitigation was withdrawn in August 2019. Indicates marketing activity has been inhibited. No clear evidence of deliverability.

Site 35: Reserve Site 3 (deduct 22 units for either 1 April or 1 October)

7.72. MKDP site and SAP allocation. June 2019 proforma limited. No further progress with an allocation. No clear evidence of deliverability.

Site 36: High Park Drive (deduct 74 units for either 1 April or 1 October)

7.73. Site with outline planning permission. No proforma. Work to discharge condition post-dates both base dates. No clear evidence of deliverability.

Site 37: Maybrook House (deduct 25 units for either 1 April or 1 October)

7.74. Prior notification site. Appellant explained that such a site does not fall within category (a) or (b) in the NPPF definition of deliverable. The PPG reference to "conversions" in 68-029 only refers to completions, it does not designate such units as part of a supply. If sites are to be included, there is still a requirement to assess the extent to which the sites are available in light of ongoing activity in existing use and whether there is clear evidence they will deliver completions at the rate forecast. No proforma for this site and no further evidence from Council. Site is still not fully vacated and so should not be

considered for residential use. Clear evidence that the site could not be delivered at either base date.

Site 38: Mercury House (deduct 113 units for either 1 April or 1 October)

7.75. Prior notification site. No proforma and no further evidence from Council. Grant of approval for demolition as at 9 January 2020 but no evidence of any timescale for further works. Clear evidence that the site could not be delivered at either base date.

Site 39: Bowback House (deduct 107 units for either 1 April or 1 October)

7.76. Prior notification site. No proforma and no further evidence from Council. Site is still not fully vacated and still be marketed for office use. Should not be considered available for residential use. Clear evidence that the site could not be delivered at either base date.

Site 40: Land east of Tillbrook Farm (deduct 36 units for either 1 April or 1 October)

7.77. Site with outline planning permission. June 2019 proforma and follow-up email from November 2019 refer to delays of further 3 months for submission of reserved matters. No clear evidence of deliverability.

Site 41: Tickford Fields (deduct 220 units for either 1 April or 1 October)

7.78. Council owned site with no outline permission. June 2019 proforma records start date as unknown. December 2019 email refers to future application but no further progress towards securing developer partner. No clear evidence of deliverability.

Site 42: Land west of Yardley Road (deduct 210 units for either 1 April or 1 October)

7.79. Site with outline permission and allocated in Olney Neighbourhood Plan. Council rely on June 2019 proforma. Reserved matters application submitted November 2019. No clear evidence of deliverability.

Site 43: Omega Mansions (deduct 10 units for 1 October)

7.80. Prior notification site for purposes of 1 October base date. No progress of further works. No clear evidence that the site was deliverable at base date.

Site 44: Cable House – duplication with Site 38 (Mercury House)

Site 45: Chancery House {deduct 40 units for 1 October}

7.81. Prior notification site for purposes of 1 October base date. No progress of further works. No clear evidence that the site was deliverable at base date.

Site 46: Land south of Cresswell Lane – Central MK C3.2 (deduct 294 units for either 1 April or 1 October)

7.82. The Council did not consider that this site was deliverable as at the 1 April 2019 base date. Full planning permission was only granted on 31 July 2019. There was therefore no clear evidence that the site was deliverable as at April base date. This application did not result in an amendment to the MK Housing Statistics and as such it was considered that the site remains undeliverable.

Site 47: Castlethorpe Road (deduct 50 units for 1 October)

- 7.83. Outline permission granted at appeal after 1 April. No clear evidence from Council as to why it should be included in the supply.

Site 48: Station Road Elder Gate

- 7.84. [Not covered in closing submission or in detail elsewhere by appellant]

Sites 49-52: Council's "Year 6" sites

- 7.85. The Council sought to add 4 sites predicted to deliver in first half of 2024/25 year (if the base date is 1 October). The appellant's overall position is that the timescales for delivery are extremely uncertain given that completions are only anticipated at the end of the period. None have outline permission and no recorded developers.

Site 49: Rear of Saxon Court (deduct 20 units for 1 October)

- 7.86. Council referred to development brief consultation in summer 2019. MKDP acting for Council and does not provide sufficient evidence of progress. Council's most recent assessment in December 2019 was that there was no clear evidence of delivery in 5 years.

Site 50: Rear of Westminster Court (deduct 15 units from 1 October)

- 7.87. MKDP acting for Council and does not provide sufficient evidence of progress. Council's most recent assessment in December 2019 was that there was no clear evidence of delivery in 5 years.

Site 51: C4.2 (deduct 22 units from 1 October)

- 7.88. MKDP acting for Council and does not provide sufficient evidence of progress. Council's most recent assessment in December 2019 was that there was no clear evidence of delivery in 5 years.

Site 52: Cavendish House (deduct 9 units from 1 October)

- 7.89. Part of Fullers Slade regeneration proposals now approved at referendum with a development option selected. Proforma from MKDP states 'strong possibility' site will come forward, but still not clear evidence of delivery.

Summary on housing land supply

- 7.90. The Council does not have a robust, deliverable five-year supply of housing land. This has been the case for some considerable time. The appeal site if released would be delivered within 5 years as a small site under the control of a SME developer which the Council's Housing Delivery Action Plan seeks to promote. Further, there has been a significant shortfall in the provision of affordable housing over the years which this site would help to address. The shortfall in housing for a new town is beyond problematic and the imbalance between jobs and housing increases in-commuting and frustrates sustainable growth.

Location of the development

- 7.91. The first Inspector found site to be in a sustainable location due to accessibility of public transport and local facilities and the absence of any unacceptable environmental effects.

Development plan and national policy

- 7.92. The adoption of Plan:MK has not altered this but recognised and reinforced it. Policies DS1 and DS2 identify Woburn Sands as a sustainable location with no cap on development. There is very limited space within the settlement boundary for development. Changes to the boundary in Plan:MK have reflected existing commitments, the Frosts appeal, the Nampak permission and the Frosts retail permission.
- 7.93. The revised NPPF in 2018 and 2019 has not altered sustainability. It continues to boost HLS (para 59), direct housing to sustainable locations (para 103) and ensure development is located within locations including rural locations where it can contribute to the vitality of the community (para 78). Majority of recent development at the Nampak site and of a density and general form that takes little account of town's existing character.
- 7.94. Housing would support public transport, shops and services. The existing doctor's surgery has capacity for new patients and financial contributions can be made for school places. Woburn Sands and the appeal site are appropriate locations for future growth. The fact that the Plan:MK Inspector did not require further allocations and the Town Council are declining to review WSNP does not alter this.

Oxford-Cambridge Expressway

- 7.95. The Council did not cite this as any basis for refusal of scheme and this remains their position in the SOCG and at the inquiry. The appellant has set out that plans are at the very earliest stages of consultation with the Secretary of State for Transport indicating that he will review whether there is a continuing justification for the proposal having described its benefits as finely balanced and the need to demonstrate a strong case that it will boost jobs, prosperity and has local support⁵⁸.
- 7.96. Examining the site and locality there is no realistic prospect of substantial road construction at the appeal site or vicinity. The appellant has explained the extent of constraints preventing road construction, most notably the registered park and garden and residential development including the Strategic Land Allocation. Further, the suggestion made by Highways England that development on the site would be contrary to the adopted development plan and potentially result in conflict with the expressway is wrong. Plan:MK only deals with the expressway in the context of the SEMK Strategic Growth Area. Therefore, the expressway does not constitute a reason to withhold consent.

⁵⁸ APP8 paragraph 4.6

Housing density

- 7.97. At this Inquiry, the appellant has made clear that the density figure should be assessed at 20.3 dwellings per hectare (dph) applying a net density approach that subtracts the area's listed in the planning witness' proof⁵⁹. That approach reflects the absence of any statutory definition or any extant policy or guidance. Changes to the housing mix would increase density in respect of habitable rooms per hectare⁶⁰.
- 7.98. The Council's case at the first Inquiry sought to prolong the initial objection on the basis of Policy H8 of the Local Plan 2005 which looked for a density of 35dph for locations like Woburn Sands. The first Inspector found no substance in this point in his paragraphs IR9.43 and IR9.45. The SoS DL paragraphs 24-26 referred consistently to conflict with Policy H8. The SoS referred only in DL paragraph 24 to NPPF paragraphs 122-123 in assessing the accordance of the policy with NPPF, notably identifying its use of a range of average net densities.
- 7.99. The development plan position and national policy position have both moved on markedly since the original Inquiry with the expiry of Policy H8. The policy framework for density is now Policy HN1(c) with contextual support from Policy SD1 and D1. Policy HN1 conforms with NPPF paragraph 122 and was found sound by the Plan:MK Inspector albeit in the context of NPPF 2012.
- 7.100. The correct approach to assessing acceptability of density is to assess those areas immediately adjacent to the development, not an arbitrary wider area comprising the whole settlement. The appellant's evidence carries out a systematic calculation⁶¹ of density of area surrounding the site with regard to Policy HN1(c) and NPPF paragraph 122(d) in particular. The Council's planning witness accepted in cross-examination that he had undertaken no calculation of density of his own, had relied on the Nampak Inspector's finding of density, and had not identified any minimum density. His 27dph represented one variant of an acceptable scheme and he considered the acceptable number of dwellings on the site may be higher or lower than 203. He also accepted that NPPF paragraph 123(a) is a plan-making provision and 123(c) is to be read in the broader context of paragraph 122.
- 7.101. The Council's planning witness conceded that the layout of the development was a reserved matter and one the Council could control in due course. Article 2 of the Town and Country Planning (Development Management Procedure) Order 2015 defines "layout": "*means the way in which buildings, routes and open spaces within the development are provided, situated and orientated in relation to each other and to buildings and spaces outside the development*".
- 7.102. The Council's suggestion that a Council cannot control density at the reserved matters stage relies on the solitary basis of a single paragraph of the Planning Encyclopedia's section 3B-2200.5 citing *R v Newbury DC Ex p Chieveley Parish Council* [1998] PLCR 51⁶². The Council has not explained

⁵⁹ APP8 paragraph 5.5

⁶⁰ APP8 paragraph 5.6-5.8

⁶¹ APP10 appendices 2-6, especially appendix 2 which focuses on the built up area of Woburn Sands only

⁶² RID23

which part of the judgment is relied upon. However, on its face the judgment is not authority for the Council's proposition and it focuses on the issue of floor area, not density. The same section of the Encyclopedia reveals another authority which confirms that density is indeed capable of forming a reserved matter: *Inverclyde DC v Inverkip Building Co. Ltd* 1983 SLT 81, 90.⁶³

- 7.103. On a correct understanding of the development plan, national planning policy and the legal powers available to the Council at the reserved matters stage, there is simply no basis to refuse permission on grounds of density. The Council's attempts to retract their witness' clear concessions in evidence should be rejected.

Landscape and impact on character of settlement

- 7.104. The issue was considered in detail at the first Inquiry. The first Inspector found the effects would be limited and give rise to no unacceptable harm (IR9.26 and 9.27). The SoS concurred in the DL at paragraph 27. The Council agrees with this position as set out in the SOCG and that any adverse effects would carry limited weight against the proposals. The appellant has explained that such harm would be significantly and demonstrably outweighed by the benefits.

Heritage

- 7.105. The appellant's heritage consultant⁶⁴ has considered the effect on the listed farmhouse and Wavendon House and the registered park and garden. The first Inspector found less than substantial harm to the listed farmhouse (IR9.41) and the SoS agreed in his DL at paragraph 28. The appellant's heritage consultant has found the scheme would cause no harm to the significance of Wavendon House and the registered park and garden. The Council in the SOCG agrees that the proposal would result in a low level of less than substantial harm to the listed farmhouse and that there is no basis to refuse the scheme on heritage grounds subject to a satisfactory detailed scheme/design at reserved matters stage. The Council's planning witness confirmed that the public benefits would outweigh the low level of harm for the purposes of NPPF paragraph 196.
- 7.106. In summary, whilst considerable weight and importance should be attached to the desirability of protecting and enhancing the character and appearance of designated heritage assets for the purposes of s66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, there is no basis for refusal on this ground in relation to the Appeal Scheme. For the purposes of NPPF 11d(i) there is no basis for refusal on heritage grounds.

Highways

- 7.107. Third parties raised traffic and transport concerns at the first inquiry and these have been raised to a more limited extent at the present inquiry. The first Inspector addressed these issues at IR9.35-9.38 and the SoS endorsed

⁶³ RID26

⁶⁴ APP9 appendix 4

these findings that the proposal would not give rise to unacceptable effects in his DL at paragraph 30. The TA has been updated⁶⁵.

- 7.108. The Council has confirmed in the SOCG that the proposal is acceptable in all respects, that the access is appropriate and would not put undue pressure on local road network. All other detailed matters can be considered under reserved matters applications. The TA remains robust and justifies the conclusions of the appellant and the Council's highway officers.

Best and Most Versatile Agricultural Land

- 7.109. The Council's planning witness raised this issue for the first time in his proof of evidence⁶⁶. While identifying a conflict with Policy NE7, he made clear in cross-examination that this did not amount to a freestanding basis for refusing the proposal. It is accepted that there would be a loss of Grade 3a agricultural land and that this gives rise to a conflict with NE7. However, both Policy NE7 and NPPF paragraph 170(b) make clear that this is an economic factor to be weighed against the economic benefits that would arise from the development, listed in the Economic Benefits Statement⁶⁷ and set out further below. The Council has allocated land on sites around the Borough which are of equal or greater agricultural value as the site⁶⁸.

Planning Balance

Affordable housing

- 7.110. The appellant's witnesses have identified a substantial need for affordable housing within Milton Keynes borough in their respective proofs⁶⁹. The Council has already seen a shortfall of 640 dwellings in the first 3 years of the plan period⁷⁰ with a chronic failure to deliver a sufficient amount from 2007 to 2018⁷¹. As set out above, there is a clear recognition in Plan:MK that additional weight should be accorded to the provision of affordable housing in excess of the policy minimum. The Council's planning witness confirmed in cross-examination that this was a benefit to which significant weight (the highest weight) should be attached.

Market housing

- 7.111. Significant weight should be attached to the benefits of providing market housing irrespective of the precise HLS position. The Government is committed to boosting significantly the supply of housing to meet the chronic and continuing shortfall both nationally and where it arises locally, but also to diversify the base of house builders to meet that need. One of the difficulties identified by the Government in its White Paper was the excessive concentration and dominance of the major national house builders which is seen to have a distorting and negative effect upon the continuous supply of housing up and down the country.

⁶⁵ APP9 appendix 7

⁶⁶ LPA4 paragraph 10.31-10.32

⁶⁷ APP9 appendix 6

⁶⁸ RID24

⁶⁹ APP2 chapter 7 and APP8 paragraphs 6.34-6.36

⁷⁰ APP2 table 13

⁷¹ APP2 table 17

- 7.112. The house builder in this case, Storey Homes, is a small to medium sized developer whom the Government wishes to encourage to provide housing, not only as a matter of choice but in order to meet a diversity of suppliers. The appellant's note⁷² has provided evidence both upon that, the track record of the company and the anticipation that it will be able to deliver all of the proposed housing within 5 years of the date of its permission. The proposal would deliver at least 150 dwellings within the current 5 year period up to March 2024, allowing for a year to clear reserved matters and conditions. The Council's suggestion that there should be any diminution in the weight to be accorded the proposal by reason that not all of the 203 dwellings might be delivered within the 5 year period (principally due to the suggested significant delay on the part of the SoS in issuing his decision letter on this appeal) is not credible.
- 7.113. The proposal will provide much-needed housing in an important growth location both regionally and nationally and where the provision of each type of housing has materially lagged over a prolonged period of time.

Economic benefits

- 7.114. There are substantial economic benefits as set out in the Economic Benefits Statement and accepted by the Council's planning witness at cross-examination. These comprise temporary construction employment of 180 workers per annum, or 630 workers over the course of a 3.5 year construction period, both on and off-site; demographic and labour market benefits, including a high proportion of working-age residents (75% in employment), and a cross-section of working people due to the range of accommodation offered; secondary employment generated by increased spending in the local area by new residents (£5 million total per annum), directly supporting around 40 gross full-time equivalent jobs; and New Homes Bonus paid to the Council of c.£1.4 million over 4 years.

Social benefits

- 7.115. The development will provide social benefits through housing (including much needed affordable housing) to meet future need and is accessible to the local services provided within the wider area including education facilities. The site would also provide a social benefit in the form of the doctor's surgery to be provided on site and the site would be within reasonable walking distance of existing local services and facilities.

Environmental benefits

- 7.116. There will be the opportunity to provide a net environmental benefit by the site having the potential to enhance the habitats within it, given that the appeal site has little value for wildlife at present. These are set out in an update report from CSA Environmental⁷³.
- 7.117. Clearly the site is outside the present settlement boundary of Woburn Sands but so would any site which is presently not allocated. Much of the Council's HLS is and will be located on green field sites. In that context, there

⁷² APP9 appendix 13

⁷³ APP appendix 5 paragraph 5.20

would have to be something distinct and material about this site in order to suggest that its green field location would render it unsustainable. That was certainly not the view of officers in their report recommending approval and it is freely recognised by the Council that there is no landscape or similar argument to support objection to the appeal site here.

Highways/Traffic benefits

- 7.118. There are highways and transportation benefits, by providing additional flexibility in the local network and an alternative to the existing Newport Rd / Cranfield Rd junction. These can be classified as both environmental and social benefits. The proposal would also help to contribute towards sustainable patterns of development and help to counteract the increasing levels of commuting which can be created by an imbalance of homes and jobs.

Summary on benefits

- 7.119. The proposed development is one which, by reason of its location and accessibility to a range of services, facilities and transport links, and having regard to the three dimensions set out in the NPPF, is sustainable development which properly benefits from the presumption in its favour. Even in circumstances (though not here) where an Inspector were to conclude that the Council was able to demonstrate a 5 year HLS, the sustainability and other advantages constituting material considerations in this case would be sufficient to justify the grant of consent.

Conclusions

- 7.120. The appeal proposal represents sustainable development adjacent to a settlement which is identified in Plan:MK as being a key settlement and which contains not only a wide range of service and facilities but also a railway station. The Council does not have a 5 year HLS and that the shortfall in both market and affordable housing is longstanding, acute and continuing.
- 7.121. The proposed development gives rise to substantial benefits which are not outweighed by any of the alleged detrimental impacts and is consistent with the presumption in favour of sustainable development. It is therefore respectfully submitted that the appeal should be upheld and planning permission ought to be granted.

8. The Case for Milton Keynes Council⁷⁴

Introduction

- 8.1. The Council submits that this appeal should be dismissed. In its evidence to this inquiry and questions in cross-examination, the appellant has demonstrated an obsession with process, an interpretative approach which is contrary to the plain words of local and national policy, and a selective approach to the evidence which ignores that which does not support its case. By contrast, the Council's approach has been straightforward, consistent with national policy, and should be preferred

Previous Decision Letter (DL)

- 8.2. The DL is a material consideration in the redetermination of this appeal, notwithstanding the fact that it was quashed by the High Court: see *R. (Davison) v Elmbridge Borough Council* [2019] EWHC 1409 (Admin)⁷⁵. This is to give effect to the well-established principle of consistency in decision making. In *Davison*, the judge gave specific guidance on the application of consistency to a quashed decision as follows:
- (a) The principle of consistency is not limited to the formal decision but extends to the reasoning underlying the decision.
 - (b) Of itself, a decision quashed by the Courts is incapable of having any legal effect on the rights and duties of the parties. In the planning context, the subsequent decision maker is not bound by the quashed decision and starts afresh taking into account the development plan and other material considerations.
 - (c) However, the previously quashed decision is capable in law of being a material consideration. Whether, and to what extent, the decision maker is required to take the previously quashed decision into account is a matter of judgment of the decision maker reviewable on public law grounds. A failure to take into account a previously quashed decision will be unlawful if no reasonable decision maker could have failed to take it into account.
 - (d) The decision maker may need to analyse the basis on which the previous decision was quashed and take into account the parts of the decision unaffected by the quashing.
 - (e) The greater the apparent inconsistency between decisions the more the need for an explanation of the position
- 8.3. Applying these principles, the Council submits:
- (a) The DL is a material consideration in the present case. No reasonable decision maker could fail to take the DL into account given the obvious relevance to the issues in dispute. However, the DL does not bind the decision maker who must start afresh, taking into account the

⁷⁴ Largely taken from the Council's closing submissions RID34

⁷⁵ Insofar as the Appellant may seek to rely on *West Lancashire v SSCLG* [2017] EWHC 3451 as establishing a different approach, *Davison* is to be preferred given that it expressly considered *West Lancashire*.

development plan and other material considerations, of which the DL is one.

- (b) The DL was quashed because the Secretary of State failed to give adequate reasons for concluding that the Council could demonstrate a 5 year HLS. Accordingly, the Secretary of State's conclusions (and reasoning) on all matters unrelated to 5 year HLS were not impugned by the High Court.
- (c) Notwithstanding the fact that the SoS's conclusions on these matters was not impugned, it is necessary to consider whether those conclusions remain relevant, and if so, whether they hold good, taking into account any changes in circumstances that may have arisen since the SoS's decision

8.4. In respect of the Secretary of State's principal conclusions, the Council's position is that:

- (a) 5 year HLS: The conclusion at DL paragraph 18 that the Council could demonstrate a 5 year HLS formed the basis on which the DL was quashed. Accordingly, no weight can be given to this conclusion and the issue must be considered afresh by reference to the new evidence now presented at this Inquiry.
- (b) Location of site: The conclusion at DL paragraph 19 that the development fails to accord with Policy WS5 of the WSNP is relevant and unaffected by the quashing of the DL. However, given the changes to the development plan since the DL was issued, the conclusion that the development was contrary to saved local plan policy S10 is no longer relevant. Further, given the changes to the development plan, it is necessary to consider afresh the weight to be afforded to the conflict with Policy WS5.
- (c) Housing density: The conclusion at DL paragraph 26 that the development fails to accord with NPPF 2018 paragraphs 122–123 is relevant and holds good given the similarity with the relevant paragraphs in the NPPF 2019. However, given the changes to the development plan since the DL was issued, the conclusion that the development was contrary to Policy H8 is no longer relevant.
- (d) Character of the area: The conclusion at DL paragraph 27 that "the significant visual and landscape effects of the scheme would be very local, while beyond those immediate surroundings, the effects would be very limited" is relevant and holds good as there has been no material change of circumstances.
- (e) Heritage: The conclusion at DL paragraph 28 that there would be less than substantial harm to Deethe Farmhouse is relevant and holds good as there has been no material change of circumstances.
- (f) Benefits of the scheme: The conclusion at DL paragraph 29 that the benefits of the scheme comprise affordable housing, temporary construction employment and secondary employment is relevant and holds good. However, it is necessary to consider afresh the weight to be

afforded to these benefits given the changed housing and economic environments.

- (g) Other matters: The conclusion at DL paragraph 30 that matters relating to traffic and parking, the impact of the development on the facilities of the town, and ecology and drainage, do not weigh against the proposal is relevant and holds good as there has been no material change of circumstances.

- 8.5. It is necessary to consider afresh the conclusions in respect of planning conditions and obligations and the planning balance given changes to the development plan and amendments to both conditions and obligations.

Housing Land Supply

The general approach to the assessment of HLS at this appeal

- 8.6. There is a need to adopt a proportionate and realistic approach to the assessment of evidence at an appeal compared to local plan examination as acknowledged by the Inspector at the Castlethorpe Road appeal⁷⁶. The policy imperative of demonstrating a 5 year HLS in NPPF paragraph 73 and the consequences of not being able to in terms of NPPF paragraph 11 is to ensure that there is an adequate supply of housing land. This is clear from NPPF paragraph 59. Contrary to the approach of the appellant, the assessment of 5 year HLS is concerned with the endpoint and a sufficient supply of deliverable land, not with the assessment process. There is a need for good planning judgment.
- 8.7. The appellant's approach to the assessment of deliverability invites the decision-maker to ignore evidence which is obviously material to the assessment of realistic prospects. It is well established that policy cannot lawfully make immaterial that which is material⁷⁷. The Appellant ignores this, and this is one of many reasons why its approach is wrong in law.
- 8.8. The Council's 5 year HLS must be viewed in the context of the recently adopted Plan:MK, which has brought about a robust supply and resulted in dramatic improvements in housing delivery. Since adoption in March 2019, the Council has achieved its annual delivery requirement in 2018/19 for the first time since 2007/08 consistent with the continual year on year improvement over the first 3 years of Plan:MK. In quarters 1-3 of 2019/20, the Council has delivered 92% of its annual requirement such that it is near certain that it will meet its annual delivery requirement again for the second consecutive year⁷⁸. The number of units under construction at the end of quarter 2 of 2019/20 was the highest number since June 2008 and quarter 3 only marginally lower. The first 3 quarters of 2019/20 is the first time since at least 2007/08 that the Council has recorded over 2000 units under construction for 3 consecutive quarters.

⁷⁶ CD6.18 paragraph 51 [the Council's closing submission refer to this appeal as 'Hanslope', but for consistency this report has used the same address used by the appellant]

⁷⁷ See *Gransden & Co. Ltd. and Another v Secretary of State for the Environment* (1987) 54 P. & C.R. 86 per Woolf J (as he then was) at 94.

⁷⁸ LPA1 table 5.1 and RID07

- 8.9. The Plan:MK Inspector confirmed the Council has a clear and robust roadmap to delivering housing and was satisfied with its housing trajectory, with special circumstances for significantly higher delivery over next few years, significant number of small and medium sites and the risk of non-delivery minimal⁷⁹. The Council submits that the change in the NPPF definition of deliverable does not affect these conclusions as they go to the underlying approach of the Council and the underlying circumstances of the local area.

Other recent appeal decisions dealing with 5 year HLS

- 8.10. Both the Castlethorpe Road and the Globe appeal decisions⁸⁰ are material considerations, but neither is binding on the decision maker. Given the conflicting conclusions on HLS, the decision maker will need to disagree with at least one and give reasons. Neither decision is more lawful than the other and their planning judgments have not been challenged. The differences between the appeals relate to the different evidence presented to each appeal and the different manner in which the evidence was presented. The fact that more time was spent on site by site analysis at the hearing for the Castlethorpe Road appeal does not make it a more considered decision. The evidence was presented in advance for the Globe hearing and there was only one appellant. The HLS evidence at the Globe hearing was more up to date and was presented earlier on. While this might mean the Globe decision should be preferred on this basis, there is still a need to reach a fresh judgment for this appeal based on the evidence before this Inquiry.
- 8.11. Both appeal decisions considered the most up to date evidence like this appeal. Both decisions noted the improving housing completions. The Castlethorpe decision dismissed criticism of the Council's proformas. This Inquiry has the benefit of the Council's note⁸¹ explaining the proforma process and that respondents did amend build out rates where necessary. A statement from a developer would provide no greater certainty of delivery. The evidence presented by the appellant from Mid Suffolk District Council⁸² accepts an email confirmation to support build out rates.
- 8.12. The Castlethorpe Road decision applies an optimism bias (OB) using a midpoint between the Council and appellants (paragraph 62). It is important to note that the Council and appellants were referring to two different things when using the term OB: the Council was referring to a lapse rate while the appellants were referring to an adjustment for alleged inaccuracies in the 5 year HLS assessment. The alleged inaccuracy was the discrepancy between the Council's previous assessments of HLS and the number of homes delivered. The midpoint applied by the Inspector was not 17.5% but a broader approach and the Council would have been able to demonstrate a 5 year HLS otherwise.
- 8.13. The Castlethorpe Road conclusion that it was not particularly apparent that the Council had reduced its calculations of housing land supply to reflect the revised definition of deliverable in the NPPF no longer holds good as the Council has given clear evidence⁸³ to this Inquiry of the approach and

⁷⁹ CD5.32 paragraphs 136, 145 and 152

⁸⁰ CD6.18 and CD6.17 respectively

⁸¹ RID13

⁸² RID15

⁸³ LPA2 appendix 2, section 2

methodology followed. Moreover, the Council has discounted sites from the Plan:MK 5 year HLS due to the new definition of deliverable⁸⁴.

Timescale of the evidence

- 8.14. There is dispute between the parties as to the use of evidence which post-dates the base date of 1 April 2019 to assess deliverability. This is a matter of principle which falls to be determined by interpreting national policy and is not an issue specific to the facts of the case. The Council's position is that the calculation of 5 year HLS should not introduce new sites granted permission after 1 April 2019 which were not identified as part of the supply at 1 April in Council's June 2019 HLS assessment. Moreover, regard should be had to all of the evidence presented to this inquiry even it was created after 1 April or relates to events which postdate 1 April. The assessment needs to ask a simple question in respect of each site – does the evidence presented to this inquiry demonstrate that the site is deliverable in the five-year period 1 April 2019 – 31 March 2024.
- 8.15. The appellant advocated an artificial two stage approach. Firstly, to consider, by reference only to evidence which predates 1 April (either because it was created before that date or because it was created after that date but referable back to matters known before that date), whether the site was deliverable as at 1 April. Secondly, to consider whether the conclusion reached at the first stage holds good today by reference to other matters since 1 April. The Council submits this is wrong and should be rejected for the following reasons.
- 8.16. Firstly, it is an approach that has no basis in the NPPF or PPG. Reference in paragraph 73 to a minimum of 5 years' worth of housing is simply an expression of the need for the supply to cover at least a 5 year period. Reliance on the PPG paragraph 68-001-20190722 is misplaced as 'next five years' operates as a contrast to 'last 3 years' to illustrate difference between retrospective Housing Delivery Test and prospective calculation of 5 year HLS. It does not impose an evidential cut-off date. The appellant accepts that the base date for assessment may be a date which has passed such that 'next' is not imbued with any special meaning. There is no basis for only considering evidence prior to the base date and no basis for a two stage approach.
- 8.17. Secondly, the PPG approach accords with the Council when considering the provisions relating to preparation of an Annual Position Statement (APS)⁸⁵ where the base date is 1 April and a local planning authority has until 31 July to prepare and consult on its APS before submission to PINS and PINS issues its recommendation by October. This allows for stakeholders to agree or disagree with evidence to allow robust challenge and reasoned conclusion on deliverability which is then assessed by PINS.
- 8.18. Thirdly, neither Woolpit nor Darnall School Lane decisions⁸⁶ support the appellant's approach. The former discounts sites not identified at the base date from the assessment which the Council follows in its approach. The latter considered information after the base date where it was relevant to identified sites with no artificial cut-off date for evidence.

⁸⁴ RID19

⁸⁵ PPG ID: 68-012-20190722, ID: 68-013-20190722, ID: 68-015-20190722

⁸⁶ CD6.16 and CD6.14/6.15 respectively

- 8.19. Fourthly, the appellant's approach is impractical and seeks to create an artificial process. An HLS assessment requires understanding of actual completions which cannot be known until after the base date. The Mid Suffolk and Babergh HLS assessments illustrate this reality⁸⁷. Both refer to MOUs/SOCGs agreed after base date; these may support evidence but can only mean there was sufficient clear evidence without them. The MOUs contained matters post-dating the base date that were taken into account in calculating 5 year HLS such as build out rates⁸⁸. The assessment of deliverability requires consideration of how many homes are deliverable and not simply that the site is deliverable⁸⁹. There is no basis in policy or logic to impose artificial time restrictions on the assessment of deliverability but not the other elements of the 5 year HLS assessment.
- 8.20. Fifthly, where an APS is not used, the PPG is clear that HLS should be demonstrated using the latest available evidence and up to date evidence⁹⁰. The Council's approach is consistent with this. The appellant seeks to disaggregate evidence so that there is a threshold test at first stage which omits the most recent evidence as it is limited only to evidence which predates the base date. The consequence is to invite the decision maker to disregard obviously material evidence in the assessment of whether there is a realistic prospect that a particular site is deliverable.
- 8.21. Sixthly, the Council's approach is consistent with the Colchester Road decision⁹¹ regarding evidence after the base date, the Globe decision⁹² regarding the use of proformas after 1 April base date, and the Castlethorpe Road decision regarding the use of proformas⁹³.
- 8.22. The appellant's approach seeks to create an obstacle course for local planning authorities to negotiate every time there is an appeal. It bears no resemblance to national policy and departs from clear purpose of HLS mechanism to ensure that there is a pool of sites of sufficient capability to create a realistic prospect that local housing need will be met in a timely fashion in the relevant 5 year period. The appellant places process above good, sound and sensible planning.

Deliverability, not delivery

- 8.23. There is a clear distinction in NPPF paragraph 73 between delivery and deliverable. The appellant conflates the two and the error manifests itself in two principal ways: it forms the basis for the application of an inflated OB to the Council's deliverable sites; and it forms the basis for the appellant's erroneous discounting of deliverable sites.
- 8.24. The *St Modwen* judgment⁹⁴ in paragraphs 35-39 highlights the essential distinction between the two concepts. Deliverability is a less demanding test than delivery. The fact that a particular site is capable of being delivered within five years and thus deliverable, does not mean that it necessarily will be

⁸⁷ RID15 paragraphs 10, 11, 23 and 29

⁸⁸ RID15 paragraphs 24 and 25

⁸⁹ See Colchester Road decision at CD6.22 paragraph 65

⁹⁰ PPG ID: 68-004-20190722 and 68-007-20190722

⁹¹ CD6.22 paragraph 62

⁹² CD6.17 paragraphs 23 and 24

⁹³ CD6.18 paragraph 55

⁹⁴ CD7.6

delivered. The judgment also highlights that the likelihood of housing being delivered within 5 year period is no greater than a realistic prospect, not certain or probable. The revisions to the NPPF does not affect this judgment including the definition of deliverable which is materially unchanged in the first part of that definition in the 2012 and 2019 versions.

- 8.25. *St Modwen* does not create new law but explains the correct interpretation of national policy. This is confirmed in the more recent *East Bergholt* judgment⁹⁵ at paragraphs 47-51, which highlights that 'realistic prospect' is a matter of planning judgment

Adjusting the assessment of deliverable sites

- 8.26. This issue relates to whether the assessment of deliverable sites should be adjusting by applying an OB and if so, what method of discount for OB should be applied. The Council uses OB to refer to lapse rates while the appellant uses it to refer to a discount to apply to the Council's HLS to address alleged inaccuracies in the assessment. The Council applies a lapse rate to all sites with forecast delivery in the 5th year of supply by discounting delivery of the site in each year by 10%. The appellant advocates a blanket discount of 28-30% to the supply but applies no such discount in its own assessment.
- 8.27. The Council's position is that it no longer considers it appropriate to apply a lapse rate due to the site by site assessment it undertakes. However, to be consistent with the approach for Plan:MK, a lapse rate was included in the HLS assessment in June 2019 and in the evidence to this appeal. This is to ensure robustness. The appellant's HLS witness has also carried out a site by site assessment and so there appears to be little difference that a lapse rate or OB is not required. It is open to the decision-maker to conclude that it is not required as the detailed assessment of sites reduces uncertainty.
- 8.28. The appellant's OB should not be applied as its HLS witness has compared the assessment of deliverable supply with actual delivery. This is erroneous and an unrelated comparison contrary to *St Modwen*. Just because a deliverable site was not delivered does not undermine the assessment of deliverability. It would also be inconsistent with national policy. For the purposes of NPPF paragraph 73, it is agreed that only a 5% buffer is necessary rather than 20% which is intended to make up for the significant under delivery of housing over previous three years. This achieves the same purpose as the appellant's OB. To impose the OB would be inconsistent with the NPPF which has decided it is not appropriate to apply a 20% buffer. Lapse rates were not applied in Mid Suffolk or Babergh's HLS assessments and the appellant has confirmed that it does not support a lapse rate⁹⁶.
- 8.29. If a discount is to be applied to this appeal, then it should be the lapse rate in accordance with the Council's methodology and not the appellant's OB.

Permitted development prior approval notifications

- 8.30. This relates to the grant of prior approval pursuant to Class O of Schedule 2 to the Town and Country Planning (General Permitted Development) (England)

⁹⁵ RID09

⁹⁶ RID17 paragraph 1.16

Order 2015 (GPDO) and the calculation of 5 year HLS. The Council's position is that it results in detailed planning permission which falls within category (a) of the NPPF definition of deliverable. This is a matter of law not planning judgment.

- 8.31. The NPPF should be interpreted consistently with the planning acts as judgments have found⁹⁷. Section 336(1) of the Town and Country Planning Act 1990 (TCPA 1990) defines "planning permission" as a permission under Part III TCPA 1990. The GPDO is made pursuant to Section 58 TCPA 1990, which falls within Part III TCPA 1990. Accordingly, where article 3 of the GPDO grants planning permission for development in Schedule 2 to the GPDO (including Class O), that planning permission is a permission under Part III TCPA 1990 and thus within the definition of "planning permission" in s. 336(1) TCPA 1990. On this basis, the reference to "detailed planning permission" must include planning permission granted pursuant to Class O.
- 8.32. The appellant's argument that the government was aware of Class O permitted development rights when drafting the NPPF definition of deliverable and the express omission of Class O is deliberate fails because the definition of deliverable includes such permissions under Class O.
- 8.33. A development with prior approval is indistinguishable from other types of permission in category (a). No further consent is required other than discharge of conditions like a site with full planning permission. This contrasts with the sites in category (b) where further consent is required. This approach is consistent with the SoS in the Hanging Lane decision⁹⁸ at paragraph 21 where he agreed with the Inspector's analysis regarding the inclusion of prior approval sites.
- 8.34. If the appellant is correct, then homes created under Class O would fall outside the 5 year HLS entirely. The PPG⁹⁹ states for the purposes of calculating 5 year supply housing completions can include conversions and changes of use. Furthermore, it is inconsistent with the rationale for Class O which is to boost housing delivery. The appellant has not referred to any appeal decisions or case law to support its approach and offered no cogent reason why homes created under Class O should be excluded from the definition of deliverable. Under category (a), the burden of proof is on the appellant to show clear evidence that a site will not be delivered.

Site by site assessment – general points¹⁰⁰

- 8.35. At the roundtable session, the appellant's approach was based on a number of common and erroneous themes. Firstly, the criticism of the proformas which has been dealt with above. Secondly, the discounting of proformas from MKDP for no reason other than assertion that they would be inaccurate for the purposes of the Council preparing its assessment. MKDP is an arms-length organisation with the remit of bringing land forward for housing, it has detailed local knowledge and no reason to doubt its responses. A similar approach was taken to responses from Homes England, who are a non-departmental public

⁹⁷ CD7.4 paragraphs 19 and 20

⁹⁸ CD6.20

⁹⁹ PPG ID: 068-029-20190722

¹⁰⁰ Appendix 1 to the Council's closing submissions sets out a summary on strategic sites

body and statutory corporation to improve the supply and quality of housing and the regeneration or development of land or infrastructure in England.

- 8.36. The proformas make clear that the information is being sought on the basis of a year running from 1 April to 31 March, with forecasts being sought from the year 2019/20 onwards, i.e. from 1 April 2019 onwards. Accordingly, the suggested completions of the Council (and any confirmation or amendment by the respondent) can only be on the basis of starting from the base date. As such, it is evidence which can be taken into account even on the appellant's artificial basis because it refers to matters as they were at the base date.
- 8.37. The appellant's distinction between sites in the control of land promoters or landowners and developers is without consequence as there is clear evidence that the former are no more likely than the latter to landbank sites as set out in the NLP report¹⁰¹.
- 8.38. The appellant's suggestion that the evidence gathered for the Plan:MK preparation was of no assistance as it had been prepared with the NPPF 2012 definition of deliverable erroneously conflates the collection of evidence with the judgment made on the basis of that evidence. There is no reason why Plan:MK evidence could not be taken into account and reappraised under the revised definition of deliverable.
- 8.39. The Council's approach to build out rates is robust, as the Plan:MK Inspector found, because it has adopted an individualised approach to each site, sense checked against build out rates derived from local context and subject to further checking by the Joint Housing Delivery Team.

Brooklands (Site 1)

- 8.40. Appellant's criticism of build out rates is misplaced as the Council's projected completions are consistent with local evidence and increasing pattern of completions. Over the last 4 years, the average delivery has been 247dpa which is above the 222dpa average rate for the next 5 years which the appellant criticises. Recent monitoring data illustrates that the site has already delivered well over Council projections of 182 completions for 2019/20, with 267 homes completed by the end of quarter 3. The evidence supports that the Council's figures are realistic and robust since delivery is already in advance of the Council's projections. This is also confirmed by the proformas provided by the Council from the housebuilders involved and who are already building out some parts of the strategic site.

Tattenhoe Park (Site 2)

- 8.41. Criticism of Homes England's involvement is misplaced for the reasons above. Homes England provided further information as part of Plan:MK process supported by continuing dialogue. Two parcels are in the hands of developers and Homes England is engaged in a clearly documented marketing exercise to secure developer involvement on remaining parcels via tender process. This documentation contains a clear timeline for this to happen (including the build out rates and lead in times which the developers must adhere to) and supports the proforma responses from Homes England (including the most recent

¹⁰¹ CD11.1 page 12, second column, first paragraph

updated proformas). All of this progress is consistent with the two recent grants of detailed planning permission, both of which were for more homes than expected.

Western Expansion Area (Site 3)

8.42. There have been completions on Area 10 for 4 years (5 including current year). Up to 1 April 2019 there have been 712 completions since the site started delivering and 300 delivered in this year alone. This area has delivered 1000 homes and is only 32 short of meeting this year's projected figure. For Area 11, there has been 834 completions over last 4 years and over the last 2 years the completions have been 267 and 268 homes. There have been 133 completions for this year, more than projected. Combined, the two areas are delivering in the same manner (high 200dpa almost 300dpa each). The Council's assessment is consistent with the proformas and supported by a documented disposal strategy. There has been a sense check of developer information with a more conservative approach adopted by the Council.

Strategic Land Allocation (Site 4)

8.43. The Council's careful parcel by parcel analysis is to be preferred as it is clearly grounded in the evidence of ongoing completions. For example, taking the area as a whole, 181 completions were projected across the whole site for 2019/20 and as the Q3 monitoring data demonstrates, 187 have been completed.

The Council's final 5 year HLS position

8.44. Scenario 1: removal of conceded site – Land at Galleon Wharf (Site 14) for 14 units.

1 April 2019	No. of Units
Annual requirement	1,767
Requirement to 1 April 2019	5,301
Completions to 1 April	4,529
Shortfall	772
5 year requirement	9,607
5 year requirement including 5% buffer	10,087
Supply as at 1 April 2019	13,610
MKC Lapse Rate	678
Supply as at 1 April 2019	12,932
5 year	6.41
Surplus	2,845

8.45. Scenario 2: removal of conceded site – Land at Galleon Wharf for 14 units and inclusion of all adjustments in paragraph 4.62 of Council's HLS proof of evidence with the exception of paragraph 4.6.11 (Site C3.2 Central Milton Keynes) as this was deemed undeliverable as of 1 April 2019.

1 April 2019	No. of Units
Annual requirement	1,767
Requirement to 1 April 2019	5,301

Completions to 1 April	4,529
Shortfall	772
5 year requirement	9,607
5 year requirement including 5% buffer	10,087
Supply as at 1 April 2019	13,252
MKC Lapse Rate	650
Supply as at 1 April 2019	12,602
5 year	6.25
Surplus	2,515

8.46. Scenario 3: as per Scenario 2 but with Council lapse rate not applied.

1 April 2019	No. of Units
Annual requirement	1,767
Requirement to 1 April 2019	5,301
Completions to 1 April	4,529
Shortfall	772
5 year requirement	9,607
5 year requirement including 5% buffer	10,087
Supply as at 1 April 2019	13,252
MKC Lapse Rate	0
Supply as at 1 April 2019	13,252
5 year	6.57
Surplus	3,165

Conclusions on 5 year HLS

8.47. For the reasons above the Council submits that its approach should be preferred and that it has demonstrated a 5 year HLS. The Council's approach is robust, sensible and consistent with national policy. By contrast the appellant's approach is artificial, focussed on process not good planning and inconsistent with national policy.

The Development Plan

Plan:MK

8.48. The appellant's planning witness accepted at cross-examination that the development is contrary to Policies DS1 and DS2 of Plan:MK. He suggested that it was nevertheless in general conformity with the approach that underlines the spatial strategy, but the spatial strategy is DS1 and DS2 and so this must be rejected. Policy DS1 draws a distinction between the urban area of Milton Keynes where development should be within and adjacent to that area, and the rural area where new development should be within the key settlements, villages and other rural settlements. The appellant's planning witness accepted that Policy DS2 is to be read in combination with Policy DS1. Thus, it only contemplates housing within the defined boundary of the key settlements. He also accepted that the appeal site does not fall within any of the 13 criteria in Policy DS2.

- 8.49. The Plan:MK Inspector as recently as February 2019 found Policies DS1 and DS2 were consistent with NPPF 2012 subject to modifications¹⁰². The Inspector considered the overall strategy for Woburn Sands and found no need to modify the settlement boundary to make a specific allowance for additional development¹⁰³. The appellant's witness accepted that the spatial strategy of Plan:MK is that there is no requirement for Woburn Sands to meet. Thus, there is no inconsistency between Policies DS1 and DS2 and NPPF paragraph 65 (which requires plans to set out housing requirements for neighbourhood areas) given the findings of the Plan:MK Inspector. The policies therefore carry full weight for this appeal.
- 8.50. The objective of Policy DS5 is, amongst other things, to recognise and safeguard the character of the areas within the Borough beyond the settlement boundary. The appellant's witness accepted conflict with this policy and that it is consistent with the NPPF 2019 and up to date. As such, it carries full weight. The Plan:MK Inspector found the policy was sound. The NPPF allows plans to include policies that conserve and enhance the natural environment, not just protect valued landscapes.

The Neighbourhood Plan

- 8.51. The policies in the WSNP remain the same as the first Inquiry but circumstances have moved on not least with the adoption of Plan:MK. Paragraph 19 of the SoS's decision only gave moderate weight to Policy WS5 since it defined boundaries by reference to a Local Plan only intended to guide development to 2011. However, the role of the WSNP and its boundaries have been considered afresh within Plan:MK and particularly Policy DS2. As above, the Plan:MK Inspector concluded that no modification was required in terms of the settlement boundary. Further, he concluded that Plan:MK was the first opportunity to systematically review settlement boundaries in the Borough and he found them to be robust. Therefore, the WSNP boundary is robust and up to date.
- 8.52. Policy WS5 is not purely a countryside protection policy, it is a settlement boundary policy indicating the approach to development within the boundary. This is not contrary to the NPPF, which also allows neighbourhood plans to include policies to conserve and enhance the natural environment. The appellant cannot assert that Policy WS5 is inconsistent and out of date but agree that Policy DS5 is consistent and up to date. The two policies reflect the same policy approach. The arguments concerning the bullet points in WS5 go nowhere since they are all contingent on Plan:MK identifying a need for a boundary change which it did not. As such they do not apply. Accordingly, Policy WS5 is to be given full weight for this appeal.
- 8.53. The same is true in respect of Policy WS6. The appellant only raised points regarding the consistency of bullet points in that policy, none of which are engaged as Plan:MK did not identify any need for boundary changes. Thus, Policy WS6 is consistent with the NPPF and up to date and should be given full weight.

¹⁰² CD3.32 paragraphs 31-45

¹⁰³ CD3.32 paragraph 34

Density

- 8.54. As a matter of law, the grant of outline planning permission will establish that the density of the development, however it is distributed across the appeal site and, however many units will come forward, will be acceptable in principle. Accordingly, if outline permission were granted as sought and a developer were to apply at the reserved matters stage for 203 units distributed across the appeal site, the Council would not lawfully be able to refuse planning permission on the basis that the density of what is proposed is too low and makes an inefficient use of land contrary to Policy HN1 and/or paragraphs 122/123 of the NPPF. The Planning Encyclopedia states that density is not a reserved matter referred to the court judgment in *Chieveley*¹⁰⁴. The appellant has not suggested the use of a condition to reserve density for later approval and this has not been addressed at the Inquiry. Thus, there is no evidence for the SoS to consider such a condition.
- 8.55. The Council's planning witness was confused in cross-examination on the matter of whether reserved matters approval could be refused on the grounds of density. That suggestion cannot be found in the written evidence of either party since it is wrong as a matter of law. The decision-maker has to determine now whether a proposal which would allow up to 203 units across the whole of the redline area would be acceptable in density terms. This is a planning judgment as to whether the development would make efficient use of land.
- 8.56. NPPF paragraph 122 sets out a number of factors to consider as to whether a development makes efficient use of land. This approach is echoed in Plan:MK via Policy HN1(c) which is consistent with NPPF paragraphs 122 and 123 and so is up to date and given full weight. The policy adopts a flexible approach to ensure appropriate densities on a case by case basis. Any judgment needs to be sensitive to the extent to which land is being released to meet a housing need. The appellant's planning witness accepted the greater the need and/or shortfall in HLS the greater this will pull towards a higher density level.
- 8.57. Local market conditions and viability in this case do not pull towards a higher or lower density. There is no constraint in the availability and capacity of infrastructure and services which would prevent additional housing above 203 units. This site is in a sustainable location and no evidence that any increase in units would give rise to severe consequences for the local highway network.
- 8.58. In terms of maintaining the area's prevailing character and setting, the SoS's decision considered this matter in relation to the then extant Policy H8 which sought a density of 35dph. The SoS must have considered that such a density was acceptable in terms of character and appearance. He noted that the scheme was a significant departure from policy in paragraph 26 of his DL.
- 8.59. Since the SoS decision, the only material change in terms of the character of the area is that Policy H8 has been replaced with Policy HN1. While the latter does not contain a requirement for 35dph, the objection of bringing forward the highest density that can be delivered while ensuring that the development would still relate well to character and appearance has not.

¹⁰⁴ RID23

- 8.60. It is evident from paragraph 26 of the DL that the SoS must have concluded conflict with NPPF paragraph 122 since in paragraph 24 he had found that Policy H8 was consistent with this paragraph. The SoS had previously found only limited effects of the scheme on visual and landscape considerations implying that the site has strong visual containment. As such, there is scope for the density to increase while maintaining an appropriate buffer and landscape boundary without unduly affecting character and appearance. There is no reason to reach a different conclusion now as the scope for additional development to be accommodated. Thus, the only reasonable conclusion is that the development does not make efficient use of land contrary to NPPF paragraph 122 and Policy HN1.
- 8.61. The appellant argues the site should be released due to a lack of 5 year HLS. NPPF paragraph 123 is highly relevant here. Where there is shortage of housing land, it is especially important to avoid low densities and to optimise the use of each site. Paragraph 123(a) relates to plan making, but the policy response of a significant uplift in the average density applies in a decision-taking context. Paragraph 123(c) is clear that proposals which fail to make efficient use of land they should be refused planning permission, even in the context that includes circumstances where there is a shortage of housing land. If sites are to be released to meet housing needs, they must be utilised efficiently to reduce the overall amount of land that has to be released.
- 8.62. Where a development comes forward that does not make efficient use of land it must be refused even in the context of additional housing need. Any conflict with NPPF paragraphs 122/123 must be given significant weight against the grant of permission. Any less weight would not achieve the policy objective of optimising densities in situations of housing need.
- 8.63. The appellant cannot argue for a site to be released due to a shortfall of sites but propose a scheme which reflects the low density of adjacent development that is below the average density for Woburn Sands (26-27dph). There is no evidence that even with 203 units the amount of development is optimal. The appellant has not produced evidence that shows a higher density would be unacceptable in planning terms¹⁰⁵. The appellant has reduced the planning judgment to a series of comparisons of density calculations.
- 8.64. The appellant's recalculation of density was flawed in that it omitted access roads and other elements. This excluded roads initially described as estate roads which should have been included in the net developable area as without them access to houses could not be achieved. The Council's Urban Capacity Study which supported Plan:MK makes it clear this approach was inconsistent¹⁰⁶. The appellant revised density figure is thus flawed and overstates the density. The reliance placed by the appellant on the 50% net developable area approach adopted in the Strategic Housing Land Availability Assessment¹⁰⁷ is also misplaced since that documents predates the revisions to the NPPF on density.

¹⁰⁵ In response before its closing submissions, the appellant noted that at the first Inquiry, an illustrative proposal by the appellant for 303 dwellings (Document 11.13) did not find favour with the Inspector at paragraph IR9.46

¹⁰⁶ CD5.12 paragraphs 1.1.3 and 1.2.2

¹⁰⁷ CD5.15 paragraph 7.7 and table 7.2

- 8.65. The comparative exercises in the appellant's planning witness' rebuttal¹⁰⁸ is flawed as it does not compare like with like. The areas examined include larger areas of open countryside rather than focusing on the built-up area and so does not help with whether the development makes efficient use of land. None of the above gives rise to any reason to reach a different view from that concluded previously by the SoS. It is submitted that the simple fact here is that the proposed development would not make efficient use of land and is unacceptable in policy terms as a result. Regardless of the HLS position, the conflict with the NPPF is so significant it justifies refusal in its own right.

Best and most versatile land (BMV)

- 8.66. The appellant accepted that the development will result in the loss of some BMV and that this gives rise to a conflict with Policy NE7. He accepted that Policy NE7 is consistent with the NPPF and up to date and is to be given full weight in the determination of this appeal.

Benefits of the proposed development

- 8.67. Regardless of the HLS position, it is accepted that the provision of affordable housing should be given significant weight. If there is a 5 year HLS, the benefits of extra market housing are moderate at best. The weight to ascribe should take into account that the actual amount of housing that may come forward is uncertain (up to 203). If there is no 5 year HLS then the benefits of extra market housing could be significant, depending on the number and how many units are likely to be delivered in the 5 year period.
- 8.68. It will take time for decision on this appeal. It took 18 months last time. If it is assumed that a decision to allow is reached in 6 months (July 2020) there would be a period of time to secure reserved matter approvals and discharge pre-commencement conditions before works start on site. Based on the evidence of the appellant's HLS witness, the average time from grant of outline permission to commencement on site is 5 years. If that were applied here, the development would make no contribution to the 5 year HLS. If commencement began at a rate 5 times faster i.e. July 2021 there would be delivery in the 5 year period. At 50dpa, this would be 150 units at most, so the weight to be given to the contribution to 5 year HLS must be reduced.
- 8.69. There have been no material changes in circumstances in terms of economic benefits, which should be ascribed moderate weight.
- 8.70. The appellant cites the provision of an alternative route to the existing Cranfield Road / Newport Road junction as a highway benefit, but the updated TA presents modelling that shows increases in queue lengths and traffic flows at both the Newport Road and Cranfield Road junctions. While a very modest impact, this does not suggest improvement. There is no appraisal of the benefit to safety and so anything suggested is just assertion. Thus, while the development is acceptable in highway terms, there are no material benefits to be weighed in favour.
- 8.71. It is unclear the extent to which the offer relating to medical facilities is justified as necessary to make the development acceptable in planning terms

¹⁰⁸ APP10

or the extent to which that offer goes beyond the mitigation of what is proposed. To the extent that it mitigates the effect of the development it is not a benefit but rather what is required to render the scheme policy compliant. To the extent that it goes beyond that position then it cannot be given weight as a benefit since to do so would be contrary to regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010.

- 8.72. No details have been provided to show that the development would provide potential to mitigate the risk of surface water flooding. Since this alleged benefit would involve drainage proposals which seek to address a pre-existing issue it cannot be required by condition or by a planning obligation since it goes beyond that which is related to the development proposed. To give this factor weight would thus be contrary to the requirements of NPPF paragraphs 55 and 56 and to regulation 122 of the CIL Regulations 2010
- 8.73. A high quality living environment is unknown at this stage given the outline nature of the proposal. Further, such a requirement is required to be delivered by all development in Milton Keynes as a result of Policies D1 and SD1 of Plan:MK. This is not a benefit but a policy requirement and so carries no weight.

The proper approach to the determination of this appeal

- 8.74. Policies DS1, DS2, DS5, HN1 and NE7 of Plan:MK and Policies WS5 and WS6 of the NP are all relevant development plan policies. They are also the policies which are the most important to determining the application¹⁰⁹. Further, as has been established above, they are all consistent with the NPPF and are up to date. The Council has a 5 year HLS. Thus, NPPF paragraph 11(d) is not engaged and rather it is NPPF paragraph 11(c) that should be used.
- 8.75. Plan:MK is up to date. The development does not accord with it overall since it conflicts with the spatial strategy, its policy approach to making efficient use of land and to avoiding the loss of BMV. Section 38(6) of the 2004 Act requires the application to be determined in accordance with the development plan unless material considerations indicate otherwise. The development conflicts with the above policies and so is not in accordance with the development plan.
- 8.76. The development's benefits are not of such a nature or scale to justify departure from the constraint policies of a recently adopted plan. All of the benefits could be claimed by any housing development on greenfield land on the edge of any settlement in Milton Keynes. The weight to these benefits cannot be such as to outweigh the conflict with the development plan. Thus, the development conflicts with NPPF paragraph 11(c) and is not sustainable development. It does not accord with the development plan with insufficient material considerations to outweigh the conflict.
- 8.77. If, contrary to the Council's case, NPPF paragraph 11(d) is engaged, it is accepted that the application of policies in the NPPF that protect areas or assets of particular importance do not provide a clear reason for refusing the proposed development. As such, NPPF paragraph 11(d)(i) does not provide a

¹⁰⁹ Based on the cross-examination of appellant's planning witness and the evidence in chief of the Council's planning witness

reason for refusing planning permission. Accordingly, the tilted balance in paragraph 11(d)(ii) would be engaged.

- 8.78. There would be adverse impacts in a development of inappropriate density and the loss of BMV. These impacts would conflict with NPPF paragraphs 122, 123(c) and 170(b). In circumstances where greenfield land is to be released to meet housing needs due to inadequacies in the 5 year HLS it is all the more important that efficient use is made of that greenfield resource to meet as much of the unmet need as is possible (NPPF paragraph 123). The development does not optimise the use of the site but promotes a sub-optimal density and continues the inefficient low density development of the past. This clear breach of NPPF paragraph 123 should result in refusal given the importance of the issue and the clear words of paragraph 123(c). This is an adverse impact contemplated by the NPPF as justifying refusal.
- 8.79. Even if NPPF paragraph 11(d) is applied, the Council submits that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits. Accordingly, the proposed development does not represent sustainable development even on this basis. This means that the NPPF weighs heavily in favour of refusal of planning permission. Applying section 38(6), even in circumstances where there is no 5 year HLS, the breach of the development plan together with the breaches of the NPPF weigh heavily in favour of refusal. It is submitted that the other material considerations which weigh in favour of the grant of planning permission are not sufficient to outweigh these factors. Thus, even if there is no 5 year HLS, planning permission should be refused for the proposed development.

Conclusion

- 8.80. The planning system should not be an obstacle course for local planning authorities. It should be about delivering homes that are needed at the right time and in the right place. That is best achieved via the plan-led system and not ad hoc at appeal, making judgments on the capability of housing supply with regard to all material evidence.
- 8.81. Plan:MK is not even 12 months old since adoption and yet is faced with submissions that there is no 5 year HLS. All relevant evidence should be considered for the 5 year HLS position. All that a decision maker has to guard against is skewing the 5 year period by not including schemes in the assessment that were not there at the outset. The obstacle course promoted by the appellant has no place in policy or guidance and is wholly impracticable.
- 8.82. The proposed development is contrary to a development plan which is less than a year old and up to date. It is contrary to the NPPF. The application of section 38(6) points firmly in favour of refusal.

9. The Case for Interested Parties

- 9.1. A number of interested parties made representations to the first Inquiry. Paragraphs IR7.1 to IR7.49 of the first Inspector's report¹¹⁰ provide an overview of their comments. In summary, the representations focused on traffic and parking impacts, ecology, flooding, development plan compliance, and the effect on existing services and facilities. The following parties made representations to the second Inquiry:

*Councillor Jacky Jeffries – Woburn Sands Town Council*¹¹¹

- 9.2. Woburn Sands was still a small town at the start of the 21st century with a population of about 2,500 in 950 dwellings. New housing since 2006 have added 622 homes, a 65% increase and an even bigger population increase. Yet, the infrastructure remains virtually unchanged and restricted by available land. Milton Keynes has always sought to preserve the character of existing settlements and the WSNP seeks to preserve green space around town to create small separation from Milton Keynes. Hence, the site is designated open countryside.
- 9.3. Education and medical services in Woburn Sands are at capacity and the proffered doctor's site will not be taken up as it will not be viable. The town has lost shops and the bus service to central Milton Keynes is once an hour. The library remains open thanks to volunteers. The future of East-West rail is uncertain and the line separates the development from the town. There is also the threat of the Oxford to Cambridge Expressway with the preferred corridor almost certain to go through part of this development.

*Councillor David Hopkins – Milton Keynes Council and Wavendon Parish Council*¹¹²

- 9.4. Plan:MK is recently adopted and should be afforded full weight for applications and appeals. The Plan:MK Inspector did not support the representations of the appellant made at the examination. Plan:MK sets out where development should and should not take place. The site is open countryside. The appellant can make representations to the Plan:MK Review should they wish.
- 9.5. The Council can demonstrate a 5 year HLS with enough land in excess of the Plan:MK housing requirement including the shortfall and a 5% buffer. There is clear evidence of deliverability for each site in the 5 year supply.
- 9.6. The WSNP makes it clear that the site is not included directly or as a reserve site for development. Wavendon does not have a neighbourhood plan but does have 4000 dwellings underway within the parish boundary as part of the Strategic Land Allocation first identified in the Local Plan 2001-2011.
- 9.7. The land is close to the East-West rail link and the preferred option for the Oxford to Cambridge Expressway. The Plan:MK Inspector while allowing the South East Milton Keynes allocation restricted development before 2023 to allow for full consultation and approval of the Expressway. If the Expressway does not come forward or the route goes elsewhere, then this site could be considered against other sites.

¹¹⁰ CD10.33

¹¹¹ RID04

¹¹² RID05

- 9.8. There are issues regarding density. There are issues regarding the capacity of the local highway network now and in the future with East-West rail seeing additional trains and the level crossing closed more often. The neighbouring land at Wavendon House is now a registered park and garden. There needs to be a masterplan when this site does come forward to take account of the park and garden, the need for highways infrastructure and other improvements and the provision of local services.

*Judith Barker – local resident*¹¹³

- 9.9. Plan:MK has been adopted and does not designate the land for development. Policy WS5 of the WSNP protects the field behind Tavistock Close from development. Woburn Sands' character and identity needs protecting. New flats at the Greens development remain unsold. The town's infrastructure cannot cope and the railway is due to be upgraded. When there is a problem on the M1, traffic re-routes through Woburn Sands.
- 9.10. The appellant has control over land to the east of the site and permission would set precedent for more rural development. Land along the A421 is already being developed for 4000-6000 dwellings with extra cars on local roads. New housing is not being bought by local people. Milton Keynes has a 20 year land supply in pipeline. Highways England has recommended no permission on land within the preferred route corridor until further consultation on route options in 2020.
- 9.11. If applications get turned down and the developer appeals and wins the Council has to recompensate the development with council tax money. The appellant has prejudiced the appeal outcome by giving a story to The Times complaining that smaller building companies are not getting permissions for political reasons when the reality is based on planning grounds. The importance of open countryside for nature and wildlife cannot be ignored in light of climate change issues and sustainability. There is a shortage of Council housing rather than housing in general. Firms are getting approvals and then not building to raise the land value for speculation purposes. Finally, Milton Keynes has 4 times more urban land than UK average and over 10 times less natural areas, all the more important to protect open countryside.

*Jenny Brook – local resident*¹¹⁴

- 9.12.** We will need farmland even more in the context of Brexit. Curveballs are being thrown at the local planning authority. Milton Keynes was intended as a city for 250,000 people and is now planning for 500,000 people. There are national infrastructure issues with East-West Rail and the Expressway. Network Rail has said the level crossing is not their issue. Plans need to be put in place to deal with the through traffic issue.

¹¹³ RID16

¹¹⁴ Oral comments only

10. Written Representations

- 10.1. In terms of the original application and appeal, paragraphs IR8.1 to IR8.6 of the first Inspector's report set out the comments that were made. They covered many of the points raised by interested parties above.
- 10.2. In terms of the redetermined appeal, there have been 11 letters of objection¹¹⁵ from local people and statutory bodies, and a further written objection received at the Inquiry highlighting concerns with surface water flooding from the site to adjoining properties¹¹⁶. The concerns raised in all of the other letters highlighted similar issues to those raised above. They included the loss of open countryside, ecological and flooding impacts, the capacity for Woburn Sands to take more development, increased strain on local services including the doctors and the police, traffic effects including delays at the level crossing, and the route of the potential Expressway.
- 10.3. One of the letters was from Highways England dated 13 December 2019 noting that the site lies within the preferred corridor of the Expressway. The letter registered concerns that development of the site could affect or be affected by a potential route option either directly or indirectly. The letter noted that environmental and planning constraints in the Woburn Sands area effectively limit the potential availability of route options in this area. As such, there are risks of conflict with the Expressway particularly in relation to proposals for major development which lie outside defined settlement boundaries. Highways England supports Plan:MK which seeks to accommodate necessary growth in the form of sustainable development whilst facilitating the Expressway as a key national infrastructure project with the potential to increase connectivity in Milton Keynes. The letter concludes that the development would be contrary to the adopted development plan and as such would potentially result in conflict with the Expressway.

¹¹⁵ See bundle of representations in REP1

¹¹⁶ RID11

11. Conditions and Obligations

- 11.1. Suggested conditions are included in Section A2 of the agreed SOCG between the parties¹¹⁷. They are based on the conditions recommended by the first Inspector with an additional condition relating to housing mix. The list of recommended conditions (28) in the attached annex are broadly the same of those in the SOCG with some small drafting changes to reflect discussions at the Inquiry. The main change is to Condition 3 which only requires compliance with those parts of the plans not reserved for later approval; the previous wording required the development to be along the lines of the illustrative layout and parameters plans which would prejudice the reserved matter applications.
- 11.2. Should the Secretary of State decide to allow the appeal, I consider all of the conditions to be necessary and meet the tests in NPPF paragraph 55. The reasons for each condition, including why some need to be pre-commencement, are set out in the annex.
- 11.3. The main thrust of the S106 agreement is set out above in Section 3 of this report. The justification for each obligation was set out by the Council before the Inquiry opened with further clarification provided during the Inquiry¹¹⁸. The affordable housing obligation meets the requirements of Policy HN2 of Plan:MK. The carbon neutrality obligation meets the requirements of Policy SC1 to help offset the carbon impact of the development. The obligations relating to education facilities are in accordance with Policy INF1 of Plan:MK and the Planning Obligations for Education Facilities SPG¹¹⁹ to address the impact of the development on school places. The leisure, recreation and sports obligations¹²⁰ are in accordance with Plan:MK Policies INF1 and L4 and the Planning Obligations for Leisure Recreation and Sports Facilities SPG¹²¹ to address the on-site and off-site impact of the development on such facilities. This includes an obligation to agree the specification of public open space within the development.
- 11.4. The social infrastructure obligations¹²² are in accordance with Policies INF1 and CC1 of Plan:MK and the Social Infrastructure Planning Obligations SPD¹²³ and address various social requirements arising from the development. They include a financial contribution either towards the provision of the on-site surgery or expanding capacity at the nearest surgery serving the development. There is also an obligation relating to reserving a site within the development for a potential health facility should this be required to address capacity issues in the local area that have been identified by the Council and relevant parties.
- 11.5. There is an obligation relating to the provision of bus vouchers and the distribution of travel information packs to promote more sustainable mode of transport in accordance with Policy CT5 of Plan:MK on public transport. There

¹¹⁷ Section A2 of RID06

¹¹⁸ RID12

¹¹⁹ RID32

¹²⁰ Relating to playing fields, local play, neighbourhood play, community hall, local park, district park, allotments, and sports hall

¹²¹ CD5.9

¹²² Relating to public art, libraries, burial grounds, heritage, health facilities, waste management, social care-day care, emergency services, voluntary sector, skills and training, and inward investment

¹²³ CD5.10

is also an obligation to secure the highway works necessary to form the highway accesses and connecting footpaths to the site.

- 11.6. All of the above obligations are necessary to make the development acceptable in planning terms. They are also directly related to the development, and fairly and reasonably related in scale and kind to the development. Therefore, they meet the 3 tests set out in NPPF paragraph 56 and regulation 122 of the CIL Regulations 2010.

12. Conclusions

- 12.1. The numbers in square brackets refer back to earlier paragraphs which are relevant to my conclusions.

Main Considerations

- 12.2. The main considerations for the reopened Inquiry were informed by the previous decision letter, notwithstanding submissions by both main parties on the extent to which specific sections of that letter remain a material consideration. Nevertheless, it was broadly accepted that those sections which did not form part of the High Court judgment to quash the first decision, or have not been overtaken by circumstances such as the adoption of Plan:MK, remain relevant to this redetermination. **[7.1-7.4 and 8.2-8.4]**
- 12.3. The main considerations were narrowed down at the pre-Inquiry meeting¹²⁴. At the start of the Inquiry the main parties confirmed that the effect on the character and appearance of the landscape was no longer a main consideration. It was agreed that the main considerations now are as follows¹²⁵:
- (a) whether or not the Council can demonstrate a 5 year supply of deliverable housing sites;
 - (b) whether the proposed housing would be in an appropriate location having regard to the development plan and national policies, as well as routes of potential new transport infrastructure;
 - (c) the acceptability of the proposed housing density; and
 - (d) the overall planning balance in relation to the economic, social and environmental dimensions of sustainable development.

Housing Land Supply

- 12.4. A number of overarching themes were debated at the Inquiry which are discussed below before turning to an assessment of specific sites and whether the Council can demonstrate a 5 year HLS.

The definition of deliverability

- 12.5. The 2019 revision to the NPPF definition of deliverable retains reference to “a realistic prospect that housing will be delivered on the site within five years” as it did in the original 2012 version of the NPPF. The Court of Appeal judgment in *St Modwen* found that realistic prospect did not mean a site’s deliverability must necessarily be certain or probable. It also noted the distinction between deliverability and delivery in that a deliverable site does not necessarily have to be delivered. **[8.23-8.24]**
- 12.6. The more recent Court of Appeal judgment in *East Bergholt* noted that a decision maker could adopt a more cautious view when assessing a “realistic prospect”. It went on to say that the assessment of realistic prospect falls

¹²⁴ CD10.44

¹²⁵ It was agreed by the main parties at the start of the inquiry that the effect of the development on the character and appearance of the landscape and surrounding area was no longer a main consideration

within the realms of policy and planning judgment rather than a legal concept. The judgment did not seek to take a different view on the distinction between deliverability and delivery. Therefore, I consider that the *St Modwen* and *East Bergholt* approaches are broadly compatible and there is no need to favour one over the other when assessing deliverability. **[7.21, 8.25]**

- 12.7. Nevertheless, the 2019 revision to the NPPF resulted in a more precise approach to the assessment of deliverability, with two specific categories (a) and (b) and the need to provide clear evidence in both. This necessitates a site specific assessment to determine whether a site is deliverable.

The base date and timescale of the evidence

- 12.8. The Council uses a base date of 1 April 2019 for the purposes of calculating its 5 year HLS position. It published its assessment in June 2019 with the housing trajectory in Appendix 1 containing notes on deliverability. Proformas were sent out by email on 20 May 2019 asking for a reply by 7 June 2019. Where no response was received, this was followed up. It was accepted by the Council that the amount of evidence predating 1 April 2019 that informed the assessment was limited. **[7.26]**
- 12.9. However, there is nothing in the NPPF or PPG that stipulates that all of the documentary evidence for a 5 year HLS has to be available at the base date itself. Instead, the PPG advocates the use of the latest available evidence. A local planning authority can prepare and consult on an APS after the 1 April base date before submission to the Planning Inspectorate by 31 July. While not directly applicable here, this indicates that evidence can be produced and tested after the base date. The HLS position statements in Babergh and Mid Suffolk for the 2019-2024 period were published in September 2019 and included data to justify supply that was only known about after 1 April. **[7.25, 8.16, 8.17, 8.19, 8.20]**
- 12.10. The Council has avoided adding new sites after the base date to prevent the skewing of supply in line with the Woolpit decision. While the Woolpit Inspector criticised the retrospective justification of sites after the publication of the Annual Monitoring Report, the Inspector at Darnall School Lane permitted additional evidence to support sites identified as deliverable at the base date which was a position accepted by the SoS in that case. The Longdene and Colchester Road Inspectors took a similar approach. In terms of Milton Keynes appeals, the Castlethorpe Road and the Globe Inspectors took into account the proformas used by the Council to inform its June assessment of 5 year HLS. **[7.23, 7.24, 8.18, 8.21]**
- 12.11. Therefore, I consider it acceptable that the evidence can post-date the base date provided that it is used to support sites identified as deliverable as of 1 April 2019.
- 12.12. The appellant argues for a 1 October 2019 base date in order to take into account the Council's June assessment and quarterly monitoring data. This would result in a necessary adjustment of the 5 year supply period to 30 September 2024. There is little in national policy or guidance that advocates such an approach and it would appear to go against efforts to create greater certainty in the planning process. I concur with the Council that such an approach would mean having to argue HLS at every appeal, rather than having

a fixed base date. Moreover, the quarterly monitoring data is not intended to be an updated assessment of supply¹²⁶. Thus, I do not consider it necessary to apply a 1 October base date. Nevertheless, if the SoS disagrees on this point, my assessment of specific sites below includes an assessment of the 5 year HLS supply position using a 1 October base date. **[7.27, 8.22]**

The proformas

12.13. The appellant's criticisms of the Council's use of proformas focused on whether they provided sufficient written evidence in line with the guidance in the PPG 68-007 and, in some cases, whether the reliance on information provided by bodies such as Homes England and the MKDP on sites in public ownership was appropriate. **[7.28, 7.30]**

12.14. Dealing with the former, the Council clarified at the Inquiry that the proformas included a covering letter explaining their purposes for assessing 5 year HLS. Representatives of each site were asked to confirm or amend the Council's trajectory for each site. Although relevant boxes were not always ticked, the proformas were signed and returned with a covering email in many cases. While a SOCG or MOU could provide more information, they offer no more of a commitment to the deliverability of homes than a proforma. Therefore, I consider that a proforma can, in principle, provide clear evidence of a site's deliverability. Additional evidence to support a proforma can also be taken into account subject to its specific content and timing. **[8.11, 8.21, 8.36]**

12.15. Turning to the latter, it is apparent that some publicly owned sites have not come forward as quickly as anticipated such as Tattenhoe Park. However, the evidence linking slow delivery to unreliable forecasting from the bodies responsible for managing the disposal of these sites is not conclusive. Although representatives of Homes England and MKDP form part of the group that assesses the proformas, there is little to suggest that their responses to their own proformas is misleading or inaccurate in principle. Therefore, it would not be appropriate to automatically disregard all of their sites. **[8.35]**

Past forecasts and the application of discount rates

12.16. The first Inspector for this appeal noted the uncertainty, slippage and failure in the Council's forecasts of housing delivery and that reasonable adjustments would clearly reduce the HLS to less than 5 years. Evidence presented to this Inquiry has noted the historic under-delivery of housing against forecasts of around 28-30%. While delivery is not the same as deliverability, it is apparent that past forecasting has not been particularly accurate. However, recent evidence in terms of housing delivery has shown that the Council met its annual delivery requirement from Plan:MK for 2018/19 and is set to do so again for 2019/20. The number of units under construction is at a high rate. **[7.31, 7.32, 8.8].**

12.17. The Plan:MK Inspector found the plan sound in terms of housing delivery rates and considered the higher delivery to be realistic with minimal risk of non-delivery. I accept that the Inspector examined the plan under the

¹²⁶ LPA3 paragraph 2.9

2012 NPPF definition of deliverable and it should not be assumed that because the plan was found sound that a 5 year HLS can be demonstrated now. There is a need to review sites on the basis of the 2019 NPPF definition. Indeed, the Council has removed sites in the Plan:MK supply for completion by 31 March 2024 where it no longer considers they meet the new definition. **[7.16, 8.9, 8.13]**

12.18. Nevertheless, the appellant has not applied a discount of 28-30% to their assessment of the Council's 5 year HLS as they have carried out a site by site assessment. Moreover, the appellant accepted that for the purposes of establishing whether a 5 year HLS exists, it is only necessary to apply a 5% rather than a 20% buffer in Milton Keynes due to rates of delivery. **[8.26, 8.28]**

12.19. The Council has historically applied a lapse rate to its forecasting of HLS for sites with delivery in Year 5, where a 10% discount is applied across the 5 years for those sites. Given that the Council has moved to a site by site assessment, it considers that such a discount is no longer necessary. However, for robustness and consistency with the Plan:MK trajectory, the discount has been applied to this appeal by the Council. Therefore, I have taken into account the Council's lapse rate as part of my HLS assessment. Based on recent delivery rates and Plan:MK, I see no reason to apply a greater discount than the Council's rate **[8.27, 8.29]**

Build-out rates

12.20. National reports¹²⁷ are helpful in identifying previous maximum average built-out rates over 5 years for large strategic sites like Brooklands (268 dwellings per annum). However, they can only be a guide and consideration should be given to evidence relating to specific sites as set out below. **[7.29, 8.37, 8.39]**

Prior approval sites

12.21. Prior approval sites are not mentioned in categories (a) or (b) of the NPPF definition of deliverable. However, I am persuaded by the Council's argument that where Article 3 of the GPDO grants planning permission for development in Schedule 2, that is within the definition of planning permission in the TCPA 1990. Such approvals are designed to provide a boost to new housing and are required to be implemented within 3 years. The PPG at 68-029 only refers what can count as a completion for the purposes of calculating HLS. It refers to new build, conversions and changes of use, but only in the context of where housing has been completed. Nevertheless, the PPG and NPPF do not explicitly exclude prior approval sites from housing supply. The Inspector and SoS at the Hanging Lane decision found that such sites can be taken into account as part of a 5 year HLS assessment. **[7.74, 8.30-8.34]**

12.22. Thus, I consider that prior approval sites can be regarded as having detailed planning permission and can form part of the supply of deliverable sites within category (a). The onus is on the appellant to demonstrate clear

¹²⁷ Such as CD11.1

evidence that such sites do not have a realistic prospect of being delivered within 5 years.

Consistency with previous appeal decisions in Milton Keynes

- 12.23. The Globe and the Castlethorpe Road appeal decisions dated 5 and 26 September respectively came to different conclusions on whether the Council could demonstrate a 5 year HLS. The former said it could and dismissed the appeal whereas the latter said it could not and allowed both appeals. Both had regard to the most up to date evidence including the proformas and both noted the recent improvement in housing delivery. The Castlethorpe Road decision found that reliance on past rates of delivery to be inappropriate, but nevertheless applied an optimism bias to the supply at a point midway between the appellants and the Council. The decision also considered that clear evidence for at least 2,717 houses had not been shown.
- 12.24. The Castlethorpe Road decision was challenged by the Council, but permission to apply for statutory review was refused by the High Court. Nevertheless, it would be wrong to afford Castlethorpe Road more weight than the Globe on the premise that it was more legally robust as the Globe has not been tested in the same way. Likewise, while the Castlethorpe Road Inspector explains in paragraph 65 why he has come to a different view on HLS to the Globe Inspector, this is largely on the basis of the nature and manner in which evidence was presented to him rather than any criticism of the Globe decision. **[7.33, 8.10-8.13]**
- 12.25. Therefore, it is not possible to say that one decision should be preferred over the other. There is a need for consistency in appeal decisions along with clear explanations of any divergence in views from another Inspector. This report is based on the evidence before me, and where necessary, it will explain any difference in findings to the Castlethorpe Road or Globe Inspectors.

Assessment of disputed sites

- 12.26. The following assessment is based on the disputed sites set out in the appellant's proof of evidence for HLS (APP2/3), specifically in Table 23 and Appendix 3, along with the HLS SOCG (SOCG1), specifically Table 3. The appellant's rebuttal proof updated Appendix 3 and included at Appendix 3a summarising the main parties' positions on each site (APP4/5/6). Following the roundtable session, the appellant produced an errata document (RID20/RID36) that updates Table 23 in the proof of evidence and Table 3 in the SOCG. The errata document also contains updates to Tables 21 and 22 in the appellant's proof setting out the contended land supply positions at 1 April and 1 October 2019. Appendix 6 of the Council's proof of evidence on HLS (LPA2) contains the primary source of evidence for each site.

Strategic sites - Brooklands (Site 1) [7.35-7.37, 8.40]

- 12.27. Brooklands has detailed planning permission for all of its remaining parcels. While the projected completions are high, the rate of delivery over the past 4 years has been high at an average of 247dpa. There have been 267 completions in 2019/20 up to 1 January 2020 against a projection of 182. While one parcel did not submit a proforma response, the Council's projections are based on delivery across the wider site and the phasing methodology. The

appellant's criticisms in terms of the limited number of developers, local experience, past rates of delivery and national reports do not match the current build out rates since 2015/16. Therefore, there is a realistic prospect that the projected housing will be delivered in the 5 year period with no clear evidence to the contrary. This applies to the April and October base dates.

Strategic sites – Tattenhoe Park (Site 2) [7.38-7.39, 8.41]

- 12.28. The projected completions on Phases 2-5 at Tattenhoe Park were considered deliverable by the Council in the June HLS assessment, based on proformas returned that month. The completions were taken into account by the Globe Inspector and rejected by the Castlethorpe Road Inspector, both based on the above proformas. The 2018 tender documents for Phases 2 and 3, which were provided to the Council in November 2019, are an indication that Homes England is actively seeking to facilitate delivery of housing (including lead-in times and build out rates). Both phases now have detailed permission via reserved matter applications granted in October and November 2019. While the Castlethorpe Road Inspector found the evidence to be lacking, the additional information provides clear evidence that there is a realistic prospect of housing delivery in the 5 year period for Phases 2 and 3. This applies to both the April and October base dates. Conversely, no additional information has been put forward for Phases 4 and 5 and so there is an absence of clear evidence of their delivery. Thus, these phases are removed from both the April and October base dates (delete 195 units from Site 2)

Strategic sites – Western Expansion Area (Site 3) [7.40-7.41, 8.42]

- 12.29. The Western Expansion Area in terms of disputed elements consists of Area 10 Remainder and Area 11 Remainder. Both areas are covered by outline planning permission apart from one parcel that now has reserved matters approval for 152 units. The Council highlights the rate of completions for Area 10 since delivery began in 2015/16 which are now up to 300dpa. For Area 11, completions are up to 288dpa and have exceeded projections already for 2019/20. Site wide infrastructure is in place for the plots expected to deliver in the 5 year period. The Globe decision took the Council's projections into account whereas the Castlethorpe Road decisions did not. However, it is not evident that the latter had the benefit of the proformas dated 10 July 2019 given this was the same date as the hearing. A disposal strategy from the landowners dated December 2019 has been added to the evidence for both areas which sets out further evidence of projected completions. Based on the lack of land disposals since March 2019, this has led to the Council revising down its 5 year trajectory by 306 units for Area 10 and 229 units for Area 11 as a worst case scenario. Nevertheless, apart from these reductions, I consider that there is clear evidence of a realistic prospect of housing delivery for the remaining units in the 5 year period for either April or October (delete 535 units from Site 3).

Strategic sites – Strategic Land Allocation (Site 4) [7.42-7.44, 8.43]

- 12.30. The Strategic Land Allocation is divided into a number of large outline sites with several developers. There are 5 parcels that only had outline permission as of 1 April 2019. No proforma was submitted for the Ripper Land parcel and the only evidence is an email from the landowner who highlights

access issues. In line with the Castlethorpe Road Inspector, there is a lack of clear evidence regarding the deliverability of this site (delete 85 units).

- 12.31. No proforma has been submitted for the Land West of Eagle Farm South parcel but this has reserved matter approval. The appellant has queried the build-out rate alongside the other two Eagle Farm parcels with reserved matter approvals, but all 3 parcels have started delivering in line with or ahead of projections. As such, there is no clear evidence to indicate that Land West of Eagle Farm South will not deliver the projected housing in the 5 year period.
- 12.32. The remaining Eagle Farm parcel for 125 units has outline permission only with no proforma returned. An email from October indicates a reserved matter application in the summer of 2020, but it provides little else in the way of clear evidence that the projected number of units will be delivered within the 5 years (delete 125 units).
- 12.33. The proforma for the remaining outline permission at Glebe Farm was submitted after the June HLS assessment but indicates a strong rate of delivery of units. Two parts of the remaining outline permission now have reserved matters approvals from September and October 2019 for a total of 366 units. This surpasses the 310 projection in the 5 year supply and with two developers operating the build-out rates appear realistic. A proforma from one of the developers in November supports these rates. Although this evidence post-dates 1 April 2019, it clearly demonstrates there is a realistic prospect of delivering the projected amount of housing within the 5 year period.
- 12.34. The Council's projection of 180 units for the Golf Course Land was based on the proforma dated May 2019. Since then, reserved matters approval was granted on 1 November 2019. This additional information provides clear evidence of deliverability within the 5 year period.
- 12.35. The proforma for Church Farm indicates a reserved matters application by late 2019. The Globe decision found this to be sufficient information whereas the Castlethorpe Road decision considered it fell short. Further information indicates that the application submission has now slipped to Easter 2020 with issues regarding road to be agreed. This continues to fall short of the clear evidence to demonstrate a realistic prospect of delivery (delete 90 units).

Outline or pending permissions as at 1 April 2019

- 12.36. The June 2019 proforma for Newton Leys (Site 5) indicates the delivery of 80 units, which has been reinforced by reserved matters approval in September 2019. The Globe decision considered the site was deliverable and I consider there is clear evidence and a realistic prospect of delivery at either base date.
- 12.37. The June 2019 proforma for Campbell Park Remainder (Site 6) indicates the delivery of 300 units in the 5 year period. The Globe and Castlethorpe Road decisions came to opposite conclusions on the deliverability of this site. There is now further information in the form of email correspondence from December 2019 that outlines progress towards starting on site in 2021. This represents clear evidence of deliverability and as such there is a realistic prospect of the projected numbers coming forward for either base date.

- 12.38. The June 2019 proforma for Wyevale Garden Centre (Site 9) noted a resolution to grant planning permission. This was granted in July 2019. This supports clear evidence of the site being deliverable, while the build-out rates of 150 and 130 units in 2021/22 and 2022/23 appear achievable given that the development relates to apartments that can be delivered in larger numbers at one time. Therefore, there is a realistic prospect of the projected numbers coming forward for either base date.
- 12.39. Planning permission for the Agora redevelopment (Site 13) has lapsed and the June 2019 proforma noted viability issues and a pending decision on whether to list the existing building. The Castlethorpe Road decision found clear evidence to be lacking. Further information from November 2019 notes that the listing request was turned down and there has been progress towards planning permission and building demolition in 2020. While viability issues remain over S106 contributions, this does not appear to be a significant constraint. Based on the above, clear evidence of deliverability has been demonstrated and as such there is a realistic prospect of the projected numbers coming forward for either base date.
- 12.40. At the inquiry, the Council accepted that Galleon Wharf (Site 14) is not deliverable. I have no reason to disagree (delete 14 units).
- 12.41. The Railcare Maintenance Depot (Site 15) has outline permission, but the June 2019 proforma provides no information on progression towards approving reserved matters. The appellant also notes that part of the site has now been developed for a supermarket. Based on the lack of clear evidence, it has not been demonstrated that a realistic prospect of delivery exists for either base date (delete 175 units).
- 12.42. Eaton Leys (Site 16) has outline permission but no proforma was submitted in June 2019. However, a reserved matter application was pending and due to be determined by January 2020. A proforma was provided by the developer in December 2019 updating projections which appear achievable for the size of development and a major housebuilder. Thus, there is clear evidence of deliverability and as such a realistic prospect of the projected numbers coming forward for either base date.
- 12.43. The June 2019 proforma for Timbold Drive (Site 26) provides limited information on the delivery of the site notwithstanding an existing outline permission. The Council notes in its proof that a new outline permission is being sought. There is a lack of clear evidence of progress towards a reserved matters approval and a realistic prospect of delivery within 5 years has not been demonstrated (delete 130 units).
- 12.44. The June 2019 proforma for Land at Walton Manor (Site 33) provides little information on delivery. The site had an application for outline permission as at 1 April 2019 which was granted in November 2019. However, there is little information on start times and build out rates. Thus, clear evidence is lacking and a realistic prospect of delivery in 5 years has not been demonstrated (delete 115 units).
- 12.45. The June 2019 proforma for Land at Towergate (Site 34) notes marketing in the summer of 2019 and a start date of January 2021. Progress has been made in terms of discharging conditions, but there is limited

information on progress towards approving reserved matters. Thus, clear evidence is lacking and a realistic prospect of delivery in 5 years has not been demonstrated (delete 150 units).

- 12.46. For High Park Drive (Site 36), no proforma was submitted in June 2019. However, a reserved matters application was submitted in November 2019 along with applications to discharge conditions. A proforma from November 2019 indicates a start date of autumn 2020. Thus, there is clear evidence of deliverability and as such a realistic prospect of the projected numbers coming forward for either base date.
- 12.47. For Land East of Tillbrook Farm (Site 40), the anticipated reserved matters application in the summer of 2019 did not materialise but a January/February 2020 application was indicated in further information. Thus, there is clear evidence of deliverability and as such a realistic prospect of the projected numbers coming forward for either base date.
- 12.48. The June 2019 proforma for Land West of Yardley Road (Site 42) indicated the submission of a reserved matters application in July. The Globe decision found the site was deliverable. The application was delayed until November 2019, but this still demonstrates progress towards securing detailed permission. Thus, there is clear evidence of deliverability and a realistic prospect of the projected numbers coming forward for either base date.

Sites with prior notification approval as at 1 April 2019

- 12.49. Based on the above reasoning, Maybrook House (Site 37), Mercury House (Site 38) and Bowback House (Site 39) can be considered as having detailed planning permission based on their prior notification approval to convert from officers to residential. No proformas have been submitted for these sites, but the assumption should be that there is a realistic prospect of delivery unless clear evidence indicates otherwise. All 3 sites had prior notification granted in 2018 and so as of 1 April 2019 there was still ample time to implement. While the sites may not be fully vacated now and being marketed for office use, there was a realistic prospect of delivery as of 1 April 2019 with no clear evidence to the contrary. Therefore, all 3 sites can be included within the 5 year supply.

Allocated sites as at 1 April 2019

- 12.50. No evidence for the South East Milton Keynes Strategic Growth Area (Site 7) was presented to the Castlethorpe Road Inspector and so it was discounted. However, the Council note that the projection is based on the Plan:MK trajectory and the SOCG to the plan examination. There is the uncertainty of whether the route of the Oxford to Cambridge Expressway will go through the site, delaying progress with delivering housing. However, the Plan:MK Inspector referred to a modest output by 2023/24. Although there have been delays to announcements on the preferred route of the Expressway, progress is being made towards a planning application for a smaller part of the site and a wider Development Framework is being prepared. Therefore, clear evidence of a realistic prospect of delivering 50 units on the site has been demonstrated.

- 12.51. Berwick Drive (Site 8), Food Centre (Site 10), Redbridge and Rowle Close (Sites 11 and 12), Land off Hampstead Gate (Site 19), Land off Harrowden (Site 20), Hendrix Drive (Site 22), Kellan Drive (Site 23), Singleton Drive (Site 24), the former Milton Keynes Rugby Club (Site 25), Land north of Vernier Crescent (Site 28), Manifold Lane (Site 29), Daubney Gate (Site 30), Springfield Boulevard (Site 31), Reserve Site Hindhead Knoll (Site 32), Reserve Site 3 (Site 35) and Tickford Fields (Site 41) are all allocated sites where the June 2019 proformas gave little information on the delivery of these sites and the Castlethorpe Road decision found clear evidence to be lacking.
- 12.52. For Site 8, Site 23 and Site 31 there is further information from the Council's property team dated November 2019 setting out a specific timetable for delivery by 2021, albeit with a revised number of dwellings. For Site 10, there is now a planning performance agreement for the site, and hybrid planning applications have been submitted following positive public consultation events for a significantly larger number of units overall. The Council's June assessment projected 298 units delivered in the 5 years, although this has been revised down to 200 units based on the further information. For Site 19, Site 29, Site 30, Site 32 and Site 41 there is further information in the form of emails setting out the timetable for an application and construction. For Site 25, land disposal has been agreed and plans prepared. Based on the above, clear evidence of deliverability has been demonstrated and as such there is a realistic prospect of the projected numbers coming forward for either base date.
- 12.53. For Sites 11 and 12, an updated proforma and letter from November 2019 confirms that the sites have passed through a neighbourhood plan examination with increased unit numbers. However, there is no clear evidence of a timetable for submitting planning applications and starting on site (delete 19 + 18 units). For Sites 20, 22, 24, 28 and 35 there is no further information provided meaning that there is still a lack of clear evidence to demonstrate a realistic prospect of delivery for either base date (delete 25 + 10 + 22 + 14 + 22 units).
- 12.54. The Lakes Estate Neighbourhood Plan site allocations (Site 17 as well as Site 18 Phelps Road and Site 27 Southern Windermere Drive) gave limited information on firm progress towards the submission of an application and the Castlethorpe Road decision found clear evidence to be lacking. Further information and timings have been submitted in November 2019 providing greater detail on progress towards submitting the application and starting on site. The development would deliver a net total of 398 dwellings allowing for the demolition of existing Council homes. Phase A will involve the construction of 110 new homes, with further new homes in Phase B only once demolition has taken place in early 2022. Therefore, there is a realistic prospect of delivering the 130 units projected by the Council over the 5 year period, with clear evidence to support this for either base date.
- 12.55. The self-build plots at Broughton Atterbury (Site 21) form part of an allocated site with the wider site subject to detailed planning permission. However, the June 2019 proforma provides little information on the delivery of this site and no further information has been provided on this matter or evidence of demand for such plots. Thus, there is a lack of clear evidence to

demonstrate a realistic prospect of delivery for either base date (delete 6 units).

New sites between 1 April and 1 October 2019

- 12.56. In the event that a 1 October 2019 base date is preferred, there are a few sites that could be included in the 5 year supply, although the appellant disputes their inclusion. Omega Mansions (Site 43) and Chancery House (Site 45) are prior notification approvals for office to residential granted in July and August 2019 respectively. There is no clear evidence to indicate these sites with detailed permission will not deliver within the 3 years of their approval. Therefore, they can be included for an October base date. Cable House (Site 44) is a duplication with Mercury House and so has not been included. The appellant has also referred to a prior notification site at Station Road Elder Gate (Site 48) although I have little information on this site including any projected numbers. As such, it makes no difference to the supply either way.
- 12.57. Land south of Cresswell Lane (Site 46) was an allocated site as of 1 April 2019 but gained detailed permission for 294 flats in July 2019. A proforma from November 2019 indicates delivery within the 5 years which is achievable for two blocks of flats. There is no clear evidence to suggest there is not a realistic prospect of delivery and so the site can be included for an October base date.
- 12.58. The Castlethorpe Road decisions (Site 47a/b) granted outline permission for 50 units on one site (a) and detailed permission for 51 units on the other site (b). For the latter, there is no clear evidence to indicate non-delivery in the next 5 years. For the former, there is no clear evidence to demonstrate progress towards reserved matters approval. Therefore, I can include Site 47(b) for an October base date but exclude Site 47(a) (delete 50 units).

Sites potentially delivering between 1 April and 30 September 2024

- 12.59. If the base date is shifted to 1 October 2019, this would necessitate moving the end date to 30 September 2024 in terms of the 5 year period. Based on the June 2019 assessment, there are 13 sites currently in Year 6 (2024/25) that are shown as starting to deliver in that year. At the Inquiry, the Council only sought to argue that 4 of them have a realistic prospect of delivery. The amount for each site would be half of that shown in Appendix 1 of the June assessment for 2024/25 given that 1 April to 30 September is 6 months.
- 12.60. The sites at the rear of Saxon Court (Site 49), the rear of Westminster House (Site 50), Site C4.2 (Site 51) and the Cavendish site (Site 52) within the Fullers Slade regeneration project are all allocations in Plan:MK. There is little evidence of progress towards applications for any of these sites. Site 49 has had a development brief prepared but there is no other information. The regeneration project has been through a referendum and a development programme agreed. While an application could be submitted in late 2020 and delivery commence in the 5 year period for Site 52, there is little evidence to support this position. Therefore, it has not been shown that there is a realistic prospect of delivery for these 4 sites and they should not form part of the 5 year supply for a 1 October 2019 base date (delete 20 + 15 + 22 + 9 units).

Conclusion on housing land supply

- 12.61. For the 1 April 2019 base date, the Council considers it has a surplus of 2,845 units with a lapse rate applied to the supply (removing 678 units) in Scenario 1 above **[8.44]**. The appellant's closing statement reports the Council's contended surplus to be 2,844 which is one unit lower **[7.19]**. The discrepancy is not clear, but I have used the lower surplus figure just in case. The above assessment deletes a number of units from specific sites coming to a total of 1,750 units deleted for a 1 April base date. This would reduce the surplus to 1,094 units and result in a supply of 11,181 units (12,931 – 1,750). Set against an agreed 5 year requirement of 10,087 units this would result in a HLS of 5.5 years. Bearing in mind that the lapse rate has only been applied to ensure robustness, I am satisfied that the Council can realistically demonstrate a 5 year HLS for this base date.
- 12.62. For a 1 October 2019 base date position, the Council's surplus based on its monitoring data and its approach to assessing deliverability is 3,859. The reduction in units set out above, including those sites purported to be in a 5 year supply between 1 October 2019 and 30 September 2024, comes to a total of 1,866 units deleted. The effect on the surplus would reduce it to 1,993 units and result in a supply of 12,083 units (13,949 – 1,866). Set against a 5 year requirement of 10,091 units, this would result in a 5 year HLS of 5.99 years for this base date.
- 12.63. I have had regard to the Council's Scenario 2 **[8.45]** which includes all of the adjustments in paragraph 4.62 of the Council's proof (LPA1) except paragraph 4.62.11 along with the removal of Site 14 at Galleon Wharf. This scenario sees an overall reduction in supply by 330 units from Scenario 1 but still provides a 5 year HLS of 6.25 years. My assessment above has already applied the adjustments to the sites in paragraphs 4.62.1 and 4.62.2 and deleted all or part of the sites in paragraphs 4.62.6, 4.62.12 and 4.6.13. It has not applied the adjustments in the remaining paragraphs, but even if it did, this would result in a minor overall addition of 95 units to the supply for the April base date. Thus, Scenario 2 does not affect my findings on HLS.
- 12.64. Scenario 3 is the same as Scenario 2 **[8.46]** but without the Council's lapse rate applied. I have decided that it would be prudent to apply the lapse rate and so this scenario also does not affect my findings on HLS.
- 12.65. In conclusion and based on the evidence before me, I find that the Council can demonstrate a 5 year supply of deliverable housing sites whichever approach is taken in terms of the base date, and even with the application of the Council's lapse rate. In the event that the SoS finds that a 5 year supply cannot be demonstrated, I deal with this scenario and its implications below.

The Location of the Development

The Development Plan – Plan:MK

- 12.66. The appellant accepts that the proposal conflicts with Policies DS1, DS2 and DS5 of Plan:MK due its location in the open countryside outside of the development boundary for Woburn Sands. While adjacent to this key settlement, the proposal does not meet any of the 13 criteria set out in Policy

DS2 and neither does it meet any of the exceptions in Policy DS5. **[7.5, 8.48, 8.50]**

- 12.67. The appellant argues that the proposal is in accordance with the approach that underpins the Plan:MK spatial strategy given that it adjoins a key settlement that Plan:MK defines as 'chosen for development'. There is general agreement between the main parties that the site is in a sustainable location with regards to its proximity to a range of services and facilities in Woburn Sands. The NPPF supports housing in such locations and where it can enhance or maintain the vitality of rural communities. However, I consider that the location and type of development does not comply with Policies DS1, DS2 and DS5 which sets out the spatial strategy for residential schemes. The presence of a 5 year HLS means the weight to any conflict with these policies is not diminished. **[7.5, 7.93, 7.94, 8.49]**
- 12.68. While Plan:MK does not set out housing requirements for the Woburn Sands neighbourhood area as advocated in NPPF paragraph 65, the Plan:MK Inspector considered that no specific allowance for additional development was necessary for this settlement. The development boundary is tightly drawn around the settlement but it has been reviewed as part of the Plan:MK examination with amendments made to accommodate recent planning approvals. This is not to say that there is a cap on development in Woburn Sands, but there is no policy requirement to deliver additional housing in this settlement. Moreover, it has not been demonstrated that Policies DS1, DS2 and DS5 are inconsistent with the NPPF in terms of their approach to the spatial strategy and the location of housing and the objective to safeguard the countryside from inappropriate development. **[7.6, 7.7, 7.92, 8.49, 8.50]**

The Development Plan - Woburn Sands Neighbourhood Plan

- 12.69. The appellant accepts that the proposal conflicts with WSNP Policy WS5 as none of the exceptional circumstances currently apply to allow for an extension of the current development boundary. The appellant stressed that WSNP Policy WS6 is parasitic on Policy WS5 and only allows for a limited amount of additional housing in the plan area and none of the listed circumstances apply. **[7.9, 7.13]**
- 12.70. The WSNP has not been reviewed within 5 years of it being made and it makes no allocations for housing. The previous Inspector's report and SoS decision only gave moderate weight to Policy WS5 as it was based on tightly drawn boundaries and the old Milton Keynes Local Plan 2001-2011. The requirement in the policy for any boundary amendment through Plan:MK to be agreed by the Town Council was not recommended by the examiner. Such a requirement is at odds with the NPPF which clarifies the hierarchy of local plans over neighbourhood plans. **[7.10-7.12]**
- 12.71. However, as noted above, the development boundary has been reviewed and updated as part of the Plan:MK process and no specific allowance for additional development was necessary. There is no inconsistency with the NPPF in terms of how Policies WS5 and WS6 seek to safeguard the countryside and direct development to specific locations. Therefore, significant weight can be afforded to both policies and any conflict with them, particularly in light of a demonstrable 5 year HLS. Neither policy should be regarded as being out of date. **[7.14, 8.51-8.53]**

Proposed new transport infrastructure

- 12.72. It is conceivable that the route of the Oxford to Cambridge Expressway could travel through or near to the appeal site based on the preferred option of Highways England and the various constraints within the Woburn Sands area. However, there has yet to be a formal announcement on the next stage of this road project or further public consultation on specific options or routes. Plan:MK addresses the Expressway in relation to the South East Milton Keynes extension in terms of the timing of any planning permission but does not preclude development in specific locations as the details and future of the project are still yet unclear. The main parties agree that the proposal does not conflict with the development plan insofar as the Expressway is concerned and so does not warrant refusal of the proposal on this matter. **[6.1, 7.95, 7.96, 9.3, 9.7, 9.10, 10.3]**
- 12.73. The East-West rail project would see greater use of the line through Woburn Sands and interested parties have expressed concerns regarding the potential increased frequency of the level crossing being closed. However, there is little evidence that the appeal proposal would hamper the delivery of the rail project or result in unacceptable traffic conditions insofar as the level crossing is concerned. Again, there is no conflict with the development plan or reason to refuse the proposal on this matter. **[9.3, 9.7, 9.8, 9.12]**

Conclusion on the location of the development

- 12.74. While there are no reasons to withhold permission having regard to routes of potential new transport infrastructure, the proposed housing would not be in an appropriate location having regard to the development plan and national policies. As noted above, it would conflict with Plan:MK Policies DS1, DS2 and DS5 and WSNP Policies WS5 and WS6.

Housing Density

- 12.75. At the time of the first SoS decision, Policy H8 of the Local Plan 2001-2011 sought a density of 35dph. The SoS found that the density of the proposed development, which was generally considered to be 16dph at the time, was a very significant departure from this policy with significant weight given to the conflict. Policy H8 has since been replaced with Policy HN1 of Plan:MK which sets no density limit but seeks a balance between making efficient use of land with respecting the surrounding character and context. **[7.99, 8.58]**
- 12.76. Paragraphs 122 and 123 of the NPPF have not changed between the 2018 version considered by the SoS and the current 2019 version. Paragraph 122 seeks efficient use of land taking into account various factors including the desirability of maintaining an area's prevailing character and setting. Paragraph 123 seeks to avoid low densities, but only in the context of an existing or anticipated shortage of land. Given my findings above, this paragraph is not applicable. Policy H8 was considered by the SoS to be consistent with the NPPF, but it is clear that he found conflict with the policy only. This is because he said that the various factors in paragraph 122 did not justify the departure from policy (DL26). **[7.98, 8.60]**

- 12.77. At the first Inquiry, the appellant demonstrated¹²⁸ how 16dph was broadly comparable to the densities of immediately adjoining residential streets. The first Inspector found the proposed density to be acceptable. At the second Inquiry, the appellant contended that the net density based on the illustrative layout would actually be 20.3dph. The parties disagreed on the extent of land within the site that would be developed for housing and directly associated uses including the access roads. Around 50% of the site would be developed for housing, but there is no agreement on the overall density. **[7.97, 8.64]**
- 12.78. The fact that there is disagreement over an illustrative layout for a proposal where all matters are reserved apart from access indicates that the final density figure cannot be established at this point. As part of any reserved matter application relating to layout, the provision and situation of buildings, routes and open spaces across the site area is to be assessed and determined. Thus, while density is not a specific reserved matter, the eventual layout could affect the density figure. If the layout was unacceptable to the Council in terms of how it related to the development and buildings and spaces beyond, it could refuse the reserved matters application. Thus, I am persuaded more by the judgment in *Inverclyde* which found density could be considered as part of a reserved matter than the judgment in *Chieveley* which focused on gross floor space. **[7.101, 7.102, 8.54, 8.55]**
- 12.79. No condition has been put forward to fix a specific density or developable area. The development is for up to 203 dwellings. Thus, it is not possible to be certain of the final density figure. There is no detailed analysis from the Council on a specific density figure or range of figures. Its planning witness stated that the development should reflect the overall average density of Woburn Sands which is 27dph. However, this is based on an unverified figure in the appeal decision for the Nampak site. The appellant's analysis indicates that the built-up area of Woburn Sands has a density of 23.7dph. Its density figures for the individual parishes are lower but less helpful as they include large area of countryside. **[7.100, 8.63, 8.65]**
- 12.80. Notwithstanding the disagreement over density figures and the scope of reserved matters, even if the original figure of 16dph is preferred, this would be in keeping with the surrounding character and context of the adjoining streets. The illustrative layout would reflect the spaciousness of these existing streets with the use of open space buffers to safeguard the living conditions of neighbouring properties and the setting of the listed farmhouse. Little evidence has been presented to suggest that a density beyond 16 or 20dph would be acceptable in terms of character and appearance. The first Inspector found that an indicative layout for 303 dwellings would not be desirable in terms of landscaping, amenity and context. Although the site's location has good access to facilities including public transport, it has not been demonstrated that higher density development would be acceptable. In the event that a 5 year HLS could not be demonstrated, there would need to be adequate justification that a higher density could work in this location. **[7.100, 8.63]**

¹²⁸ CD2.6 appendix 13

- 12.81. While the final layout and density of the development has yet to be fixed, I consider that a scheme based on the illustrative layout with a density of 16-20dph would be relatively low but would be acceptable in this instance for this location. It would balance an efficient use of land with respecting the surrounding character and setting, and so would accord with Plan:MK Policy HN1 and NPPF paragraph 122. While I have reached a different conclusion to the SoS in his first decision, this is based on the changed development plan context, the ability to finalise density at reserved matters, and having regard to the context and character of nearby residential streets. **[7.4, 7.103, 8.65]**
- 12.82. If the SoS concludes differently and finds that the proposed density would not represent an efficient use of land, then there would be conflict with Plan:MK Policy HN1 and NPPF paragraph 122. This would increase the amount of weight against the proposal.

Other Matters

Best and most versatile agricultural land

- 12.83. The loss of Grade 3a agricultural land within the site would conflict with Plan:MK Policy NE7. However, site allocations such as the South East Milton Keynes Strategic Growth Area encompass larger areas of best and most versatile agricultural land. The Council has not sought to argue that this matter on its own would justify refusing the development and so the policy conflict only carries moderate weight. A balance needs to be struck between the economic and other benefits of such land versus the benefits of the development. **[7.109, 8.66, 9.12]**

Ecology and drainage

- 12.84. The first Inspector noted that the ecological value of the site was limited due to its agricultural use with most of the existing habitats contained within the trees, hedgerows and ponds on the field margins. These habitats would be mostly retained and enhanced by the development with measures secured by condition. An updated desktop study and site assessment was undertaken in September 2019 with no major changes since the original 2016 ecology reports. **[6.1, 7.116, 9.11]**
- 12.85. The existing badger sett would be removed to allow for the new access from Newport Road. This would require a derogation licence to avoid an offence under the Conservation of Species and Habitats Regulations 2010. There is no requirement for a derogation licence to be provided prior to grant of planning permission, but the decision-maker must be assured that there would be a reasonable prospect of the licence being granted by Natural England.
- 12.86. The provision of housing is in the public interest, while there is no alternative but to move the badger sett given its location. The creation of an artificial sett as close as possible to the original location would provide temporary refuge and would have to be in use before the licence application. Other mitigation measures during construction would also seek to limit risks to badgers. These measures should maintain the species at a favourable conservation status. Based on these considerations, there is reasonable prospect of Natural England granting a licence. As a consequence, the

development would not have an unacceptable effect on ecology or protected species.

- 12.87. As noted by the first Inspector, the development offers the means to alleviate current drainage problems through additional attenuation and the use of a suitable maintenance regime. There should be sufficient space to allow for the drains set out in the hydrology assessment. The site is within Flood Zone 1 which has the lowest risk of flooding and the development would provide sufficient ponds, swales and ditches to address surface water run-off. The measures and maintenance plan can be secured by conditions and so the development would not have an unacceptable effect on drainage. **[6.1, 10.2]**

Highways and parking

- 12.88. The development would provide a new route between Newport Road and Cranfield Road to alleviate some of the problems associated with the junction next to the level crossing. The first Inspector noted that all of the junctions would achieve suitable visibility splays and that there would be no unacceptable highway safety impacts. The updated TA for the second Inquiry provides new trip generation and distribution estimates taking into account more recent data and reviews existing and proposed junction modelling. It concludes that there would be very modest impact on all junctions and routes with no adverse effect on highway capacity or the need for any more complex highway designs such as ghost island right turn lanes. While I note the concerns raised by interested parties about traffic impacts, the evidence before me does not indicate that the development should be restricted on highways grounds. The first Inspector noted little evidence of parking stress within Woburn Sands and the intention for a Travel Plan to encourage sustainable modes of transport. I have no reason to come to a different view on parking. **[6.1, 7.107, 7.108]**

Facilities and services in Woburn Sands

- 12.89. Woburn Sands retains a number of services and facilities including schools, shops and a medical centre, with a bus service and train station. While it may have lost or reduced the amount of services and facilities in recent years, the town remains designated as a key settlement in Plan:MK. Concerns regarding capacity limits at the schools and medical centre can be addressed via financial contributions in the S106 agreement, which also provides the opportunity for additional medical provision within the site. There is little evidence before me to indicate that the development would have an unacceptable impact on services and facilities in Woburn Sands. **[6.1, 7.115, 9.2, 9.3, 9.9]**

Heritage assets

- 12.90. The Grade II listed Deethe Farmhouse has architectural and historic interest as an 18th century property with later alterations. Its significance is also informed by its setting, which today includes the industrial estate as well as the agricultural fields of the appeal site. The former, due to their modern utilitarian appearance and use contribute little to the significance of the farmhouse, whereas the latter make a positive contribution as remnants of the building's agricultural past. The building is not highly visible from either the road or the site due to planting and so the positive contribution of the appeal site is only moderate.

- 12.91. The development would change the rural setting of the farmhouse but the illustrative layout plans shows that a landscaping buffer can be provided within the site to wrap around the shared boundary. Layout and landscaping details could be addressed at reserved matters stage. For the above reasons, the development would result in less than substantial harm to the significance of the listed building. The level of harm would be low due to the existing setting and the proposed mitigation measures. Nevertheless, NPPF paragraphs 193 and 194 state that great weight should be given to the conservation of the listed building and that any harm requires clear and convincing justification. In line with NPPF paragraph 196, this harm will be weighed against the public benefits below. **[6.1, 7.105]**
- 12.92. The recently designated Grade II registered park and garden at Wavendon House forms part of the grounds to the Grade II* listed Wavendon House and extends close to the northern boundary of the site. The significance of the park and garden derives from its historic and design interest as an 18th century pleasure ground and park laid out by a significant landscape improver of the time (Richard Woods). Wavendon House itself has architectural and historic interest as a country estate home of 17th century origins largely remodelled in the 18th century. A mature belt of trees on the edge of the former golf course limit views between the park and garden and the site, while the listed house is further away to the north with additional landscape screening in place. Thus, the site only makes a minor contribution to the significance of both heritage assets as part of their wider setting. The development would provide trees and a landscape buffer along the boundary nearest to Wavendon House. Details could be addressed at the reserved matters stage. Given the existing screening and distances involved, there would be no harm caused to either heritage asset. **[7.105]**

Character and appearance of the landscape

- 12.93. The development would have a significant visual and landscape effect on the site itself given that it would change from agricultural fields to housing. However, as noted by the first Inspector and the first SoS decision, the site does not comprise a valued landscape and is contained by existing boundary vegetation which limits views from wider vantage points. Moreover, the site adjoins the edge of Woburn Sands and the development would be seen in the context of existing housing. Although some hedgerows and trees would be lost including those subject to a TPO, the intention is to retain and enhance planting. Little has changed in visual and landscape terms since the first Inquiry and decision. Therefore, I concur that the development would have a very limited effect on the character and appearance of the landscape. **[6.1, 6.3, 7.104, 7.117]**

The Planning Balance

- 12.94. A number of benefits have been put forward by the appellant. The provision of affordable housing beyond the minimum policy requirement should be strongly supported in line with Policy HN2 and so carries significant weight. The provision of market housing carries similar weight given the potential number that could be delivered and the eagerness of the appellant as a small to medium sized developer to deliver housing as swiftly as possible. The provision of medical facilities within the site is a potential social benefit but

only if it goes beyond mitigating the effect of the development which has not been proven. **[7.110-7.113, 7.115, 8.67, 8.68, 8.71]**

- 12.95. The economic benefits would include temporary construction employment, the provision of a range of homes for a cross-section of working people, secondary employment through increased spending in the local area and the payment of a new homes' bonus to the Council, some of which could be remitted to Woburn Sands Town Council. As such, reasonable weight can be afforded to these benefits. **[7.114, 8.69]**
- 12.96. In highways terms, while the new road through the site between Newport Road and Cranfield Road would offer an alternative route to the level crossing junction, the appellant's update TA notes very modest impacts on all junctions as a result of the development. The housing would reduce the extent and distance of car-borne commuting although not remove it altogether given the distance to major areas of employment and the relatively limited train and bus services. Therefore, only limited weight can be afforded any highway benefits. **[7.118, 8.70]**
- 12.97. The environmental enhancement of ecology and the provision of drainage measures to try and address existing problems would provide moderate benefits. Little weight can be afforded to the appellant's claim of a high quality living environment given the limited information at outline stage and the policy requirement that all development should be high quality. **[7.116, 8.72, 8.73]**
- 12.98. Taken a whole, the benefits range from limited to significant in magnitude. They can all be regarded as public benefits and set against the low level of harm to the significance of the listed farmhouse, they would provide clear and convincing justification for that harm. Having special regard to the desirability of preserving listed buildings and their setting in line with Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, the development would have an acceptable effect in terms of heritage assets. **[12.102-12.104]**
- 12.99. The development would have an acceptable effect on a range of other matters listed above. It would also be acceptable in terms of housing density. There are insufficient grounds for withholding permission based on routes of potential national infrastructure projects and the negative effect on best and most versatile agricultural land would not, in itself, be a reason for refusal. The conflict with Plan:MK Policy NE7 carries moderate weight as set out above and would be outweighed by the benefits. **[12.88-12.95]**
- 12.100. However, there would be conflict with Plan:MK Policies DS1, DS2 and DS5 and WSNP Policies WS5 and WS6 due to the location of the site in the open countryside. I have found that a 5 year HLS can be demonstrated and so there is no reason to reduce the weight to the conflict with these policies on that basis. Policies DS1, DS2 and DS5 are not inconsistent with the NPPF and so carry full weight, while significant weight can be afforded to Policies WS5 and WS6 based on their NPPF consistency. As policies most important for determining the application, none of these 5 policies are out of date. As such, the tilted balance in NPPF paragraph 11(d) is not engaged. **[7.119, 8.74-8.76, 12.79-12.84]**

- 12.101. The development's conflict with the development plan in terms of the location of the housing carries substantial weight as it would not accord with the spatial strategy set out in Plan:MK. While a number of benefits would be achieved, they would be insufficient to outweigh the conflict with the development plan. In line with Section 38(6) of the Planning and Compulsory Purchase Act 2004, planning permission should not be granted.
- 12.102. Alternatively, if the SoS finds that a 5 year HLS cannot be demonstrated or that the most important policies are out of date for other reasons, then the tilted balance in NPPF paragraph 11(d) would be engaged. As there are no policies in the NPPF that provide a clear reason for refusing the development (having had regard to the effect on designated heritage assets), it would be necessary to consider whether any adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF taken as a whole.
- 12.103. Moreover, it should be noted that if the SoS finds that there is a housing land supply shortfall, then NPPF paragraph 123 would be engaged which seeks to avoid homes being built at low densities. NPPF paragraph 123(c) states that proposals should be refused where the decision maker considers that they fail to make efficient use of land taking into account the policies of the NPPF.

13. Recommendation

- 13.1 For the reasons set out above, I recommend that the appeal be dismissed.
- 13.2 Nonetheless, if the SoS is minded to disagree with my recommendation and allow the appeal, then the conditions listed in Annex 1 should be attached to any permission granted along with the obligations set out in the S106 agreement.

Tom Gilbert-Wooldridge

INSPECTOR

ANNEX 1: SUGGESTED CONDITIONS (28)

Details, phasing and lighting

- 1) No development shall commence on any phase of the development until details of the layout, scale, appearance and landscaping for that phase (hereinafter called 'the reserved matters') have been submitted to and approved in writing by the Local Planning Authority
Reason: To meet the requirements of the Town and Country Planning (Development Management Procedure) Order 2015
- 2) Application/s for approval of all the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission. The development hereby permitted shall be begun no later than the latest of the following dates:
 - i. The expiration of three years from the date of this permission; or
 - ii. The expiration of two years from the date of the approval of the last of the reserved matters to be approved.Reason: To meet the requirements of Section 92 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Planning Act
- 3) The development hereby permitted shall be carried out in accordance with the following approved plans: PL-X-001 Rev B, PL-X-003 Rev C and PL-X-004, but only in respect of those matters not reserved for later approval.
Reason: For the avoidance of doubt and in the interests of proper planning of the development
- 4) The development hereby permitted shall not exceed 203 dwellings (Use Class C3). The use classes are those set out in the Town and Country Planning (Use Classes) Order 1987 (as amended) or in any provision equivalent to that Class in any statutory instrument revoking or re-enacting that order with or without modification.
Reason: To ensure the development conforms to the outline planning permission
- 5) Prior to the commencement of development of any phase of the development, a phasing plan for the whole site shall be submitted to and approved in writing by the Local Planning Authority. For the avoidance of doubt the phasing plan shall include the phasing of the delivery of all roads, footways, redway and bridleway links and Framework Travel Plan measures. The development shall take place in accordance with the approved phasing plan.
Reason: In order to clarify the terms of this planning permission and ensure that the development proceeds in a planned and phased manner. This is pre-commencement condition as the phasing plan would need to be agreed before any works begin.
- 6) The access arrangements hereby permitted shall be carried out in accordance with Proposed Site Access drawings nos.WO1188-101 Rev P05 and WO1188-102 rev.P03

Reason: To provide satisfactory highway connections to the local highway network

- 7) Reserved matters applications for each phase of the development shall include details of the proposed finished floor levels of all buildings and the finished ground levels in relation to existing surrounding ground levels for that phase. Development for that phase shall be undertaken in accordance with the approved levels.

Reason: To ensure that construction is carried out suitable levels having regard to drainage, access, the appearance of the development and the amenities of neighbouring properties in accordance with Policy D5 of Plan:MK

- 8) Reserved matters applications for each phase of the development shall include details of the proposed boundary treatments for that phase. The approved boundary treatments shall be carried out in accordance with the approved details for that phase and be completed prior to the occupation of the associated dwelling or first use of such phase of the development.

Reason: To provide adequate privacy, to protect the external character and appearance of the area and to minimise the effect of development on the area in accordance with Policy D5 of Plan:MK

- 9) Reserved matters applications for each phase of the development shall include a lighting scheme for all public and private streets, footpaths and parking areas. The lighting scheme shall include details of what lights are being proposed, a lux plan showing maximum, minimum, average and uniformity levels, details of means of electricity supply to each light and how the lights will be managed and maintained in the future. If any lighting is required within the vicinity of current or built-in bat features, it shall be low level with baffles to direct the light away from the boxes and units, thus preventing severance of bat commuting and foraging routes. The approved scheme shall be implemented prior to the occupation of each associated dwelling within that phase of the development.

Reason: In the interests of safety and amenity and in order to comply with Policies D5 and NE6 of Plan:MK

- 10) Reserved matters applications for each phase of the development shall incorporate measures to minimise the risk of crime in accordance with Secured by Design principles. All dwellings shall be designed to achieve Secured by Design accreditation (as awarded by Thames Valley Police) in accordance with details to be submitted to, and approved in writing by, the Local Planning Authority.

Reason: In the interests of reducing crime and disorder in accordance with Policy EH7 of Plan:MK

- 11) Reserved matters applications for each phase of the development shall be accompanied by a Sustainability Statement for that phase including, as a minimum, details required by Policy SC1 of Plan:MK. The approved details shall be implemented for each dwelling prior to the occupation of that dwelling.

Reason: In the interests of achieving a sustainable form of construction and to ensure the development complies with Policy SC1 of Plan:MK

- 12) No development shall take place above slab level until samples of the external materials to be used in the construction for each phase of the development (if any) have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in full accordance with the approved details.

Reason: To ensure that the development does not detract from the character and appearance of the area in accordance with Policy D2 of Plan:MK

Affordable housing

- 13) Reserved matters applications for each phase of development shall include details of the location and type of affordable housing pursuant to the development phase for which approval is sought. Each phase of the development shall be carried out in accordance with the approved details.

Reason: To ensure that the development and location of affordable housing is appropriate and in accordance with Policy HN2 of Plan:MK

Drainage

- 14) Prior to the commencement of the development hereby permitted a detailed design, and associated management and maintenance plan, for a surface and storm water drainage scheme, based on sustainable drainage principles for the site shall be submitted to and approved in writing by the Local Planning Authority. The management and maintenance plan shall include details of the way the surface and storm water drainage scheme will be implemented for each phase of development. The approved drainage scheme shall subsequently be implemented and maintained in accordance with the approved detailed design and scheme for maintenance, and in accordance with the approved phasing details and be retained thereafter.

Reason: To ensure satisfactory and sustainable surface water drainage to prevent the increased risk of contamination and flooding on or off site in accordance with Policy FR1 of Plan:MK. This is a pre-commencement condition as it is necessary to establish a drainage scheme before works begin.

- 15) Prior to the commencement of each phase of the development, a foul water strategy shall be submitted to and approved in writing by the Local Planning Authority. No dwellings in that phase shall be occupied until the works have been carried out in accordance with the approved foul water strategy for that phase.

Reason: To ensure satisfactory and sustainable foul water drainage to prevent the increased risk of contamination and flooding on or off site in accordance with Policy FR1 of Plan:MK. This is a pre-commencement condition as it is necessary to establish a drainage scheme before works begin.

Car parking, travel and access

- 16) Reserved matters applications for each phase of the development shall include a scheme to provide car parking and cycle parking and manoeuvring of vehicles within the development in accordance with the Milton Keynes Council Parking Standards SPG (2016) or any subsequent parking standards adopted at the time any reserved matters application is

submitted and in accordance with the Council's New Residential Development Design Guide (2012) or any further guidance on parking that may be adopted at the time any reserved matters application is submitted. The approved scheme shall be implemented and made available for use for each dwelling prior to the occupation of that dwelling and shall not thereafter be used for any other purpose.

Reason: To ensure adequate parking provision at all times and to enable vehicles to draw off, park, load/unload and turn clear of the highway so that the development does not prejudice the free flow of traffic or the safety on the neighbouring highway in accordance with Policies CT3 and CT10 of Plan:MK

- 17) No development shall take place until there has been submitted to and approved in writing by the Local Planning Authority a Construction and Delivery Plan that shall outline, in accordance with the phasing as approved under Condition 5 the proposed access works and which shall include links to the existing highway, footpaths and cycle ways (including the specification thereof). Development shall then take place in accordance with the approved Construction and Delivery Plan. No other parts of the development shall begin until the new means of access for that phase has been provided and laid out in accordance with the Construction and Delivery Plan and constructed in accordance with Milton Keynes Council's standard specification.

Reason: In the interests of highway safety and to ensure adequate mitigation measures are in place. This is a pre-commencement condition to ensure that there is agreement on construction traffic and deliveries before works begin

- 18) Measures proposed within the approved Framework Travel Plan dated March 2016 will be implemented in a phased manner, in accordance with Condition 5. No phase of the development shall be occupied prior to the implementation of the agreed Framework Travel Plan measures relating to that phase. Those parts of the approved Framework Travel Plan that are identified therein as being capable of implementation after occupation shall be actioned and reported in accordance with the timetable contained within, with a minimum of annual reporting for the first five years.

Reason: To support sustainable transport objectives including a reduction in single occupancy car journeys and the increased use of public transport, walking and cycling in accordance with Policy CT2 of Plan:MK

- 19) No dwelling shall be occupied in any phase of the development until the estate road which provides access to the dwelling, from the existing highway, has been laid out and constructed.

Reason: To provide satisfactory highway connections to the local highway network in accordance with Policy CT2 of Plan:MK

Archaeology

- 20) Prior to the commencement of each phase of the development a programme of archaeological field evaluation comprising trial trenching shall be completed. The programme of archaeological evaluation shall be detailed in a Written Scheme of Investigation submitted to and approved by the Local Planning Authority in writing. On completion of the agreed

archaeological field evaluation for each phase a further Written Scheme of Investigation for a programme of archaeological mitigation in respect of any identified areas of significant buried archaeological remains shall be submitted to and approved by the Local Planning Authority in writing. The scheme for archaeological mitigation shall include an assessment of significance and research questions; and

- i. The programme and methodology of site investigation and recording;
- ii. The programme for post investigation assessment;
- iii. Provision to be made for analysis of the site investigation and recording;
- iv. Provision to be made for publication and dissemination of the analysis and records of the site investigation;
- v. Provision to be made for archive deposition of the analysis and records of the site investigation; and
- vi. Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.

No development in any phase shall take place other than in accordance with the Written Scheme of Investigation so approved. The development hereby permitted shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the approved Written Scheme of Investigation and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.

Reason: To enable expert investigation of cultural remains at this site of archaeological interest in accordance with Policy HE1 of Plan:MK

Ecology

- 21) Any protected species survey report in excess of three years old at the time of the commencement of development of each phase of the development shall be updated and submitted to and approved in writing by the Local Planning Authority prior to the commencement of development of that phase of the development. Natural England derogation licence(s) shall be obtained for any protected species likely to be harmed prior to the commencement of the development.

Reason: To safeguard protected species and biodiversity in accordance with Policy NE2 of Plan:MK

- 22) Prior to the commencement of development of each phase of the development, a Landscape and Ecology Management Plan which covers the landscape and ecological features of the development ensuring net gains for wildlife compliance with local and national policies shall be submitted to and approved in writing by the Local Planning Authority. The submitted plan shall include the creation of additional habitat areas and a scheme to incorporate additional biodiversity features such as swallow cups, bird and bat boxes, bricks or cavities into appropriate buildings. Thereafter the development shall be carried out in accordance with the approved scheme and all features and access to them shall be maintained in perpetuity.

Reason: To ensure the development incorporates adequate biodiversity enhancements in accordance with Policies NE3 and NE4 of Plan:MK

Tree protection

- 23) All existing trees and hedgerows to be retained in each phase of the development are to be protected according to the provisions of BS 5837:2012 'Trees in relation to design, demolition and construction - Recommendations' prior to the commencement of any works on each phase. All protective measures shall be in place prior to the commencement of any building operations (including any structural alterations, construction, rebuilding, demolition and site clearance, removal of any trees or hedgerows, engineering operations, groundworks, vehicle movements or any other operations normally undertaken by a person carrying on a business as a builder) in that phase.

Reason: To protect significant trees and hedgerows, safeguarding the character of the area and preserving habitats and to minimise the effect of the development on the area

Open space, play areas and landscaping

- 24) Prior to the commencement of any phase of the development, an open space specification which includes the location, details and specification for all areas of open space including the Neighbourhood Play Area shall be submitted to and approved in writing by the Local Planning Authority. Detailed proposals for play areas shall be submitted and agreed at the same time as the detailed housing layouts or otherwise demonstrate that the minimum buffer distances between residential property boundaries and the play area active zone can be achieved in compliance with the standards set out in Plan:MK Appendix C, or any subsequent standards. The open space specification shall also include the phasing for the laying out of all areas of open space including any Play Areas and the long term management and maintenance arrangements for all open space and play facilities, to cover a minimum period of ten years. The development shall be completed in accordance with the approved details.

Reason: To minimise the effect of the development on the area in accordance with Policy L4 of Plan:MK

- 25) Reserved matters applications for each phase of the development shall include a landscaping scheme with detailed drawings showing which trees and hedgerows are to be retained in that phase and which trees and hedgerows are proposed to be felled or lopped in that phase. The landscaping scheme shall also show the numbers, types and sizes of trees and shrubs to be planted in that phase including their locations in relation to associated infrastructure and a species list to include native species and species beneficial to wildlife. The planting plans shall include existing trees and/or hedgerows to be retained and/or removed within each phase accurately shown with root protection areas and based up to date tree surveys. Any trees or shrubs removed, dying, or which become severely damaged or diseased within two years of planting shall be replaced in the next planting season with trees or shrubs of such size and species to be agreed in writing by the Local Planning Authority.

Reason: To protect significant trees and hedgerows, safeguarding the character of the area and preserving habitats and to minimise the effect of the development on the area

Construction

- 26) Prior to the commencement of development of any phase of the development, a Construction Environmental Management Plan (CEMP) shall be submitted to and approved in writing by the Local Planning Authority. The CEMP shall include Noise Action Levels (based on a noise survey) and site procedures to be adopted during the course of construction including working hours, intended routes for construction traffic, details of vehicle wheel washing facilities, location of site compound, lighting and security and how dust and other emissions will be controlled. The development shall be carried out in accordance with the approved CEMP.

Reason: To ensure there are adequate mitigation measures in place in the interests of highway and pedestrian safety and in order to protect the amenities of existing and future residents in accordance with Policies CT2 and NE6 of Plan:MK

- 27) Prior to the commencement of development on any phase, the developer shall carry out an intrusive site investigation into the ground conditions at the site to determine the likelihood of any ground, groundwater or gas contamination of the site. The results of this survey detailing the nature and extent of any contamination, together with a strategy for any remedial action deemed necessary to bring each phase to a condition suitable for its intended use, shall be submitted to and approved in writing by the Local Planning Authority before construction works commence on that phase. Any remedial works shall be carried out on each phase in accordance with the approved strategy and validated on a phase by phase basis by submission of an appropriate verification report prior to the first occupation on that phase of the development. Should any unforeseen contamination be encountered, the Local Planning Authority shall be informed immediately. Any additional site investigation and remedial work that is required as a result of unforeseen contamination shall also be carried out to the written satisfaction of the Local Planning Authority.

Reason: To ensure the site is fit for its proposed purpose and any potential risks to human health, property and the natural and historic environment area appropriately investigated and minimised in accordance with Policy NE6 of Plan:MK

Housing mix

- 28) Any reserved matters application shall be accompanied by details outlining the proposed housing mix strategy which takes account of the latest housing need within the District. The development shall be carried out in accordance with the approved details.

Reason: To ensure that the development hereby approved reflects housing need within the Borough in accordance with Policy HN1 of Plan:MK

ANNEX 2: APPEARANCES

FOR THE APPELLANT

Peter Goatley and James Corbet Burcher of Counsel instructed by Stephen Webb of Clyde and Co LLP.

They called:

Roland Burton BSc (Hons) MRTPI	DLP (Planning) Limited
Tim Waller BA (Hons) DipTP MRTPI	Waller Planning
Julian Hudson MA (Oxon) MSc MSc MCIHT	Scott White and Hookins
Stephen Webb	Clyde and Co LLP

FOR THE LOCAL PLANNING AUTHORITY

Reuben Taylor QC and Matthew Henderson of Counsel instructed by Sharon Bridglings of Milton Keynes Council.

They called:

James Williamson BA (Hons) MSs MRTPI	Milton Keynes Council
Niko Grigoropoulos BSc (Hons) MA MRTPI	Milton Keynes Council
Paul Van Geete	Milton Keynes Council
Nazneen Roy	Milton Keynes Council

INTERESTED PERSONS WHO SPOKE AT INQUIRY

Councillor Jacky Jeffries	Woburn Sands Town Council
Councillor David Hopkins	Danesborough and Walton Ward Councillor (Milton Keynes Council) and Chairman of Wavendon Parish Council
Judith Barker	Local resident
Jenny Brook	Local resident

ANNEX 3: DOCUMENTS

INQUIRY DOCUMENTS (FOR REDETERMINED APPEAL)

RID01	Opening submissions on behalf of the appellant
RID02	Opening statement on behalf of the Council
RID03	High Court judgment R(oao Matthew Davison) v Elmbridge Borough Council [2019] EWHC 1409 (Admin)
RID04	Statement by Councillor Jacky Jeffries
RID05	Statement by Councillor David Hopkins
RID06	Statement of Common Ground between the appellant and the Council
RID07	Quarter 3 (1 October to 31 December 2019) monitoring data of housing starts and completions in Milton Keynes
RID08	Babergh District Council Housing Land Supply Position Statement 2019/20 to 2023/24
RID09	Court of Appeal judgment R (on the application of East Bergholt Parish Council) v Babergh District Council) [2019] EWCA Civ 2200
RID10	Mid Suffolk District Council Housing Land Supply Position Statement 2019/20 to 2023/24
RID11	Email and photograph from Stephanie Forester (local resident)
RID12	Addendum to the Council's justification document for Section 106 contributions
RID13	Note from the Council on the 2019 distribution of annual housing monitoring proformas
RID14	Site visit itinerary
RID15	Note from the Council on the Babergh and Mid Suffolk Housing Land Supply Position Statements
RID16	Statement by Judith Barker
RID17	Note from the appellant responding to the Council's note (RID15)
RID18	Extract from the Encyclopedia of Planning Law and Practice 3B-2200.5 (Applications for outline planning permission)
RID19	Note from the Council clarifying the sites removed from the 2019 five-year land supply when updated to a base date of 1 April 2019
RID20	Errata to Roland Bolton Proof of Evidence and Statement of Common Ground on housing land supply
RID21	Closing submissions on behalf of Milton Keynes Council
RID22	Court of Appeal judgment City and District Council of St Albans v Hunston Properties and Secretary of State for Communities and Local Government [2013] EWCA Civ 1610

RID23	Court of Appeal judgment R v Newbury District Council, Newbury and District Agricultural Society, Ex Parte Chieveley Parish Council [1998] EWCA Civ 1279
RID24	Agricultural land quality maps for urban extensions to Milton Keynes compared to the appeal site
RID25	Order from the Planning Court regarding Milton Keynes Council's claim for Planning Statutory Review of Castlethorpe Road appeal decision
RID26	Court judgment Inverclyde District Council v Inverkip Building Company Limited
RID27	High Court judgment Bloor Homes East Midlands Ltd v Secretary of State for Communities and Local Government [2014] EWHC 754 (Admin)
RID28	High Court judgment R (on the application of West Lancashire Borough Council) v Secretary of State for Communities and Local Government [2017] EWHC 3451 (Admin)
RID29	Closing submissions on behalf of the appellant
RID30	Final draft Section 106 agreement
RID31	Final draft Section 106 agreement (with tracked changes)
RID32	Supplementary Planning Guidance on Planning Obligations for Education Facilities
RID33	Clean and tracked changes version of appellant's closing submissions reflecting amendments made at the Inquiry
RID34	Clean and tracked changes version of the Council's closing submissions reflecting amendments made at the Inquiry
RID35	Addendum to Statement of Common Ground regarding Area Tree Preservation Order
RID36	Amended version of RID20
RID37	Completed and executed S106 agreement

PROOFS OF EVIDENCE (FOR REDETERMINED APPEAL)

Appellant:

APP1	Summary Proof of Roland Bolton (Housing Land Supply)
APP2	Proof of Roland Bolton
APP3	Appendices to Roland Bolton's Proof
APP4	Rebuttal Proof of Roland Bolton
APP5	Updated Appendix 3 of Roland Bolton's Proof
APP6	Rebuttal Appendix 3a of Roland Bolton's Proof
APP7	Summary Proof of Tim Waller (Planning)
APP8	Proof of Tim Waller
APP9	Appendices to Tim Waller's Proof

APP10	Rebuttal Proof of Tim Waller
APP11	Errata to Roland Bolton's Proof
APP12	Errata to Tim Waller's Proof (Appendix 5)

Local Planning Authority:

LPA1	Proof of James Williamson (Housing Land Supply)
LPA2	Appendices to James Williamson's Proof
LPA3	Rebuttal Proof of James Williamson
LPA4	Proof of Niko Grigoropoulos

STATEMENTS OF COMMON GROUND (FOR REDETERMINED APPEAL):

SOCG1	Statement of Common Ground on Housing Land Supply
RID06	Statement of Common Ground (overarching)
RID35	Addendum to Statement of Common Ground (TPO)

OTHER DOCUMENTS

TPO1	Area Tree Preservation Order dated 8 January 2020 and illustrative drawing of other TPOs
REP1	Bundle of representations in respect of the redetermined appeal

CORE DOCUMENTS (FOR REDETERMINED INQUIRY)

Core Doc Ref	Name	Drawing No. (or) Reference	Date
CD1 - Application Documents			
CD1.1	Application forms and certificates		Submitted 11/03/16
CD1.2	Application forms and certificates		Submitted 20/07/16
CD1.3	Site Location Plan	Drawing PL-X-001/B	Submitted 09/06/16
CD1.4	Parameters Plan	Drawing PL-X-003/C	Submitted 04/08/16
CD1.5	Illustrative Layout	Drawing PL-X-004/C	Submitted 17/10/16

CD1.6	Illustrative Layout (Transport)	Drawing PL-X-005/B	Submitted 17/10/16
CD1.7	Illustrative Layout (Landscape)	Drawing PL-X-006/B	Submitted 17/10/16
CD1.8	Illustrative Layout (Character Areas)	Drawing PL-X-007/B	Submitted 17/10/16
CD1.9	Illustrative Layout (Affordable Housing)	Drawing PL-X-008/B	Submitted 17/10/16
CD1.10	Design and Access Statement, Rev. A		Submitted 04/08/16
CD1.11	Supporting Planning Statement		Submitted 11/03/16
CD1.12	Transport Assessment, Revision C		Submitted 08/07/16
CD1.13	Use of TEMPRO to Forecast Traffic Impact in 2021, Addendum to Transport Assessment		Submitted 14/11/16
CD1.14	Residential Travel Plan		Submitted 11/03/16
CD1.15	Highway Access Drawings	WO1188-101 P05 and WO1188-102 P03	Submitted 05/10/16
CD1.16	Arboricultural Schedule		Submitted 11/03/16
CD1.17	Tree Survey	Drawings SJA115.01.0 – SJA115.01.06.0	Submitted 11/03/16
CD1.18	Baseline Ecological Evaluation and Impact Assessment		Submitted 11/03/16
CD1.19	Protected Species Report		Submitted 27/07/16
CD1.20	Flood Risk Assessment (incorporating Drainage Strategy)		Submitted 11/03/16
CD1.21	Further Details on Surface Water Drainage		Submitted 08/06/16
CD1.22	Geo-Environment Audit		Submitted 11/03/16

CD1.23	Landscape Character Areas	Drawing SJA115.10.0	Submitted 11/03/16
CD1.24	Landscape Masterplan	Drawing SJA115.11.0	Submitted 11/03/16
CD1.25	Landscape and Visual Impact Appraisal		Submitted 04/08/16
CD1.26	Environmental Noise Survey		Submitted 11/03/16
CD1.27	Supplementary Noise Impact Report: SoundPLAN		Submitted 11/03/16
CD1.28	Statement of Community Involvement		Submitted 11/03/16
CD1.29	Sustainability Statement		Submitted 11/03/16
CD1.30	Delivery Programme		Submitted 01/12/16
CD2 - Appellant Documents			
CD2.1	Housing Density	Drawing 213.3/101	Submitted 10/02/17
CD2.2	Appellants Statement of Case (V1)		Submitted 10/02/17
CD2.3	Appellants Statement of Case (V2)		Submitted 12/09/19
CD2.4	S106 Agreement		17/08/2017
CD2.5	Unilateral Undertaking		17/08/2017
CD2.6	Tim Waller, Planning Proof of Evidence		13/06/2017
CD2.7	Roland Bolton, Housing Land Supply Proof of Evidence		13/06/2017
CD2.8	Roland Bolton, Housing Land Supply Proof of Evidence Appendices		13/06/2017
CD2.9	Mary Fisher, Landscape Proof of Evidence		13/06/2017

CD2.10	Mary Fisher, Landscape Proof of Evidence Appendices		13/06/2017
CD2.11	Katy Jordan, Wavendon Properties Proof of Evidence		13/06/2017
CD2.12	Tim Waller Rebuttal to Planning Proof of Evidence		06/07/2019
CD2.13	Roland Bolton Rebuttal Housing Land Supply Proof of Evidence		06/07/2019
CD2.14	Peter Goatley Closing Submissions		19/07/2019
CD3 - Council Documents			
CD3.1	Pre-Application Advice Letter		18/01/2016
CD3.2	Committee Report		08/09/2016
CD3.3	Minutes of Committee Meeting		
CD3.4	Decision Notice		05/12/2016
CD3.5	Note from Council's Senior Engineer, 'Highway Observations for 16/00672/FUL		28/11/2016
CD3.6	MKC Housing Land Supply Calculation and Trajectory April 2017 -2022	www.milton-keynes.gov.uk/planning-and-building/planning-policy/five-year-housing-land-supply-annual-monitoring-report	
CD3.7	Countryside Officer Reps	<u>20160423</u>	
CD3.8	Conservation Officer Reps	<u>20160425</u>	
CD3.9	Passenger Transport Reps	<u>20160527</u>	
CD3.10	Countryside Officer Reps	<u>20160623</u>	
CD3.11	Travel Plans	<u>20160628</u>	
CD3.12	Natural England Reps	<u>20160812</u>	
CD3.13	Ecology Reps	<u>20160817</u>	

CD3.14	Urban Design Reps	<u>20160817</u>	
CD3.15	Countryside Officer Reps	<u>20160823</u>	
CD3.16	Network Rail Reps	<u>20161018</u>	
CD3.17	Highways Observations Final	<u>20161128</u>	
CD3.18	Appeal Reps from MKC Website	<u>20170515</u>	
CD3.19	[Blank Record]	-	
CD3.20	Trees	-	
CD3.21	Dev Plans	-	
CD3.22	Landscape Architecture	-	
CD3.23	Wavendon PC		
CD3.24	WS Town Council		
CD3.25	WS Town Council Appendix		
CD3.26	Jon Goodall Planning Proof of Evidence		13/06/2017
CD3.27	Jon Goodall Planning Proof of Evidence Appendices		13/06/2017
CD3.28	Jon Goodall Housing Land Supply Proof of Evidence		13/06/2017
CD3.29	Jon Goodall Housing Land Supply Proof of Evidence Appendices		13/06/2017
CD3.30	Tim Straker QC Closing Submissions		19/07/2019
CD3.31	MKC housing statistics 2019 Q2 Extract		September 2019
CD3.32	MKC June HLSP 2019		June 2019
CD3.33	Appendix 1 - Housing Trajectory 2019 - 2024		June 2019
CD3.34	MKC Assessment of Five Year Land Supply 2016 - 2021		June 2016

CD3.35	MKC Five Year Housing Land Supply Position, 2018		June 2018
CD3.36	MKC Five Year Housing Land Supply 2011-2016		November 2010
CD3.37	MKC Interim Assessment of five year land supply, 2015		November 2015
CD3.38	MKC Housing Land Supply Position 2017/18		June 2017
CD3.39	Council's Addendum Statement of Case		12 September 2019
CD3.40	Council's Addendum Statement of Case Appendices		12 September 2019
CD3.41	MKBC 2019 Annual Housing Monitoring Completed Proformas		June 2019
CD4 - National Policy			
CD4.1	National Planning Policy Framework		March 2012
CD4.2	National Planning Practice Guidance	(Electronic Only)	
CD4.3	Ministerial Statement of Greg Clark, then SSCLG		June 2010
CD4.4	White Paper 'Fixing Our Broken Housing Market', UK Government		February 2017
CD4.5	National Planning Policy Framework		July 2018
CD4.6	National Planning Policy Framework		February 2019
CD4.7	Independent Review of Build Out, Rt Hon Sir Oliver Letwin MP		October 2018
CD4.8	Independent Review of Build Out Rates Annexes		June 2018
CD4.9	Independent Review of Build Out Rates Draft Analysis		June 2018

CD4.10	Housing Delivery Test Measurement Rule Book		July 2018
CD5 - Local Policy			
CD5.1	Milton Keynes Local Plan 2001-2011		
CD5.2	Milton Keynes Core Strategy		
CD5.3	Woburn Sands Neighbourhood Plan		July 2014
CD5.4	Strategic Land Allocation Development Framework SPD		November 2013
CD5.5	Parking Standards SPD		
CD5.6	Milton Keynes Sustainable Construction Design Guide SPD		
CD5.7	Milton Keynes Affordable Housing SPD 2013		
CD5.8	Planning Obligations for Educational Facilities		
CD5.9	Planning Obligations for Leisure, Recreation and Sports Facilities SPG		
CD5.10	MKC Supplementary Planning Document Social Infrastructure Planning Obligations		
CD5.11	New Residential Development Design Guide SPD		
CD5.12	Milton Keynes Council Urban Capacity Study		February 2017
CD5.13	Milton Keynes Residential Characterisation Study: An Evidence Base For Plan:MK		March 2017
CD5.14	Landscape Sensitivity Study to Residential Development in the Borough of Milton Keynes and Adjoining Areas		December 2016

CD5.15	Milton Keynes Strategic Housing Land Availability Assessment 2012		December 2012
CD5.16	Plan: MK Topic Paper- Issues Consultation Rural Issues		September 2014
CD5.17	Woburn Sands Neighbourhood Plan - A Report to Milton Keynes Council of the Examination into the Woburn Sands Neighbourhood Plan		March 2014
CD5.18	Development Plan Policies Map Extract - Development Boundaries for Policies CS1 and H7		
CD5.19	Development Plan Policies Map Extract - Policy S10		
CD5.20	Milton Keynes School Place Planning Forward View 2017-18		
CD5.21	Newport Pagnell Neighbourhood Plan - Referendum version		
CD5.22	Milton Keynes Core Strategy Sustainability Appraisal Final Report 2010		February 2010
CD5.23	Milton Keynes Site Allocations Plan Proposed Submission Draft October 2016		October 2016
CD5.24	Plan:MK The Way Forward Development Strategy Topic Paper (2014)		
CD5.25	Milton Keynes Strategic Housing Market Assessment 2016-2031 Report of Findings Feb 2017, ORS		February 2017
CD5.26	Core Strategy Housing Technical Paper		March 2011

CD5.27	Strategic Land Allocation Development Framework SPD Adoption Statement November 2013		
CD5.28	Milton Keynes Drainage Strategy Development and Flood Risk SPG		May 2004
CD5.29	Milton Keynes Core Strategy Inspector's Report		May 2013
CD5.30	Plan:MK Draft Consultation (Reg18)		March 2017
CD5.31	Plan:MK		March 2019
CD5.32	Plan:MK Inspector's Report		February 2019
CD5.33	Plan:MK Inspector's Report Appendices		February 2019
CD5.34	Milton Keynes Council Response to Inspectors Questions for Examination Hearings - Stage 1, Matter 3		July 2018
CD5.35	Milton Keynes overall 5YLSP at April 2018		
CD5.36	Milton Keynes Council Assessment of Five Year Land Supply: 2011-2016		November 2010
CD5.37	Milton Keynes Site Allocations Plan		July 2018
CD5.38	Milton Keynes Boundary Settlement Review		October 2018
CD5.39	Sustainability Appraisal Report (to Plan:MK)		November 2017
CD5.40	Sustainability Appraisal Map		November 2017
CD5.41	MK Local Development Scheme (LDS)		September 2018
CD6 - Appeal Decisions			
CD6.1	Land North of Dark Lane, Alrewas, Burton Upon Trent, Staffordshire	PINS Ref: 2225799	13/02/2017

CD6.2	Brook Farm, 94 High Street, Wrestlingworth, Bedfordshire, SG19 2EJ	PINS Ref: 3150607	31/08/2016
CD6.3	Land South of Nanpantan Road, Loughborough, Leicestershire	PINS Ref: 3028159	16/01/2017
CD6.4	Land North of Lenham Road, Headcorn, Kent, TN27 9TU	PINS Ref: 3151144	09/12/2016
CD6.5	Land East of Seagrave Road, Sileby, Leicestershire	PINS Ref: 3152082	27/03/2017
CD6.6	Land at Wain Close, Newport Road, Woburn Sands, Milton Keynes	PINS Ref: 2224004	01/10/2015
CD6.7	Land at Burford Road, Witney, Oxford	PINS Ref: 3005737	24/08/2016
CD6.8	Land East of Wolvey Road, Three Pots, Burbage, Leicestershire	PINS Ref: 2202261	03/01/2014
CD6.9	Land at Long Street Road, Hanslope	PINS Ref: 3177851	05/03/2018
CD6.10	Land at Linford Lakes, off Wolverton Road, Milton Keynes, Bucks	PINS Ref: 3175391	27/03/2018
CD6.11	Land at Moat Farm, Chicheley Road, North Crawley	PINS Ref: 3186814	30/04/2018
CD6.12	Land off Olney Road, Lavendon	PINS Ref: 3182048	04/05/2018
CD6.13	Longdene House, Hedgehog Lane, Haslemere	PINS Ref: 3165974	10/01/2019
CD6.14	Darnhall School Lane Appeal - Decision Letter	PINS Ref: 2212671	16/04/2019
CD6.15	Darnhall School Lane Appeal - Inspectors report	PINS Ref: 2212671	16/04/2019
CD6.16	Land on East Side of Green Road, Woolpit, Suffolk	PINS Ref: 3194926	28/09/2019

CD6.17	The Globe, 50 Hartwell Road, Hanslope	PINS Ref: 3220584	05/09/2019
CD6.18	Land off Castlethorpe Road and Malt Mill Farm Hanslope	PINS Ref: 3214365	26/09/2019
CD6.19	Land at Church Farm, Wavendon	PINs Ref 3134194	12/08/2019
CD6.20	Land at Site North of Former North Worcestershire Golf Club, Hanging Lane, Birmingham	PINs Ref: 3192918	06/12/2018
CD6.21	Land to the south of Bromley Road, Ardleigh, Colchester CO7 7SE	PINs Ref: 3185776	13/09/2019
CD6.22	Land Off Colchester Road, Bures Hamlet, Essex	PINs Ref: 3207509	27/03/2019
CD6.23	Land Off Stone Path Drive, Hatfield Peverel, Essex	PINs Ref: 3162004	08/07/2019
CD6.24	Land to the South of Cox Green Road, Rudgwick, Surrey	PINs Ref: 3227970	16/09/2019
CD6.25	Land North of Leighton Road	PINs Ref: 3203307	24/01/2019
CD6.26	Land at Well Meadow, Well Street, Malpas, Cheshire, SY14 8DE	PINs Ref: 2214400	07/01/2015
CD7 - Case Law			
CD7.1	St Modwen Developments V SSCLG & East Riding of Yorkshire Council	[2016] EVVHC 968 (admin)	28/04/2016
CD7.2	Suffolk Coastal DC v Hopkins Homes & SSCLG and Richborough Estates V Cheshire East BC & SSCLG	[2016] EWCA Civ 168	17/03/2016
CD7.3	Crane v Secretary of State for Communities and Local Government	[2015] EWHC 425 (admin)	23/02/2015
CD7.4	Suffolk Coastal District Council (Appellant) v Hopkins Homes Ltd and	[2017] UKSC 37	17/03/2016

	another (Respondents) Richborough Estates Partnership LLP and Another (Respondents) v Cheshire East Borough Council (Appellant)		
CD7.5	Barker Mill Estates v SSCLG & Test Valley BC	[2016] EWHC 3028 (Admin)	26/11/2016
CD7.6	St Modwen Developments Ltd v Secretary of State for Communities and Local Government and another	[2017] EWCACiv 1643	
CD7.7	Wokingham Borough Council v Secretary of State for Communities and Local Government and another	[2017] EWHC1863	
CD7.8	Barwood Strategic Land v East Staffordshire BC	[2017] EWCACiv893	30/06/2017
CD7.9	Monkhill Ltd v SSHCLG	[2019] EWHC1993	24/07/2019
CD8 - Related Applications			
CD8.1	11/00936/OUT - Committee Report		
CD8.2	11/00936/OUT -Decision Notice		
CD8.3	11/00936/OUT -Proposed Site Layout Plan		
CD8.4	11/00936/OUT - SITE/LOCATION PLANS		
CD8.5	12-01502-OUT, Officer Report		
CD8.6	12-01502-OUT, Decision Notice		
CD8.7	12-01502-OUT, Location Plan		
CD8.8	12-01502-OUT, Resolved Site Layout		
CD9 - Additional Documents from First Inquiry			

CD9.1	MK Housing Stats - Starts 2016/2017		
CD9.2	MK Housing Stats - Comps 2016/2017		
CD9.3	MK Housing Stats Appx 1a Completions 1981-2017		
CD9.4	MK Housing Stats Appx Starts, Under Cons and Completions by Tenure		
CD9.5	MK Housing Stats Appx 1g Starts Inside and Outside MK Dev Area		
CD9.6	Total Starts by Grid Square		
CD9.6a	Starts by Grid Square (200+)		
CD9.7	Total Completions by Grid Square		
CD9.7a	Housing Completions by Grid Square		
CD9.8	Summary Note of MK Housing Statistics		
CD9.9	Summary of RB PoE delivery rates		
CD9.10	Counsel Opinion on 5YHLS		
CD9.11	Council's Instructions to Counsel & appendices on 5YHLS		
CD9.12	Council's Statement of Case		
CD10 - Documents Between First and Second Inquiries			
CD10.1	Milton Keynes Borough Council request to Secretary of State to recover appeal		24/08/2017
CD10.2	Letter from PINS rejecting call-in request		30/08/2017
CD10.3	Letter from Ian Stewart MP to Secretary of State		12/09/2017

	requesting appeal is called in		
CD10.4	Letter from Clyde & Co to the Secretary of State regarding potential call-in decision		12/10/2017
CD10.5	Letter from PINS confirming appeal called in		31/10/2017
CD10.6	Letter from Minister of State for Housing and Planning to Ian Stewart MP confirming call-in		31/10/2017
CD10.7	Letter Clyde & Co to Minister of State for Housing and Planning regarding call-in		08/11/2017
CD10.8	Letter from Minister of State for Housing and Planning to Clyde & Co regarding call-in		20/12/2017
CD10.9	PINS letter and appeal timetable		02/02/2018
CD10.10	Letter Waller Planning to Secretary of State regarding recent appeal decisions		06/04/2018
CD10.11	PINS Letter re variation of appeal timetable		01/05/2018
CD10.12	Letter from Ministry for Housing, Communities and Local Government to Milton Keynes BC regarding recent appeal decisions		08/05/2018
CD10.13	Briefing Note on recent appeal decisions by Milton Keynes BC sent to Secretary of State		22/05/2018
CD10.14	PINS Letter re variation of appeal timetable		23/05/2018
CD10.15	Letter Waller Planning to Secretary of State		29/05/2018

	regarding recent appeal decisions		
CD10.16	Letter Clyde & Co to Secretary of State		23/07/2018
CD10.17	Letter from Secretary of state re. new NPPF & Site Allocations Plan		26/07/2018
CD10.18	Councillor Hopkins response to Secretary of State		01/08/2019
CD10.19	Clyde & Co response to Secretary of State		06/08/2018
CD10.20	Woburn Sands & District Society response to Secretary of State		09/08/2018
CD10.21	Other responses to the Secretary of State		07/08/2018
CD10.22	Woburn Sands Town Council response to Secretary of State		14/08/2018
CD10.23	Clyde & Co response to Secretary of State		15/08/2018
CD10.24	Local resident response to Secretary of State		05/08/2018
CD10.25	Local resident response to Secretary of State		
CD10.26	Local resident response to Secretary of State		16/08/2018
CD10.27	Local resident response to Secretary of State		17/08/2018
CD10.28	Milton Keynes BC e-mail and enclosure re. emerging Plan:MK		05/09/2018
CD10.29	Secretary of State's letter re. housing land supply, emerging Plan:MK and NPPF density policies and enclosures		27/09/2018
CD10.30	Waller Planning response to Secretary of State		05/10/2018

CD10.31	SPRU response to Secretary of State		05/10/2018
CD10.32	Correspondence between Waller Planning and MHCLG		15/10/2018
CD10.33	Decision by the Secretary of State (now quashed), incorporating the Inspector's recommendations		05/12/2018
CD10.34	Judgment by the High Court in relation to the Secretary of State's decision		14/06/2019
CD10.35	MHCLG letter re. need for further inquiry		09/07/2019
CD10.36	Clyde & Co response to MHCLG		18/07/2019
CD10.37	Milton Keynes BC response to MHCLG		30/07/2019
CD10.38	Wavendon Parish Council response to MHCLG		24/07/2019
CD10.39	Woburn Sands Town Council response to MHCLG		16/07/2019
CD10.40	Cllr Hopkins response to MHCLG		11/07/2019
CD10.41	Local resident response to MHCLG		19/07/2019
CD10.42	MHCLG letter re. second inquiry		16/08/2019
CD10.43	PINS letter re. second inquiry		22/08/2019
CD10.44	Inspector's Note of the Pre-Inquiry Meeting		
CD10.45	Email correspondence - Council were going to introduce new evidence to seek to justify 33 of the sites within their June 2019 trajectory		12/12/2019

CD11 - External Reports			
CD11.1	"Start to Finish How Quickly do Large-Scale Housing Sites Deliver?", Nathaniel Lichfield and Partners		November 2016
CD11.2	HBF Survey - Chairman's Update		
CD11.3	Home Builders Federation Planning Policy Conference presentation by John Stewart		2016
CD11.4	Housing Delivery on Strategic Sites, Colin Buchanan		2005
CD11.5	Urban Extensions Assessment of delivery rates, Savills		2013
CD11.6	University of Glasgow - (CLG housing markets and Planning Analysis Expert Panel) Factors affecting build out rates		February 2008
CD11.7	Sutton Coldfield Green Belt Sites Phase 2 Report of Study, PBA		June 2014
CD11.8	Hourigan Connolly - An interim report into the delivery of Urban Extensions 2013		
CD11.9	Ruth Stainer DCLG Planning Update		
CD12 - Niko Grigoropoulos Proof additional documents			
CD12.1	Historic England Designation Report, Wavendon House Landscape		1 November 2019
CD12.2	Final SAP Issues and Options Consultation Document		September 2014

CD12.3	Council's note submitted at the Pre-inquiry meeting re reasons for refusal		01/11/2019
CD12.4	Woburn Sands neighbourhood Plan Map		July 2014
CD12.5	MK Settlement Boundary Study		November 2017
CD12.6	Plan:MK Proposals map Sheet 4 extract		March 2019

PLANS

- Plans A
1. Site Location Plan PL-X-001 rev. B
 2. Proposed site access drawing no.WO1188-101 rev.PO5
 3. Proposed site access drawing no.WO1188-1021 rev.PO3
 4. Site Location Plan PL-X-001 rev.B (A1)
- Plan B Illustrative layout PL-X-004 rev.C
- Plan C Parameters Plan PL-X-003 rev.C

INQUIRY DOCUMENTS (FROM FIRST INQUIRY)

- ID01 Town and Country Planning (Development Management Procedure) (England) Order 2015, extract
- ID02 Statement of Common Ground
- ID03 Opening Statement – Peter Goatley
- ID04 Opening Statement – Tim Straker
- ID05a Housing figures, updated
- ID05b Summary; housing monitoring
- ID06 Updated implications of using Core Strategy trajectory
- ID07 Written objections from Steph Foster
- ID08 Draft conditions 1
- ID09 Draft Section 106 Agreement 1
- ID10 Draft Section 106 Obligation 1
- ID11 Development Brief for Walton Manor, Walton
- ID12 Interventions by Milton Keynes Council to 'boost the delivery of housing'.
- ID13 Minister opens the dual carriageways of the A421, helping to develop 2,900 new homes, October 2015
- ID14 Funded road schemes
- ID15 Eastern Expansion Area Delivery Pack
- ID16 Strategic Land Allocation Delivery Pack
- ID17 Programme of development on appeal site
- ID18 Draft Section 106 Agreement 2

ID19	Draft Section 106 Obligation 2
ID20	Draft conditions 2
ID21	Closing submissions – Tim Straker
ID22	Closing submissions – Peter Goatley
ID23	Signed Section 106 Agreement 3
ID24	Signed Section 106 Obligation 3
ID25	Suggested conditions 3
ID26	Letter dated 30 August 2017 refusing to recover the appeal for decision by the Secretary of State
ID27	Letter dated 31 October 2017 recovering the appeal for decision by the Secretary of State

DOCUMENTS (FROM FIRST INQUIRY)

Document 1	List of persons present at the Inquiry
Document 2	Conclusion and proof – Roland Bolton
Document 3	Appendices 1-35, folder 1 - Roland Bolton
Document 4	Appendices 36-62, folder 2 - Roland Bolton
Document 5	Supplementary proof and appendices 1-4 - Roland Bolton
Document 6	Proof and appendix – Katy Jordan
Document 7	Summary proof – Mary Fisher
Document 8	Proof – Mary Fisher
Document 9	Appendices A-D – Mary Fisher
Document 10	Summary proof – Tim Waller
Document 11	Proof and appendices 1-13 - Tim Waller
Document 12	Supplementary proof and appendices 1-6 - Tim Waller
Document 13	Summary and planning proof - Jon Goodall
Document 14	Appendices 1-18 to planning proof - Jon Goodall
Document 15	Summary and housing land availability proof - Jon Goodall
Document 16	Appendices 1-20 to housing land availability proof - Jon Goodall
Document 17	Statement - Cllr David Hopkins
Document 18	Objection letters on behalf of Wavendon Residential Properties Limited and Merton College Oxford - Ian McGrane A. Letter of objection from Integrated Transport Limited B. Letter of objection from Heather Pugh, Partner, David Lock Associates
Document 19	Statement - Cllr Jackie Jeffreys
Document 20	Statement - Chris Jenner A. Technical Objection Report
Document 21	Statement - Alistair Ewing
Document 22	Statement - Judith Barker
Document 23	Bundle of representations in respect of the appeal
Document 24	Inspector's index to representations
Document 25	Index to Core Documents



Ministry of Housing, Communities & Local Government

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RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.



Appeal Decision

Inquiry Held between 30 July and 7 August 2019

Site visits made on 29 July and 2 August 2019

by John Felgate BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd September 2019

Appeal Ref: APP/J2210/W/18/3216104

Land off Popes Lane, Sturry, Kent CT2 0JZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Gladman Developments Limited against the decision of Canterbury City Council.
 - The application Ref 18/01305, dated 22 June 2018, was refused by notice dated 24 September 2018.
 - The development proposed is the erection of up to 140 Dwellings, with public open space, landscaping, sustainable drainage system, and vehicular access.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

General

2. The appeal proposal is for outline permission with all details reserved except for access. In so far as the submitted Framework Plan includes details of other elements, including the type and disposition of the proposed open space and planting, it is agreed that these details are illustrative.
3. During the inquiry, a Section 106 planning agreement was completed. The agreement secures the provision of affordable housing and the proposed on-site open space and sustainable urban drainage (SUDs) system, and a system of travel vouchers for future house purchasers. It also provides for financial contributions to schools, libraries, community learning, healthcare, adult social care, youth services, highways, cycle routes, public rights of way, traffic regulation orders (TROs), and ecological mitigation.
4. In the light of these provisions in the S.106 agreement, the Council withdrew Refusal Reasons (RRs) Nos 6, 7 and 8, relating to housing tenure, infrastructure, and the effects on a designated Special Protection Area (SPA). In addition, the Council withdrew RR5, relating to air quality, in the light of further information submitted prior to the inquiry.

Matters relating to internationally designated sites

5. The SPA contribution provided for in the S.106 agreement relates to mitigation measures for recreational disturbance to the Thanet Coast and Sandwich Bay SPA, for which the Council has established a mitigation scheme in consultation

with Natural England (NE). NE was consulted on the original application and raised no objection subject to this contribution. Subsequently, the appellants prepared a Shadow Appropriate Assessment. The Council has expressed itself to be satisfied with that Assessment.

6. At the inquiry, a copy was produced of a letter from NE regarding certain other proposed developments within the Sturry area. In that letter, NE raised issues relating to possible impacts on water quality at another protected site, the Stodmarsh Special Area of Conservation (SAC), which is also a Ramsar Site and a Site of Special Scientific Interest (SSSI). In the light of this letter, the Council wrote to NE, inviting any further comments regarding the present appeal proposal. NE's reply, dated 16 August 2019 and therefore received after the inquiry had finished sitting, indicates that similar concerns are now considered applicable to this appeal site.
7. In the circumstances, it seems to me that, without further information as to the potential impacts on the Stodmarsh site, planning permission for the appeal proposal could not be granted without contravening the relevant provisions of the Conservation of Habitats and Species Regulations 2017. This is because, in the light of NE's stated position, I cannot be certain that the development could be carried out, either individually or cumulatively, without adversely affecting the protected site's integrity. If in other respects the balance of the evidence had pointed towards granting permission, I would have been minded to allow the appellants some further time to address this new issue before making my decision. However, having fully reviewed all the evidence, I find that is not the case. I have therefore proceeded to my decision, on the evidence that is already before me.

Relevant Development Plan Policies

8. The development plan policies relevant to the appeal are contained in the Canterbury District Local Plan (the CDLP), adopted in July 2017. Policy SP2 sets out the overall housing requirement for the District, of 16,000 dwellings over the period 2011-31.
9. Policy SP3 identifies twelve strategic housing site allocations. One of these comprises land at Sturry and Broad Oak, which is allocated for 1,000 dwellings, business floorspace, local shopping and community facilities. The allocation is also intended to help deliver a new Sturry Relief Road, by-passing the centre of the village. The present appeal site is not included in any of the strategic allocations.
10. Policy SP4 sets out the overall spatial strategy, including the settlement hierarchy. Sturry is identified as a rural service centre, within the hierarchy's second tier.
11. Policy SP1 broadly reflects the presumption in favour of sustainable development in the National Planning Policy Framework (the NPPF). Where other relevant policies are out of date, planning permission is to be granted, unless material considerations indicate otherwise, taking account of whether the adverse impacts would significantly and demonstrably outweigh the benefits, and whether specific NPPF policies indicate that development should be restricted.
12. Other policies relating to particular issues in the appeal are identified elsewhere in this decision, where relevant.

Main Issues

13. Having regard to all the submissions before me, I consider the main issues in the appeal to be as follows:
- whether the district has an adequate supply of deliverable land for housing;
 - the effects of the proposed development on the highway network and safety;
 - the effects on the character and appearance of the area and its landscape;
 - the effects on the setting of nearby listed buildings;
 - the effects on 'best and most versatile' agricultural land;
 - and whether the appeal site is a suitable location for the proposed development, having regard for the CDLP's policies for the location of housing.

Reasons for Decision

Housing land supply

Base data

14. The evidence prepared for the inquiry by both parties, including the agreed Statement of Common Ground (SCG), was based on the Council's 'Housing Land Supply Statement 2017/18'. That document has a base date of 1 April 2018, and looks to a 5-year period of 2018-23 (the 2018 HLSS). Shortly before the inquiry, the Council produced a draft version of the annual update, with a base date of 1 April 2019, and a 5-year period of 2019-24 (the 2019 HLSS). The 2018 HLSS identifies a requirement for 4,611 dwellings, including a 5% buffer, and a supply of 6,059 dwellings, giving a surplus of 1,448. In the 2019 version the requirement, based on the same method, is 4,801 units, whilst the supply is 6,455 units, and the surplus 1,654.
15. The 2019 document has some limitations, in that it has not yet been subject to final checking and internal approval, and is not yet publicly available. Nor did the appellants have a great deal of time to appraise the contents, before the inquiry. But nonetheless, the information within it is more up to date, and provides a basis for a forward view spanning almost five full years from now. In the circumstances, whilst I have had regard to both of the HLSSs, I have based my calculations principally on the 2019 version.

The housing requirement

16. In both versions of the HLSS, the 5-year housing requirement figures are based on the broad phasing indicated in CDLP Policy SP2, which shows a stepped annual requirement, starting from 500 dwellings per annum (dpa) in 2011-16, and then 900 dpa in each of the subsequent phases of the plan period. I accept that elsewhere in the Local Plan, and in the Examining Inspector's report, there are statements or other indications which appear to support a flat rate of 800 dpa across the plan period. But in the event of any contradiction, it is the policies that must prevail over the supporting material. In the present case, that means using the phasing set out in Policy SP2.

17. I acknowledge that in another appeal¹ (in which I was the inspector), in February 2018, the land supply calculations were based on a flat rate approach. But each decision must be based on the evidence given at the time. In the present appeal, the Council's approach differs from that advanced in the earlier case. But this inconsistency does not change my view as to the merits of the two approaches, as set out above.
18. The Council's approach to the housing requirement in the present appeal is based on the 'Liverpool' method, whereby any past shortfall in delivery is to be made up over the remainder of the plan period. I accept that, in general, the advice in the Planning Practice Guidance (PPG) favours the alternative 'Sedgefield' method, of seeking to make up the deficit within the next five years. But the PPG also advises that a Liverpool-type approach may be acceptable, provided that approach is put forward and accepted through the Local Plan examination process. In the case of the CDLP, the Liverpool method was expressly endorsed by the Examining Inspector in 2017. I agree that this does not mean that the methodology can never be reviewed, but having regard to the reasons given by the Inspector at that time, I see no compelling argument for departing from the approach that was agreed only two years ago.
19. For my calculations therefore, I have primarily addressed the requirement figure of 4,801 dwellings, and the period 2019-2024, which are contained in the 2019 HLSS.

Deliverability

20. The NPPF requires that sites which are to be included in the 5-year supply should be deliverable, within the terms of definition set out in the Glossary. To come within that definition, amongst other things, sites should be available now, and be achievable, with a realistic prospect that housing will be delivered on the site within five years. Sites for major development, without detailed planning permission, will only be counted as deliverable where there is clear evidence that completions will begin within that period. In addition, the PPG gives examples of some types of evidence which may be relevant.
21. In the present case, the Council's 5-year supply relies heavily on sites in this category, having only outline permission or no permission at all. In the 2019 HLSS, sites of this kind account for 3,923 units, representing some 60% of the claimed supply for the 5-year period. The evidence before me, in so far as it relates to the 2019 supply schedules, focuses on eleven such sites which are disputed by the appellants². In considering this evidence, I am keenly aware that part of the reason that the Council is reliant on sites of this type is because the CDLP seeks to achieve a rapid increase in the rate of housing delivery, and that process is still in the early stages. However, the NPPF makes it clear that the planning system should aim to ensure continuity in the housing supply in the short term, as well as planning for the longer-term future, and it seems to me implicit that this is what the 5-year supply test is primarily designed to achieve.

¹ Land at Old Thanet Way, Whitstable

² In the Table in the Housing SCG, the disputed sites that are relevant to the 2019 supply are Nos 1-7, 9, 11, 12 and 17. Sites Nos 8 and 13-16 are not forecast in the 2019 HLSS to produce any completions in the relevant period, so are no longer relevant to my consideration. Site No 10 is now under construction, and is no longer disputed.

22. In the light of these considerations, I have given close attention to the nature of the evidence which the Council has produced to demonstrate the disputed sites' deliverability. In this regard, I fully appreciate the efforts that Officers have gone to, to introduce new systems for liaising with developers and landowners, and monitoring progress, particularly through the establishment of the Housing Delivery Group, and the preparation of the Phasing Methodology. I have no doubt that these systems are designed to enable housing delivery forecasts to be accurate, robust, flexible and up to date. But nevertheless, it is clear from the NPPF and PPG that, until sites achieve detailed planning permission, they should not be treated as deliverable, unless the evidence clearly demonstrates that this status is justified.
23. For a number of the disputed sites, the Council's evidence is founded on site-specific SCGs which have been agreed with the developer or landowner of the site in question. I appreciate that the PPG refers to SCGs as an admissible type of evidence, and I have had full regard to that advice. But nevertheless, the evidential value of any particular SCG in this context is dependent on its content. In a number of cases, the SCGs produced by the Council primarily record the developer's or landowner's stated intentions. Without any further detail, as to the means by which infrastructure requirements or other likely obstacles are to be overcome, and the timescales involved, this type of SCG does not seem to me to demonstrate that the development prospect is realistic. In addition, most of the site-specific SCGs are undated, thus leaving some uncertainty as to whether they represent the most up-to-date position.

Disputed sites

24. Only one of the disputed sites has any kind of planning permission. That site is Strode Farm (Site No 4 on the disputed sites list), which has outline permission for 800 dwellings. In the 2019 HLSS, the Council forecasts 190 dwelling completions within the relevant 5-year delivery period, 2019-24. A legal challenge to the outline permission has only recently been resolved, and to that extent it is not surprising that there has been no apparent progress towards an application for reserved matters. But even so, there is no clear evidence of any other kind to show deliverability. An SCG has been agreed with the site's promoter, but it appears that a development partner is to be appointed, and there is no indication that that party has been involved in the SCG. The timings and build rates suggested are not supported by any detailed programme, or explanation of how the timing would be achievable. The development is apparently to include major road infrastructure, both on-site and offsite (albeit now reduced from what was originally sought), and there is no evidence as to how this may affect the timing or viability. The evidence therefore does not demonstrate that the site is deliverable within the terms of the NPPF definition.
25. Five of the disputed sites are the subject of current outline or hybrid applications or appeals. One of these is the site known as South Canterbury (Site No 1). The overall outline scheme, supported by an allocation in the CDLP, is for 4,000 dwellings. The Council resolved in 2016 to grant a hybrid permission, including full permission for the first 140 dwellings, and outline for the remainder. In the 2019 HLSS, the site is forecast to produce 550 completions in the relevant delivery period. However, the permission has not yet been granted. Since 2016, further environmental information has been submitted, which has not been the subject of any further resolution. In

addition, Kent County Council (KCC) has requested an increase of over £7m in the education contribution. There is no information as to what effect this will have. The development also requires major infrastructure works, including on- and off-site highway works, sewer diversions, and the removal of pylons. Conditions relating to archaeology and contamination, amongst others, are proposed. The SCG from the site promoter contains no programme to show how the timescales for all the necessary approvals, advance works and site preparation can be accommodated. At the inquiry, the Council's witness admitted that the Council does not have this information. Without that kind of detail, on a site of such a scale and complexity, the SCG is unconvincing. I have little doubt that the necessary permission is likely to be granted at some point, but the critical factor is likely to be the lead-in time after that occurs, and on this the evidence is entirely lacking. On the evidence submitted therefore, the South Canterbury site cannot realistically be counted as deliverable at this stage.

26. In the same category is the allocated site known as Sturry/Broad Oak (Site No 2). This site is currently the subject of two planning applications, by different developers, totalling 1,106 dwellings. One of these is a hybrid, which seeks full permission for some of the dwellings. The Council forecasts 440 dwellings in the 5-year period. However, no decisions have yet been made on the current applications. As noted earlier, Natural England has raised an objection relating to the effects on the Stodmarsh SAC. The development as a whole is bound up with the proposed Sturry Relief Road, and although contributions to this have been agreed in principle, further funding is needed and is yet to be fully secured. KCC is said to be considering the phasing of the housing in relation to the new road, but this has not yet been agreed. The potential effects of this phasing on the scheme's overall viability are not yet known. From the evidence available, it is not clear how this may affect the scheme. The development also involves the provision of other local infrastructure, but there is no evidence of any binding agreement between the various parties as to how the costs are to be apportioned. Nor is there evidence of any detailed programme for the necessary approvals, site works and other works necessary prior to any house completions. In the face of so many unresolved issues, it seems to me that the prospect of any housing completions on the Sturry/Broad Oak site within the relevant 5-year period is far from certain. The site therefore cannot be classed as deliverable.
27. The next site in this category is Land at Hillborough (Site No 3), which is allocated in the CDLP for 1,300 dwellings, and is in three parcels. Two of the are the subject of current applications totalling 1,080 units. In the 2019 HLSS, the site is forecast to deliver 195 dwellings in the relevant 5-year period. However, the applications are undetermined. The Council's evidence highlights the complex nature of the issues relating to access and road infrastructure, and the apportionment of costs between the owners or developers of the different land parcels. In addition, it appears that these costs may now rise as a result of recent decisions which have reduced the amount that will be contributed by the Strode Farm site. It is said that discussions about viability and costs are continuing. However, there is no evidence as to how the admitted complexities can be overcome, or within what timescale. None of the evidence produced amounts to clear and realistic evidence that the site will deliver housing completions within five years.

28. The site known as Greenhill (Site No 5) has no planning permission, but is the subject of a current outline application. The site is said to have no major infrastructure requirements, and the Council expects it to produce 150 dwellings in the relevant 5-year period. However, the current planning application is for 450 dwellings, which exceeds the CDLP allocation for 300 units, by some 50 per cent. The principle of the site being developed on this scale is therefore unsupported by the Local Plan, and it cannot be regarded as certain that the current application will be found acceptable. Nor can it be assumed that an alternative, policy-compliant scheme would necessarily come forward within the relevant timescale. There is therefore no certainty as to whether any permission will be forthcoming to allow the development to proceed in its present form. As such, the development cannot currently be regarded as deliverable.
29. The only other site with a current proposal awaiting determination is the site known as Grassmere (Site No 9), where there is a current appeal for a hybrid scheme of 300 dwellings. The site is allocated in the CDLP, and is expected by the Council to produce 70 completions, in the 2019 HLSS. At the time of the present inquiry, the Council hoped to be able to withdraw its opposition to the appeal scheme, but had not done so yet. As long as the appeal is contested by the Council, there is clearly no certainty as to the outcome. If the appeal is dismissed, it may still be possible for an acceptable alternative scheme to come forward within the relevant five-year period, but there is no evidence to show that this would be likely, let alone that such a scheme would qualify as a realistic prospect. Consequently, while the appeal remains undetermined, the site cannot be treated as deliverable.
30. None of the other disputed sites is the subject of any current planning application. The largest of these other sites is Land North of Hersden (Site No 7), which is allocated in the CDLP for 800 dwellings, and has been the subject of pre-application discussions. The Council sees it as delivering 160 completions in the relevant 5-year period. But there is no evidence of any firm progress towards a planning application, or any site assessment work. Contractual negotiations between the landowners and the prospective developer appear to be still on-going. The site is likely to be required to make a contribution in excess of £5m to the Sturry Relief Road. The SCG, although involving the developer, contains no details of how the development would be delivered within the relevant timescales, or whether the required contribution would be viable. The evidence does not demonstrate a realistic prospect of completions being achieved within the five years, and the site therefore does not come within the definition of deliverable.
31. The disputed sites at Canterbury West Station (Site No 11), and Rosemary Lane car park (Site No 12), have been allocated for housing since the previous Local Plan, in 2006. Between them, these two small sites are forecast in the HLSSs to deliver a total of 40 dwellings in the relevant 5-year period. But both are currently in active use as Council car parks. Although they may be freed up from that use in February 2020, when a new multi-storey park is completed, this means that they are not available now. From the evidence presented, it also seems that no formal decision has yet been taken by the Council regarding any future development. The sites are therefore not currently deliverable.
32. The site known as Land at Rough Common Road (Site No 17) was likewise allocated in the 2006 CDLP, and is now forecast to produce 16 dwellings in the

relevant period. Pre-application discussions have been held. But there is no evidence of any further progress towards the submission of an application. The site therefore does not qualify as deliverable.

33. The final disputed site is Land North of Thanet Way (Site No 6), which has outline permission for 400 dwellings, and a current reserved matters application for 138 of these units. In the 2019 HLSS the site is forecast to deliver 297 completions in the relevant five years. The site is not challenged by the appellants on grounds of deliverability, but on timing and build rates. Given the involvement of a Registered Provider as lead developer, I consider the forecast in the 2019 document reasonable. I therefore make no further adjustment in respect of this site.

Conclusion on housing land supply

34. In the light of the above, I conclude that the disputed sites numbered 1, 2, 3, 4, 5, 7, 9, 11, 12 and 17 should all be excluded from my assessment of the deliverable supply. In all these cases, this is because there is insufficient clear evidence to show that they meet the NPPF's definition of deliverable. Sites which are not deliverable cannot be counted as part of the supply for the purposes of meeting the 5-year requirement.
35. In total, these 10 non-deliverable sites are relied on in the 2019 HLSS to deliver 1,811 housing completions in the period 2019-24. The effect of excluding these sites is that the supply for that period is reduced to 4,644 units, which represents a shortfall of 157 against the Council's requirement figure of 4,801 units. On this basis, the deliverable supply is 4.8 years.
36. For completeness, if the calculations were instead based on the 2018 HLSS, the effect of deleting the same sites from the Council's supply figures for 2018-23 would be to reduce the supply for that period by 1,760 units. The result in terms of the years' supply would then be very slightly lower, at just under 4.7 years. However, for the reasons that I have explained, I consider the use of the 2019-based figures to be more appropriate. In any event, the difference in the outcome is not significant.
37. For the reasons set out above, I conclude that the Council has been unable to demonstrate a 5-year supply of deliverable housing land. In the circumstances, the provision of up to 140 dwellings in the appeal proposal, including 30% affordable, would be a substantial benefit of the scheme.

Traffic and highway safety

Existing traffic conditions

38. Even though the inquiry took place during the summer holiday period, I was able to see on my visits to Sturry that the village suffers from a combination of factors that make it particularly prone to traffic problems. The coming together of the A28 and A291, at the centre of the village, funnels traffic from two main routes into one. The sharp bend, and the lack of signal controls, makes it difficult for traffic from the A291 to emerge at the uncontrolled junction. The gated railway crossing, directly adjacent, causes extensive queuing on the A28, which blocks the road junction and compounds the problems. The only practical alternative route involves a network of minor roads and narrow lanes, which are unsuited to through traffic.

39. The evidence of both parties confirms the scale of the existing problems. On the A28, the appellants' traffic counts show average 24-hour weekday flows of around 19,000 vehicles. In the morning and afternoon peaks, the average 2-way flow is over 1,400 vehicles an hour, with one-way flows in the busier direction of around 850 and 780 vehicles respectively. These latter figures exceed the link capacity for a road of this type, as advised in the DMRB³, even without taking account of the level crossing, which further restricts that capacity.
40. The Sturry level crossing is said to be amongst the 'top ten' busiest crossings in Network Rail's national database. On average, the barriers close five times per hour, halting traffic flows for a total of about 12 minutes out of every hour, thus losing about 20% of the total time available. Some of the individual closure periods last for 4-5 minutes or more. The appellants' surveys show queue lengths during the barrier closures averaging 79 vehicles on the southbound side in the AM peak, and 115 vehicles northbound in the PM peak. The maximum lengths during the longer closures reached 144 vehicles and 215 vehicles respectively. Even on the less busy side of the crossing in each case, average queues were around 30-33 vehicles, with maxima of up to twice these numbers. Further queuing also takes place on the southbound A291, where the exit onto the A28 becomes blocked during these periods.
41. There is no disagreement that this congestion in the village centre is responsible for large numbers of vehicles diverting onto minor roads. To the west of the A291, on the rat-running route via Sweechgate, Shalloak Road and Broad Oak Road, the evidence indicates 2-way flows of over 700 vehicles an hour in the AM peak and only slightly less in the PM period. Over a full day, the Sturry and Herne Highway Capacity Study (the SHHCS) reports traffic flows of 7,000 vehicles on Shalloak Road. To the east of the A291, it is clear that some traffic from the A28 connects to this route, via Babs Oak Hill, Hawe Lane and Popes Lane. For much of their length, these circuitous rat-runs comprise narrow, winding lanes, with sharp bends and poor forward visibility. Their use by high volumes of through traffic is a cause for justified concern.
42. Some of the junctions along these routes, under existing conditions, are at or approaching their practical capacity. At the A291/Sweechgate junction (Junction SJ8), on the appellants' figures, the current RFC⁴ value for the right-turn movement into Sweechgate in the AM period is 0.97, with a queue length of 16 vehicles. At this point the A291 is only wide enough for one lane in each direction, so all southbound traffic is held behind the vehicles that are waiting to turn. In the PM period, the RFCs on Sweechgate are 0.90 for the left-turn and 0.83 for the right-turn, and again in practice most of the turning vehicles on this arm are combined into a single queue, with the Council's survey showing that this can reach 150m. At the Broad Oak/Vauxhall Road roundabout (SJ 10), the RFCs on all three arms are between 0.92 - 0.95 in either one or both of the peaks. At SJ9, Shalloak Road/Mayton Lane, the RFC in the PM peak reaches 1.08. All of these RFCs indicate that these junctions are operating at, or very close to, their limits. Given the range of daily variation which is evidenced in the traffic counts, it seems likely that on some days their capacities will be exceeded.

³ Design Manual for Roads and Bridges (Mr Finch's Appendix C)

⁴ Ratio of flow-to-capacity

43. The evidence identifies a high number of accidents in the Sturry area, with 108 recorded in a 5-year period in the village as a whole. Although the A291 has been downgraded from the highest risk category in the 'EuroRAP' system, it is apparently still classified as medium-high risk, and the A28 as medium risk.
44. The difficulties of the existing traffic conditions in Sturry, together with those at Herne village, a little further along the A291, are recognised and indeed highlighted in the CDLP. Moreover, it is the need to address the traffic problems of these two villages that has clearly dictated a large part of the plan's spatial strategy, as a significant number of the largest housing allocations have been chosen at least partly for their ability to contribute to a comprehensive highway solution for the A291 corridor.
45. Overall, it seems to me that the evidence adds up to a picture of a local road network in and around Sturry that is under considerable strain, and where delays, inconvenience, unnecessary extra mileage, and potential safety hazards are evidently part of the everyday experience of local residents and other road users. Clearly, none of these problems are of the appellants' making, and refusing permission for the present proposal will not in itself bring any improvement. But nonetheless, the development does have the potential to make the situation worse. The extreme difficulty of the existing traffic conditions in Sturry is a material consideration to which I attach considerable weight in this case.

Committed developments and the Sturry Relief Road

46. The appellants' Transport Assessment (TA) models the impact of the appeal proposal in relation to two scenarios, relating to 2018 and 2031 respectively. The 2018 assessment is based on the observed traffic flows at that date, with no changes to the network, and no other new developments apart from the appeal proposal. The 2031 scenario takes account of known housing commitments, and also assumes the completion of the Sturry Relief Road. The modelled scenarios therefore do not include any assessment of the appeal scheme in a situation where some or all of the other committed developments may have been completed, but not the Relief Road.
47. From the evidence of Mr Finch, on behalf of Kent County Council (KCC) as the Highway Authority, the earliest date envisaged for the completion of the southern section of the Relief Road is in the year 2023/24, and the time lag between this and the northern section is expected to be around four years. The earliest date for the completion of the whole Relief Road is therefore likely to be about 2027/28. These dates have not been challenged. Although the road is designed to be constructed in these two phases, it is self-evident that it can only start to serve its main purpose of bringing traffic relief to the village, when the whole route is complete.
48. KCC is evidently keen to start work on the southern section as soon as possible, and the above programme reflects this aim. Nevertheless, it is equally clear that the Authority is unlikely to start any part of the construction work until they can be confident that the whole of the road can be delivered. As a minimum, this is likely to mean having all the necessary approvals in place, and full funding secured. As things stand, that position seems some way off. Neither of the two planning applications for the road itself have yet been approved, and objections are said to remain outstanding, including that from

Natural England. Planning permission for the northern section is also bound up with the applications for housing on the Sturry/Broad Oak site. Discussions regarding some aspects of these, and the terms of the permissions that might be granted, are evidently still on-going. With regard to funding, contributions are required not only from these two developments, but also from the North of Hersden site. None of these contributions can be regarded as certain until the relevant planning permissions have been granted. Partial funding is said to have been secured from the LEP⁵, but this appears to be to some extent conditional on the timing. Ultimately, it seems more likely than not that all the necessary approvals and funding arrangements will fall into place. But nonetheless, substantial hurdles remain. At the present time therefore, neither the timing nor indeed the actual delivery of the Relief Road are yet assured. Having regard to the terms of the judgement in *Manor Oak Homes*⁶, the delivery of the road in this case is not beyond sensible doubt.

49. The seven committed housing developments identified in the TA amount to a total of over 5,200 dwellings. The assessment carried out for the SHHCS in 2016 estimated that the traffic generation from five of these sites, those that were known at that time, would add 1,084 additional peak-hour trips to the road network through Sturry. Since that assessment, some 150 or so of the dwellings at the Herne Bay Golf Course site have now been built and occupied, and thus may be accounted for in the appellants' traffic counts. But these are partly balanced out by the Sturry/Broad Oak scheme, where the overall number of proposed dwellings has now grown by about 100, with the current applications totalling 1,106 dwellings compared to the 1,000 units originally allocated. The other sites identified in the SHHCS, at Strode Farm, Hillborough and North of Hersden, are all unchanged. The two additional sites identified in the TA, at Hoplands Farm and Chislet Colliery, amount to 620 dwellings. The traffic from these two sites will therefore be over and above that which was anticipated in the SHHCS.
50. The developments at Herne Bay Golf Course, Strode Farm, Hoplands Farm and Chislet Colliery all have planning permission and are unrestricted in terms of their timing or phasing in relation to the Sturry Relief Road. Although the allocated sites at Hillborough and North of Hersden are not yet permitted, the Council made it clear at the inquiry that it does not anticipate imposing any such restrictions. In the case of the Sturry/Broad Oak applications, the Council will be seeking to agree limits on the number of dwellings to be occupied before the Relief Road is completed, but those numbers have not yet been decided. KCC is currently testing a phasing limit of 350 units for the Sturry part of the scheme, and is also to consider a separate allowance for the Broad Oak part. It is fairly clear from this that the combined limit for the site as a whole is likely to exceed 350 dwellings. Indeed, given that this is the development that will have to contribute the most to the new road, not only financially but also in physically delivering part of it, it would not be surprising if the number of dwellings allowed in advance were to increase further.
51. In any event therefore, the Sturry/Broad Oak development is the only one of the committed sites that is likely to be subject to any timing or phasing restrictions in relation to the Relief Road, and even there a significant part is

⁵ Local Enterprise Partnership

⁶ *Manor Oak Homes v SoS & Aylesbury Vale DC* [2019]EWHC 1736 (Admin)

likely to be unrestricted. All of the other dwellings in the TA's list of commitments are free to come forward ahead of the new road. Although a number of these developments are not yet far enough advanced to be classed as deliverable for the purposes of the 5-year housing supply, they are all potentially capable of being developed, either wholly or largely, prior to the opening of the Relief Road, even if the road is delivered by its earliest date of 2028. If this timing were to slip by as little as two or three years, then the evidence suggests that all of the unrestricted dwellings could be completed in full.

52. All of these committed developments are expected to have an impact on traffic in Sturry. This is evident from the fact that they are identified in the TA and taken account of in its 2031 scenario, albeit that this is the scenario that includes the completed Relief Road. Having regard to the traffic generation figures identified previously in the SHHCS, it seems probable that the numbers of dwellings at Sturry/Broad Oak which will be subject to phasing restrictions will roughly balance the number of units added in the new sites at Hoplands and Chislet Colliery, which were not included in the SHHCS assessment. In round figures therefore, the SHHCS's estimate of about 1,000 additional vehicles through Sturry, from committed developments, probably remains broadly applicable.
53. To my mind it seems likely that the addition of these extra 1,000 traffic movements to the 2018 base model, without the benefit of the Relief Road, is likely to result in some further deterioration in the performance of the network, especially given the number of key junctions which have been shown to be already at or close to capacity. In my view, this likely further deterioration forms part of the context within which the impact of the appeal scheme should be viewed. In the TA however, none of the committed developments is taken into account in any modelled scenario except that which also includes the Sturry Relief Road. Consequently, in so far as the existing network is concerned, the cumulative effect of the appeal scheme together with these other relevant developments is untested.
54. I appreciate that there is a high degree of optimism that the Relief Road will be achieved, but the prospect remains of a lengthy period before it is completed, and indeed there is as yet no certainty about the road at all. This latter scenario is not so remote that it can be disregarded. I appreciate that the scoping for the TA was agreed in advance with the Highway Authority, but this does not change the fact that the necessary testing and modelling, of what in my view is a critical alternative scenario, is conspicuously lacking. To my mind, this flaw significantly weakens the case now advanced by the appellants with regard to traffic impact.

Traffic impact of the appeal scheme

55. The proposed development is forecast to generate 79 traffic movements in the AM peak hour, and 72 in the PM peak. These are not large numbers. But in a situation where some junctions are already under pressure, a relatively small increase may be significant, especially where the effect would be to push some junctions closer to their capacity, or beyond. And in any event, the NPPF makes it clear that traffic impacts should be considered on a cumulative basis, and that a severe cumulative impact may amount to grounds for refusal of permission.

56. At the junction of Popes Lane with the A291 (Junction SJ2), on the appellants' 2018-based figures, the appeal scheme is forecast to add 71 vehicles to the existing AM peak traffic flow on the Popes Lane approach, an increase of 8.7%. As shown in the TA, the effect of this would be to increase the RFC value significantly, from 0.81 to 0.94, with queue lengths and delay times approximately doubled. This sharp increase in the RFC indicates that the junction would, within the space of 4-5 years, come to within a few vehicles of the 'absolute' capacity level of 1.0, and significantly in excess of the 0.85 threshold which is often cited as 'practical' capacity. Furthermore, in so far as these figures indicate that the junction would still have any reserve capacity left at all, the TA records a daily variation of 41, indicating that on some days this reserve would be further reduced by that number of additional vehicles. And in any event, as already noted, these figures exclude any traffic from the other committed developments that are expected. It is common ground that when and if the Sturry Relief Road is built, the level of through traffic on Popes Lane will fall, and the junction's performance will improve. But without the new road, the evidence of the TA indicates that it will be overloaded.
57. A large proportion of the traffic at Junction SJ2 currently turns right onto the A291, heading for the rat-run route via Sweechgate, and in the absence of the Relief Road, this is likely to continue. At this point the A291 has a speed limit of 40mph, and the daily flow is said in the SHHCS to be around 7,500 vehicles. The junction has some recent history of accidents, albeit not a large number. In this type of situation, there seems a strong possibility that the increase in queuing time would result in drivers exiting from Popes Lane taking more risks. I accept that the installation of a toucan crossing on the A291 could potentially help, by creating gaps in the traffic flow. But this would depend on the amount of use. Apart from the Broad Oak Village Stores, there is nothing to attract pedestrian trips to this semi-rural section of the road. I am therefore not convinced that the toucan crossing would improve the safety of the junction to any significant degree.
58. To my mind, the development's potential impact on Junction SJ2, without the Relief Road, gives justified cause for concern. Even without any other development, the effect of the appeal scheme alone would be to significantly increase pressure on the junction, pushing it towards the limits of safe operation. Cumulatively with the other planned developments, the development would be likely to go beyond those limits.
59. Elsewhere on the network, at the already overloaded junctions identified in the TA, the proposed development would lead to further significant deterioration. At SJ8 (A291/Sweechgate), in the AM peak, the RFC on the A291 southbound would be elevated to 0.99. The queue of right-turning vehicles on the main carriageway would extend to over 19 vehicles. In the PM period the Sweechgate arm would reach 0.96 and 0.93, for the left and right turns respectively, with a further lengthening of queues and delay times. This junction has a significant accident history, and this record combined with the high RFC levels suggests that the risk of further accidents would be increased. At SJ9 (Shalloak Road/Mayton Lane), in the PM peak period the queue length would extend to 30 vehicles, with an RFC of 1.13, indicating a junction significantly beyond its capacity. Again, there is no dispute as to the fact that both of these junctions are expected to improve considerably if and when the Sturry Relief Road is available, but for the reasons already given, I consider that the interim situation must also be taken into account.

60. At all of these locations, the RFC values presented in the TA show that the proposed development would depend on these junctions being able to continue to operate under the pressure of congestion levels even worse than those suffered now. And in all cases, when the development is considered cumulatively with the other developments already committed, the RFCs, queue lengths and delay times associated with these junctions would be likely to be higher than those shown in the TA. Even though the TA does not quantify the impacts of those other commitments, the other evidence before me indicates that they would be significant. Where the network is already under strain, it seems to me that these cumulative effects, taking account of the appeal scheme and the other committed developments, would amount to a severe impact on the highway network.
61. The appellants point to the fact that in some cases the incremental effect of the appeal scheme would be less than the existing daily variation in flows. But the scheme's impact would be additional to that daily variation, not in place of it. Just like the base flows, the cumulative impact would vary from day to day. This means that there would be some days when the impact would be less than indicated in the TA, but equally there would be others when it was worse. The argument therefore has little merit.

Mitigation

62. The highways contribution in the S.106 agreement would cover part of the cost of converting Junction SJ10 (Broad Oak Road/Vauxhall Road) to a full-size roundabout. If this improvement were carried out, then Junction SJ10 would function better with the proposed development than it does currently without it. But the proposed contribution would not cover the full cost of the improvement; indeed it would leave something in the order of £1m still to be raised from other sources. There is no evidence as to where this balance could be found, and therefore no apparent prospect at present that the improvement could be realised. And even if it were, an improvement to this single junction, well away from the appeal site, would not remove the adverse effects on the three others that I have identified, which are all closer to it.
63. Various other transport-related mitigation measures are proposed by the appellants, including the toucan crossing, improvements to pedestrian routes and cycleways, and a travel plan which would include a travel voucher scheme. But although these measures would be potentially beneficial in their own ways, there is no evidence to suggest they would reduce traffic impacts that have been identified. Indeed the TA makes it clear that measures of these kinds were taken into account when the trip generation and distribution rates for the development were decided.
64. During the inquiry, the possibility was mooted of a 'Grampian' condition, restricting the development until the Sturry Relief Road is in place. But neither party appears to support such a condition. In any event, given the degree of uncertainty over the road, and the likelihood that it will not become available within the normal 3-year life of an outline planning permission, I consider that a condition along these lines would not be reasonable.

Conclusion on traffic impact

65. For the reasons explained above, I conclude that the proposed development would have an unacceptably severe cumulative impact on traffic flows, and on

the operation of the highway network, and on highway safety. In all these respects, the scheme would be contrary to paragraph 109 of the NPPF, which provides for permission to be refused in these circumstances. It would also conflict with CDLP Policy T1, which amongst other things seeks to control the level of vehicular traffic and its impacts.

Effects on the character and appearance of the area and the landscape

66. The appeal site is essentially a flat, rectangular arable field. Although the trees and woodland on two of its boundaries provide a pleasant backdrop to outward views, the site itself is featureless. These trees separate the appeal site from the surrounding countryside, so that the site is seen only as a discrete compartment rather than as part of any wider landscape context.
67. If the site were developed with housing and open space as now proposed, the main change would be the loss of its openness. With that loss would go the close-range views from Popes Lane, and from the two public footpaths which cross the site. The medium-range views across the site from a short section of the A291 would also be altered, although to a lesser extent. The site itself would change in character from semi-rural to suburban. These impacts would result in some harm to the area's appearance and visual amenity, but the degree of that harm would be no more than minor. The change to the wider landscape would be insignificant.
68. In order to accommodate 140 dwellings, given the constraints of the gas pipeline that crosses the site, the density would be higher than that of most of the other nearby housing. But those existing areas are not necessarily an appropriate guide for new development. And in any event, the site has ample space for structural planting and open space, to create a strong landscape framework. The height of the buildings could also be controlled by condition, if thought necessary.
69. Overall, I conclude that the harm that the development would cause to the area's character and appearance, including any effects on the landscape, would be so minor as to be insignificant. In the light of this conclusion, I find no conflict in this respect, either with Policy DBE3 or with any other policy in the CDLP, nor with the relevant provisions of the NPPF.

Effects on nearby listed buildings

70. The significance of the Grade II listed Sweech Farmhouse lies primarily in its evidential and illustrative value as a 15th century hall house. Some value also derives from its later use as a farmhouse, at the centre of a farmstead with a group of ancillary buildings, including the listed stables and the former listed barn. The stables has some evidential and illustrative value derived from this functional relationship. Although the barn is no longer standing, there is apparently permission for its reinstatement, and although there seems some uncertainty as to what its status would then be, it is likely that it would retain some heritage value, as part of this group.
71. It is an agreed matter that the appeal site lies within the setting of at least the Farmhouse, and in my view it must therefore also form part of the setting of the whole group. But to my mind, its role in the setting is a limited one. The site is separated from the building group by trees and vegetation. There is

little intervisibility. Although the roof and chimneys of the Farmhouse can be made out from the appeal site, the views from this direction are not important ones, and do not assist in the appreciation of any of the buildings. It is believed that the appeal site can be seen from the Farmhouse's upper windows, but such views would be heavily filtered by the trees. In views from further south on the A291, the buildings and the appeal site can be seen as part of the same panorama, but only at some distance. In the more important views, facing the front of the house and the group as a whole, the appeal site cannot be either seen or sensed. There is no evidence of any historic functional relationship between the any of the buildings and the appeal site.

72. The site's contribution to the buildings' setting is therefore confined to its role in illustrating the relative isolation that the farmstead would once have had from any nearby settlements. But in so far as that quality may have been important to the buildings' significance at one time, it has now been eroded by other developments, particularly the 20th century housing at Broad Oak, and the modern A291 which runs immediately in front of the building group. In addition, although there are differing accounts of the various planning applications within the Sweech Farm site, it appears that permissions have been granted for up to three new dwellings, as well as for the residential conversion of the Stables. Whilst the details of these developments are not before me, it seems likely that they would have the effect of further emphasising the former farmstead's continuing evolution, away from its one-time agricultural role, and back to its original purely residential function. Having regard to this historical and present day context as a whole, it seems to me that the appeal site makes a very limited contribution to the buildings' significance as heritage assets.
73. If the appeal site were developed as now proposed, the glimpsed views of the Farmhouse from within the site would either be lost or would be seen from within a much-changed context. The same change of context would also be evident in the sideways view from the A291. Housing sited as shown in the Development Framework plan would be well away from the boundary of the listed buildings. Although lighting within this area might be discernible from the Farmhouse and parts of the former farmyard, at night this would not be readily distinguishable from that associated with the existing development in Popes Lane. Any lighting or built development in the part of the site closest to the listed buildings could be adequately controlled by conditions. If a mini sports pitch was located in this part of the site as suggested, there could be some noise, but the development could take place without this facility if required.
74. Overall therefore, I consider that the harm to the setting of the listed buildings would be minor. Given also the limited role that this part of the setting plays in contributing to the buildings' significance, it follows that the harm to their significance would also be minor. To my mind, the characterisation of this by the appellants' heritage witness as being 'at the lower end of less than substantial' is a reasonable way of describing the extent of the harm in this case. Notwithstanding that the effect is agreed to amount to harm, in these circumstances it seems to me that the harm identified would be so minor that, to all intents and purposes, it would be inconsequential.
75. In coming to my conclusion on this issue, I have had full regard to the desirability of preserving listed buildings' settings, and the need to give due

weight to any harm in that respect. I have also taken account of the NPPF's advice that great weight is to be given to the conservation of heritage assets, and that less than substantial harm is to be weighed against any public benefits. In this case, I have found only minor harm to the setting, and to the assets' significance. Given the low level of this harm, even when great weight is attached to it, I consider that in the present case the harm would be outweighed by the benefit of providing the proposed housing, as well as the other benefits identified elsewhere in this decision.

76. In the light of the above, I conclude that the harm identified would be so minor as to involve no significant conflict with CDLP Policy HE1, which seeks to protect, conserve and enhance all historic assets, or with Policy HE4, which has similar aims and is targeted specifically at listed buildings.

Effects on best and most versatile land

77. The appeal site is said to comprise 9.36 ha of agricultural land, of which about 5.06 ha is classed as best and most versatile (BMV) land. CDLP Policy EMP12 states that BMV land will be protected, but permission for significant development on agricultural land may be granted, including BMV land, where the development is shown to be necessary, and where no sites within the urban area or on poorer quality agricultural land are available.
78. I accept that the amount of BMV land in the appeal proposal would be significant. But in view of my findings with regard to the housing land supply, it is evident that some additional housing development is necessary, and also that the available sites on urban and poorer quality land are insufficient to meet the need.
79. As part of its aim to contribute to and enhance the natural and local environment, NPPF paragraph 170 advocates recognising the economic and other benefits of BMV land. But this aim seems to me to be reflected in Policy EMP12, and thus needs no further response beyond compliance with that policy.
80. In the circumstances, I find no conflict with Policy EMP12, and no conflict with NPPF paragraph 170. I conclude that the loss of BMV land in this case would not be unacceptable.

Whether the scheme would accord with the CDLP's locational policies

81. The principal CDLP policy relevant to the location of housing on unallocated sites is Policy SP4. The policy states that the main focus for development is to be at the three larger urban areas, together with development at the rural service centres, of which Sturry is one, and also at the local centres. In relation to Sturry and the local centres, paragraph 2 of the policy goes on to say that, in addition to the plan's allocations, the provision of new housing of a size, design, scale, character and location appropriate to these villages' character and built form will be supported, provided the proposal is not in conflict with certain other policies. Under paragraph 5 of SP4, development in the open countryside will be permitted for agriculture and forestry. In addition, Policy HD4 sets out in more detail the circumstances in which new dwellings in the countryside may be permitted, none of which apply to the appeal scheme.

82. Policy SP4 therefore gives some encouragement to development at Sturry and the local centre villages, as settlements where development is to be focussed, and also allows for some sites to come forward over and above those already allocated. Nothing in this part of the policy requires sites to be within the existing built confines, and in the absence of a defined boundary, it seems to me that the policy permits some flexibility with regard to sites on the village edge. In this context, I note that 'flexibility' was the term used by the Examining Inspector in explaining the need for the modifications that he recommended to the policy⁷, and I consider that his comments in this regard are helpful in understanding the way the policy is designed to operate.
83. In the present case, the appeal site is adjacent to Sturry's main built-up area, and relates reasonably well to the existing development pattern. Although its size would be substantial, the settlement itself is a large village, and the development would not be out of scale with it. Design is a reserved matter, and the final criterion, character, is largely a function of the others. None of these criteria therefore seem to rule out the proposed scheme from being supported within the terms of SP4's second paragraph.
84. With regard to Policy SP4's fifth paragraph, I agree that there is a clear inference that development in open countryside that is not for the specified purposes will not normally be permitted, and this approach is reinforced by Policy HD4. In the case of Sturry, with its lack of a defined boundary, this leaves unanswered the question of whether a particular site falls within open countryside, or within the ambit of SP4's second paragraph. But to my mind this is part and parcel of the same flexible approach that is inherent in that paragraph as a whole. I therefore find nothing in either Policy SP4 or Policy HD4 that specifically requires the appeal site to be treated as countryside.
85. In coming to this view, I accept that the CDLP is to be read as a whole, and I have had regard to all the various paragraphs that I have been directed to, including the explanatory text supporting Policies SP4 and HD4, and Policy HD3 relating to exception sites, and also page 237 which refers to the plan's objectives for the countryside. However, nothing in these seems to me to be conclusive, and I have therefore drawn my interpretation of Policy SP4 from the words of the policy itself. I have also noted the Inspector's reasoning in the recent appeal relating to a site in Westbere. But Westbere is defined as a hamlet, in the lowest tier of the settlement hierarchy, where a different policy approach applies, under another part of Policy SP4.
86. I fully agree with the Council that Policy SP4 cannot have been intended to permit development on each and every site around the fringes of Sturry, or the other paragraph 2 villages. Rather, it seems to me, the policy allows decisions on proposals at these settlements to be made on a case-by-case basis, having regard to the policy's own criteria, together with the nature of the particular site, and the circumstances at the time. Different and more restrictive approaches for the lower tiers of the settlement hierarchy are set out in Policy SP4's other paragraphs, and it seems to me that the greater flexibility given to Sturry and the local centres is clearly intended to complement that approach.
87. For completeness, I note that the final proviso in Policy SP4's second paragraph, regarding compliance with other CDLP policies, is relevant to the

⁷ Inspector's Report on the CDLP Examination, paras 55 and 97

appeal, as I have already found the proposal to conflict with Policy T1 with regard to traffic impact. However, that matter is taken into account elsewhere in this decision, and does not affect my conclusion as to the policy's locational aspects.

88. In the circumstances of this case, I find that the appeal proposal falls within the type and scale of development that could be accepted within the terms of the second paragraph of Policy SP4. As a result, it follows that Policy HD4 is not relevant in this case. The proposal is therefore not in conflict with either of these policies.

Other Matters

The Section 106 agreement

89. The provisions of the S.106 agreement relating to the provision of 30% affordable housing are needed for compliance with CDLP Policy HD2. This provision, amounting to up to 42 affordable units, has no mitigatory role and would therefore represent a substantial public benefit.
90. The provisions relating to the proposed on-site open space, including an equipped play area, a proposed mini pitch and a trim trail, and also the SUDs drainage system, are all needed to ensure a high standard of development and future maintenance. The quantity of the proposed open space exceeds policy requirements, but is necessary because of the large amount of land within the site that is sterilised by the pipeline. The open space would be available to the public and would therefore be a general benefit, to which I give some weight.
91. The agreed contributions to the Canterbury-Herne Bay cycle route, surfacing and improvements to public footpath CB59, and the provision of travel vouchers for new residents, are all necessary to manage travel demand and mitigate the development's transport impacts to the levels assumed in the TA, in accordance with relevant policies. The first two of these items would also have benefits for the general public, carrying a small amount of weight.
92. The contributions to primary and secondary education, community learning, healthcare, adult social care, libraries, youth services, and the SPA, are all needed to mitigate the development's impacts on these services, in accordance with the relevant CDLP policies. The contribution for TROs is needed, to allow for the introduction of waiting restrictions on Popes Lane, in order to mitigate any impact on safety in connection with the proposed site access.
93. All of the above obligations have been demonstrated to be necessary to make the development acceptable, and to be relevant to the development and reasonably related in scale and kind. I have therefore taken these into account, and where I have identified that these would involve public benefits, I have given weight to those benefits accordingly.
94. The proposed contribution to highway works at Junction SJ10, Broad Oak Road/Vauxhall Road, would help to relieve congestion at that junction. It would thus have potential benefits for the general public, assuming that the balance of the cost could be raised from another source, and the improvement scheme could then be implemented. However, the junction is remote from the appeal site, and is not one of those where the impact of the proposed development would be most severe. Nor would the improvement to this junction, if carried out, make the development acceptable, in terms of its

overall traffic impact. In the circumstances, the proposed contribution does not meet the necessary legal tests, and I have therefore not taken the potential benefit of this obligation into account.

Other benefits of the development

95. In addition to the benefits already identified above, the development would have significant benefits for the local and national economy. The overall construction spend is estimated by the appellants at £16.3m. Over the construction period, it is estimated that 140 full-time equivalent direct jobs, and 152 indirect jobs, would be created. The gross value added is put at £5.4m. The development's future residents are estimated to generate a total household expenditure of £4.17m, and the Council would benefit from Council Tax receipts and New Homes Bonus payments totalling around £3.2m. The appellants' figures for these items have not been challenged. These beneficial economic effects would be additional to the District's other committed housing sites. I consider that the economic benefits carry moderate weight.
96. In addition to the contributions in the S.106 agreement, improvements are also proposed by the appellants to existing pedestrian routes between the site and the village centre⁸. These improvements could be secured by condition. Although minor in nature, they would have some benefits for existing residents as well as future occupiers at the development itself. These carry modest weight.
97. The creation of new and enhanced wildlife habitats, and other biodiversity gains, could also be secured through conditions, likewise attracting some modest weight.
98. Although new public parking bays are proposed in Popes Lane, these would merely replace the on-street spaces lost due to the necessary TROs. As such, this would represent mitigation rather than a net benefit.

Planning Balance and Overall Conclusions

99. For the reasons set out in this decision, I find that the proposed development would fit acceptably well with the CDLP's spatial strategy, embodied in Policy SP4. I also find no serious adverse consequences for the area's character and appearance, or for the nearby listed buildings, or for agriculture. Having regard to all of the above matters, I find no significant conflict with the development plan in respect of any of these matters.
100. However, in the light of the development's impact on the road network and highway safety, there would be a serious conflict with Policy T1. Numerically, this conflict is with only one policy compared to the larger number where I have found no such conflict in relation to other issues. But nevertheless, the conflict with Policy T1 is in my view so substantial that it is not outweighed merely by causing no harm in those other respects. In the context of this particular scheme therefore, I find Policy T1 to be the most important development plan policy in the appeal. The proposal before me is in clear conflict with that policy.

⁸ Shown on Plan no. 1592/13, Revision A

101. Weighing against this conflict with Policy T1, and in favour of the appeal, are the benefits that I have identified. Given the Council's failure to demonstrate a 5-year supply of housing land, the most significant of these benefits is the provision of up to 140 dwellings, and especially the 30% which would be affordable. I have therefore given the benefits of providing housing substantial weight. The other benefits, in order of weight, are firstly the economic effects, particularly the construction jobs and investment; then the on-site public open space, including the proposed play and leisure facilities; the improvements to pedestrian and cycle routes; and also the opportunity for gains to biodiversity. But in my view, given the seriousness of the traffic impacts that I have identified, even when these benefits are all added together, they do not outweigh the harm to the road network and safety.
102. I have had regard to Policy SP1, and paragraph 11 of the NPPF, which both embody a presumption in favour of sustainable development, including a 'tilted balance' to be applied where relevant policies are out of date. But in this case the most relevant policy, T1, is not out of date. Nor is it made out of date simply by the shortfall in the housing supply. The NPPF's policy towards developments which would have a severe impact on the road network, or an unacceptable impact on highway safety, is very clear. Policy T1 supports that aim and is consistent with it. Consequently, despite the need that I have found for additional short-term housing land in the District, I do not see any basis for reducing the weight given to these important national and local transport policies.
103. I therefore do not consider that the tilted balance provisions of either the NPPF or Policy SP1 should be applied in this case. But in any event, even if the tilted balance were to be applied, I consider that the harm that I have identified, due to the scheme's impacts on traffic and safety, significantly and demonstrably outweighs the benefits. In these circumstances, the appeal scheme does not constitute sustainable development, and should be refused.
104. I have had regard to all the other matters raised, but none alters or outweighs these conclusions. The appeal is therefore dismissed.

J Felgate

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Ms Isabella Tafur	Of Counsel (instructed by the Principal Solicitor to the Council)
She called:	
Ms Shelley Rouse MA MRTPI	Principal Planner
Mr John Etchells MA BPhil CMLI	Consultant Landscape Architect
Ms Elizabeth Johnson BA MSc IHBC(Affiliate)	Senior Heritage Officer
Mr Colin Finch BTech MIPROW	Principal Transport and Development Officer, Kent County Council
Mr Chris Pragnell LLB	Principal Planning Officer

FOR THE APPELLANT:

Mr John Barrett	Of Counsel (instructed by Ms Richardson of the appellants)
He called:	
Mr Desmond Dunlop BA(Hons) MRTPI	D2 Planning
Ms Silke Gruner Ba(Hons) LArch CMLI	CSA Environmental
Ms Gail Stoten BA(Hons) MCIFA FSA	Pegasus Group
Mr Benjamin Jackson BEng(Hons) MSc MCIHT	Ashley Helme Associates
Ms Diana Richardson BA(Hons) MA MRTPI	Gladman Developments Ltd

INTERESTED PERSONS:

Ms Ann Davies	Local resident and Sturry Parish Councillor

DOCUMENTS TABLED DURING THE INQUIRY

DOCUMENTS TABLED BY THE COUNCIL

C/1	Manor Oak Homes v SoS and Aylesbury Vale DC [2019]EWHC 1736 (Admin)
C/2	Opening submissions
C/3	Email dated 1 August 2019 from R Hill, Regeneration Programme Manager, re Station Road West and Rosemary Lane car park sites
C/4	Email from Persimmon Homes, dated 2 August 2019, re land north of Hersden
C/5	Email dated 2 August 2019 from L Barden, Streetworks Co-Ordinator, re S.74 roadworks charge
C/6	List of appearances for the Council
C/7	CIL compliance statement by KCC Highways
C/8	Closing submissions

DOCUMENTS TABLED BY THE APPELLANTS

AP/1	List of appearances for the appellants
AP/2	Opening submissions
AP/3	Email from BDW Homes, dated 18 July 2019, re Broad Oak housing site
AP/4	Table comparing 2018 and 2019 housing site trajectories (Mr Dunlop)
AP/5	The Council's land supply evidence to Old Thanet Way inquiry, 2018
AP/6	Letter from KCC, dated 12 June 2019, re South of Canterbury site – education contributions
AP/7	Note re land north of Hersden – land ownerships
AP/8	'Yotta' highways works record sheets
AP/9	Location plans relating to appeal site at Staines Hill, Westbere
AP/10	Closing submissions
AP/11	Executed S.106 agreement, dated 15 August 2019
AP/12	Email from D Richardson dated 27 August 2019 in response to Natural England comments

OTHER DOCUMENTS

GEN/1	Jointly suggested site visit route plan
GEN/2	Letter from Natural England dated 28 June 2019, re Sturry/Broad Oak housing sites
GEN/3	Housing Delivery Test: 2018 measurement results
GEN/4	Main Modifications to the Canterbury District LP, April 2017
GEN/5	Agreed joint note on Habitat Regulations Assessment
GEN/6	Policies Map 2017, extract
GEN/7	Plan of the proposed A28 Sturry Link Road
GEN/8	Draft conditions and comments, based on list tabled on 24 July 2019 (including appellants' agreement to pre-commencement conditions)
GEN/9	Further comments on draft conditions, tabled on 6 August 2019
GEN/10	(not used)
GEN/11	Consultation letter from Council to Natural England, dated 10 December 2018
GEN/12	Notification letter from Council to Natural England, dated 9 July 2019
GEN/13	Consultation email from Council to Natural England, dated 6 August 2019
GEN/14	Email from Natural England dated 16 August 2019, Habitat Regulations Assessment



Appeal Decision

Inquiry Held on 28, 29, 30 and 31 January 2020

Site visit made on 31 January 2020

by Harold Stephens BA MPhil Dip TP MRTPI FRSA

an Inspector appointed by the Secretary of State

Decision date: 18th March 2020

Appeal Ref: APP/W1145/W/19/3238460

Land at Caddywell Lane/Burwood Lane, Great Torrington, Devon

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Beechcroft Land Ltd against the decision of Torridge District Council.
 - The application Ref 1/0340/2019/OUTM, dated 12 April 2019, was refused by notice dated 12 August 2019.
 - The development proposed is an outline application for residential development of up to 181 dwellings and ancillary development with vehicular access from Hoopers Way, Burwood Lane and Caddywell Lane.
-

Decision

1. The appeal is allowed and planning permission is granted for an outline application for residential development of up to 181 dwellings and ancillary development with vehicular access from Hoopers Way, Burwood Lane and Caddywell Lane, Great Torrington, Devon in accordance with the terms of the application, Ref 1/0340/2019/OUTM dated 12 April 2019, and the plans submitted with it, subject to the conditions set out in the Schedule attached to this Decision.

Procedural Matters

2. Planning permission was refused for the proposal under delegated powers on 12 August 2019 for three reasons. Reason for Refusal (RfR) 3 alleged that insufficient information has been provided by the Appellant to satisfy the Council that the proposal would be acceptable in terms of surface water drainage. The Council, having taken advice from the County Council's Flood Risk Management Officer, now accepts that sufficient information has been provided and it therefore has no 'in principle' drainage objection. It was agreed that RfR3 is no longer in dispute between the main parties and that the matter can be dealt with on the basis of appropriate planning conditions.
3. The application was submitted in outline with all matters except access reserved for subsequent approval. It was agreed that the plans on which the appeal should be determined are:
 - A Location Plan - Drawing Number AP01 (Doc A20)
 - A Revised Access Plan - Drawing Number 2696.14B (Doc 36)

A Proposed Site Layout Drawing AP02 (Doc A21) was submitted for illustrative purposes.

4. In addition, the application was supported by a number of reports and technical information in accordance with the Council's validation requirements. Details of these documents are set out in the Inquiry Documents A1-A27. They include an Aborigicultural Assessment, an Archaeology Assessment, a Design and Access Statement (DAS), an Ecological Assessment, a Flood Risk Assessment, Contamination Reports, Landscape and Visual Impact Assessments, a Planning Statement, a Transport Assessment and a Tree Survey Report.
5. I held a Case Management Conference (CMC) on 5 December 2019. At the CMC the main issues were identified, how the evidence would be dealt with at the Inquiry and timings. It was agreed that questions raised by interested persons on matters relating to traffic and flood risk would be dealt with by the Appellant's specialist witnesses on the opening day of the Inquiry. It was further agreed that evidence on Housing Land Supply and Landscape could best be dealt with by separate topic based Round Table Sessions (RTS) supported by dedicated Statements of Common Ground (SoCG). In the weeks following the CMC both main parties continued discussions on the appeal to ensure that matters of dispute were clear and that all matters of agreement (non-disputed matters) were documented in either SoCG or in draft Planning Conditions. In this case three SoCG were agreed (see below) by the main parties before the Inquiry opened and following the Housing Land Supply RTS on 29 January 2020 Updated Housing Land Supply Tables were provided in Doc APP10.
 - General SoCG (Doc 37)
 - Housing Land Supply SoCG (Doc 38)
 - Landscape SoCG (Doc 39)
6. At the Inquiry, a s106 Planning Obligation was submitted. The Planning Obligation is made by an Agreement between the Landowners, the Appellant, the Torridge District Council (TDC) and Devon County Council (DCC).¹ The Agreement addresses all of the matters sought by the District and County Councils in connection with the provision of community and other services arising from the proposed development. The Planning Obligation is signed and dated 13 February 2020. It is a material consideration in this case. A Community Infrastructure Levy (CIL) Compliance Schedule was submitted in support of the Planning Obligation.² I return to the Planning Obligation later in this decision.

Main Issues

7. In light of the above I consider that the main issues in this case are:
 - Whether the proposal would provide an appropriate site for development having regard to the most important and up-to-date policies in the development plan and national guidance;

¹ LPA2

² LPA1

- Whether the Council can demonstrate a five year housing land supply and whether paragraph 11 (d) of the NPPF is engaged;
- The effect of the proposal on the character and appearance of the surrounding landscape particularly in relation to the central and western fields of the development;
- Whether the proposal makes adequate provision for affordable housing and for any additional infrastructure/services, such as education, drainage, transport and public open space arising from the development.

Reasons

The proposed development and the appeal site

8. The appeal site comprises three existing agricultural fields located on the south side of the town of Great Torrington abutting the existing settlement boundary and urban area. For the purposes of this appeal they are generally referred to as the eastern, central and western fields although they are also referred to as Phases 1, 2 and 3 respectively. Part of the western field (Phase 3) is excluded from the appeal site.
9. The proposed development seeks outline planning permission for up to 181 dwellings. Vehicular access is proposed from Caddywell Lane to the north of the western field and from Hoopers Way to the north of the eastern field. Within the site a 5.5m wide access road would continue through the centre of the site, with 1.8m wide footways on both sides. Off the access road a mix of shared surface cul-de-sacs and driveways are proposed. The proposed illustrative site layout plan (Doc A21) demonstrates how 181 2, 3 and 4 bedroom dwellings and parking provision could be accommodated on the site with associated open space (including play provision) and landscaping. It is supported by a detailed DAS (Doc A6).
10. The land currently comprises agricultural land with no significant internal features except for its topography and the hedge banks/trees defining its boundaries. The eastern and central fields slope generally from north to south whilst the western field slopes away to the north west. The total area of the appeal site is about 9.35 hectares.

Planning History

11. The planning history of the appeal site is set out at Section 3 of the General SoCG³ and there is no need for me to repeat that here. Suffice it to say that outline planning permission for up to 60 dwellings on the eastern field was granted in December 2016.⁴ I also note that outline planning permission was granted for a 50 space car park, access, landscaping and ancillary infrastructure immediately to the west of the appeal site in June 2018.⁵

³ Doc 37

⁴ 1/0781/2015/OUTM

⁵ 1/0702/2017OUT

Planning Policy

12. The statutory development plan includes the North Devon and Torridge Local Plan 2011-2031 (NDTLP). The NDTLP, adopted in October 2018, is currently the principal relevant development plan document for the purposes of Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990. The parties are agreed that the planning policies which are most relevant to this appeal are set out at Section 4 in the General SoCG and are not repeated here.⁶
13. A Great Torrington Neighbourhood Plan (GTNP) 2018-2031 is under preparation. The GTNP has been subject to examination, with the Examiner's report received on the 8 December 2019 and subsequently published. The Examiner concluded that the GTNP could meet the basic conditions, subject to the acceptance of the recommendations contained in his report and that if the recommended modifications are accepted (by the District Council), the GTNP 2018 - 2031 should be submitted to a referendum. On the 6 February 2020 the Town Council agreed to accept and incorporate the Examiner's recommendations into the GTNP; also agreeing to the extension of the 56 day deadline for the Plan to be subject to referendum.
14. The GTNP is currently programmed to go to the Full Council meeting of TDC on the 6 April 2020 to consider the findings of the Examiner's report and seek authorisation for it to subsequently go out to referendum. In parallel the GTNP is being amended by the Town Council to reflect the findings of the examination. The GTNP will not be proceeding to referendum in advance of the TDC meeting on the 6 April 2020. In my view, the weight to be attributed to the emerging GTNP policies is currently limited by the provisions of paragraph 48 of the NPPF, recognising the stage of preparation. The relevant policies which are considered material are set out in Section 4 of the General SoCG and are not repeated here.

First Issue - Whether the proposal would provide an appropriate site for development having regard to the most important and up-to-date policies in the development plan and national guidance.

15. Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 make clear that applications for development must be determined in accordance with the development plan, unless material considerations indicate otherwise.
16. The NDTLP was recently adopted in October 2018. Section 4 (i) of the General SoCG (Doc 37) sets out the policies from NDTLP which are considered relevant to this appeal. Although I have taken into account other policies listed in Section 4 (i), I consider the most important are: Policy ST01, Policy ST06, Policy ST07, Policy ST08, Policy ST21 and Policy GTT.
17. It is noteworthy that the Council accepts that the eastern field of the appeal site lies within the Great Torrington development boundary and is subject to a housing allocation under NDTLP Policy GTT05. The Council therefore accepts the principle of residential development on the eastern field as being in accordance with NDTLP Policies ST06, GTT and GTT05 and acknowledges that

⁶ Doc 37

the 60 dwellings that would come forward on this part of the appeal site form part of the Spatial Strategy.

18. However, the central and western fields fall outside of, but adjacent to, the development boundary for Great Torrington. I note that Policy ST06 sets out the Spatial Strategy and states that development will be supported within development boundaries. Moreover, Policy ST07 supports development which accords with the Council's settlement hierarchy. The broad locations for development are outlined in Policies ST06 and ST07 and these have been co-ordinated with transport and utilities infrastructure and the provisions of appropriate community facilities, retail, employment and open space to create sustainable communities. To the extent that the central and western fields fall outside the settlement boundary of Great Torrington then I accept that the proposal conflicts with NDTLP Policy ST06 and Policy ST07.
19. Turning to Policy ST08 and GTT, the Council argues that the appeal proposal would be in conflict with the settlement hierarchy which seeks to increase self-containment through sustainable growth and would also undermine the Council's Spatial Strategy for Great Torrington (Policy GTT). It is claimed that the proposal would disrupt the carefully planned balance of housing and employment development and as a speculative major housing development would not serve to address local needs and the local vision's aspirations for self-containment. Housing development over and above the minimum number allocated to Great Torrington, it is said, would destroy this delicate balance and would be in breach of the rationale of the Spatial Strategy. However, I cannot agree with the Council's arguments in relation to the alleged conflict with Policy ST08 and Policy GTT for a number of reasons.
20. Firstly, it said that there is at the heart of the NDTLP the objective of preserving or bringing about balance between homes and jobs, but the NDTLP does not say what that balance is now or indicate what jobs to homes ratio it aspires to achieve.
21. Secondly, I note that reliance is placed on paragraph 10.216 of the NDTLP⁷ which states that half of the working population of Great Torrington work in Great Torrington. However, this does not prove there are insufficient jobs in Great Torrington for the other half, as people may choose to work outside the settlement where they live, for all sorts of reasons. There is no information about how many people are commuting into Great Torrington from outside to work and increasing the number of jobs in Great Torrington could equally increase in-commuting as decrease out-commuting. It is plain, from the evidence base of the NDTLP,⁸ that maintaining the working population in Great Torrington at current levels requires the provision of about 1,000 dwellings. Capping the delivery of housing in Great Torrington at 632 could result in more in-commuting, not to mention the inevitable adverse impacts that this would have on social sustainability as the existing population ages.
22. Thirdly, from the evidence that is before me, it is plain that Great Torrington is a highly sustainable location in itself, with good accessibility to higher level facilities and jobs in Bideford and Barnstable, including by public transport. Its sustainability in these terms is acknowledged within the NDTLP itself at paragraph 10.212; in the SHLAA; and in the General SoCG at section 2 and

⁷ Page 156

⁸ APP5 Figure 60

section 8(7). In the light of this it would make no sense at all to construe the NDTLP as placing a cap on housing in Great Torrington because of a concern about unsustainable home to work travel patterns.

23. Fourthly, if the housing numbers in the NDTLP are firmly tied to the employment allocations because only “balanced growth” is acceptable, there would be a phasing policy in the NDTLP that prevented the delivery of housing unless it came forward in tandem with employment. Plainly, there is no such policy, and the reality is that the planning system has no way of ensuring that either the housing or the employment actually gets delivered, let alone in tandem.
24. Fifthly, if the NDTLP is aimed at ensuring that housing is restricted to the numbers set out in the NDTLP for each settlement so as to always be in line with the level of allocated employment land, why does it not cap the housing number to that set out in the Local Plan? That is the only way to give effect to the balance which the Council espouses. However, the NDTLP expressly states in Policy ST08 and emphasises that the dwelling numbers for the plan area as a whole and for individual settlements including Great Torrington are for a minimum. The dwelling provision figures included in Policy ST08 are not ceilings or targets and nowhere in the NDTLP is there any suggestion that provision should be constrained to these levels.
25. Sixthly, if there was any force in the Council’s argument then logically it would have to resist an additional 121 houses or indeed any number it thinks would unacceptably upset the balance between homes and jobs regardless of whether those houses are provided within or without settlement limits. Yet that is not what the NDTLP states – it works with minimum numbers, and whilst it expressly resists development outside settlement limits it has no policy to the effect that housing within settlement limits will be resisted.
26. Finally, the reference to self-containment in the NDTLP appears in precisely the same terms in respect of all settlements, no matter where they sit in the settlement hierarchy.⁹ The approach to distributing housing and employment in a coordinated, justified way is expressed in the same terms for each of the settlements.¹⁰ The logic of the Council’s argument dictates that it must resist housing development above the minimum numbers in the Local Plan in each and every one of its settlements, whether proposed within or without the settlement limits. The effect would be to turn minimum housing numbers into maximum housing numbers. Yet this was not the Council’s approach as explained at the Inquiry when it was suggested that additional housing in Barnstable and Bideford would be welcomed, but not in Great Torrington. In my view, the Council was unable to identify how the NDTLP differentiated between these settlements particularly in relation to self-containment.
27. In overall terms I consider that all the references in the NDTLP which the Council rely upon and which speak to self-containment have to be seen for what they are, namely a high-level explanation of why the decision was taken as part of the NDTLP to distribute the employment land in the manner set out in the Plan. These references are not to be read as directing decision-makers to cap housing delivery unless and until it comes forward in tandem with more employment land. In this context I consider the overarching Policy ST01 in the

⁹ Policy ST06

¹⁰ Paragraph 4.19 of the NDTLP

NDTLP is noteworthy and relevant. It states that the two Councils covered by the Local Plan will adopt a positive approach to all sustainable development and work with applicants and local communities to find solutions which mean that proposals can be approved wherever possible.

28. Furthermore, I note from the evidence that the Council considers that the most important policy in terms of breach of the NDTLP is Policy GTT and particular reliance is placed on Policy GTT criterion (c). However, this criterion is purely descriptive of the allocations for Great Torrington; it is not a criterion by which to assess non-allocated sites, whether within or without the settlement boundary. It seems to me that this simple point undermines the Council's reliance on the first paragraph of the Policy GTT (under Spatial Vision) which refers to supporting Great Torrington's future through small to medium scale employment and housing development. The policy itself describes, at criterion (c), the allocations as small to medium scale, including an allocation for 140 dwellings. That shows that a site for 140 is medium scale, and a site for 181 is of similar scale. Given the size of Great Torrington and its status as a Main Centre, a site of this size is self-evidently of medium scale.
29. From all of the above it is clear that the central and western fields abut the development boundary for Great Torrington but lie outside it. Development on this part of the site and thus the proposal as a whole, would not be in accordance with Policy ST06 and Policy ST07 of the NDTLP. However, the main parties accept that Policy ST21 is a key consideration in this case. I agree. This key policy was introduced towards the end of the NDTLP preparation process specifically to provide a framework for managing the delivery of housing based on maintaining a five year housing land supply and a particular methodology which is integral to the development plan. I shall deal with the implications of Policy ST21 in the context of the second issue below before returning to conclude on the development plan later in this decision.

Second Issue - Whether the Council can demonstrate a five year housing land supply and whether paragraph 11 (d) of the NPPF is engaged.

30. The starting point to enable an assessment of the five year housing land supply is to establish the *Housing Requirement*. It is agreed between the main parties that the overall housing requirement set out in Policy ST08 of the NDTLP applies to Northern Devon, across the joint plan area and is not disaggregated to individual constituent local planning authorities.¹¹ The NDTLP was adopted by TDC and by North Devon Council (NDC) in October 2018.
31. The NPPF at paragraph 73 requires the five-year supply to be measured against the housing requirement in an adopted plan where the plan is less than five years old. The NDTLP is less than five years old and the housing requirement within the NDTLP provides the appropriate NPPF compliant figure to use when calculating the five-year housing land supply. The housing requirement is therefore that set out in Policy ST08 and its supporting text.
32. The NDTLP through Policy ST08 establishes a requirement of a minimum of 17,220 dwellings; equating to an average development rate of 861 dwellings per annum over the plan period (20 years). It is agreed that, recognising the

¹¹ Paragraph 4.20 of the NDTLP

joint nature of the NDTLP, and in accordance with the PPG,¹² the five-year housing land supply for TDC and NDC should be calculated on a joint (aggregate) basis.

33. The base five-year requirement is five times the annual requirement of 861 dwellings or 4,305 dwellings. Any shortfall in delivery against the requirement from previous plan years, calculated from the base date of the Plan, should be factored into the five-year requirement calculation. From the base date of 1 April 2011 to the end of the last monitoring year, 31 March 2019, there have been a total of 5,285 completions against a requirement of 6,888. A shortfall of 1,603 dwellings.
34. It is agreed between the main parties that the base date of the five-year housing land supply assessment is 1 April 2019 and that the five-year period looking forward is 1 April 2019 to 31 March 2024.
35. I note that the NDTLP, at paragraph 4.24, adopts the Liverpool approach for accommodating a shortfall in housing delivery in future years. The PPG¹³ sets out that any shortfall from the base date of the adopted plan should be added to the plan requirements for the next 5 year period (the Sedgfield approach) unless a case is made (and accepted) as part of the plan-making and examination process by the strategic policy-making authority to deal with past under delivery over a longer period.
36. As adopted in the NDTLP, the Liverpool approach distributes and averages any shortfall across the remainder of the plan period. There are 12 years remaining of the plan period which establishes an annualised shortfall of 133.58 dwellings per annum. This figure multiplied by five is 667.92, rounded to 668, and is added to the base five-year requirement of 4,305 which produces a base line five-year requirement (without buffer) of 4,973 dwellings (or 995 dwellings per annum).
37. The components of the calculation for the five year housing requirement excluding buffer, as per the NDTLP and using the Liverpool approach, are agreed to be as set out in Table 1 of the Housing Land Supply SoCG (Doc 38).
38. There is an issue over whether a buffer should be applied to the Policy ST21 calculation as contended by the Appellant. The Council disagrees with the Appellant's contention that Policy ST21(2) is triggered; there is no reference to a buffer in the policy or in the supporting text to that policy. However, as the Local Plan Inspector's Report makes clear, modifications to ensure housing delivery were regarded as essential in order to rectify matters that would have led to the Plan being found unsound.¹⁴ Reference is made to the request by the Inspector to the Councils for a policy to rectify these shortcomings and she concludes that the maintenance of the five year housing land supply is the most effective means by which the Councils can ensure that decisions on housing development can continue to be made on the basis of the strategy set out in the NDTLP.¹⁵

¹² Planning Practice Guidance

¹³ ID: 68-031-20190722

¹⁴ Doc 2, page 6, paragraph 9

¹⁵ Doc 2, page 27, paragraphs 125 and 126

39. I appreciate that TDC wants to move away from the position set out in the NDTLP because the NPPF states that the level of the buffer should be determined by the HDT¹⁶ and if that is applied a 5% buffer is appropriate. I accept what the NPPF says about the buffer is a material consideration, but it does not follow that the approach in the NPPF should automatically be followed. The Local Plan Inspector addressed the question of the buffer and was well aware that the housing requirement was not being met and that a 20% buffer should be applied. She was well aware that the HDT had come in, but she did not think this was sufficient for 5% to be applied nor did she think it appropriate to say that in future this Council should determine the buffer by having regard to the results of the HDT.
40. What she said was that there should be no move away from the 20% buffer until the end of the Plan period, unless the shortfall was cleared, or the Plan was reviewed. There is no reason therefore why the Council should be allowed to adopt a mix and match approach. The reasons which persuaded the Inspector to impose the 20% buffer remain as pressing today as they were when she imposed it. If the Council maintains that the approach to the Plan in calculating the five year housing land supply is out of date, then it must accept that the policies of the Plan that determine when and where housing is acceptable are also out of date because all of these policies presume the existence of a five year housing land supply.
41. Policy ST21, with the supporting text, was therefore put forward to secure the position. It identifies the triggers and provides the mechanism to ensure the maintenance of a five year housing land supply. The Local Plan Inspector also considered it appropriate to make reference in the NDTLP to the application of the Liverpool method for the lifetime of the Plan. At the time of adoption, she also considered it appropriate to apply a 20% buffer with the Liverpool approach, but this may change over time.¹⁷
42. Accordingly, paragraph 4.24 of the NDTLP clearly states that the NDTLP at the time of the adoption applies a 20% buffer:

"For the purposes of identifying and updating annually a supply of specific deliverable sites sufficient to provide five years' worth of housing against the housing requirements of the Local Plan, the Liverpool method of spreading the delivery of shortfall together with the 20% buffer shall apply to all reports published for the North Devon and Torridge Local Plan area until 2031 or until the Local Plan is first reviewed. In the event that the shortfall is delivered prior to the 1 April 2031 or to the review of the Local Plan, a buffer of 5% shall be applied to the five year housing land requirement."

43. In my view, the purpose of the buffer is to provide for past under delivery as paragraph 4.25 of the NDTLP explains – it is as much part of the housing requirement as is the base figure and is indivisible from it. It is intended to both help ensure that under delivery from the early years of the Plan period is made up as soon as possible and to maintain delivery to meet the remaining

¹⁶ Housing Delivery Test

¹⁷ Doc 2, page 26, paragraph 122

housing requirement. Accordingly, when paragraph 7.64 of the NDTLP (in the context of Policy ST21) talks about monitoring against the “managed” target “to reflect any cumulative backlog”, it must include the buffer otherwise it would not reflect the backlog in the manner intended by the Plan as set out at paragraph 4.25.

44. None of the prerequisites set out in the NDTLP for moving away from the 20% buffer apply: it is not 2031, the NDTLP has not been reviewed and the shortfall has not been delivered. Nonetheless, the Council’s Position Statement (Doc 31) has chosen to move away from the 20% buffer citing the introduction of the HDT, the results supporting a 5% buffer. In doing so the Council has ignored the primacy of the development plan and its commitment to applying the 20% buffer. If the Council is promoting that the NPPF and the introduction of the HDT are of such material importance for the Plan’s commitment to 20% to be put aside then in my view that should also apply to the Liverpool approach.

45. Neither the NPPF nor the PPG refers to the Liverpool approach. The PPG states

“The level of deficit or shortfall will need to be calculated from the base date of the adopted plan and should be added to the plan requirements for the next 5 year period (the Sedgefield approach), then the appropriate buffer should be applied. If a strategic policy-making authority wishes to deal with past under delivery over a longer period, then a case may be made as part of the plan-making and examination process...”¹⁸

The preferred approach is clearly that of Sedgefield with alternatives derived through plan-making, which is the position that applies here in TDC. That of course takes us back to paragraph 4.24 of the NDTLP.

46. The Appellant points out that the HDT results are measured against household growth and not the adopted housing requirement. I note from the evidence presented that the household growth figures do not represent the full housing requirement for the Local Plan area. The three year aggregate household growth requirement for the HDT is 1,844, whereas the Local Plan aggregate annualised requirement for three years is 2,583, before any additional uplift for past shortfalls in delivery. Given the Local Plan’s commitment to a 20% buffer and making up for past under-performance it would seem strange to me to move away from this position.¹⁹ TDC’s position is that a 5% buffer should be applied whereas the Appellant’s position is that a 20% buffer should be applied. The Appellant has a secondary position, that is Sedgefield and 5%, the NPPF position.
47. Drawing the threads of the housing requirement together, it is clear to me that Policy ST08 of the NDTLP sets a minimum of 17,220 dwellings over a 20 year plan period from 1 April 2011 to 31 March 2031. This annualises to a minimum of 861 dwellings per annum. Paragraph 4.24 of the NDTLP plainly states that when calculating the housing requirement, the Liverpool approach to addressing shortfall in delivery and the application of a 20% buffer will be applied for the lifetime of the Local Plan, until its first review or until the shortfall is cleared. The stipulated buffer was the consequence of a conscious decision by the Local Plan Inspector to recognise the shortfall in delivery from

¹⁸ Paragraph 031 Reference ID: 68-031-20190722

¹⁹ Mr Jacobs’ proof of evidence page 15 paragraph 4.11

the start of the Plan period. The Council's Housing Land Supply Statement accepts the NDTLP in part by applying the Liverpool approach but diverts in part by applying a 5% buffer and through this approach calculates a five-year requirement of 5,222 dwellings. I conclude that the five-year housing should be calculated in accordance with the commitment in the NDTLP applying the Liverpool approach and a 20% buffer producing a figure of 5,968 dwellings.²⁰

48. In terms of *Housing Supply*, it was agreed in the SoCG²¹ submitted to the Inquiry that minor developments consist of commitments on sites of less than 10 dwellings, some of which may have started and others which have yet to be implemented, amounted to 586 dwellings. There are a further 576 dwellings consented from this source but not yet implemented. Allowing for a 15% discount from this source of supply both parties agreed would yield 520 dwellings within the five plan period.²² Moreover, a windfall allowance of 117 dwellings per annum applied to years 4 and 5 totalling 234 is agreed.
49. It is common ground that Policy ST21 of the NDTLP is a relevant policy in the context of managing the delivery of housing in the NDTLP. Policy ST21 requires an annual review and an updated housing trajectory will inform the review. In the application of clause (1) of Policy ST21, if the number of dwelling completions across the Plan area is less than 110% of the annualised dwelling requirement in any monitoring year, in this case 2018/19, the provisions of that clause will be brought into force.
50. There is no dispute that the number of dwelling completions for 2018/19 was 951 dwellings, compared to an annualised (residual) dwelling requirement for that year of 991 dwellings. The level of completions as a proportion of dwelling requirement for that year is 96%; 14% (or 139 dwellings) below 110% of the annualised dwelling requirement required to trigger the provisions of clause (1) of Policy ST21 (1,090 dwellings). Accordingly, it is agreed that the provisions of clause (1) of Policy ST21 are triggered on the basis of the level of dwelling completions achieved in 2018/19.
51. Clause (2) of Policy ST21, states that if the number of dwelling completions in a monitoring year falls below 90% of the annualised dwelling requirement, and the housing trajectory indicates that the rate would not recover to an average of at least 100% for the two subsequent monitoring years, then proposals for additional residential development outside defined settlement limits will be supported subject to four stated criteria. It is common ground that for the purposes of clause (2) of Policy ST21, 90% of the annual (residual) dwelling requirement for the 2018/19 monitoring year, and without the addition of any buffer, is 892 dwellings (991*0.9).
52. It is agreed that there were 951 dwelling completions in the 2018/19 monitoring year, providing 96% of the annual (residual) dwelling requirement, or a surplus of 59 dwellings compared to the 90% requirement, if no buffer is applied. On the basis of applying no buffer, it is agreed that the provisions of clause (2) of Policy ST21 are not brought into force. The parties do not agree the appropriate buffer to be applied, nor do they agree the assessed five year

²⁰ Doc 38 page 12

²¹ Doc 38

²² Where the sites are for 1-4 dwellings or less than 0.1 hectare to allow for non-implementation or lapse rate

supply.

53. At the opening of the Inquiry, in the SoCG,²³ the Council considered the total supply of deliverable housing land for the period 1 April 2019 to 31 March 2024 to be 6,685 dwellings reflecting its Five Year Housing Land Supply Position Statement.²⁴ The Appellant considered the equivalent supply to be 4,874 dwellings. There were 38 sites from the Council's five-year supply of deliverable sites on which the parties did not agree an attributable dwelling yield.²⁵ As a result of the differing positions the Council calculated there would be 6,685 dwellings (6.40 years supply using the Liverpool approach with a 5% buffer, whereas the Appellant using Liverpool with a 20% buffer calculated there would be 4,874 dwellings equivalent to 4.08 years supply. There is a difference of 362 dwellings in the supply forecast for Years 1 and 2.²⁶
54. Following the RTS on Housing Land Supply (HLS) there were a number of concessions made in respect of the disputed sites which affects both the Council and the Appellant's position. The changes are reflected in updated tables from the HLS SoCG.²⁷
55. I have assessed the disputed sites in the context of the test of deliverability set out in the Glossary to the NPPF. This specific guidance indicates which sites should be included within the five-year supply. The first list (Part A) is those sites where it is for the Appellant to provide evidence that sites will not deliver within five years while the second list Part (B) consisting of sites with outline planning permission for major development, allocated in a development plan, has a grant of permission in principle, or is identified on a brownfield register cannot be included within the five-year supply unless the Local Planning Authority can produce clear evidence that housing completions will begin on site within five years.
56. I have also had regard to the updated PPG advice published on 22 July 2019 on 'Housing supply and delivery' including the section that provides guidance on 'What constitutes a 'deliverable' housing site in the context of plan-making and decision-taking.' The PPG is clear on what is required:
- "In order to demonstrate 5 years' worth of deliverable housing sites, robust, up to date evidence needs to be available to support the preparation of strategic policies and planning decisions."*
- This indicates the expectation that 'clear evidence' must be something cogent, as opposed to simply mere assertions. There must be strong evidence that a given site will in reality deliver housing in the timescale and in the numbers contended by the party concerned.
57. Clear evidence requires more than just being informed by landowners, agents or developers that sites will come forward, rather, that a realistic assessment of the factors concerning the delivery has been considered. This means not only are the planning matters that need to be considered but also the technical, legal and commercial/financial aspects of delivery assessed.

²³ Doc 38

²⁴ Doc 31

²⁵ Table 3 Doc 38

²⁶ Table 4 Doc 38

²⁷ Doc APP10

Securing an email or completed pro-forma from a developer or agent does not in itself constitute 'clear evidence'. Developers are financially incentivised to reduce competition (supply) and this can be achieved by optimistically forecasting delivery of housing from their own site and consequentially remove the need for other sites to come forward.

58. Turning to the sites in dispute, there was a narrowing of issues following the RTS but there remain 19 sites in dispute. The difference in deliverable supply between the parties for the supply sites listed in Table 3 is 1,099 dwellings.²⁸ Of the supply, the Council considers that in Year 1 (2019/20) 1,206 dwellings and in Year 2 1,260 dwellings will be delivered. The Appellant contends that figures of 1,206 and 1,145 are more realistic and robust. This is a difference of 115 dwellings and Table 4 lists the sites where the Appellant disputes the Council's supply for Years 1 and 2 of the five-year period.²⁹
59. Of these 19 sites, one site (IL Ref. 1)³⁰ falls within Part A where the burden of proof is put on the Appellant to demonstrate that the site will not deliver in line with the Council's forecast i.e. to provide clear evidence. From the evidence there are a number of uncertainties including whether the site has been sold and when a reserved matters application will be worked up, submitted and determined. There is nothing to indicate a start date on site and no indication of build out rates. I consider that Year 3 for first completions is more realistic and a nationally identified built out rate of 43dpa would be more appropriate. A minimum of 61 dwellings should be deducted.
60. The remaining 18 sites in dispute are Part B sites where the burden of proof is put on the Local Planning Authority to provide clear evidence to justify inclusion of sites within the forecast supply. Of these sites, one site (IL Ref. 14),³¹ which the Council's commentary refers to as being controlled by Linden Homes and based on information provided first completions are expected in 2020. However, the email from Linden Homes that the Council rely on suggests uncertainty around delivery and does not provide clear evidence of the site's deliverability for the five-year supply. The developer has provided a profile of delivery but there appears to be no interrogation of this. It is my understanding that the land is under option and price negotiations have yet to start with the landowner. The nature of these can be lengthy and far from straightforward. It is therefore unknown when development would come forward and the lack of clear evidence should remove this site from the supply reducing the supply by 170 dwellings.
61. In another Part B site (IL Ref. 15),³² the Council's evidence states that the agents for the site have indicated that a detailed application is likely in the near future. There is some uncertainty about progress on this application. However, as I saw on my visit, there are significant issues associated with this site not least ground conditions, demolition of a complex industrial heritage and viability. There are also suggestions that the site is to be sold and that it may become part of a wider redevelopment scheme. None of this information provides clear evidence for inclusion of the site within the five year supply and therefore 105 dwellings should be removed from the supply.

²⁸ APP10 pages 1-2

²⁹ APP10 page 3

³⁰ Larkbear Strategic Extension, Barnstaple

³¹ South of Clovelly Road, Bideford

³² The Former Creamery Site, Great Torrington

62. There is a major strategic Part B site (IL Ref.16)³³ listed which requires Government infrastructure funding to enable delivery. I accept that funding is forthcoming in the form of a Funding Agreement³⁴ but there is no information about when the funding will be available, what needs to be done to secure it, what the timeframe is for delivery of the infrastructure and how this plays out for housing delivery. Without clear evidence the site should not be included and therefore 150 dwellings should be removed from the supply.
63. There are many other Part B sites which the Council considers will contribute significant numbers of dwellings in the five year period. I note that with regard to site IL Ref. 26³⁵, the Council's commentary refers to the site being under the control of a regional house builder and that it intends to submit an application in 2020. This would suggest that the site is progressing. However, the site has yet to be sold and it is not known whether negotiations over price have commenced. Without this being resolved it undermines the clear evidence required to include the site within the overall supply and therefore 70 units should be removed.
64. Similarly, on site IL Ref. 33³⁶ I note that no planning applications have yet been submitted. Discussions with the developer are said to be on-going but there is no clear evidence of the issues, what needs to be resolved or whether there are any landownership issues that need to be overcome. On such a large strategic site greater justification is required before including dwellings within the supply. I consider that 128 dwellings should be removed from the supply. With regard to IL Ref. 54,³⁷ there is no planning permission and the site is subject to a s106 Agreement. I consider that there is a lack of clear evidence to justify inclusion of this site and therefore a further 174 dwellings should be removed from the Council's supply.
65. It is not necessary for me to go through all of the sites in Table 3 and Table 4 of APP10. In my view, the Council was not able to provide clear evidence of delivery on most of the disputed sites which significantly undermines its position. Although the Council published on 19 November 2019 a Housing Land Supply Statement for the period 1 April 2019 to 31 March 2024 what is evident is that the evidence that underpins the report has been collected post-base date with evidence collection from Autumn 2019. In my view any update should be thorough and consistent across all aspects of housing land supply with evidence available and published at the base date.
66. Overall, I consider that the Appellant's assessment of supply is more realistic taking into account the test of deliverability set out in the Glossary to the NPPF and the updated PPG advice published on 22 July 2019. I am satisfied that the Appellant's approach is consistent with national policy, case law, appeal decisions and informed by research into current housebuilder sales rates, assessment of the technical complexities of delivering development sites and experience of the housebuilding industry including lead-in times.³⁸
67. My conclusion on housing land supply is that there are a number of sites that together significantly reduce the Council's five-year housing land supply. A

³³ Ilfracombe Southern Extension

³⁴ LPA10

³⁵ Kingsley Plastics Ltd, Western Barn Road, Winkleigh

³⁶ Land at Adjavin Farm, Bideford

³⁷ Land north of Clovelly Road, Bideford

³⁸ See Appendix 14 and Appendix 15 of Mr Jacobs' evidence

large number of the sites that TDC includes within the supply cannot be justified applying the current definition of deliverable. I consider that TDC's supply should be reduced to reflect the Appellant's position set out in Table 3, Table 4 and Table 5 of APP10. It follows that the Council's supply figure of 6,145 dwellings in APP10 should be reduced by 1,099 to give a more robust total supply figure of 5,046 dwellings for the period 1 April 2019 to 31 March 2024. The Council maintains there is a 5.88 years supply using Liverpool and a 5% buffer; 5.15 years using Liverpool and a 20% buffer. Using the Liverpool approach with the 20% buffer, which I consider an integral part of the development plan, produces a housing land supply equivalent to **4.23** years.³⁹

68. It is accepted by both main parties in the General SoCG⁴⁰ under item 9 that Policy ST21 (1) is triggered on the basis of the monitoring year 2018/19. Specific action is thus required in accordance with the policy but there are no proposals to implement the necessary remedial measures. With regard to Policy ST21 (2) this test is also failed. As Mr Jacob's evidence demonstrates, completions for the monitoring year 2018/19 fall below the 90% threshold based on the NDTLP paragraph 4.24 approach and his assessment of completions against requirements for the two subsequent years 2019/20 and 2020/21 also fall below the 100% average.⁴¹ The principle of development plan support for residential development outside of defined settlement limits is established subject to four criteria. Policy ST21 (2) is engaged in this case.
69. The Council gave evidence that even if it was engaged, the four criteria set out within the policy were not met. However, the Council did accept in relation to criterion (a) that the location was suitable as it was on the edge of a Main Centre in a sustainable location. It also agreed that the proposal was commensurate with the deficit in required housing. I note the proposal does not need to be commensurate with the deficit as against the two years shown in the monitoring report prepared for the purposes of Policy ST21. It simply has to be "commensurate to the deficit in required housing". The required housing is the housing that is required in the district, and the deficit in the housing required in the district is some 1,603 dwellings as at 31 March 2019.
70. With regard to criterion (b) delivery in a timely manner – if planning permission is granted the appeal site would have outline planning permission and a signed s106 Agreement. There is a contractual obligation to market the site as soon as possible. There are no impediments to the delivery of housing on the site as soon as the site is sold to a housebuilder. The agent's letter⁴² establishes that the volume housebuilders would be interested in a site of this size. There is nothing different about this site as regards delivery compared to any other site that would need to be released if Policy ST21(2) is engaged.
71. With regard to criterion (c) I consider the proposal would be broadly consistent with and not prejudicial to the overall spatial vision and strategy for northern Devon along with the settlement vision and development strategy. There is no need for me to repeat my assessment of the site in relation to Policy ST08 and Policy GTT which is set out above. On the basis that Policy ST21(2) is engaged and there is an express need to release housing sites outside of settlement limits to make up a deficit in supply, I consider that

³⁹ App10 page 5 Summary Table of 5 Year Housing Land Supply Position

⁴⁰ Doc 37

⁴¹ APP10 Updated Table 8 page 7

⁴² APP1

release of a site adjoining the settlement boundary of a Main Centre in what is conceded by the Council to be a sustainable location, would be appropriate.

72. With regard to criterion (d) subject to my assessment under the third and fourth issues below, I consider that there is no breach of other development plan policies. I note that paragraph 7.65 of the NDTLP indicates that if the circumstances set out in Policy ST21 (2) are triggered

'It is expected that such sites will be developable or potentially developable Strategic Housing Land Availability Assessment (SHLAA) sites and will normally adjoin development boundaries or the principal built form for defined settlements without development boundaries.'

The SHLAA concluded that not only was this site developable, but that it was also suitable in all respects. This is precisely the type of site that should be released if Policy S21(2) is engaged.

73. I conclude on the second issue that the Council cannot demonstrate a five year supply of deliverable housing sites and that paragraph 11 (d) of the NPPF is engaged.

Third Issue - The effect of the proposal on the character and appearance of the surrounding landscape particularly in relation to the central and western fields of the development.

74. The landscape planning policies that are alleged to have been breached are set out in the Officer's Report to Committee⁴³ and the Council's Statement of Case.⁴⁴ These are agreed in the LSoCG⁴⁵ at paragraph 1 f) and g) and there is no need for me to repeat them here. I held a Landscape RTS on 28 January 2020 when the landscape witnesses for both main parties discussed the landscape and visual effects which are clearly set out in the comparison tables that they produced. I have considered the LVIA,⁴⁶ the Addendum to the LVIA⁴⁷ together with the plans and photographic viewpoints submitted by the parties.
75. From the RTS discussion and from the evidence that is before me, it is clear that the appeal site is not a valued landscape, and neither does it lie within or adjacent to any locally or nationally designated landscape. It has an ordinary condition typical of mixed Devon farmland, adjacent to existing residential development. The landscape character of the area in which the appeal site sits is one of arable and pastoral fields bordering the urban edge of a small town. Hedge banks border the majority of the appeal site, with some exceptions. The appeal site is not part of or adjacent to a conservation area. It is of medium value in landscape terms and given that what is currently a greenfield site would become a residential estate it is inevitable that within the confines of the site itself the impact is assessed as major adverse.
76. I accept that there would be a change from farmland to a residential area, which would change the perception of the area. The Council refers to a suburbanising effect on the landscape. However, no hedgerows or trees would be lost. The only landscape feature of note proposed to be lost would be hedge banks, but substantially more hedge bank is proposed. The proposed road

⁴³ Doc 14

⁴⁴ Doc 34

⁴⁵ Doc 39

⁴⁶ Doc A13

⁴⁷ Doc A11

layout would remove about 130m length of hedge bank and gap up about 5m of the existing boundary (a field gate). The remainder would be retained. The southern boundary of the central field, currently a post and wire fence would be replaced with 205m of hedge bank, which would be tied into retained hedge banks at the Caddywood Lane and Burwood Lane ends. With mitigation the adverse impact would reduce to moderate.

77. Mr Randall's assessment that the County Landscape Area (LCA) and District Landscape Type (LCT) have high sensitivity, simply cannot be right because he accepts that the appeal site is medium sensitivity and it sits within these larger character areas and is representative of them. The surrounding area is not designated, and Mr Randall's reference to the former AGLV designation is not of assistance because as the Council itself has confirmed it is no longer used. In any event the area upon which Mr Randall focuses was never part of the AGLV designation.
78. One of the two key inputs in the assessment of sensitivity of the landscape receptors is to ask how susceptible the area is to the development proposed, and Mr Randall has wrongly concluded that the surrounding landscape has high susceptibility. They are much larger areas and are less susceptible to the proposed development than the appeal site, not more. Neither can the impact on these surrounding areas be of medium sensitivity, as Mr Randall claims. There would be no impact on these areas because no development is proposed on them. Extending the south-eastern edge of the town by between 100m and 200m, which once developed would read as part of the town, cannot possibly have a high impact on the very large landscape areas surrounding the town.
79. Turning to the visual assessment of the appeal site, at my site visit I saw that visually it is extremely well contained. Mr Randall confirms that the medium range views extend to only 250m from the site and his long range views extend to no more than 1.5kms from the site.⁴⁸ In this regard he states that 'Within the built-up area, ground level views are confined to a few relatively elevated sections of road that are oriented towards the site. Within the countryside, views are constrained by landform, roadside hedge banks and countryside. There are very few opportunities for views towards the site from the majority of the built-up area, including historic town centre, or from the wooded sections of the Torridge Valley and its tributaries. I agree.'⁴⁹
80. Moreover, Mr Randall also concludes that the significance of effect for all the long range views and many of his medium range views is (at worst) none to moderate.⁵⁰ He states that 'The significance of the effects falls away to moderate and below in medium-range views, particularly views from within the built-up area in which a perception of the surrounding countryside remains. In longer range views, the effects generally become minor, since the development - whilst visible - would not represent a fundamental change to the character of the view'.⁵¹
81. Overall, I consider that the proposed development would have very little landscape and visual impact. It is noteworthy that the Council has allocated sites adjacent to the urban edge of the town in the NDTLP for residential

⁴⁸ Mr Randall's proof of evidence Table on page 21

⁴⁹ Mr Randall's proof of evidence page 20 paragraph 4.7

⁵⁰ Mr Randall's proof of evidence Table on page 31

⁵¹ Mr Randall's proof of evidence page 33 paragraph 6.10

development, including the eastern field (Phase 1) of the appeal site. By allocating these greenfield sites, the Council has demonstrated that there would be no breach of Policy ST14 i.e. that the development of these sites would conserve and enhance local distinctiveness, including tranquillity. Moreover, the proposed development for the central and western fields (Phases 2 and 3) is of similar layout, density and overall design principles to that which was permitted on the eastern field (Phase 1). As with Phase 1, there would be no breach of Policy DM04 or DM08A.

82. With regard to policies in the GTNP, the proposed development demonstrates sensitivity to the distinctive landscape character. Where important landscape elements would be lost e.g. sections of hedge bank, these would be replaced, and new lengths of hedge bank created as part of the mitigation. This is in line with the mitigation hierarchy, set out in the Examiner's proposed changes to the submitted Policy ENV1. With regard to Policy ENV3, the proposed development would provide new green infrastructure, which would benefit the existing and the new communities. In terms of Policy ENV4, the proposed development lies adjacent to the urban edge of Great Torrington. It would extend the light sources into the fields immediately to the south of the town. However, with the type and extent of the landscaping proposed,⁵² as well as an agreed lighting strategy, the light spill would be minimised. I find no conflict with the emerging GTNP policies.
83. I note the comments in the SHLAA,⁵³ under the headings of compatibility, landscape and light pollution, all of which are written by the Council itself and run directly to the Council's case that development of the appeal site would breach the landscape policies of the NDTLP. The SHLAA evidence demonstrates that the proposal would not breach any of those policies.
84. Drawing these threads together, I accept that as with most development of greenfield sites there would be adverse visual impacts in views either from within the site itself, or from some viewpoints immediately outside the site looking in. However, with mitigation, the proposed development on Phases 1 and 2 would not have a significant adverse effect on the existing landscape and visual resources. Similarly, the development of Phase 3 would not cause unacceptable landscape or visual harm, whether taken individually or together with Phases 1 and 2. The proposed development would comply with the relevant NDTLP policies listed in the RfR1, other relevant NDTLP policies referred to in evidence to the Inquiry and the relevant GTNP policies identified in the LSoG.⁵⁴ The proposal would also accord with paragraphs 8c, 122, 127 and 170 of the NPPF. Overall, I consider that, in landscape and visual terms, the proposal is acceptable. On the third issue, I conclude, there is no reason to withhold permission.

Fourth Issue - Whether the proposal makes adequate provision for affordable housing and for any additional infrastructure/services, such as education, drainage, transport and public open space arising from the development.

85. At the Inquiry, a s106 Planning Obligation was submitted by way of Agreement. The Planning Obligation is made by an Agreement between the

⁵² This would be agreed with the TDC at the detailed design/reserved matters stage

⁵³ Doc 10

⁵⁴ Doc 39 paragraph 1 f) and 1 g)

Landowners, the Appellant, TDC and DCC.⁵⁵ A CIL Compliance Schedule was submitted for the Planning Obligation.⁵⁶ I have considered the Planning Obligation in the light of the CIL Regulations 2010, as amended, the advice in the NPPF and the PPG.

86. Local Planning Authorities should only consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations.⁵⁷ Planning obligations may only constitute a reason for granting planning permission if they meet the tests that they are necessary to make the development acceptable in planning terms. Regulation 122 of the CIL Regulations, as amended by the 2011 and 2019 Regulations, and paragraph 56 of the NPPF make clear that Planning Obligations should only be sought where they meet all of the following three tests:
- necessary to make the development acceptable in planning terms
 - directly related to the development; and
 - fairly and reasonably related in scale and kind to the development.
87. Paragraph: 004 of the PPG⁵⁸ states that policies for planning obligations should be set out in plans and examined in public. It states that it is not appropriate for plan-makers to set out new formulaic approaches to planning obligations in supplementary planning documents or supporting evidence base documents, as these would not be subject to examination. Paragraphs 007 and 008 of the PPG concern funding for education and refer to the DfE guidance for local education authorities on developer contributions.⁵⁹
88. NDTLP Policy ST18 (Affordable Housing on Development Sites) sets out the basis on which the Council will require affordable housing on residential development proposals. Policy ST23 (Infrastructure) requires development to provide, or contribute towards the timely provision of physical, social and green infrastructure made necessary by the specific and/or cumulative impact of those developments. Policy DM10 (Green Infrastructure Provision) sets out the requirements for development to meet the green infrastructure typology, quantitative and accessibility standards as set out in Table 13.1 to meet the needs of intended occupants. The Green Infrastructure Strategy for North Devon and Torridge District Councils⁶⁰ provides the basis for the standards set out in the NDTLP with the supporting text at paragraph 13.68 indicating that regard should be had to the Strategy for a comprehensive interpretation of the overall approach towards green infrastructure provision.
89. The Planning Obligation secures the provision of 30% affordable housing on-site, with an agreed tenure split, in accordance with NDTLP Policy ST18(7), for 75% to be provided at a social rent level and 25% at intermediate level. The provision of affordable housing on-site is necessary to meet an identified need and is a requirement of both national and local planning policy. The provision is directly related to the development and the provision of 30% is fairly and reasonably related in scale and kind to the development. The actual numbers of affordable units would depend on the final approved number of dwellings.

⁵⁵ LPA2

⁵⁶ LPA1

⁵⁷ NPPF paragraph 54

⁵⁸ Reference ID: 23b-004-20190901

⁵⁹ Reference ID: 23b-007-20190315 and Reference ID: 23b-008-20190315

⁶⁰ Part 2 of 3; David Wilson Partnership/JPC Strategic Planning & Leisure, April 2014

90. The Planning Obligation would also secure green infrastructure provision on site pursuant to NDTLP Policy DM10 (incorporating Table 13.1) and provision for an off-site financial contribution of £18,718.61 towards Great Torrington Artificial Turf Pitch (ATP) in lieu of on-site provision towards youth play space. The provision of appropriate levels of green infrastructure is essential in the context of national and local policy. Policy DM10 and Table 13.1 provide a robust basis for establishing the green infrastructure required for the detailed design stage. The proposal would generate an estimated resident population of some 423 persons and Table 13.1 requires the proposal to provide 0.2 ha of Play Space (youth) per thousand population resulting in a requirement of 84.73m² of provision for the development. Whilst the NDTLP generally expects green infrastructure requirements for major developments to be provided on site, it recognises that financial contributions may be supported for off-site provision.⁶¹ I consider this provision would be fairly and reasonably related in scale and kind to the development.
91. The public transport contribution of £200,000 is necessary towards improving bus services serving Great Torrington. The appeal site is at the edge of Great Torrington and although walking and cycling as well as driving is possible to the town centre, trips would be made to Barnstaple and Bideford, so enhancements are necessary to public bus services. Policy ST23 of the NDTLP indicates that developments will be expected to provide or contribute towards the timely provision of infrastructure. The proposed service improvements would operate Monday to Friday with an estimated cost of £120 per day and total cost of £30,000 (5 days x 50 weeks excluding public holidays) per year. Additionally, a Sunday/Public Holiday service is proposed at a cost of £350 per day, or about £20,000 per year. The contribution would support these service enhancements for a 4-year period. I consider the provision would be fairly and reasonably related in scale and kind to the development.
92. Outline planning permission for a 50 space car park and associated access road immediately to the west of the appeal site was granted in June 2018.⁶² The construction of the car park is necessary. It forms part of the transport strategy to mitigate the impact of the proposal in relation to the additional traffic generated by the development and issues associated with activity outside Great Torrington Bluecoat Church of England Primary School in the morning and afternoon drop off/pick up periods. The provision of a 50-space car park would remove a significant proportion of vehicles from the street and remove any conflict arising from the development.
93. The Transport Assessment⁶³ indicates that there are around 50 vehicles typically parked on roads near to the school associated with dropping off and picking up pupils; this conclusion has been confirmed by the Local Highway Authority. The provision of a 50-space car park would therefore remove any additional impact from the development and would accord with NDTLP Policies ST23, DM05 and DMO6. I consider the provision of a 50 space car park would be fairly and reasonably related in scale and kind to the development.
94. The Planning Obligation secures contributions for the provision of nursery, primary and secondary education. The contributions requested by DCC are necessary to make the appeal development acceptable in planning terms and

⁶¹ Doc 1 page 425 paragraph 13.70

⁶² Reference: 1/0702/2017/OUT

⁶³ Doc A16 paragraph 6.3.5

directly related to the development. An Early Years Education Contribution of £250 Index Linked per qualifying dwelling is required towards early years (2, 3 and 4 year olds) provision within Great Torrington. The new housing would add to existing demand through population growth which is confirmed by the provision for a new primary school in Policy GTT03 of the NDTLP.

95. A Primary Education Contribution of £3,336.55 Index Linked per qualifying dwelling is required towards the provision of new primary school places within Great Torrington. The new housing would add to existing demand through population growth which is confirmed by the provision for a new primary school in Policy GTT03 of the NDTLP. DCC has identified that the proposed 181 family type dwellings would generate an additional 45.25 primary pupils.
96. The designated primary school for this development is Great Torrington Bluecoat Church of England Primary School which has a current net capacity of 525. When factoring in approved but not yet implemented developments in the area the Local Education Authority (LEA) has forecasted that in Spring 2023 the number of pupils expected to be attending the school is 517.45. This shows that there is capacity for 7.55 pupils and therefore a contribution towards the remaining 37.70 pupils would be required towards new primary education provision in the area. This contribution would relate directly to providing education facilities for those living in the development. In addition, as a new primary school is required, the LEA would also need to request a proportionate land contribution of 10sqm per family-type dwelling.
97. As contributions towards a new school are being requested in the area, all early years' requests would be towards early years provision at the proposed new school. The contribution is based on the cost of provision arising from the development on a per dwelling basis and the numbers of pupils per dwelling and accords with guidance set out in DfE '*Securing Developer Contributions for Education*' November 2019; DCC '*Education Section 106 infrastructure Approach*' October 2016 and NDTLP Policies ST23: Infrastructure and GTT03: Hatchmoor Common Lane. The contribution is fair and reasonable as it is based on the cost of provision arising from the development on a per dwelling basis and the numbers of pupils per dwelling.
98. A Secondary Education Contribution of £3,288 Index Linked per qualifying dwelling is required towards provision of additional infrastructure at Great Torrington School. The new housing would add to existing demand through population growth. DCC has identified that the proposed 181 family type dwellings would generate an additional 27.15 secondary pupils, and this would have a direct impact on Great Torrington School. The net capacity for Great Torrington School is 900, when factoring in approved but not yet implemented planning approvals the forecast for Spring 2025 is 971 pupils, showing a shortfall of 71 secondary pupils in the area. An expansion of Great Torrington School to meet the increased population would therefore be required and the contribution request would facilitate this directly. The contribution is based on the cost of provision arising from the development on a per dwelling basis and the numbers of pupils per dwelling. It accords with aforementioned guidance.
99. In my view, all of the obligations in the Planning Obligation are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. Therefore, they all meet the tests within Regulation 122 of the

CIL Regulations and should be taken into account in the decision. On the fourth issue, I conclude, there is no reason to withhold permission.

Other Matters

100. I have taken into account all other matters raised including the concerns raised by Great Torrington Town Council, the representations made by interested persons including those who gave evidence at the Inquiry and those who provided written submissions. I have already dealt with many of the points raised in the main issues.
101. A number of concerns related to highway safety matters and traffic impact. I note that the proposal was supported by a Transport Assessment (TA) and Travel Plan which complements the TA. The TA confirms that suitable vehicular site accesses can be provided on to Hoopers Way and Caddywell Lane and that the design of the site would be in accordance with the principles of Manual for Streets. The location of the proposed development is accessible for pedestrians, cyclists and public transport users and would integrate well with the surrounding residential area. The level of traffic generated by the proposed development would not have a material impact on the local road network or on the capacity at nearby junctions.
102. The ability for the new dedicated school car park to come forward as a result of the residential development would also be a benefit to the development proposals as it would alleviate congestion around the primary school at the start and end of the school day which in turn would improve road safety for pupils. The development would not have an impact on the road safety conditions on the wider road network. Locally improvements to footway provision on Caddywell Lane and the realignment of Tylers Meadow would improve existing road safety in the vicinity of the site and nearby primary school. The development could also remove on street parking around the school crossing points.
103. There is no objection to the proposal from DCC the Highway Authority but given the level of interest in the matter a statement has been prepared by the transport consultants advising the Appellant which is included in the evidence before the Inquiry.⁶⁴ The statement responds to the issues raised by third parties on this topic and sets them in the context of a summary of matters such as the site access, traffic impact and the general accessibility of the site. The statement demonstrates that there are no additional considerations identified by third parties under this heading that weigh against the proposal.
104. The concerns about drainage relate to both foul and surface water drainage. In relation to the former, South West Water have no objection to the proposal. As far as surface water drainage is concerned, RfR3 refers to an alleged lack of information on this topic. Further discussions have since taken place between the Appellant's drainage consultant and the Lead Local Flood Authority and additional information has now been provided. A conditional approach is now proposed whereby a detailed drainage scheme would be prepared and submitted to the Local Planning Authority for approval and implemented before any dwellings are occupied. It was agreed at the Inquiry that RfR3 is no longer in dispute between the main parties and that the matter can be dealt with via appropriate planning conditions. I agree.

⁶⁴ See Appendix A to Mr Simkins' proof of evidence

105. As with many proposals for new housing, interested persons have expressed concerns about the pressure on various services and facilities such as education facilities and green infrastructure. The Planning Obligation that has been completed and signed between the Landowners/Appellant, TDC and DCC in relation to the appeal addresses all the legitimate requirements in this regard arising from the proposal that have been identified including education, transport and recreation provision. I have dealt with the Planning Obligation and how it would mitigate the impact of the proposed development in relation to specific projects in the preceding section.
106. In terms of landscape and environmental impact some of the concerns raised are similar to matters which I have already dealt with under the third main issue. The proposed residential development would not result in a detrimental impact on the character and appearance of the surrounding area. It would not require the stopping up or diversion of any public rights of way. I recognise that residential development would have some effects on residential visual amenity. However, the effect on private views is not a planning matter, unless they are unacceptable which these are not. In my view, the indicative plans do show adequate separation distances between properties and potential for further landscaping to soften boundaries.
107. Concerns have been expressed about the principle of development including the site's relationship with the defined development boundary for Great Torrington and what is described in one response as 'unplanned' growth. I have already dealt with the site's suitability for residential development in the first main issue and there is no need to repeat that assessment here.

Planning Balance

108. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission be determined in accordance with the development plan, unless material planning considerations indicate otherwise. The housing land supply position triggers the operation of Policy ST21(2). The appeal proposal meets all the requirements of the policy in terms of suitability of the site and its ability to meet the 2 and 5 year shortfalls as well as the overall shortfall of completions over requirement.
109. The key development plan policies are ST01, ST06, ST07, ST08, ST21 and GTT set in the context of the general, positive approach in the NDTLP. The way these policies operate in this case effectively means that Policies ST06 and ST07 are overridden by Policy ST21 which specifically includes support for sites such as the appeal site where the ST21(2) test is failed. These policies, in combination, reflect the positive approach in the NDTLP towards sustainable development, the principle of housing requirements as minimum levels to be achieved and the importance of ensuring that at least those minimum levels are met in a situation where, from the point of adoption, the NDTLP was already well short of achieving them. In all the circumstances of this case I find no conflict with any of the aforementioned policies including Policies ST08 and GTT which deal with self-containment. I conclude that the appeal proposal accords with the development plan when read as a whole.
110. Paragraph 11c of the NPPF provides that proposals which accord with an up to date development plan should be approved without delay. There is clear evidence before me with regard to the suitability of the site, including in

relation to environmental considerations. The material considerations in this case do not begin to outweigh the primacy of the development plan. To the extent that there is some residual harm involved in relation to the development of any 'green field' site which involves a change from countryside to becoming part of a settlement, it does not change what is a clear case for approving the appeal proposal in these circumstances.

111. Even if Policy ST21 (2) is not engaged then paragraph 11d) of the NPPF would be engaged and the tilted balance would be in play because the Council cannot demonstrate a five year housing land supply as I have demonstrated under the second main issue. There are no footnote 6 policies which would provide a clear reason for refusing permission and which would prevent the tilted balance from being applied. I do not consider that the most important policies for determining the proposal are out-of-date in relation to the use of a 20% buffer. However, if it is determined that the buffer is indeed out of date and thus so are the most important policies which I have identified based on the Council's approach in paragraph 2.17 of the November 2019 Position Statement,⁶⁵ then paragraph 11d) would also be engaged on this basis. If paragraph 11 d) is engaged I consider that planning permission should be granted because the adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits.
112. There would be a number of benefits of the appeal scheme which are powerful material considerations and they indicate taking a decision otherwise than in accordance with the Plan. These benefits were not undermined to any degree during the Inquiry. The following benefits would arise: (a) much needed market housing and affordable housing; this is a very significant benefit of the scheme where there is a shortfall in housing delivery; (b) significant economic benefits from the housing scheme. Whilst I accept that any benefits arising out of the construction phase would be temporary, the economic benefits arising from the building of the houses and the spending power of residents would be significant. It is estimated that this spending would be around £4.75m in the local area each year; (c) the provision of the proposed car parking for the Bluecoat School and associated footpaths would be a significant benefit; this would address existing safety issues; (d) the enhancement of existing bus services would be a significant benefit to both residents and the wider community and (e) the contribution towards an all-weather recreation facility would be a significant benefit which would also provide a valuable additional facility available to the wider community.
113. The only harm that would need to be weighed in the balance against the appeal scheme is the alleged harm in relation to landscape and visual effects. Other concerns raised by interested persons have been dealt with and none of the concerns raised amount to objections of any substance.
114. Therefore, even if I had accepted that the proposal is contrary to Policies ST06, ST07, ST08 and GTT of the NDTLP and thereby reached a contrary conclusion in terms of the appeal proposals accordance with the development plan, then in the context of paragraph 11(d) of the NPPF, any harm which might be identified as arising from the appeal proposals comes nowhere near significantly and demonstrably outweighing the many and varied benefits of

⁶⁵ Doc 31

the appeal proposals. There is no reason to withhold planning permission in this case and I conclude that the appeal should be allowed

Planning Conditions

115. I have considered the conditions suggested by the Council⁶⁶ in the light of the advice in paragraphs 54 and 55 of the NPPF and the Government's PPG on the use of planning conditions. I have made minor adjustments to the conditions in the interests of clarity. Condition 1 is the standard time limit condition and Condition 2 is necessary to determine the scope of the application and for the avoidance of doubt. Condition 3 is required to ensure the development provides an appropriate mix of dwelling sizes, types and tenures to contribute to a mixed and balanced community and to reflect local needs. Condition 4 is necessary to determine the scope of the application and for the avoidance of doubt.
116. Condition 5 is necessary to enable the development to be delivered in controlled phases as part of an overall phasing plan. I have added the words "in writing" in the interests of clarity. Condition 6 is necessary to protect the trees to be retained on the site from damage before and during the course of development. Condition 7, which relates to a Construction Method Statement, is necessary to minimise the impact of the works during construction of the development in the interests of highway safety and the free flow of traffic and to safeguard residential amenity. Condition 8, which relates to finished floor levels, is necessary in the interests of amenity and to ensure a satisfactory overall development. Condition 9 is necessary to minimise the amount of waste produced and promote sustainable methods of waste management. I have added the words "in writing" in the interests of clarity. Condition 10 is required to safeguard heritage assets of archaeological interest.
117. Condition 11 is necessary to ensure the interests of protected species on the site are maintained and to achieve biodiversity enhancement. Condition 12 is necessary in the interests of highway safety and to ensure that adequate information is available for the proper consideration of the detailed proposals. I have added the words "in writing" in the interests of clarity. Condition 13 is required to ensure the development does not cause increased flood risk or increased pollution to the water environment. Condition 14 is necessary to protect the amenities of neighbouring properties. Condition 15 is necessary to ensure that adequate access and associated facilities are available for the traffic attracted to the site. Condition 16 is necessary to control the number of dwellings accessed from a single access point in the interests of the safe and free flow of traffic. Condition 17 is necessary in the interests of public safety and to prevent damage to the highway.

Conclusion.

118. Having considered these and all other matters raised I find nothing of sufficient materiality to lead me to a different conclusion. The appeal is therefore allowed subject to the conditions set out in the attached Schedule.

Harold Stephens

INSPECTOR

⁶⁶ LPA4

SCHEDULE OF PLANNING CONDITIONS

TIME LIMITS FOR COMMENCEMENT OF DEVELOPMENT

- 1) Application for the approval of reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission. The development hereby permitted shall be begun either before the expiration of three years from the date of this permission or before the expiration of two years from the date of approval of the last reserved matters to be approved whichever is the later.

DETAILS AND DRAWINGS SUBJECT TO WHICH THE PLANNING PERMISSION IS GRANTED

- 2) For those matters not reserved for later approval, the development hereby permitted shall be carried out in accordance with the approved Site Location plan ref AP01 and Access plans 2696.05 and 2696.14B and with regard to the principles set out in the Design and Access Statement prepared by Inspire Design dated January 2017.

PRE-COMMENCEMENT AND CONSTRUCTION PHASE CONDITIONS

- 3) Prior to commencement of the development, a proposed dwelling mix for the development shall be submitted to and agreed in writing by the Local Planning Authority. The proposed dwelling mix shall be in broad accordance with Table 114 of the North Devon and Torridge Housing and Economic Needs Assessment (2016), which requires the following: 1 bed – 5-10%; 2 bed – 30-35%; 3 bed – 40-45%; 4 bed – 15-20%. Any deviation from this mix shall be justified in accordance with Policy ST17(a). The reserved matters shall come forward in accordance with the agreed mix.
- 4) Prior to the commencement of a phase or combination of phases of the development details of the following matters for that phase or combination of phases (in respect of which approval is expressly reserved) shall be submitted to, and approved in writing by, the Local Planning Authority:
 - (a) the scale of the development;
 - (b) the layout of the development;
 - (c) the external appearance of the development;
 - (d) the landscaping of the site;

The development shall be carried out in accordance with the approved details.

- 5) Prior to the commencement of the development a phasing plan for the whole site shall be submitted to and approved in writing by the Local Planning Authority. The phasing plan shall include the following:
 - (a) the intended number of market and affordable dwellings for each phase;
 - (b) the general locations and phasing of key infrastructure including, surface water drainage, green infrastructure, and access for pedestrians, cyclists, buses and vehicles;
 - (c) the timing and delivery of the road improvements and part closure of Burwood Lane and Caddywell Lane; and

(d) the timing and delivery of the footway improvements.

The development shall be carried out in accordance with the phasing plan.

- 6) Prior to the commencement of any development hereby granted planning permission and before any equipment, machinery or materials are brought onto the site for the purposes of the development hereby granted planning permission, site specific details of the specification and position of the fencing for the protection of any retained tree/group of trees, a tree constraints report and plan in accordance with the recommendations in BS5837:2012, together with a site specific arboricultural impact assessment and arboricultural method statement shall be submitted to and approved in writing by the Local Planning Authority. The works shall be carried out as approved and the fencing shall be erected prior to the commencement of any of the development hereby permitted and shall be maintained until the development has been completed and all equipment, machinery and surplus materials have been removed from the site.
- 7) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the Local Planning Authority. The Statement shall provide for:
- details of points of access of vehicles associated with the construction of the site;
 - the parking of vehicles of site operatives and visitors;
 - loading and unloading of plant and materials;
 - storage of plant and materials used in constructing the development;
 - the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - wheel washing facilities;
 - measures to control the emission of dust and dirt during construction; and
 - a scheme for recycling/disposing of waste resulting from demolition and construction works.

The Construction Method Statement shall be adhered to throughout the construction period for the development.

- 8) Prior to commencement of each phase or combination of phases of the development hereby permitted a plan identifying the finished floor level of the proposed dwellings and the finished garden levels in relation to an identifiable datum point shall be submitted to and agreed in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with such agreed details.
- 9) A waste audit statement shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of each phase or combination of phases of the development. The development shall be carried out in accordance with the approved statement.

- 10) No development shall take place on any phase or combination of phases until the developer has secured the implementation of a programme of archaeological work for that phase or combination of phases in accordance with a written scheme of investigation (WSI) which has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out at all times in accordance with the approved scheme.
- 11) Prior to the commencement of development, a Construction and Ecological Management Plan (CEMP) to detail measures to ensure habitat and species protection during construction and a Landscape and Ecological Management Plan (LEMP) to detail how retained and proposed habitats will be managed in the long term based on the Ecological Assessment dated March 2019 prepared by Ecology Solutions Ltd, will be submitted to and approved in writing by the Local Planning Authority. The development will be implemented in accordance with the approved CEMP and LEMP.
- 12) Prior to the commencement of development on any phase or combination of phases, details of any proposed estate road, cycleways, footways, footpaths, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, road maintenance/vehicle overhang margins, embankments, visibility splays, accesses, car parking and street furniture shall be submitted to and approved in writing by the Local Planning Authority. The phase or combination of phases shall be implemented in accordance with the approved details.
- 13) No development hereby permitted shall commence on any phase or combination of phases until the following information in relation to that phase or those phases has been submitted to and approved in writing by the Local Planning Authority:
 - (a) soakaway test results in accordance with BRE 365;
 - (b) measured ground water levels to demonstrate that throughout the year the soakaway system would be in accordance with CIRIA SuDS Manual C753;
 - (c) evidence that there is a low risk of infiltrated water from soakaways re-emerging downslope from the site;
 - (d) a detailed drainage design based upon the approved Flood Risk Assessment and Drainage Strategy by Clive Onions Ltd dated 4 March 2019 (Version 4), and the results of the information submitted in relation to (a), (b) and (c) above;
 - (e) detailed proposals for the management of surface water and silt run-off from the site during construction of the development hereby permitted; and
 - (f) proposals for the adoption and maintenance of the permanent surface water drainage system.

No building hereby permitted within each phase or combination of phases shall be occupied until the works approved under (a) - (f) above have been

implemented for that specific phase or phases in accordance with the approved details under (a) - (f).

- 14) Construction works shall not take place other than between 0700 and 1900hrs on Mondays to Fridays, Saturdays between 0800 and 1300hrs and at no time on Sundays and Bank Holidays.

PRE-OCCUPANCY CONDITIONS

- 15) The occupation of any dwelling in a phase or combination of phases shall not take place until the following works have been completed:
- (a) the spine road and any cul-de-sac carriageways serving the dwelling (including any vehicle turning heads, kerbing and highway drainage) constructed up to and including base course level, the ironwork set to base course level and the sewers, manholes and service crossings completed;
 - (b) the spine road and cul-de-sac footways and footpaths which provide that dwelling with direct pedestrian routes to an existing highway maintainable at public expense constructed up to and including base course level;
 - (c) any cul-de-sac visibility splays have been laid out to their final level;
 - (d) the street lighting for the spine road, any cul-de-sac and footpaths serving the dwelling has been erected and is operational;
 - (e) the car parking and vehicular access to serve the dwelling; and
 - (f) the verge and service margin and vehicle crossing on the road frontage of the dwelling.
- 16) No more than eighty dwellings shall be occupied with access from Hoopers Way until the spine road through the site links to Caddywell Lane and no more than eighty dwellings shall be occupied with access from Caddywell Lane until the spine road through the site links to Hoopers Way.

POST OCCUPANCY MONITORING AND MANAGEMENT

- 17) Provision shall be made within the site for the disposal of surface water so that none drains on to any County Highway.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY

Peter Wadsley (of Counsel) Instructed by the Solicitor to TDC

He called

Peter Radmall MA BPhil CMLI Chartered Landscape Architect

Mike Muston BA (Hons) MPhil
MRTPI Director, Muston Planning

Helen Smith BA MTP MRTPI Development Manager Team Leader TDC

Beth Sachs MA (Hons) MRTPI Planning Policy Officer TDC

FOR THE APPELLANT

Satnam Choongh (of Counsel) Instructed by Beechcroft Land Ltd

He called

Corinna Demmar BA (Hons)
Dip LA (Hons) CMLI Senior Director (Landscape) RPS

Nigel Jacobs BA (Hons) MRTPI Operations Director, Intelligent Land

Christopher Simkins BA (Hons)
MRTPI Director, Planning and Strategy, RPS

Andrew Kenyon BEng FCHIT Director, Peter Evans Partnership

Clive Onions BSc, CEng, FICE,
FCIWEM, MStructE, MCIHT Director Clive Onions Ltd

FOR DEVON COUNTY COUNCIL

Helen Montgomery MA (Hons)
C.WEM, MCIWEM Flood and Coastal Risk Engineer

FOR NORTH DEVON COUNCIL

Andrew Austen BA (Hons),
MPhil, MRTPI Planning Policy Team Leader

DOCUMENTS SUBMITTED AT THE INQUIRY

INQ1 Notification Letter

INQ2 Letters of representations

ADDITIONAL DOCUMENTS SUBMITTED BY THE APPELLANT

APP1 Letter to Ian Thomas at Beechcroft Land Ltd 10.01.2020

- APP2 Email from DCC Landscape Officer re AGLV Supplementary Paper 29.11.2019
- APP3 Email from Stephen Reed to Helen Smith 22.05.2019
- APP4 Email exchange Helen Smith and Chris Simkins 09.12.2019
- APP5 Extract from Northern Devon Housing and Employment Study 2014
- APP6 Appeal and costs decision APP/G2815/W/19/3232099
- APP7 North Devon & Torridge Infrastructure Delivery Plan 2016
- APP8 Paul Newman New Homes Ltd v Secretary of State EWHC 2367 (Admin), 2019 WL 04259661
- APP9 NPPG Planning Obligations para 004 extract
- APP10 Housing Land Supply SoCG 30.01.2020
- APP11 Closing Submissions on behalf of the Appellant

ADDITIONAL DOCUMENTS SUBMITTED BY THE LPA

- LPA1 CIL Compliance Schedule 13.2.2020
- LPA2 s.106 Agreement 13.2.2020
- LPA3 Proposed site visit and vehicular route
- LPA4 Draft Conditions (as revised) 31.01.2020
- LPA5 North Devon and Torridge District Councils' Core Strategy Issue and Options November 2007
- LPA6 Great Torrington Commons Management Plan 2019 -2024
- LPA7 Numbers of dwelling completions in Torrington
- LPA8 Homes for Sale in Barnstaple Devon – Tawcroft (Persimmon)
- LPA9 Homes for Sale in Barnstaple Devon – Larkbear (Pickards)
- LPA10 Homes England Funding Contract, Ilfracombe
- LPA11 Babergh appeal re deliverability definition 2019 EWCA Civ 2200 Case No. C1/2019/0140
- LPA12 Beech Grove (Chichester Development)
- LPA13 Daddon Hill Farm Northam (Linden)
- LPA14 Email re Land west of Parklands, South Molton (SoCG site 18) 27.01.2020
- LPA15 Email re Clovelly Road and Tadworthy Road, Northam (SoCG site 11 and 50) 28.01.2020
- LPA16 Email re South Molton Strategic Western Extension (SoCG site 52) 17.12.2019
- LPA17 DCC LLFA Drainage Statement 29.01.2020
- LPA18 Torridge and North Devon Councils' Housing and Economic Needs Assessment Torridge and North Devon Councils May 2016
- LPA19 Closing submissions on behalf of the Council

INTERESTED PERSONS' DOCUMENTS

- IP1 Statement by Alan G Crawley, Torridge Commons Conservator
- IP2 Statement by Cheryl Cottle-Hunkin, District and Town Councillor for Great Torrington
- IP3 Statement by John Insull, Town Councillor
- IP4 Statement by James Shuttleworth, Local Resident
- IP5 Statement by Adrian Freeland, Local Resident
- IP6 Statement by Jill Hewell, Local Resident

PP App	Address	PP date	Exp Date	Description	2025/26	2026/27	2027/28	2028/29	2029/30	LPA - In Supply	RPS - In Supply	Assessment
2024/522	35 Crescent Road, Caterham, Surrey, CR3 6LE	03/04/2025	03/04/2028	Demolition of detached 4 bed dwelling and 2 bed annexe and erection of 4 no. 3 bed terrace dwellings, with associated parking and hard and soft landscaping etc.	0	3	0	0	0	3	0	Site granted consent after 1 April 2025 - dispute basis for 1 October 2025 base date - remove from assessment
2025/116	41 High Street, Dormansland, Lingfield, Surrey, RH7 6PU	09/04/2025	09/04/2028	Construction of detached dwelling and creation of new vehicle access to lane. (Permission in principle)	0	1	0	0	0	1	0	Site granted consent after 1 April 2025 - dispute basis for 1 October 2025 base date - remove from assessment
2025/143	Newlands Barn, Little Farleigh Green, Farleigh Court Road, Warlingham, Surrey, CR6 9PX	09/04/2025	09/04/2028	Demolition of existing storage building and ancillary workshop. Erection of detached dwelling (self-build/custom build) with associated works.	0	1	0	0	0	1	0	Site granted consent after 1 April 2025 - dispute basis for 1 October 2025 base date - remove from assessment
2025/174	22 Salmons Lane West, Caterham, Surrey, CR3 5LT	20/05/2025	20/05/2028	Proposed first floor extension and division of property into 2no. Three bedroomed semi-detached dwellings.	0	1	0	0	0	1	0	Site granted consent after 1 April 2025 - dispute basis for 1 October 2025 base date - remove from assessment
2025/192/NC	Gorsey Down Farm, Ricketts Hill Road, Tatsfield, Westerham, Surrey, TN16 2NB	11/04/2025	11/04/2028	Conversion of an agricultural building to single 'larger' dwellinghouse (Application to determine if prior approval is required for a proposed: Change of Use of Buildings on Agricultural Units and former Agricultural Buildings to Dwellinghouses (Class C3), which may include extension of the building and/or building operations reasonably necessary for the conversion. The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) - Schedule 2, Part 3, Class Q)	0	1	0	0	0	1	0	Site granted consent after 1 April 2025 - dispute basis for 1 October 2025 base date - remove from assessment
2025/215	The Oast House, Pikes Lane, Crowhurst, Lingfield, Surrey, RH7 6LX	15/05/2025	15/05/2028	Demolition of various outbuildings including stables. Subdivision of residential curtilage and the erection of a detached single storey dwelling (with habitable accommodation within the roofspace) and associated works. (Amended description)	0	1	0	0	0	1	0	Site granted consent after 1 April 2025 - dispute basis for 1 October 2025 base date - remove from assessment
2025/253	Marhaba, Antlands Lane, Shipley Bridge, Horley, Surrey, RH6 9TE	08/04/2025	08/04/2028	Residential development comprising 2x proposed dwellings. (Permission in Principle)	0	2	0	0	0	2	0	Site granted consent after 1 April 2025 - dispute basis for 1 October 2025 base date - remove from assessment
2025/277	Land At, Shaw Road, Tatsfield,,	20/08/2025	20/08/2028	Erection of 1x detached dwelling.	0	1	0	0	0	1	0	Site granted consent after 1 April 2025 - dispute basis for 1 October 2025 base date - remove from assessment
2025/332	Land To Rear Of 1 Woodlands Drive, South Godstone, Surrey, RH9 8HU	22/08/2025	22/08/2028	Subdivision of site and erection of a three bedroom detached bungalow at rear of no.1 Woodlands Drive, Godstone.	0	1	0	0	0	1	0	Site granted consent after 1 April 2025 - dispute basis for 1 October 2025 base date - remove from assessment
2025/356	Byshe Court Farm, Chithurst Lane, Horne, Horley, Surrey, RH6 9JU	01/09/2025	01/09/2028	Retention of rural worker's dwelling (amended proposal).	0	1	0	0	0	1	0	Site granted consent after 1 April 2025 - dispute basis for 1 October 2025 base date - remove from assessment
2025/358	Meadow Bank, Goatsfield Road, Tatsfield, Westerham, Surrey, TN16 2BU	07/08/2025	07/08/2028	Erection of self-build dwelling with demolition of existing outbuildings, and hard and soft landscaping.	0	1	0	0	0	1	0	Site granted consent after 1 April 2025 - dispute basis for 1 October 2025 base date - remove from assessment
2025/412	Lady Cross Paddocks, Mutton Hill, Dormansland, Lingfield, Surrey, RH7 6NP	19/06/2025	19/06/2028	Erection of 1 self-build dwelling, parking & landscaping.	0	1	0	0	0	1	0	Site granted consent after 1 April 2025 - dispute basis for 1 October 2025 base date - remove from assessment
2025/414	22a Croydon Road, Caterham, Surrey, CR3 6QB	22/05/2025	22/05/2028	Amalgamation of two existing flats to form a 3-bed 5-person flat.	0	-1	0	0	0	-1	0	Site granted consent after 1 April 2025 - dispute basis for 1 October 2025 base date - remove from assessment
2025/422	Flintfield Lodge, Rca Kenley Aerodrome, Whyteleafe Hill, Whyteleafe, Surrey, CR3 0AJ	11/07/2025	11/07/2028	Restoration of former Lodge Building to provide 1no. dwelling, including single storey side extension with roof lantern and solar panels, new parking area to south, and associated landscaping (part retrospective).	0	1	0	0	0	1	0	Site granted consent after 1 April 2025 - dispute basis for 1 October 2025 base date - remove from assessment
2025/475	Orchard Farm Stables, Southfields Road, Woldingham, Caterham, Surrey, CR3 7BG	30/06/2025	30/06/2028	Change of use of a section of the stables and conversion to a 2 bed house (Permission in Principle).	0	1	0	0	0	1	0	Site granted consent after 1 April 2025 - dispute basis for 1 October 2025 base date - remove from assessment
2025/499	Nyahlands Farm, Copthorne Bank, Copthorne, Crawley, Surrey, RH10 3JD	13/06/2025	13/06/2028	Erection of 9 dwellings and widening of existing access following demolition of stables ad removal of sand school. (Permission in principle)	0	4	5	0	0	9	0	Site granted consent after 1 April 2025 - dispute basis for 1 October 2025 base date - remove from assessment
2025/683	Cromlech, Felcourt Road, East Grinstead, Surrey, RH19 2JR	22/07/2025	22/07/2028	Demolition of existing dwelling and construction of up to 7 dwellings	0	3	3	0	0	6	0	Site granted consent after 1 April 2025 - dispute basis for 1 October 2025 base date - remove from assessment
2025/755	Marhaba, Antlands Lane, Shipley Bridge, Horley, Surrey, RH6 9TE	29/07/2025	29/07/2028	Permission in Principle for 1 dwelling (revised siting further to permission 2025/253)	0	1	0	0	0	1	0	Site granted consent after 1 April 2025 - dispute basis for 1 October 2025 base date - remove from assessment
2024/1154	Woodlands Garage, Chapel Road, Smallfield, Horley, Surrey, RH6 9NN	15/05/2025	15/05/2028	Demolition of existing buildings and the erection of 9 no. 3 bed dwellings with associated parking and landscaping.(Amended Scheme)	0	4	5	0	0	9	0	Site granted consent after 1 April 2025 - dispute basis for 1 October 2025 base date - remove from assessment

2024/1162	51 Stafford Road, Caterham, Surrey, CR3 6JG	29/04/2025	29/04/2025	Demolition of existing garage and erection of a 2 storey detached house with accommodation within the roof space, a detached garage and associated parking and vehicle access.	0	1	0	0	0	1	0	Site granted consent after 1 April 2025 - dispute basis for 1 October 2025 base date - remove from assessment
2024/1219	Silver Birches, Effingham Road, Burstow, Horley, Surrey, RH6 9RP	02/04/2025	02/04/2025	Demolition of existing barn, stables and shed and erection of 5 bedroom dwelling and associated works	0	1	0	0	0	1	0	Site granted consent after 1 April 2025 - dispute basis for 1 October 2025 base date - remove from assessment
2024/1293	Land At 81 Copthorne Road, Felbridge, West Sussex, RH19 2PB	30/09/2025	30/09/2028	Demolition of existing glasshouses and outbuildings and erection of 3 dwellings with associated access, parking and landscaping.	0	1	2	0	0	3	0	Site granted consent after 1 April 2025 - dispute basis for 1 October 2025 base date - remove from assessment
2024/1313	Aranui, 31 Wheelers Lane, Smallfield, Horley, Surrey, RH6 9PT	04/07/2025	04/07/2028	Partial demolition of the existing buildings and the erection of a new detached dwellinghouse. (self - build/custom build)	0	1	0	0	0	1	0	Site granted consent after 1 April 2025 - dispute basis for 1 October 2025 base date - remove from assessment

PP App	Ward	Parish	Address	PP date	Exp Date	Description	Status	Net	Outstanding Capacity	2025/26	2026/27	2027/28	2028/29	2029/30	LPA - In Supply	RPS - In Supply	Assessment
2024/1378	Westway	Caterham-on-the-Hill	Sea Cadet Hut, The Grove, Caterham, Surrey, CR3 5QD	06/06/2025		Demolition of existing buildings and erection of 16 affordable dwellings, with associated works including access, parking, and landscaping.	pp	16	16	0	5	5	6	0	16	0	Site granted consent after 1 April 2025 - dispute basis for 1 October 2025 base date - remove from assessment
2023/482	Felbridge	Felbridge	Land South Of Crawley Down Road, Felbridge,	13/06/2025	13/06/2028	Demolition of existing structures and erection of 200no. 1, 2, 3 and 4 bedroom homes (30% affordable) with new vehicular accesses via Crawley Down Road together with associated car parking, open space and landscaping.(Update - Highways technical report and	pp	200	200	0	50	50	50	50	200	0	Site granted consent after 1 April 2025 - dispute basis for 1 October 2025 base date - remove from assessment
2023/1249	Oxted South	Oxted	Perrysfield Farm, Gibbs Brook Lane, Oxted, Surrey, RH8 9PG	09/05/2025		Erection of 29 dwellings (including 10 affordable and 10 homes for active older persons) through conversions, demolition and erection of dwellings, plus associated parking, drainage infrastructure, access improvements, new footpath, landscaping and	pp	29	29	0	10	10	9	0	29	0	Site granted consent after 1 April 2025 - dispute basis for 1 October 2025 base date - remove from assessment

From: Laura Moyano <Laura.Moyano@surreycc.gov.uk>
Sent: 12 February 2026 17:47
To: Amit Patel
Cc: Statutory
Subject: LLFA-TA-25-1086RevB - Land North Of Plough Road And East Of Meadow View
Attachments: LLFA-TA-25-1086RevB Land North of Plough Rd East of Meadow View.pdf

Our ref: LLFA-TA-25-1086RevB
Your ref: 2025/723
FAO Amit Patel

Dear Amit,

Please see attached our response regarding the above application, should you have any query please do not hesitate to contact me.

Laura Moyano
Senior Sustainable Drainage Officer
Environment & Planning
Place Directorate
[SuDS](#)



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Case Officer: Laura Moyano
E-mail: SUDS@surreycc.gov.uk



Flood Risk, Planning, and
Consenting Team
Whitebeam Lodge
Morrow Lane
Guildford
Surrey
GU4 7BQ

Recommendation (mark one with X)

Further/amended information required	X
No objection	
No objection – Subject to conditions	
Objection	X

Our ref: LLFA-TA-25-1086RevB
Your ref: 2025/723
Date: 12/02/2026

Dear Planning Authority,

Land North Of Plough Road And East Of Meadow View, Smallfield,

Thank you for consulting Surrey County Council (SCC) as the Lead Local Flood Authority (LLFA) on the above Reserved Matters Planning Application. We have reviewed the surface water drainage strategy for the proposed development and assessed it against the requirements of the NPPF, its accompanying PPG and the Non-Statutory Technical Standards for sustainable drainage systems.

As part of our statutory consultee role our advice relates to surface water flood risk and surface water drainage only, the Environment Agency should be contacted for advice in relation to fluvial flood risk.

The following documents submitted as part of the above application have been reviewed and should be referred to as part of any future submissions:

Consultation request date: 02/09/2025

- Flood Alleviation Scheme Plan, August 2025, SMF-AKSW-XX-XX-DR-C-9301- P02, AKSWard;
- Land at Plough Road – Flood Alleviation Scheme Technical Note, May 2025, SMF-AKSW-XX-XX-RP-C-0001 Rev:P01, AKSWard;
- Caseway long sections, 30/05/2025;
- Caseway Manhole schedule, 30/05/2025;
- Proposed sections Sheet 1, May 2025, SMF-AKSW-XX-XX-DR-C-9135-P03, AKSWard;
- Proposed sections sheet 3, August 2025, SMF-AKSW-XX-XX-DR-C-9137-P03, AKSWard;
- Proposed sections sheet 2, August 2025, SMF-AKSW-XX-XX-DR-C-9136-P03, AKSWard;
- Proposed section plan Roads, August 2025, SMF-AKSW-XX-XX-DR-C-9130-P03, AKSWard;
- Proposed sections Road 5, M1, M2 & Shared Surface 4 P03, August 2025, SMF-AKSW-XX-XX-DR-C-9138-P03, AKSWard;
- Proposed section Plan pond, August 2025, SMF-AKSW-XX-XX-DR-C-9131 – P03, AKSWard;
- Proposed sections pond 1, August 2025, SMF-AKSW-XX-XX-DR-C-9139 – P03, AKSWard;

- Proposed contours Sheet 3, August 2025, SMF-AKSW-XX-XX-DR-C-9103-P02, AKSWard;
- Proposed contours Sheet 1, August 2025, SMF-AKSW-XX-XX-DR-C-9101-P02, AKSWard;
- Proposed contours Sheet 2, August 2025, SMF-AKSW-XX-XX-DR-C-9102-P02, AKSWard;
- General arrangement, August 2025, SMF-AKSW-XX-XX-DR-C-9000-P02, AKSWard;
- Flood Exceedance Route Sheet 1, August 2025, SMF-AKSW-XX-XX-DR-C-9241-P02, AKSWard;
- Flood Exceedance Route Sheet 2, August 2025, SMF-AKSW-XX-XX-DR-C-9242-P02, AKSWard;
- Proposed sections Flood Alleviation Scheme Sheet 1, May 2025, SMF-AKSW-XX-XX-DR-C-9311-P01, AKSWard;
- Proposed sections Flood Alleviation Scheme Sheet 2, May 2025, SMF-AKSW-XX-XX-DR-C-9312-P01, AKSWard;
- Drainage Plan Sheet 1, August 2025, SMF-AKSW-XX-XX-DR-C-9201-P02, AKSWard;
- Drainage Plan Sheet 2, August 2025, SMF-AKSW-XX-XX-DR-C-9202-P02, AKSWard;
- Drainage Construction Details Sheet 1, August 2025, SMF-AKSW-XX-XX-DR-C-9251-P02, AKSWard;
- Drainage Construction Details Sheet 2, August 2025, SMF-AKSW-XX-XX-DR-C-9252-P02, AKSWard;
- Drainage Construction Details Sheet 3, August 2025, SMF-AKSW-XX-XX-DR-C-9253-P02, AKSWard;
- Causeway Calculations, 30/5/2025;
- Boundary Plan, August 2025, SMF-AKSW-XX-XX-DR-C-9010-P02, AKSWard;

Re-consultation request date: 29/10/2025

- Cover Letter response LLFA, October 2025, Q250209, quod;
- General Arrangement Plan – Sitewide, April 2025, 5092-UBU-ZZ-D-L-101 Rev P02, Ubu design;
- General Arrangement Plan – Detail Area 1, April 2025, 5092-UBU-ZZ-D-L-202 Rev P02, Ubu design;
- General Arrangement Plan – Detail Area 2, April 2025, 5092-UBU-ZZ-D-L-203 Rev P02, Ubu design;
- General Arrangement Plan – Detail Area 3, April 2025, 5092-UBU-ZZ-D-L-204 Rev P02, Ubu design;
- Village Green Detail Area, May 2025, 5092-UBU-ZZ-D-L-205 Rev P02, Ubu design;

Re-consultation request date: 29/01/2026

- Response to LLFA comments, 23/12/2025, Q250209, Quod;

The proposed surface water drainage scheme does not meet the requirements set out in the NPPF, its accompanying PPG and the Non-Statutory Technical Standards for sustainable drainage systems.

Insufficient information has been provided / significant issues have been identified, to overcome this, the following changes and information are required:

The application site comprises 12.47ha of land and therefore is classified as 'Major' Development. Any planning application classified as Major Development will need to include a detailed drainage strategy. As per the NPPF, all 'major' planning applications being determined must include full details about surface water drainage and sustainable drainage systems, which is a material consideration.

Paragraph 181 (Feb 2025) of NPPF states:

'When determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere. Where appropriate, applications should be supported by a site-

specific flood-risk assessment. Development should only be allowed in areas at risk of flooding where, in the light of this assessment (and the sequential and exception tests, as applicable) it can be demonstrated that:

a) within the site, the most vulnerable development is located in areas of lowest flood risk, unless there are overriding reasons to prefer a different location;

b) the development is appropriately flood resistant and resilient such that, in the event of a flood, it could be quickly brought back into use without significant refurbishment;

c) it incorporates sustainable drainage systems, unless there is clear evidence that this would be inappropriate;

d) any residual risk can be safely managed; and

e) safe access and escape routes are included where appropriate, as part of an agreed emergency plan.

Paragraph 182 (Feb 2025) of NPPF states:

'Applications which could affect drainage on or around the site should incorporate sustainable drainage systems to control flow rates and reduce volumes of runoff, and which are proportionate to the nature and scale of the proposal. These should provide multifunctional benefits wherever possible, through facilitating improvements in water quality and biodiversity, as well as benefits for amenity. Sustainable drainage systems provided as part of proposals for major development should:

a) take account of advice from the Lead Local Flood Authority;

b) have appropriate proposed minimum operational standards; and

c) have maintenance arrangements in place to ensure an acceptable standard of operation for the lifetime of the development.'

The applicant has provided additional information regarding the Flood Alleviation Scheme but has not provided any information regarding the proposed drainage scheme for the development.

Drainage Scheme for the

The applicant has not provided additional information to address our comments regarding the drainage scheme for the proposed development.

In accordance with **Technical Standard S2**: *'For greenfield developments, the peak runoff rate from the development to any highway drain, sewer or surface water body for the 1 in 1 year rainfall event and the 1 in 100 year rainfall event should never exceed the peak greenfield runoff rate for the same event.'*

As per the design outline criteria, associated discharge rates and storage volumes must be calculated using a maximum discharge rate of **4.4 l/s/ha**, applied only to the **positively drained areas of the site**, and incorporating a range of on-site SuDS measures, the applicant has not confirmed the final contributing area for the site. We note that a discharge rate of 9.5 l/s has been proposed; however, the following information has not been provided:

- Confirmation of the positively drainage areas of the site
- Evidence that the proposed discharge rate complies with the 4.4l/s/ha
- Details of permeable and impermeable areas as this is a reserved matters application for layout, scale, appearance and landscaping.

In May 2022 the climate change allowances were updated based on a catchment approach. This development is located within the 'Mole Management Catchment' which shows the upper end allowance (recommended by SCC) as 35% for the 3.3% annual exceedance rainfall event and 40% for the 1% annual exceedance rainfall event. No Hydraulic calculations have been provided for the 1 in 30 year (+ 35% allowance for climate change).

The development presents an opportunity to incorporate a wide range of sustainable surface water management measures that not only reduce discharge rates from the site but also deliver amenity, biodiversity, and water-quality benefits, while contributing to climate-change resilience under both drought and flood conditions.

The applicant has indicated now that swales and permeable paving will form part of the scheme; however, the submitted drainage plan has not been updated to show these features. All proposed SuDS components must be clearly illustrated on the drainage plan to demonstrate how they function together as a coherent strategy. In addition, the applicant should provide justification where certain SuDS options—such as green or blue roofs, attenuation tree pits, rain gardens, or other source-control features—have not been incorporated.

Rainwater harvesting should always be considered given that Surrey is designated as a 'Water Stressed Area', yet no evidence of such consideration has been provided. The applicant is therefore expected to review the proposed strategy and demonstrate why rainwater reuse measures have been omitted or how they could be integrated into the scheme.

The outline submission included a detailed mapping of the watercourses within and around the site. These watercourses should be integrated into the site layout, with adequate provision for maintenance access. The drainage plan provided does not currently show the identified watercourse network within the site, and there is concern that the proposed arrangement along the western boundary does not safeguard the required access for maintenance due to insufficient space being allocated for watercourses along the western boundary of the site.

Flood Alleviation Scheme

The S106 attached to the Outline Planning Permission (OPP) requires that Flood Relief Scheme (Schedule 5, Paragraph 1, 2 & 4) to be submitted alongside the relevant reserved matters application.

Flood Relief Scheme

(Schedule 5, Paragraph 1) Schedule 5, Paragraph 1 of the S106 states: "To submit to the District Council for approval details of the Flood Relief Scheme no later than the first submission of a Reserved Matters Application."

(Schedule 5 – Paragraph 4) sets clearly the minimum requirements that the Flood Relief Scheme should be meet and the scheme should be provide the following:

- (a) Northern Basin Volume no less than 11,400 cubic meters*
- (b) Bed level 59.50 AOD;*
- (c) Northern Basin Inlet Conditions from Wetherhill Stream;*
- (d) Northern Basin Outlet Conditions to Wetherhill Stream;*
- (e) Southern Basin and Interception Channel Volume no less than 16,700 cubic meters;*
- (f) Bed level 57.85 AOD;*
- (g) Southern Basin and Interception Channel Inlet Conditions (overland flow from the east);*
and
- (h) Southern Basin Outlet Conditions piped to Car Park Dich,*

Or alternative solutions that achieve the same flood relief benefits as set in the modelling.

The proposed Flood Relief Scheme must be designed in full accordance with the approved Flood Relief Parameter Plan, as secured through the Section 106 agreement. However, the submitted information states that the Northern Basin has 11,337m³ of storage capacity, with the Southern Basin is providing a further 11,337m. However, the approved Flood Relief Parameter Plan requires a total storage capacity of 11,400m³ in the Northern Basin and 16,700m³ in the Southern Basin as agreed at outline stage and secured through the Section 106 obligations. The scheme must therefore either deliver the approved storage volume or demonstrate an alternative approach that provides an equivalent level of flood relief.

No information has been provided to inform how the area will be lowered to allow flow into basin from Weatherhill stream as it is shown in the Parameter Plan and how connections will be made into the watercourse.

The LLFA is not satisfied that the submitted documents meet the requirements of the Fifth Schedule (Flood Relief Scheme) of the Section 106 agreement attached to outline permission TA/2022/1658.

Elimination of conditions

The applicant has suggested the removal partially of the proposed pre-commencement conditions on the basis that the requirements are addressed within the Section 106 agreement. However, the Section 106 and planning conditions serve distinct purposes.

While the Section 106 secures the overarching legal obligations, it does not provide a mechanism for the Local Planning Authority to review, approve or control the detailed technical information required prior to the start of development.

Pre-commencement conditions remain necessary to ensure that essential design details are submitted at the correct stage and assessed before any works commence. The conditions will be recommended in addition to the Section 106 obligations.

Should the Applicant wish to discuss our concerns in more detail we provide a pre-application advice service, details of which are available on our website:

[Sustainable Drainage Systems \(SuDS\) planning advice - Surrey County Council](#)

A full list of the information we expect to receive as part of Reserved Matters Planning Application can also be found using the above link.

We are not satisfied that the proposed drainage scheme meets the requirements set out in the aforementioned documents because insufficient information has been provided; however, in the event that planning permission be granted by the Local Planning Authority against our recommendations, suitably worded conditions should be applied. Suggested conditions are below:

- 1) The development hereby permitted shall not commence until details of the design of a surface water drainage scheme have been submitted to and approved in writing by the planning authority. The design must satisfy the SuDS Hierarchy and be compliant with the national standards for sustainable drainage systems and the NPPF. The required drainage details shall include:

- a) Evidence that the proposed final solution will effectively manage the 1 in 30 (+35% allowance for climate change) & 1 in 100 (+40% allowance for climate change) storm events and 10% allowance for urban creep. Associated discharge rates and storage volumes shall be provided using a maximum discharge rate **of 4.4 l/s/ha applied to the positively drained areas of the site only and incorporating a range of on-site SuDS measures.**
- b) Detailed drainage design drawings and calculations to include: a finalised drainage layout detailing the location of drainage elements, pipe diameters, levels, and long and cross sections of each element including details of any flow restrictions and maintenance/risk reducing features (silt traps, inspection chambers etc.).
- c) An exceedance flow routing plan demonstrating no increase in surface water flood risk on or off site. The plan must include proposed levels and flow directions.
- d) Details of drainage management responsibilities and maintenance regimes for all drainage elements.
- e) Details of how surface water will be managed during construction including measures to protect on site and downstream systems prior to the final drainage system being operational. Including details of how existing watercourse on and adjacent to the site will be protected.

Reason: To ensure the design meets the national standards for SuDS and the final drainage design does not increase flood risk on or off site.

- 2) The development hereby permitted shall not commence until full construction details for the flood relief scheme have been submitted to and approved in writing by the planning authority including: pipe diameters, levels, and long and cross sections of each area including details of any flow restrictions and maintenance/risk reducing features (silt traps, inspection chambers etc. The long-term maintenance responsibility for the areas should be clearly defined with associated maintenance regimes.

Reason: To ensure that the scheme that is built provides, at a minimum, the same as level of flood relief as that assessed in the submitted 'Hydraulic Modelling Study at Plough Road, Smallfield by JBA Consulting Final Report' of July 2023.

- 3) Prior to the first occupation of the development, a verification report must be submitted to and approved by the Local Planning Authority. This must demonstrate that the surface water drainage system has been constructed as per the agreed scheme (or detail any minor variations), confirming any defects have been rectified. Provide the details of any management company. Provide an 'As-Built' drainage layout and state the national grid reference of key drainage elements.

Reason: To ensure the Drainage System is designed to the national standards for SuDS.

Informative

If proposed site works affect an Ordinary Watercourse, Surrey County Council as the Lead Local Flood Authority should be contacted to obtain prior written Consent.

If proposed works result in infiltration of surface water to ground within a Source Protection Zone the Environment Agency will require proof of surface water treatment to achieve water quality standards.

Sub ground structures should be designed so they do not have an adverse effect on groundwater.

If there are any further queries please contact the Flood Risk, Planning, and Consenting Team via SUDS@surreycc.gov.uk. Please use our reference number in any future correspondence.

Yours faithfully

Laura Moyano
Senior Sustainable Drainage Officer
For the Flood Risk, Planning, and Consenting Team

PP App	Address	PP date	Description	2025/26	2026/27	2027/28	2028/29	2029/30	LPA - In Supply	RPS 2025/26	RPS 2026/27	RPS 2027/28	RPS 2028/29	RPS 2029/30	RPS - In Supply	Deductions	Applicant	Pre-Commencement conditions to be discharged	Progress on discharging PC conditions	Housebuilder identified	Does the site need to be marketed / sold to a developer prior to RM/build out?	Progress towards RM application	Assessment (as of 3 March 2026)
2022/1658	Development Site At 532253 143328, Plough Road, Smallfield, Surrey, RH6 9JN (The Plough and Furrow Inn)	17/07/2024	Development of up to 120 residential dwellings with associated infrastructure, open space and vehicular and pedestrian access, with additional engineering works to provide for flood relief. (Outline application with all matters reserved saved for access)	0	0	40	40	40	120				40	40	80	40	Landform Smallfield Limited	7. Bird Hazard Management Plan (BHMP). 8. (Contamination) 9. (archaeological work) 10. (Construction Environmental Management Plan) 11. (Landscape and Ecological Management Plan) 13. (proposed road junction with Meadow View and the proposed pedestrian-cycle only access) 15. (Construction Transport Management Plan) 16. (Construction Transport Management Plan) 22. (surface water drainage scheme)	None of the pre-commencement conditons on the original outline have been discharged. Discharge of condition 15 submitted as part of the RM application.	Lovell Partnerships	No	2025/723 validated on 21 August 2025. Not yet determined.	A reserved matters application (2025/723) has been submitted but has not yet been determined. However, there are outstanding objections on flooding and drainage issues raised through the RMA that remain unresolved (Surrey CC, LFA). Not clear when these issues will be resolved and allow the application to be determined. It is most likely that additional pre-commencment conditons will be applied to any RM consent, which will also need to be discharged prior to development coming forward. Furthermore, a number of pre-commencement conditions attached to the Outline consent have not been discharged or even applied for (NB:only one application has been submitted for condition 15). On balance, whilst some progress has been made towards delivery of housing it remains unclear when development is likely to commence. The current trajectory is not supported by clear evidence. We recommend the trajectory is pushed back by one year. Reduce supply by 40 dwellings.
2024/47 / SCC2023-0217	Orchard Court, 33 East Grinstead Road, Lingfield, Surrey, RH7 6ET	07/06/2024	Outline application for the erection of part 2 and 3 storey building (with additional basement) for extra care accommodation, comprising self-contained apartments, staff and communal facilities, electric substation and associated parking. Appearance and landscaping reserved (Consultation from Surrey County Council)	0	0	27	27	0	54	0	0	0	0	0	0	54	Surrey County Council	Unable to confirm.	Unable to confirm.	No	Yes	No clear evidence	This site is owned by Surrey County Council . It appears the existing buildings have been demolished (Googlemaps). However, there are no records of any discharge of conditions applications being submitted pursuant to the original outline consent. No RM application has been submitted. No developer has been identified and unclear whether site has been marketed for sale. No clear evidence to demonstrate any progress towards an RMA or sale of the site. Realistic prospects of delivery within the next five years not demonstrated. Remove in full.
2025/58	Stables, Red Lane Farm, Red Lane, Limpsfield, Oxted, Surrey, RH8 0RT	22/09/2025	Demolition of existing stables and the erection of 12 dwelling with parking, access and associated works (Outline application with all matters reserved except access, layout and scale).	0	0	6	6	0	12	0	0	0	0	0	0	12	Chartwell Land & New Homes Limited	4. (Contamination) 5. (Arboricultural Method Statement) 7. (Biodiversity Gain Plan) 8. (Construction Environmental Management Plan) 10. (surface water drainage) 11. (Construction Transport Management Plan) 14. (Red Lane)	None discharged.	Applicant	No	No clear evidence	A variation of condition application (2025/1517) was validated on 21 January 2026. Assume applicant will build out the site. Acknowledge the applicant is a local housebuilder with a recent track record in the area. However, no discharge conditions applications submitted as yet, and no firm progress towards a RM application. Site granted consent after 1 April 2025 - dispute basis for 1 October 2025 base date. Remove in full.
2022/267	Former Shelton Sports Club, Shelton Avenue And Land Adjacent To 267 Hillbury Road, Warlingham, Surrey, CR6 9TL	20/06/2025	Outline planning application with all matters reserved except access, for a residential development of 150 dwellings including 45% affordable housing with vehicular access from Hillbury Road, provision of public open space and associated ancillary works.	0	0	50	50	50	150	0	0	0	0	0	0	150	Chartwell Land & New Homes Limited	6. (surface water drainage) 8. (Construction Environmental Management Plan) 9. (Archaeological work) 20. (Construction Transport Management Plan)	None discharged.	Applicant	No	No clear evidence	Assume applicant will build out the site. Acknowledge the applicant is a local housebuilder with a recent track record in the area. However, no discharge conditions applications submitted as yet, and no firm progress towards a RM application. Site granted consent after 1 April 2025 - dispute basis for 1 October 2025 base date. Remove in full.
2024/1393	1 Park Lane, Warlingham, Surrey, CR6 9BY	24/07/2025	Outline planning permission for up to 45 new homes with all matters reserved except scale, layout and access.	0	0	20	25	0	45	0	0	0	0	0	0	45	Chartwell Land & New Homes Limited	No DN available on planning application search.	None discharged.	Applicant	No	No clear evidence	Assume applicant will build out the site. Acknowledge the applicant is a local housebuilder with a recent track record in the area. However, online register indicates that this application has only been approved pending completion of a s106 Agreement, and so a formal consent has not yet been issued (hence why a DN is not available on the planning register). No discharge conditons applications submitted as yet on the outline, and no firm progress towards a RM application. No signed s106 available on planning register. No clear evidence provided. Site granted consent after 1 April 2025 - dispute basis for 1 October 2025 base date. Remove in full.
2024/1389	Rede Cottage, 57 Redehall Road, Smallfield, Horley, Surrey, RH6 9QA	02/07/2025	Demolition of existing buildings and erection of 85 dwellings with associated works (outline application with all matters reserved except access, layout and scale).	0	0	25	30	30	85	0	0	0	0	0	0	85	Chartwell Land & New Homes (2) Limited	No DN available on planning application search.	None discharged.	Applicant	No	No clear evidence	Assume applicant will build out the site. Acknowledge the applicant is a local housebuilder with a recent track record in the area. However, online register indicates that this application has only been approved pending completion of a s106 Agreement, and so a formal consent has not yet been issued (hence why a DN is not available on the planning register). No discharge conditons applications submitted as yet on the outline. No firm progress towards a RM application. No signed s106 available on planning register. Also net loss of a single dwelling. No clear evidence provided. Site granted consent after 1 April 2025 - dispute basis for 1 October 2025 base date. Remove in full.
2023/1464	Land West Of Chapel Road, Smallfield, Surrey, RH6 9JH	17/06/2025	Outline planning application for residential development (Use Class C3) comprising up to 270 dwellings; private parking; landscaping and public open space; SUDs; and flood alleviation measures and land reserved for education use. (Outline application with all matters reserved saved for access)	0	0	90	90	90	270	0	0	0	0	0	0	270	B.Yond Homes Limited	5. (Tree Protection Plans, per phase) 6. (surface water drainage)	Conditions will need to be discharged by the new owner/developer once the site has been sold. Conditions may also apply to any RMA.	Site in process of being sold	Yes - site on the market	No clear evidence	This application was approved on appeal in June 2025. The site was subsequently been put on the market and we understand that expressions of interest have been received. Whilst the site may be sold, it has yet to be sold and so it is unclear who will secure RM consent and who will build out the site. No clear evidence has been presented to demonstrate realistic prospect that homes will be delivered in the next five years. Site granted consent after 1 April 2025 - dispute basis for 1 October 2025 base date. Remove the site in full.



Neutral Citation Number: [2018] EWCA Civ 1808

Case No: C1/2017/3339

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ADMINISTRATIVE COURT
PLANNING COURT
MR JUSTICE SUPPERSTONE
[2017] EWHC 2865 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 31 July 2018

Before:

Lord Justice Davis
Lord Justice Lindblom
and
Lord Justice Hickinbottom

Between:

Hallam Land Management Ltd.

Appellant

- and -

**(1) Secretary of State for Communities and
Local Government**

(2) Eastleigh Borough Council

Respondents

Mr Thomas Hill Q.C. and Ms Philippa Jackson (instructed by **Irwin Mitchell LLP**)
for the **Appellant**

Mr Zack Simons (instructed by **the Government Legal Department**)
for the **First Respondent**

Mr Paul Stinchcombe Q.C. and Mr Ned Helme (instructed by **Eastleigh Borough Council**)
for the **Second Respondent**

Hearing date: 3 May 2018

**Judgment Approved by the court
for handing down
(subject to editorial corrections)**

Lord Justice Lindblom:

Introduction

1. In deciding an appeal against the refusal of planning permission for housing development, how far does the decision-maker have to go in calculating the extent of any shortfall in the five-year supply of housing land? That is the central question in this appeal.
2. With permission granted by Lewison L.J. on 6 March 2018, the appellant, Hallam Land Management Ltd., appeals against the order of Supperstone J., dated 16 November 2017, dismissing its application under section 288 of the Town and Country Planning Act 1990 by which it had challenged the decision of the first respondent, the Secretary of State for Communities and Local Government, in a decision letter dated 9 November 2016, dismissing an appeal under section 78 of the 1990 Act. The section 78 appeal was against the refusal by the second respondent, Eastleigh Borough Council, of outline planning permission for a development of up to 225 dwellings, a 60-bed care home and 40 care units, the provision of public open space and woodland, and improvements to Hamble Station, on land to the west of Hamble Lane, in Hamble.
3. The site of the proposed development is about 23 hectares of pasture, on the Hamble Peninsula, between the Hamble River and Southampton Water. It is not within any settlement, nor allocated for development in the Eastleigh Borough Local Plan Review (2001-2011), adopted in 2006. The settlements of Bursledon, Netley and Hamble lie, respectively, to the north, the west and the south. Because it is in the “countryside”, the site is protected by policy 1.CO of the local plan. And because it lies within the Bursledon, Hamble, Netley Abbey Local Gap, it also has the protection of policy 3.CO.
4. An inquiry into the section 78 appeal was held by an inspector appointed by the Secretary of State on four days in June 2015. On 24 June 2015, the second day of the inquiry, the appeal was recovered by the Secretary of State, because it involved a proposal for “residential development of over 150 units ... , which would significantly impact on the Government’s objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities”. In his report, dated 26 August 2015, the inspector recommended that the appeal be dismissed. The Secretary of State subsequently received a large number of further representations, some of them in response to letters he sent to the parties on 15 April 2016 and 29 June 2016. In those representations the Secretary of State received the parties’ comments on two decisions of inspectors on appeals in which the supply of housing land in the council’s area had been assessed – first, an appeal relating to a proposed development of up to 335 dwellings on land at Bubb Lane, Hedge End, which was dismissed on 24 May 2016, and secondly, an appeal relating to a proposed development of up to 100 dwellings on land at Botley Road, West End, which was allowed on 7 October 2016. In his decision letter on Hallam Land’s appeal the Secretary of State largely agreed with the inspector’s conclusions and accepted his recommendation.
5. The challenge to the Secretary of State’s decision was made on four grounds. The first and second grounds went to his failure – unlawfully, it was said – to ascertain the extent of the shortfall against the five-year housing land supply in the council’s area, and to provide adequate reasons for his relevant conclusions. The third and fourth grounds asserted that his decision was inconsistent with the conclusions on housing land supply and the weight to be

given to policy 3.CO in an inspector's report, dated 25 August 2016, in an appeal relating to a proposed development of up to 680 dwellings on land at Winchester Road, Boorley Green. Supperstone J. rejected all four grounds.

The issues in the appeal

6. The appeal before us raises two main issues:

- (1) given that the council could not demonstrate the requisite five-year supply of housing land under government policy in the first National Planning Policy Framework ("NPPF"), published in March 2012, whether the Secretary of State established the shortfall with sufficient precision, and whether his relevant reasons were adequate; and
- (2) whether the Secretary of State erred in law in deciding Hallam Land's appeal without having regard to the inspector's report on the Boorley Green appeal.

7. These issues raise no question of law that has not already been amply dealt with in a series of cases on the meaning of relevant policies in the NPPF, and on the importance of consistency in planning decision-making.

NPPF policy

8. We are not concerned in this appeal with the policies in the revised NPPF, which was published on 24 July 2018. I shall refer only to the policies in the first NPPF, as if they were still extant.

9. Paragraph 47 of the NPPF states:

"To boost significantly the supply of housing, local planning authorities should:

...

- identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements ...

...".

Paragraph 49 states:

"Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites."

Paragraph 14 contains the Government's policy for the "presumption in favour of sustainable development". It explains that:

" ...

For decision-taking this means:

- approving development proposals that accord with the development plan without delay; and

- where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:
 - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
 - specific policies in this Framework indicate development should be restricted.”

The inspector’s report

10. In his report the inspector noted, under the heading “The Case for the Council”, that the council “acknowledge that they are not currently able to demonstrate a 5 year housing supply, as required by NPPF para 47” (paragraph 22). It was the council’s case, however, that “the proposal is contrary to development plan policies which are not out of date, and is not the sustainable form of development for which there is a presumption in favour”, and that “[even] if the presumption in NPPF para 14 was engaged, the negative aspects of the scheme, including the landscape impact and the loss of openness, would significantly and demonstrably outweigh the benefits” (paragraph 41).
11. Summarizing the case for Hallam Land, under the heading “The Case for the Appellants”, he referred (in paragraph 62) to the uncontested evidence of its planning witness, Mr Usher:

“62. The need for housing is demonstrated in Mr Usher’s proof ... , which has not been challenged by the Council, and which reflects the conclusions of the Local Plan Examination that the draft is unsound for failing to make adequate provision. The Council accept that they cannot demonstrate a five year supply, the level being shown by the appellants to be 2.92 years, or 1.78 years if the need for affordable housing is included.”

Because the council would “not be able to meet its housing land requirements without the loss of significant areas of countryside...”, it was “inevitable that there will be a change to the open and undeveloped character of such land”. This was “not, of itself, an adequate ground to resist the development when there is no 5 year land supply, nor an up to date development plan” (paragraph 65).
12. In his conclusions the inspector identified the “main issues” as being “i) the effect of the development on the character and appearance of the countryside and its role in separating settlements, and ii) whether any harm would be outweighed by the potential benefits of the development, including a supply of market and affordable housing, and the improvement of station facilities” (paragraph 88).
13. He said that “[the] proposal would not fall within any of the specified uses in Local Plan policy 1.CO ...”. He concluded that there was “no doubt that a development of this scale would diminish the Local Gap both physically and, to some degree, visually, contrary to policy 3.CO ...”, and that “[in] these respects it would not comply with the development plan” (paragraph 90). He went on to find that “there are grounds to conclude that policy 1.CO may be regarded as out of date, but that there is not justification for giving any substantial reduction to the weight applied to policy 3.CO” (paragraph 96).
14. Under the heading “The Benefits of the Proposal” he noted that Hallam Land had particularly emphasized “the supply of market and affordable housing to meet an acknowledged need, and

the provision of facilities for Hamble Station” (paragraph 107). He continued (in paragraph 108):

“108. The Council acknowledge that they are not able to demonstrate more than a four and a half years supply of deliverable housing land, and it is the appellants’ view that the actual level is significantly less. It is not necessary for this report to carry out a detailed analysis of the housing land supply position, which is better left to the Local Plan examination, where all the evidence is available to the inspector. However, it can be said that there is a material shortfall against the five year supply required by NPPF para 47, and that there is evidence of an existing need for affordable housing. In these circumstances, the provision of up to 225 homes, 35% of which would be affordable, would be a significant advantage arising out of the scheme. It is also the case that the new dwellings would meet sustainable construction and accommodation standards, and be of a mix to satisfy a wide range of housing needs. In these respects, the development would help meet the NPPF objectives of boosting significantly the supply of housing, and delivering a wide choice of high quality homes. ...”.

He accepted that “[the] choice of accommodation would also be boosted by the provision of 100 care and extra care spaces”, and that “such accommodation would be likely to release a supply of existing, under-used homes to meet the general housing demand” (paragraph 109).

15. Bringing his conclusions together under the heading “Sustainability and Overall Conclusions”, the inspector said (in paragraph 116):

“116. When assessed against the criteria in para 7 of the NPPF, the supply of market and affordable housing, along with care facilities, would make a significant contribution to meeting the social role of sustainability, complemented by the provision of public open space, although, in the latter case, at the expense of the loss of the rural character of the public footpath crossing the site. The additional population and employment opportunities would assist the economic life of the area, as would the supply of homes in an area with an acknowledged shortfall. There would be the environmental and community benefits arising out of the station improvements (but having regard to the Council’s alternative scheme), any spin-off advantages for traffic and pollution levels, from the off-site highway works, and the environmental and ecological aspects of the landscaping proposals.”

He accepted that “[on] balance, this is a reasonably sustainable location in terms of accessibility” (paragraph 117). His final conclusion, however, went against the proposal. He found that “the loss of the gap between the surrounding settlements, involving the physical intrusion into an area of countryside, and contributing to the coalescence of those settlements, and loss of independent identity” would be contrary to policy 3.CO of the local plan and corresponding policies in the NPPF; that “[the] countervailing benefits of the scheme, as well as compliance with other development plan policies ... would not outweigh the harm that this loss of separation would cause”; and that “[taken] as a whole, the proposal does not amount to the form of sustainable development for which there is a presumption in favour” (paragraph 118).

The decision in the Bubb Lane appeal

16. The inspector in the Bubb Lane appeal concluded (in paragraph 45 of his decision letter):

“45. The evidence before me does not support EBC’s view that it is ‘a whisker’ away from demonstrating a five year supply of deliverable housing land. Notwithstanding EBC’s considerable efforts to improve housing provision, something in the order of a four year supply at the time of this Inquiry indicates that EBC has a considerable way to go to demonstrating a five year supply of deliverable sites. There is no convincing evidence that measures currently taken have been effective in increasing the rate of housing delivery. The scale of the shortfall is a significant material consideration in determining this appeal. The contribution that the appeal scheme would make to the housing supply, and particularly to affordable housing provision in the area in accordance with EBLP Policy 74.H, would be a significant benefit of allowing the appeal.”

Under the heading “Planning balance”, the inspector concluded that “some weight can be given to the conflict with EBLP Policy 2.CO, arising from the harm that would result from the proposal to the separation of settlements ...”, but that “this weight is limited because of the significant shortfall in housing supply, and the lack of convincing evidence that EBC’s efforts to address this are proving effective” (paragraph 52). He went on to say that, “[given] the current scale of the housing shortfall, the provision of additional market and affordable housing would be a significant benefit of the proposal” (paragraph 55). But he concluded, finally that “[in] my judgement, the adverse impacts of the proposal would significantly and demonstrably outweigh the benefits, when assessed against the policies in the *Framework* taken as a whole” (paragraph 57).

The decision in the Botley Road appeal

17. In the decision letter on the Botley Road appeal, the inspector stated these conclusions on “Housing land supply” (in paragraphs 18 and 19 of his decision letter):

“18. In conclusion, the final calculation taking a requirement figure of 1,120dpa, or 5,602 dwellings over the 5 year period, there is a 4.25 years’ supply of housing land. Even on the Council’s most favourable calculations, taking the Council’s approach to the buffer and with its suggested contributions from all the disputed sites, the supply would still only be 4.71 years, but the evidence indicates that this is unlikely to be achievable.

19. There is therefore a significant shortfall in the amount of deliverable housing land, amounting to some 833 dwellings. The Leader of the Council gave evidence of the impressive efforts the Council had made to underpin housebuilding confidence following the recession, but this does not seem to have been translated into the provision of enough housing land. Net completions for the two years 2014/15 and 2015/16 amounted to less than one year’s requirement. Referring to recent outline approvals, the Council said that it was making progress towards improving housing supply; recent permissions might enable it to exceed the OAN to a degree this year. Even if that happens, it is still well short of the requirement for the year. There is a significant shortfall to be made up, and the evidence that the gap might be closing quickly enough is far from convincing. The Council is not, as it claims, on the cusp of achieving a 5 year supply of deliverable housing land.”

Under the heading “Effect on the countryside and the strategic gap”, he noted (in paragraph 27) that “planning permission has been granted for a number of sites which have included dwellings in the strategic gaps”, and went on to say:

“27. ... But the Council’s argument that present needs can be met substantially within the land outside the gaps is wholly unconvincing; even with the permissions on gap land, there is still no 5 year housing land supply and without them, even on the Council’s unduly optimistic housing land supply calculations, there would only be 3.4 years’ supply of housing land. On the contrary, the evidence is that the gaps are a factor in limiting the choice of sites available for the provision of housing, and that breaches of the strategic gap policy have proved necessary and will prove necessary to cater to meet current housing needs.”

In his “Conclusion” the inspector said (in paragraph 52):

“52. There is a significant shortfall in the supply of deliverable housing land for the next 5 years and no convincing evidence that the gap is diminishing to the extent that it will be made up within a reasonable time by identified deliverable sites. There is also severe under-delivery of affordable housing. The scheme would deliver up to 100 dwellings including up to 35% affordable homes and, although it is in the countryside and in a defined strategic gap, would cause little practical harm. In a situation where there is a pressing need for housing and affordable housing, and where both saved Policies 1.CO and 2.CO are out of date, the adverse impacts of the scheme to the landscape, the countryside and the strategic gap, and the other impacts of the scheme discussed above, would be slight and would not significantly and demonstrably outweigh the benefits. Indeed, even if saved Policy 2.CO were not accepted as being a policy relevant to the supply of housing, and not out-of-date, the considerable benefits of the scheme, weighed against the limited harm, would indicate a decision other than in accordance with that policy.”

The post-inquiry representations

18. The further representations made by Hallam Land and by the council after the inquiry largely concerned the status of policies 1.CO and 3.CO of the local plan for the purposes of NPPF policy, in the light of this court’s decision in *Suffolk Coastal District Council v Hopkins Homes Ltd.* [2016] EWCA Civ 168, which was handed down on 17 March 2016, and the weight to be given to those policies in the absence of a five-year supply of housing land.
19. In its further representations dated 15 April 2016, in response to the Secretary of State’s letter of the same date, the council asserted that it was now “able to demonstrate a 4.93 year supply” of housing land (paragraph 2.7.2(1)), and that “the action which has been taken to address the shortfall has been both considerable and effective” (paragraph 2.7.2(2)). In further representations dated 5 May 2016, Hallam Land rejected the council’s suggestion that it now had a housing land supply of 4.93 years (paragraph 5). On 11 May 2016 the council submitted additional representations, referring to the planning permissions it had granted for housing development since the inquiry (paragraph 2.8 and Appendix 5), and contending that Hallam Land had failed to recognize “the wide range of measures being taken by the Council to boost housing supply” (paragraph 2.9). Hallam Land responded to those representations with further representations of its own, dated 24 May 2016, and took issue again with the council’s argument that there was now a housing land supply of 4.93 years. That figure was “not based upon an up to date SHMA”, was “not tested”, and was “not reflective of unmet need in adjacent areas” (paragraph 8). Its case, it said, “had always been that there remains a substantial shortfall” and it “[continued] to rely upon its evidence and submissions as

submitted to the inquiry” (paragraph 10). The council was “still unable to demonstrate a 5YHLS, even against its own target (which is not accepted to be correct)”. Also on 24 May 2016, the council sent the inspector’s decision letter in the Bubb Lane appeal to the Secretary of State, drawing his attention to it as a relevant decision.

20. On 17 June 2016 the council made yet further representations, “in order that the decision can be taken upon the best and most up-to-date information ...” (paragraph 1.1). It now resiled from its previous concession that policy 3.CO was a policy “for the supply of housing”, and, in the absence of a five-year supply of housing land, “out of date” (paragraphs 2.4 and 3.1 to 3.5). It said it would shortly provide “an updated position in respect of its housing land supply reflecting further (recent) changes of circumstance, including its agreement for the purposes of another inquiry [in the Botley Road appeal] (and in the light of the conclusions of the Bubb Lane Inspector) that the full objectively assessed needs for Eastleigh should be taken to be 630 dwellings per annum” (paragraph 4.1). The council provided its promised “Update on Housing Land Supply” on 23 June 2016. This referred to the conclusion of the inspector in the Bubb Lane appeal that “the OAN for Eastleigh was 630dpa”, which had now been reflected in the statement of common ground for the imminent inquiry into the Botley Road appeal (paragraphs 2.1 and 2.2). The council’s evidence for that inquiry explained that “on its preferred approach [it] is able to demonstrate a 4.86 year supply” (paragraph 2.3). Its position therefore remained that although it could not demonstrate a five-year supply of deliverable housing sites, it was “very close to being able to do so” (paragraph 2.4).
21. In representations dated 19 July 2016, in response to the Secretary of State’s letter of 29 June 2016, Hallam Land attacked the council’s “volte face” on the status of policy 3.CO (paragraphs 4 to 12). It also made clear that it did not accept the council’s “latest attempt to revise its case on the extent of its 5YHLS ...”, and that it maintained the position it had taken in the representations it had submitted in May 2016 (paragraph 13).
22. In a letter dated 13 October 2016 to Mr Barber, the Secretary of State’s decision officer, Barton Willmore, on behalf of Hallam Land, asked him to draw to the Secretary of State’s attention the inspector’s decision in the Botley Road appeal, “in order that he is fully appraised of the recent approach of one of his senior Planning Inspectors ... in relation to a series of identical issues which he will now be considering when making a decision ...” in this case. Barton Willmore pointed out that the inspector had rejected “the proposition that [the council] can meet its housing land requirements without impinging upon land which is designated as gap”, and had concluded that policy 2.CO “is a relevant policy for the supply of housing”. They argued that an “identical conclusion” must follow for policy 3.CO in this case. They referred to “the principle often expounded by the Courts that it is desirable that there be consistency in planning decision-making”. It was therefore “highly important”, they said, that the Botley Road decision, “relating to a virtually identical issue”, was “formally before the Secretary of State” in this appeal. They also emphasized the fact that the inspector’s decision letter dealt directly with the issue of housing land supply, “exposing a significant shortfall in deliverable housing land, amounting to some 833 dwellings”. They quoted paragraph 27 of the decision letter in full, and also the inspector’s conclusion in paragraph 52 that “there is a significant shortfall in the supply of deliverable housing land for the next 5 years and no convincing evidence that the gap is diminishing to the extent that it will be made up within a reasonable time by identified deliverable sites”.
23. The council did not respond to those representations, but in an e-mail to the Secretary of State dated 3 November 2016, drew his attention to the inspector’s decision in an appeal relating to proposed housing development on a site at Hamble Lane – the Botley Road appeal – and, in

particular, what he had said about policy 2.CO, “which also applies to Saved Policy 3.CO”. But it said it did not intend to provide further submissions on this point, and was drawing the inspector’s decision to the attention of the Secretary of State “in the interests of full disclosure”.

The Secretary of State’s decision letter

24. In his decision letter the Secretary of State said that he agreed with the inspector’s conclusions, “except where stated”, and his recommendation (paragraph 3).

25. He referred to the representations he had received after the inquiry, including those made in response to his letters of 15 April 2016 and 29 June 2016, in the light of the judgment of this court in *Hopkins Homes Ltd.*. He confirmed that those representations had been circulated to the parties (paragraphs 5 and 6). He then referred (in paragraph 7) to the further representations he had received in October and November 2016:

“7. The Secretary of State has also received representations from Barton Willmore dated 13 October 2016, and from Eastleigh Borough Council dated 3 November to which he has given careful consideration. The Secretary of State has also received other representations, set out at Annex A, to which he has given careful consideration. He is satisfied that the issues raised do not affect his decision, and no other new issues were raised to warrant further investigation or necessitate additional referrals back to the parties.”

He said that, “[in] reaching his decision”, he had “taken account of all the representations and responses referred to in paragraphs 5-7” (paragraph 8).

26. When he came to “The Policy Context” he concluded that policies 1.CO and 3.CO of the local plan were both “out-of-date” (paragraphs 14 to 16). But he went on to qualify this conclusion (in paragraph 17):

“17. The Secretary of State has considered carefully the Inspector’s analysis at IR93-100 on the matter of whether Policy 3.CO would be out of date through no longer meeting the development needs of the Borough, and whether there is justification for reducing the weight applied to that policy. The Secretary of State acknowledges that its weight should be reduced because he has found it to be out-of-date, but taking into account its consistency with the Framework, its role in protecting the Local Gap and the limited shortfall in housing land supply, he concludes that he should still afford significant weight to Policy 3.CO.”

27. As for “The Benefits of the Proposal”, he said this (in paragraph 19):

“19. The Secretary of State notes the Inspector’s comment (IR108) that at the time of inquiry the Council were not able to demonstrate more than a four and a half years supply of deliverable housing land, and that there is evidence of an existing need for affordable housing. Whilst the Secretary of State notes that the Council are now of the view that they are able to demonstrate a 4.86 year supply, he agrees with the Inspector that the provision of up to 225 homes, 35% of which would be affordable, would be a significant advantage arising out of the scheme, and it would help meet the objectives of the Framework by boosting significantly the supply of housing and delivering a wide

choice of high quality homes. The Secretary of State notes too that the choice of accommodation would also be boosted by the provision of 100 care and extra care spaces (IR109).”

28. On the proposal’s “Sustainability” he said (in paragraph 25):

“25. In terms of sustainability, the Secretary of State agrees with the Inspector’s conclusion (IR116) that, when assessed against the policies in the ... Framework taken as a whole, the supply of market and affordable housing, along with care facilities, would make a significant contribution to meeting the social role of sustainability, complemented by the provision of public open space (although he acknowledges that the latter is at the expense of the loss of the rural character of the public footpath crossing the site). Furthermore, he agrees that the additional population and employment opportunities would assist the economic life of the area, as would the supply of homes in an area with an acknowledged shortfall. In addition, he recognises, like the Inspector, the environmental and community benefits arising out of the station improvements identified at paragraphs 20-21 above. For the reasons given by the Inspector at IR117, the Secretary of State concludes that, on balance, this is a reasonably sustainable location in terms of accessibility.”

29. Under the heading “Planning balance and overall conclusion” the Secretary of State said (in paragraphs 29 to 36):

“29. For the reasons given above, the Secretary of State concludes that the proposal is not in accordance with the development plan policies 1.CO and 3.CO and is not in accordance with the development plan as a whole. He has gone on to consider whether material considerations indicate that the proposal should be determined other than in accordance with the development plan.

30. The Secretary of State notes that in their letter of 23 June 2016, the Council updated their position on the supply of deliverable housing land, now claiming to be able to demonstrate a 4.86 year supply. In the absence of a 5-year housing land supply, and having concluded that policies 1.CO and 3.CO are relevant policies for the supply of housing, the presumption in favour of sustainable development is engaged, meaning that permission should be granted unless any adverse impacts of doing so significantly and demonstrably outweigh the benefits.

31. He considers that the provision of market and affordable housing in an area with an acknowledged shortfall, along with care facilities in this case carries substantial weight in favour of the development. The additional population and employment opportunities would assist the economic life of the area, as would the supply of homes in an area with an acknowledged shortfall, to which he gives moderate weight. The environmental and community benefits arising out of the station improvements carry moderate weight in favour of the proposal.

32. Set against the identified positive aspects is the environmental and social damage which would arise out of the loss of the gap between the surrounding settlements, involving the physical intrusion into an area of countryside, and contributing to the coalescence of those settlements, and loss of independent identity. The Secretary of State considers that this would be contrary to those policies of the Framework which apply the principle of recognising the different roles and character of different areas, and this

carries significant weight against the proposal. He further considers that the loss of “best and most versatile” agricultural land carries moderate weight against the proposal.

33. The Secretary of State also considers that the appeal site performs a function which is specific to its location and which would be permanently undermined by the development.
34. The Secretary of State considers overall that the adverse impacts of the proposal would significantly and demonstrably outweigh its benefits.
35. The Secretary of State has taken into account the wide range of judgments and appeal decisions referred to in the inquiry and the post-inquiry representations but, having considered all the matters raised, he concludes that none is of such weight as to alter the balance of his conclusions.
36. Overall he concludes that there are no material considerations which indicate that he should determine the case other than in accordance with the development plan. The Secretary of State therefore concludes that your client's appeal should be dismissed.”

He therefore agreed with the inspector's recommendation and dismissed the appeal (paragraph 37).

The Boorley Green appeal decision

30. In a decision letter dated 30 November 2016, about three weeks after he had issued his decision on Hallam Land's appeal, the Secretary of State allowed the Boorley Green appeal. The inquiry into that appeal had taken place in May 2016. The inspector's report, though dated 25 August 2016, was released only with the Secretary of State's decision letter, in the normal way. Like the site in Hallam Land's appeal, the Boorley Green site is in the “countryside”, protected by policy 1.CO of the local plan, and also within an area protected under policy 3.CO, the Botley-Boorley Green Local Gap.
31. The inspector in the Boorley Green appeal concluded that the supply of housing land in the council's area was “very close to 4 years”, observing that this was consistent with the conclusion reached on this question by the inspector in the Bubb Lane appeal – that there was “something in the order of a four year supply” (paragraph 12.16 of the Boorley Green inspector's report). He found that “the HLS is around 4 years”. He said that, at this level, it “falls well short of that required and has done for many years ...” (paragraph 12.45). He concluded that “the benefits of housing and AH, particularly where the supply is significantly below 5 years and the history of delivery is poor, warrant considerable weight ...” (paragraph 12.47). He described the shortfalls in land for housing and affordable housing as “substantial” (paragraph 12.55).
32. In his decision letter, under the heading “Housing supply”, the Secretary of State said (in paragraph 17):
 - “17. The Secretary of State has given very careful consideration to the Inspector's analysis of the 5 year housing land supply position at IR12.10-12.20. He notes that it is common ground that the Council cannot demonstrate the 5 year housing land supply

expected at paragraph 47 of the Framework (IR12.10); and agrees with the Inspector's conclusions at IR12.21 that, on the basis of the information presented at the Inquiry and assuming that this decision is issued within the statutory timetable set, the housing land supply should be regarded as standing at around 4 years. The Secretary of State also agrees with the Inspector's conclusion at IR12.22 that considerable weight should be attributed to the benefits to which the scheme would bring through delivering affordable housing."

33. Under the heading "Planning balance and overall conclusion", the Secretary of State concluded that "[the] proposal would make a significant contribution in terms of helping to make up the deficit against the 5 year housing land supply and the need for affordable housing" (paragraph 24). Agreeing with the inspector's recommendation, he allowed the appeal.

Did the Secretary of State establish the extent of the shortfall against the five-year supply of housing land with sufficient precision, and were his reasons adequate?

34. Before Supperstone J., and again before us, Mr Thomas Hill Q.C., for Hallam Land, argued that, in any case where there is a dispute as to the five-year supply of housing land, the Secretary of State, or his inspector, is obliged to establish the level of supply and the extent of any shortfall. This, Mr Hill submitted, was because the local planning authority's failure to demonstrate a five-year supply of housing land will bring into play the balancing exercise provided for in paragraph 14 of the NPPF, and the extent of the shortfall, if there is one, will influence the weight given by the decision-maker to the benefits of the proposed development, and to its conflict with the relevant restrictive policies of the development plan. He sought to strengthen this submission with observations made by judges at first instance – in particular, *Phides Estates (Overseas) Ltd. v Secretary of State for Communities and Local Government* [2015] EWHC 827 (Admin) (at paragraph 60), *Shropshire Council v Secretary of State for Communities and Local Government* [2016] EWHC 2733 (Admin) (at paragraph 28), and *Jelson Ltd. v Secretary of State for Communities and Local Government* [2016] EWHC 2979 (Admin) (at paragraph 13).
35. In this case, Mr Hill submitted, the Secretary of State had failed to make the planning judgments he needed to make. He noted, in paragraph 19 of his decision letter, that the council was "now of the view that [it was] able to demonstrate a 4.86 year supply". But he did not say whether he accepted that this figure was accurate. Nor did he deal with the material before him, including the decision letters in the Bubb Lane and Botley Road appeals, showing that the council was now able to demonstrate only a supply of 4.25 years or even less than that. This could not sensibly be described as a "limited shortfall" – the expression the Secretary of State used in paragraph 17. In fact, Mr Hill submitted, the Secretary of State had failed to reach any conclusion on this question. His decision was vitiated by that failure.
36. Supperstone J. rejected those submissions. He did not accept that one can find in the authorities relied upon by Mr Hill the principle that the decision-maker is required "to determine a workable [five-year housing land supply] or range" in every case. He accepted the argument of Mr Zack Simons, for the Secretary of State, and Mr Paul Stinchcombe Q.C., for the council, that in a case such as this, where there was "inadequate housing supply on either [side's] figures", the Secretary of State was "not required to fix a figure for the extent of that inadequacy" (paragraph 22). He went on to say that "[in] making judgments on the issues of housing requirements and housing supply the decision maker was not required to fix a figure

for the precise extent of the Council’s housing shortfall”. In his view the “key question” was “whether the housing supply is above or below five years”. This was what Lord Carnwath had called the “important question” in paragraph 59 of his judgment in *Hopkins Homes Ltd. v Secretary of State for Communities and Local Government* [2017] 1 W.L.R. 1865 (paragraph 23). The tenor of relevant decisions at first instance was to the same effect – for example, the observation of Gilbert J. in *South Oxfordshire District Council v Secretary of State for Communities and Local Government* [2016] EWHC 1173 (Admin), at paragraph 102, that it is “not necessary to conduct a full analysis of requirements and supply in every case”, and “[whether] one has to do so depends on the circumstances”.

37. On the basis of the inspector’s conclusion in paragraph 108 of his report, having regard to “the updated material before him from the Bubb Lane [decision letter] and the Botley Road [decision letter]”, and Hallam Land having provided “no further evidence” on housing land supply since the inquiry, the Secretary of State was, said Supperstone J., “entitled to note the agreed shortfall, describe it as “limited” (DL17), and agree with his Inspector that the scheme’s contribution to the Council’s housing shortage would be “significant” (DL19)”. Nothing more was required (paragraph 29).
38. In his submissions to us, Mr Hill argued that the authorities on which Supperstone J. had based his conclusions did not deny the need for a decision-maker to establish the extent of a shortfall against the five-year supply of housing land when conducting the balancing exercise under paragraph 14 of the NPPF. Relevant parts of the judgment of the Court of Appeal in *Hopkins Homes Ltd.* – particularly paragraph 47 – which were effectively endorsed by Lord Carnwath in the Supreme Court, indicate that there is such a requirement. Detailed analysis may not always be necessary. A range or an approximate figure may be enough. But, submitted Mr Hill, the judge’s view that the crucial question is simply whether the supply of housing land exceeds or falls below five years was unduly simplistic. In this case there were several factors that made it imperative for the Secretary of State to define the shortfall: in particular, the size of the development – more than 150 dwellings – which had led to the appeal being recovered by the Secretary of State; the significance of the shortfall for the weighting of policies in the development plan that went against the proposal, which could be decisive, especially policy 3.CO of the local plan; and the fact that there were other relevant and recent appeal decisions in which the scale of the shortfall had been considered, and on which the parties had made representations. In the circumstances, Mr Hill submitted, it was not enough for the Secretary of State merely to describe the shortfall as “limited”, without resolving what it actually was by the time he made his decision.
39. Mr Hill also submitted that, in any event, the Secretary of State had failed to explain how and why he had reached a markedly different conclusion on housing land supply from the conclusions recently reached by the inspectors in the Bubb Lane and Botley Road appeals – in spite of the further representations he had received from Hallam Land in the light of them. Those two decisions were clearly relevant in this case. Yet the Secretary of State did not even refer to them in his decision letter. He said he had given “careful consideration” to the representations made after the inquiry, but in this important respect it is not clear that he had in fact done so. In both cases the decision-maker had identified a considerable shortfall against the required five-year supply materially greater than the council had conceded here. In the Bubb Lane appeal the inspector had found “something in the order of a four year supply” (paragraph 45) and had described the shortfall as “significant” (paragraph 52). In the Botley Road appeal the supply was found to be 4.25 years. And the inspector there had also described the shortfall – which amounted to “some 833 dwellings” – as “significant” (paragraphs 18, 19 and 52).

40. Those conclusions, and those descriptions of the shortfall, Mr Hill submitted, simply cannot be reconciled with the figure of 4.86 years' supply put forward by the council in its "Update on Housing Land Supply" of 23 June 2016. An explanation of some kind was clearly called for in the Secretary of State's decision letter. None was provided. Even if he did not have to resolve the precise level of the shortfall, the Secretary of State had fallen short of his duty to provide intelligible and adequate reasons for his conclusion on an issue crucial to the outcome of the appeal (see the speech of Lord Brown of Eaton-under-Heywood in *South Bucks District Council v Porter (No.2)* [2004] 1 W.L.R. 1953, at paragraph 36). In the circumstances it was not enough for him simply to refer to the shortfall as "limited", without more.
41. Mr Simons and Mr Stinchcombe supported the judge's analysis. They submitted that it is not always, or generally, a decision-maker's task to determine the precise level of housing land supply. The critical question will always be whether or not a five-year supply of housing land has been demonstrated. Under NPPF policy, the degree of detail required in ascertaining housing need and supply is left largely to the decision-maker's planning judgment in the circumstances of the case before him – as Gilbert J. emphasized in *Dartford Borough Council v Secretary of State for Communities and Local Government* [2016] EWHC 649 (Admin) (at paragraphs 43 to 45), and in *South Oxfordshire District Council* (at paragraph 102). Mr Stinchcombe pointed to the recent decision of this court in *Jelson Ltd. v Secretary of State for Communities and Local Government* [2018] EWCA Civ 24 as lending support to this submission (see, in particular, paragraph 25). Mr Simons recalled Sir David Keene's warning in *City and District Council of St Albans v Hunston Properties Ltd.* [2013] EWCA Civ 1610 (at paragraph 26) about section 78 appeals descending into the kind of exercise appropriate only for the process of plan preparation.
42. In this case, Mr Simons and Mr Stinchcombe submitted, by the time the Secretary of State came to make his decision in November 2016, the evidence given by Hallam Land at the inquiry in June 2015 in contending for a housing land supply of between 1.78 and 2.92 years was stale. The Secretary of State did not have to go beyond his conclusions that the shortfall was now "limited", and that the provision of market and affordable housing in an area with an "acknowledged" shortfall merited "substantial weight". These conclusions were, in themselves, fully justified. The existence of a shortfall in housing land supply was not a "principal controversial issue" in this appeal, even if it was in the Bubb Lane and Botley Road appeals. The parties had drawn the Secretary of State's attention to the inspectors' decisions in those appeals. But that did not make it necessary for him to deal with those decisions in the reasons he gave for concluding as he did on the evidence in this case. The reasons he gave were sufficient to explain the decision he made.
43. Mr Hill's argument was persuasively presented, but I accept it only in part.
44. The Secretary of State's decision here was taken in the light of the judgment of this court in *Hopkins Homes Ltd.*, but before the Supreme Court had dismissed the subsequent appeals – though on the basis of a narrower reading of the policy in paragraph 49 of the NPPF. As this case shows, however, nothing turns on the difference between the so-called "wider" interpretation of paragraph 49, in which the phrase "policies for the supply of housing" embraces local plan policies that create and constrain the supply, and the "narrow" interpretation, which excludes policies that operate to constrain the supply but does not prevent the decision-maker from giving such policies reduced weight under the policy in paragraph 14 of the NPPF when five years' supply is not demonstrated. Either way, the consequences will, in the end, be the same. The weight given to a policy ultimately depends not on its status but

on its effect – whether it enables the requisite five-year supply to be realized or acts contrary to that objective. Policies in a local plan are liable to carry less weight in the making of a decision on a proposal for housing development if – and because – their effect is to prevent a five-year supply of housing land (see the judgment of Lord Carnwath in *Hopkins Homes Ltd.*, at paragraphs 59 and 61, followed in this court in *Barwood Strategic Land II LLP v East Staffordshire Borough Council* [2017] EWCA Civ 893, at paragraph 22).

45. None of that is controversial here, nor should it be. As Lord Carnwath said in *Hopkins Homes Ltd.* (at paragraph 54), “the primary purpose of paragraph 49 [of the NPPF] is simply to act as a trigger to the operation of the “tilted balance” under paragraph 14”. And he went on to say (in paragraph 59) that the “important question” is “not how to define individual policies, but whether the result is a five-year supply in accordance with the objectives set by paragraph 47”. If the local planning authority fails to demonstrate that supply, “it matters not whether the failure is because of the inadequacies of the policies specifically concerned with housing provision, or because of the over-restrictive nature of other non-housing policies”. In such a case “[the] shortfall is enough to trigger the operation of the second part of paragraph 14”. As Lord Carnwath emphasized (in paragraph 61), a restrictive policy may not itself be “out of date” under paragraph 49, “but the weight to be given to it alongside other material considerations, within the balance set by paragraph 14, remains a matter for the decision-maker in accordance with ordinary principles”.
46. As this court said in *Hopkins Homes Ltd.* (in paragraph 47), the policies in paragraphs 14 and 49 of the NPPF do not prescribe how much weight is to be given to relevant policies of the development plan in the determination of a planning application or appeal. Weight is always a matter for the decision-maker (see the speech of Lord Hoffmann in *Tesco Stores Ltd. v Secretary of State for the Environment* [1995] 1 W.L.R. 759, at p.780F-H) (paragraph 46). It will “vary according to the circumstances, including, for example, the extent to which relevant policies fall short of providing for the five-year supply of housing land, the action being taken by the local planning authority to address it, or the particular purpose of a restrictive policy – such as the protection of a “green wedge” or of a gap between settlements”. The decision-maker must judge “how much weight should be given to conflict with policies for the supply of housing that are out-of-date”. This is “not a matter of law; it is a matter of planning judgment” (see the first instance judgments in *Crane v Secretary of State for Communities and Local Government* [2015] EWHC 425 (Admin) (at paragraphs 70 to 75), *Phides* (at paragraphs 71 and 74), and *Woodcock Holdings Ltd. v Secretary of State for Communities and Local Government and Mid-Sussex District Council* [2015] EWHC 1173 (Admin) (at paragraphs 87, 105, 108 and 115)).
47. The NPPF does not state that the decision-maker must reduce the weight to be given to restrictive policies according to some notional scale derived from the extent of the shortfall against the five-year supply of housing land. The policy in paragraph 14 of the NPPF requires the appropriate balance to be struck, and a balance can only be struck if the considerations on either side of it are given due weight. But in a case where the local planning authority is unable to demonstrate five years’ supply of housing land, the policy leaves to the decision-maker’s planning judgment the weight he gives to relevant restrictive policies. Logically, however, one would expect the weight given to such policies to be less if the shortfall in the housing land supply is large, and more if it is small. Other considerations will be relevant too: the nature of the restrictive policies themselves, the interests they are intended to protect, whether they find support in policies of the NPPF, the implications of their being breached, and so forth.

48. Relevant authority in this court, and at first instance, does not support the proposition that, for the purposes of the appropriate balancing exercise under the policy in paragraph 14 of the NPPF, the decision-maker's weighting of restrictive local plan policies, or of the proposal's conflict with such policies, will always require an exact quantification of the shortfall in the supply of housing land. This is not surprising. If the court had ever said there was such a requirement, it would have been reading into the NPPF more than the Government has chosen to put there, and more than is necessarily implied in the policies it contains.
49. Several decisions at first instance were cited in argument before Supperstone J., including those in *Jelson Ltd.* (at paragraphs 2 and 13) – upheld on appeal, *Shropshire Council* (at paragraph 28), *South Oxfordshire District Council* (at paragraph 102), *Dartford Borough Council* (at paragraphs 44 and 45), *Oadby and Wigston Borough Council v Secretary of State for Communities and Local Government* [2015] EWHC 1879 (Admin) (at paragraphs 42(ii) and 48) – upheld on appeal, and *Phides* (at paragraph 60). Mr Simons also referred to *Eastleigh Borough Council v Secretary of State for Communities and Local Government* [2014] EWHC 4225 (Admin) (at paragraphs 17 and 18). It is not necessary to explore the facts of these cases, or to set out the relevant observations of the judges who decided them. In summary, however, three main points emerge.
50. First, the relationship between housing need and housing supply in planning decision-making is ultimately a matter of planning judgment, exercised in the light of the material presented to the decision-maker, and in accordance with the policies in paragraphs 47 and 49 of the NPPF and the corresponding guidance in the Planning Practice Guidance (“the PPG”). The Government has chosen to express its policy in the way that it has – sometimes broadly, sometimes with more elaboration, sometimes with the aid of definitions or footnotes, sometimes not (see *Oadby and Wigston Borough Council v Secretary of State for Communities and Local Government* [2016] EWCA Civ 1040, at paragraph 33; *Jelson Ltd.*, at paragraphs 24 and 25; and *St Modwen Developments Ltd. v Secretary of State for Communities and Local Government* [2017] EWCA Civ 1643, at paragraphs 36 and 37). It is not the role of the court to add to or refine the policies of the NPPF, but only to interpret them when called upon to do so, to supervise their application within the constraints of lawfulness, and thus to ensure that unlawfully taken decisions do not survive challenge.
51. Secondly, the policies in paragraphs 14 and 49 of the NPPF do not specify the weight to be given to the benefit, in a particular proposal, of reducing or overcoming a shortfall against the requirement for a five-year supply of housing land. This is a matter for the decision-maker's planning judgment, and the court will not interfere with that planning judgment except on public law grounds. But the weight given to the benefits of new housing development in an area where a shortfall in housing land supply has arisen is likely to depend on factors such as the broad magnitude of the shortfall, how long it is likely to persist, what the local planning authority is doing to reduce it, and how much of it the development will meet.
52. Thirdly, the NPPF does not stipulate the degree of precision required in calculating the supply of housing land when an application or appeal is being determined. This too is left to the decision-maker. It will not be the same in every case. The parties will sometimes be able to agree whether or not there is a five-year supply, and if there is a shortfall, what that shortfall actually is. Often there will be disagreement, which the decision-maker will have to resolve with as much certainty as the decision requires. In some cases the parties will not be able to agree whether there is a shortfall. And in others it will be agreed that a shortfall exists, but its extent will be in dispute. Typically, however, the question for the decision-maker will not be simply whether or not a five-year supply of housing land has been demonstrated. If there is a

shortfall, he will generally have to gauge, at least in broad terms, how large it is. No hard and fast rule applies. But it seems implicit in the policies in paragraphs 47, 49 and 14 of the NPPF that the decision-maker, doing the best he can with the material before him, must be able to judge what weight should be given both to the benefits of housing development that will reduce a shortfall in the five-year supply and to any conflict with relevant “non-housing policies” in the development plan that impede the supply. Otherwise, he will not be able to perform the task referred to by Lord Carnwath in *Hopkins Homes Ltd.* It is for this reason that he will normally have to identify at least the broad magnitude of any shortfall in the supply of housing land.

53. With those three points in mind, I do not think that in this case the Secretary of State could fairly be criticized, in principle, for not having expressed a conclusion on the shortfall in the supply of housing land with great arithmetical precision. He was entitled to confine himself to an approximate figure or range – if that is what he did. Government policy in the NPPF did not require him to do more than that. There was nothing in the circumstances of this case that made it unreasonable for him in the “Wednesbury” sense, or otherwise unlawful, not to establish a mathematically exact figure for the shortfall. It would not have been an error of law or inappropriate for him to do so, but if, as a matter of planning judgment, he chose not to do it there was nothing legally wrong with that.
54. But what was his conclusion on housing land supply? He obviously accepted, as the council had acknowledged, that the requisite five-year supply had not been demonstrated. In paragraph 30 of his decision letter he referred to the “absence of a 5-year housing land supply”. And in the same paragraph he made it plain that he was applying “the presumption in favour of sustainable development”, which, as he said, meant “that permission should be granted unless any adverse impacts of doing so significantly and demonstrably outweigh the benefits”. He went on, in the following paragraphs, to apply that presumption, in accordance with the policy in paragraph 14 of the NPPF. In the course of that balancing exercise, he referred, in paragraph 31, to the “acknowledged shortfall”, which went into the balance on the positive side. All of this is clear.
55. Not so clear, however, is whether the Secretary of State reached any concluded view on the scale of the “acknowledged shortfall”. His reference in paragraph 17 to “the limited shortfall in housing land supply” suggests he had not found it possible to accept Hallam Land’s case at the inquiry, as recorded by the inspector in paragraph 62 of his report, that the supply of housing land was as low as “2.92 years, or 1.78 years if the need for affordable housing is included”, or even the “material shortfall” to which the inspector had referred in paragraph 108, in the light of the council’s concession that it was “not able to demonstrate more than a four and a half years supply of deliverable housing land”. A “limited shortfall” could hardly be equated to a “material shortfall”. It would have been a more apt description of the shortfall the council had now acknowledged in conceding, or contending, that it was able to demonstrate a supply of 4.86 years – the figure to which the Secretary of State referred in paragraphs 19 and 30 of his decision letter.
56. On a fair reading of the decision letter as a whole, I do not think one can be sure that the Secretary of State did fix upon a precise figure for the housing land supply. It may be that, in truth, he went no further than to conclude that the supply remained below five years. He certainly did not adopt the figures put forward by Hallam Land at the inquiry, nor did he even mention those figures. And he neither adopted nor rejected the council’s position at the inquiry. Instead, he took care to say, in paragraph 19 of his decision letter, that he “notes” the inspector’s comment that at the time of the inquiry the council was not able to demonstrate

more than four and a half years' supply. He was equally careful not to adopt or reject the figure that was now put forward by the council – a supply of 4.86 years. In paragraph 19, again, he said merely that he “notes” the council was now of the view that it was “able to demonstrate a 4.86 year supply”. In paragraph 30, once again, he used the word “notes” when referring to the position the council had taken in its letter of 23 June 2016 – “now claiming to be able to demonstrate a 4.86 year supply”. He was not, I think, unequivocally endorsing that figure, but rather was relying on it as proof of “the absence of a 5-year housing land supply”.

57. The Secretary of State's conclusions on housing land supply are not said to be irrational on their face – nor could they be. If one leaves aside for the moment the decisions in the Bubb Lane and Botley Road appeals and what had been said about those decisions in the parties' further representations, they make sense. To describe the shortfall in housing land supply as “limited”, as the Secretary of State did in paragraph 17, seems reasonable if he was assuming – though without positively finding – that the housing land supply now stood at or about 4.86 years. And there is nothing necessarily inconsistent between that conclusion and his later conclusions: in paragraph 19, that the amount of new housing proposed was a “significant advantage”; in paragraph 30, that the “presumption in favour of sustainable development” fell to be applied in this case; and, in paragraph 31, that the provision of housing in an area with an “acknowledged shortfall” carried “substantial weight in favour of the development”.
58. All of this is logical, as far as it goes. It may reflect an assumption on the part of the Secretary of State that he could rely on the figure of 4.86 years for the housing land supply, or at least on a range of between four and half and 4.86 years, and that this was sufficient to found his conclusions on the weight to be given to the benefits of the housing development proposed and to its conflict with restrictive policies in the local plan.
59. This reading of the decision letter may be overly generous to the Secretary of State, because it resolves in his favour the doubt as to what figure, or range, he was actually prepared to accept for the present supply of housing land in the council's area. Assuming it to be correct, however, he can be acquitted of any misunderstanding or unlawful misapplication of NPPF policy. If he did adopt, or at least assume, a figure of 4.86 years' supply of housing land, or even a range of between four and half and 4.86 years, his approach could not, I think, be stigmatized as unlawful in either of those two respects. It could not be said, at least in the circumstances of this case, that he erred in law in failing to calculate exactly what the shortfall was. In principle, he was entitled to conclude that no greater precision was required than that the level of housing land supply fell within a clearly identified range below the requisite five years, and that, in the balancing exercise provided for in paragraph 14 of the NPPF, realistic conclusions could therefore be reached on the weight to be given to the benefits of the development and its conflict with relevant policies of the local plan. Such conclusions would not, I think, exceed a reasonable and lawful planning judgment.
60. However, even if that assumption is made in favour of the Secretary of State, there is in my view a fatal defect in his decision in his failure to engage with the conclusions on housing land supply in the recent decisions in the Bubb Lane and Botley Road appeals. Here, it seems to me, Mr Hill's argument is demonstrably well founded.
61. At least by the time the parties in this appeal were given the opportunity to make further representations, an important issue between them, and arguably the focal issue, was the extent of the shortfall in housing land supply. This was, or at least had now become, a “principal controversial issue” in the sense to which Lord Brown of Eaton-under-Heywood referred in *South Bucks District Council v Porter* (at paragraph 36 of his speech). A related issue was the

weight to be given to restrictive policies in the local plan – in particular, policy 3.CO. These were, in my view, clearly issues that required to be properly dealt with in the Secretary of State’s decision letter, in the light of the representations the parties had made about them, so as to leave no room for doubt that the substance of those representations had been understood and properly dealt with. This being so, it was in my view incumbent on the Secretary of State to provide intelligible and adequate reasons to explain the conclusions he had reached on those issues, having regard to the parties’ representations.

62. There is no explicit consideration of the inspectors’ decisions in the Bubb Lane and Botley Road appeals in the Secretary of State’s decision letter, nor any reference to them at all, despite the fact that they had been brought to his attention and their implications addressed in the further representations made to him after the inquiry. The inspectors’ conclusions on housing land supply in those two decisions, and the consequences of those conclusions for the weight to be given to local plan policies, clearly were material considerations in this appeal. They would, in my view, qualify as material considerations on the basis of the case law relating to consistency in decision-making (see the judgment of Mann L.J. in *North Wiltshire District Council v Secretary of State for the Environment* (1993) 65 P. & C.R. 137, at p.145, most recently followed by this court in *DLA Delivery Ltd. v Baroness Cumberlege of Newick and Secretary of State for Communities and Local Government* [2018] EWCA Civ 1305, at paragraphs 29, and 42 to 56). But leaving aside the principle of consistency, they would have been, it seems to me, material considerations if only on the basis that they represented an up to date independent assessment of housing land supply in the council’s area, which had been squarely put before the Secretary of State. Yet he said nothing at all about them. Nor is there any explicit reference to the relevant content of the representations the parties had made. It is clear that the reference in paragraph 19 of the decision letter to the council’s view that it was now able to demonstrate 4.86 years’ supply of housing land was taken from the “Update on Housing Land Supply” that it produced on 23 June 2016. But he did not refer to the very firm and thoroughly reasoned conclusions of the inspector in the Botley Road appeal, which were reached in the light of that evidence.
63. So it is not clear whether the Secretary of State confronted the conclusions of the inspectors in the Bubb Lane and Botley Road appeals, and in particular the latter. Had he done so, he would have appreciated that the conclusions they had reached on the scale of the shortfall in housing land supply could not reasonably be reconciled with his description of that shortfall, in paragraph 17 of his decision letter, as “limited”. The language used by those two inspectors was distinctly different from that expression, and incompatible with it unless some cogent explanation were given. No such explanation was given. In both decision letters the shortfall was characterized as “significant”, which plainly it was. This was more akin to saying that it was a “material shortfall”, as the inspector in Hallam Land’s appeal had himself described it in paragraph 108 of his decision letter. Neither description – a “significant” shortfall or a “material” one – can be squared with the Secretary of State’s use of the adjective “limited”. They are, on any view, quite different concepts.
64. Quite apart from the language they used to describe it, the inspectors’ findings and conclusions as to the extent of the shortfall – only “something in the order of four year supply” in the Bubb Lane appeal and only “4.25 years’ supply” in the Botley Road appeal – were also substantially different from the extent of the shortfall apparently accepted or assumed by the Secretary of State in his decision in this case, which was as high as 4.86 years’ supply on the basis of evidence from the council that had been before the inspector in the Botley Road appeal and rejected by him.

65. One is left with genuine – not merely forensic – confusion on this important point, and the uncomfortable impression that the Secretary of State did not come to grips with the inspectors’ conclusions on housing land supply in those two very recent appeal decisions. This impression is not dispelled by his statement in paragraph 7 of the decision letter that he had given “careful consideration” to the relevant representations.
66. The significance of the parties’ dispute over the extent of the shortfall in housing land supply was not confined to that issue alone. It also bore on the question of how much weight should be given to restrictive policies in the local plan – in particular, policy 3.CO – for the purposes of the balancing exercise required by the policy in paragraph 14 of the NPPF. A factor to which the Secretary of State attached some importance in determining that “significant weight” should be given to policy 3.CO was that the shortfall in housing land supply was, as he said in paragraph 17 of the decision letter, only “limited”. This was an important issue in itself, and potentially decisive in the planning balance.
67. In the circumstances I am driven to the conclusion that the Secretary of State’s reasons were in this respect deficient, when considered in the light of the familiar principle in *South Bucks District Council v Porter*, and that Hallam Land was substantially prejudiced by the failure to provide intelligible and adequate reasons. The parties, and in particular Hallam Land, whose section 78 appeal was being dismissed after a protracted exchange of post-inquiry representations, were entitled to know why the Secretary of State had concluded as he did not only on the question of housing land supply but also on its consequences, in spite of two very fresh appeal decisions in which the question of supply had been decided in a materially different way. This was a matter on which proper reasons were undoubtedly called for, but were not given. In the absence of those reasons, one cannot be sure that the Secretary of State had come to his conclusion lawfully, having regard to all material considerations. It follows, in my view, that in failing to provide such reasons the Secretary of State erred in law and his decision is liable to be quashed for that error. I can see no basis on which the court, in the circumstances, could properly withhold an order to quash his decision. To do so, we would have to speculate as to the outcome of Hallam Land’s section 78 appeal on the assumption that the Secretary of State had regard to all material considerations, including the decisions in the Bubb Lane and Botley Road appeals.
68. Having come to that conclusion, I can take the other main issue more shortly.

Should the Secretary of State have had regard to the inspector’s report on the Boorley Green appeal?

69. The argument here is that the Secretary of State’s conclusion in this case that the shortfall in housing land supply was “limited” is impossible to reconcile with the conclusion in his decision letter in the Boorley Green appeal, issued about three weeks later, that the supply of housing land in the council’s area was “around four years”. This offended the principle that there is a public interest in planning decisions in like cases being consistent, and that, in cases of inconsistency, the decision-maker should explain that inconsistency (see the judgment of Mann L.J. in *North Wiltshire District Council*). Where relevant matters arose after the close of an inquiry, such as an inspector reporting to him on an appeal raising closely similar planning issues in the same area as the appeal in hand, it was incumbent on the Secretary of State to take reasonable steps to inform himself of those matters, and so avoid inconsistent decisions. The inspector’s report in the Boorley Green appeal fell into that category. By the time the Secretary

of State eventually came to make his decision on Hallam Land's appeal, he had had that report for almost three months.

70. Supperstone J. rejected this argument, on the simple basis that the Secretary of State's decision in the Boorley Green appeal had not yet been made when the decision in this case was issued, and "accordingly, it cannot have been a material consideration to which the principle of consistency can apply". Although the inspector's report on the Boorley Green appeal had been submitted to the Secretary of State before he made his decision in this case, "the principle of consistency in decision taking has no application to Inspectors' reports which are not decisions" (paragraph 33 of the judgment). The proposition that the Secretary of State must always have imputed knowledge of an inspector's report in an undetermined appeal was incorrect (paragraph 35). So was the submission that it was irrational, and a breach of the principle recognized by the House of Lords in *Secretary of State for Education and Science v Tameside Metropolitan Borough Council* [1976] 3 W.L.R. 641 that a decision-maker must take reasonable steps to acquaint himself of relevant matters, for the Secretary of State not to take into account an unpublished inspector's report in another appeal that was yet to be decided on its own, different facts (paragraph 38).
71. The judge also accepted the submission of Mr Simons and Mr Stinchcombe that there was, in fact, no material inconsistency between the two decisions. In both cases the Secretary of State had found that there was less than the requisite five-year supply of housing land, and that the consequences provided for by NPPF policy must follow. In his decision on the Boorley Green appeal the Secretary of State did not adopt the inspector's description of the shortfall as "significant". His conclusion in that case that the housing land supply "should be regarded as standing at around four years" was consistent with his corresponding conclusions in his decision in this case. And in both cases, given the shortfall, he gave significant weight to the provision of housing: "substantial weight" in this case, "considerable weight" in the Boorley Green case (paragraph 39). The Secretary of State's application of policy 3.CO of the local plan in this appeal, the weight he gave to that policy, and his relevant reasons did not betray an inconsistent approach with his inspector's or his own in the Boorley Green appeal (paragraphs 40 to 46).
72. I agree with the judge's approach to this issue, and the conclusions he reached upon it, essentially for the reasons he gave.
73. The principle of consistency in planning decision-making is not a principle of law. It is a principle of good practice, which the courts have traditionally supported and the Court of Appeal has recently confirmed in *DLA Delivery Ltd.*.
74. The principle applies to decisions of planning decision-makers, and is exercised with a view to the public interest in planning decisions in like cases being consistent, or if inconsistency arises, a clear explanation for it being given in the second of the two decisions concerned (see *DLA Delivery Ltd.*, at paragraphs 28 to 30, 46 and 47). It does not apply, in the case of decisions on planning appeals made by the Secretary of State, to inspectors' reports that have been submitted to the Secretary of State but on which his decision is still to be made at the time of the decision subject to challenge in the case before the court. The purpose and status of such a report is, essentially, that of advice given to the Secretary of State by his appointed inspector, which will inform the decision itself, but which the Secretary of State is not bound to follow and is free to reject, so long as he gives adequate reasons for doing so. It is an intermediate stage in the process of decision-making. The assessment and conclusions contained in the report do not constitute the Secretary of State's decision, nor do they form any

part of that decision unless and until they are incorporated into it, whether in whole or in part. Usually, as in the Boorley Green appeal, the inspector's report is not published until the Secretary of State has made his decision. On occasions, however, it may be released by the Secretary of State with a view to inviting further representations or evidence from the parties to deal with a particular issue raised in it.

75. It would be a radical and unjustified extension to the principle of consistency to embrace within it unpublished inspectors' reports, whose conclusions and recommendations the Secretary of State may in due course choose to accept or reject. Indeed, this would not be an extension of the principle of consistency but a distortion of it, because the basis for it would not be consistency between one decision and another, but consistency between a decision and a non-decision, a decision yet to be made. That is not a principle the court has ever recognized, nor even, in truth, a meaningful principle at all.

76. In my view, therefore, this part of the appeal is mistaken, and I would reject it.

Conclusion

77. For the reasons I have given, I would allow this appeal on the first issue alone and on the basis I have indicated.

Lord Justice Hickinbottom

78. For the reasons given by Lindblom L.J., with which I entirely agree, I agree that the appeal is allowed on the first issue alone.

Lord Justice Davis

79. I also agree that the appeal should be allowed.

80. I would like to make some observations of my own on the first issue.

81. Clearly a determination of whether or not there is a shortfall in the 5 year housing supply in any particular case is a key issue. For if there is then the "tilted balance" for the purposes of paragraph 14 of the NPPF comes into play.

82. Here, it was common ground that there was such a shortfall. That being so, I have the greatest difficulty in seeing how an overall planning judgment thereafter could properly be made without having at least some appreciation of the extent of the shortfall. That is not to say that the extent of the shortfall will itself be a key consideration. It may or not be: that is itself a planning judgment, to be assessed in the light of the various policies and other relevant considerations. But it ordinarily will be a relevant and material consideration, requiring to be evaluated.

83. The reason is obvious and involves no excessive legalism at all. The extent (be it relatively large or relatively small) of any such shortfall will bear directly on the weight to be given to the benefits or disbenefits of the proposed development. That is borne out by the observations of Lindblom LJ in the Court of Appeal in paragraph 47 of *Hopkins Homes*. I agree also with

the observations of Lang J in paragraphs 27 and 28 of her judgment in the *Shropshire Council* case and in particular with her statements that "...Inspectors generally will be required to make judgments about housing need and supply. However these will not involve the kind of detailed analysis which would be appropriate at a "Development Plan inquiry" and that "the extent of any shortfall may well be relevant to the balancing exercise required under NPPF 14." I do not regard the decisions of Gilbert J, cited above, when properly analysed, as contrary to this approach.

84. Thus exact quantification of the shortfall, even if that were feasible at that stage, as though some local plan process was involved, is not necessarily called for: nor did Mr Hill QC so argue. An evaluation of some "broad magnitude" (in the phrase of Lindblom LJ in his judgment) may for this purpose be legitimate. But, as I see it, at least some assessment of the extent of the shortfall should ordinarily be made; for without it the overall weighing process will be undermined. And even if some exception may in some cases be admitted (as connoted by the use by Lang J in *Shropshire Council* of the word "generally") that will, by definition, connote some degree of exceptionality: and there is no exceptionality in the present case.
85. In this case (and in striking contrast to the Bubb Lane and Botley Road cases) a sufficient evaluation of the extent of the shortfall did not happen. Instead, the Secretary of State, having "noted" the council's updated figure of 4.86 year supply and without any express reference to the Bubb Lane and Botley Road cases, simply announced a bald conclusion that there was a "limited" shortfall in the housing land supply. Broad statements elsewhere in the decision letter to the effect that "the Secretary of State has taken into account" the post-inquiry representations do not overcome the defect of a demonstrable lack of engagement with the actual extent of the shortfall: thereby resulting in an absence of a reasoned conclusion on this material issue. Moreover, such a conclusion departs – again, for no stated reason – from the inspector's statement in paragraph 108 of his report that "it can be said that there is a material shortfall against the five year supply...".
86. Although it was submitted on behalf of the council that the result would still inevitably have been the same, even had the extent of the shortfall been properly addressed, I cannot accept that that is necessarily so. So the matter must be the subject of further consideration.
87. Thus I too would allow the appeal on this basis. I would reject the appellant's arguments on the second issue, for the reasons given by Lindblom LJ.

Land at Mount Avenue, Chaldon, Tandridge, CR3 5BB

Housing Land Supply Statement

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Executive Summary

This statement addresses housing land supply and other housing-related matters in the Borough and responds to the Tandridge District Council's ('the Council') latest land supply position, which for the purposes of our assessment draws on information published by the Council (and other relevant information).

According to government figures, there has been a consistent and persistent under-delivery of housing in Tandridge since the Housing Delivery Test (HDT) came in to effect in 2018.

The Council claims they can now demonstrate 2.17 years' worth of deliverable land against their requirement figure for the 2025-2030 period. The Council accepts that a five-year supply of deliverable land cannot be demonstrated in Tandridge.

Nonetheless, our assessment has identified a number of issues regarding the land supply position in Tandridge, which are pertinent to this appeal.

The AMR 2024/25 states that the base date for the latest assessment is now 1 October 2025. However, by doing so, this has resulted in an 'unbalanced' assessment, where only newly consented sites have been added into the supply without the commensurate number of completions during that period being removed. This is not a robust or credible approach. In our view, 1 April 2025 is the appropriate base date for this appeal. The five year period should cover 1 April 2025 to 31 March 2030.

On our analysis, we contend that the correct position is 1.22 years' worth of deliverable sites in Tandridge. This amounts to a shortfall of 3,754 dwellings when adjusted against the requirement. In our view, the scale of the housing shortfall currently impacting on the delivery of housing in Tandridge adds substantial weight to the provision of housing on the application site.

1 Introduction

- 1.1 This statement relates to a planning appeal against the non-determination of outline planning application ref. TA/2025/771 for 30 homes (50% affordable) with associated works including provision of vehicular and pedestrian access, landscaping, drainage, and other associated infrastructure (“the Site”).
- 1.2 It addresses housing land supply and other housing-related matters in the Borough and responds to the Tandridge District Council’s (‘the Council’) latest land supply position, which for the purposes of assessment draws on information published by the Council.
- 1.3 It is noted the Council is now claiming it can demonstrate 2.17 years’ worth of housing land, as set out in the Annual Monitoring Report (‘AMR 2025’) dated December 2025. This is disputed.
- 1.4 This statement should also be read in conjunction with the Housing Land Supply Statement of Common Ground prepared for this appeal (to be agreed) which sets out the parties’ respective position on matters relating to housing land supply and other housing-related matters.

2 National Policy and Guidance on Land Supply

2.1 This section provides a summary of the pertinent national policy and guidance on housing land supply which has helped inform the approach and analysis set out in this statement

2.2 The relevant version of the National Planning Policy Framework for this appeal was published on 12 December 2024 ('the Framework'). The Framework is a material consideration in the determination of planning applications and appeals where housing land supply is a relevant matter. Relevant extracts from the Framework are set out below.

The Presumption in favour of sustainable development

2.3 Paragraph 11(d) requires all plans and decisions to apply the 'presumption in favour of sustainable development':

"...where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date..." (subject to further provisions in limbs i and ii of the paragraph).

2.4 Footnote 8 of the Framework clarifies that 'out of date' means:

"...for applications involving the provision of housing, situations where: the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer as set out in paragraph 78); or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years. See also paragraph 227..."

2.5 Paragraph 78 states local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing, and should include a buffer of 20% where there has been 'significant' under delivery of housing over the previous three years (when measured against the Housing Delivery Test) to improve the prospect of achieving the planned supply. This is applicable in this appeal given the acknowledgement that the Council cannot demonstrate a five-years supply of deliverable sites and has failed the HDT.

Delivering a sufficient supply of homes

- 2.6 Paragraph 61 makes clear the importance of boosting the supply of housing, by stating:

“To support the Government’s objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay. The overall aim should be to meet as much of an area’s identified housing need as possible, including with an appropriate mix of housing types for the local community.”

- 2.7 In this context, paragraph 62 is important with respect to determining the correct approach to determining the minimum number of homes needed in the area where plans are more than five years old. The Council has applied the standard method in their latest assessment. We agree this is the correct approach in Tandridge at this time.

Identifying land for homes

- 2.8 In order to ensure that housing requirements are met, paragraph 78 states:

“Strategic policies should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years’ worth of housing against their housing requirement set out in adopted strategic policies³⁸, or against their local housing need where the strategic policies are more than five years old³⁹. The supply of specific deliverable sites should in addition include a buffer (moved forward from later in the plan period)....” (RPS emphasis)

- 2.9 The Glossary to the Framework sets out the definition what constitutes a ‘deliverable’ site:

“To be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years. In particular:

a) sites which do not involve major development and have planning permission, and all sites with detailed planning permission, should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years (for example because they are no longer viable, there is no longer a demand for the type of units or sites have long term phasing plans).

b) where a site has outline planning permission for major development, has been allocated in a development plan, has a grant of permission in principle, or is identified on a brownfield register, it should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years.” (TT emphasis)

- 2.10 The Framework (and Planning Practice Guidance (“PPG”)) identifies three criteria which need to be addressed for sites to be considered deliverable, namely that; they are available now, offer a suitable location for development now, and are achievable with a realistic prospect that housing will be delivered within five years.
- 2.11 The definition is then broken down into two sub-sets of site, classified according to their planning status. These are often referred to as category ‘A’ and category ‘B’ sites, depending on their status. Category A sites should be considered to be deliverable unless there is clear evidence that homes will not be delivered within five years; Category B sites should only be considered deliverable where there is clear evidence that housing completions will begin within five years. For sites in either category, they must all also meet the three criteria in the definition. The Framework therefore differentiates between sites with detailed permission and other types of sites (including outline applications and sites with no consent) where clear evidence is a requirement.
- 2.12 Additional advice is provided in PPG on implementing aspects of the Framework, including that which relates to housing land supply and delivery. Set out below are those sections of the PPG that are worthy of note.

Demonstrating a 5-year housing land supply

- 2.13 In response to the question ‘*What constitutes a ‘deliverable’ housing site in the context of plan-making and decision-taking?*’ (Paragraph: 007 Reference ID: 68-007-20190722 Revision date: 22 July 2019) in the context of housing land supply, the PPG provides additional detail to that set out in the Framework. It states:

“In order to demonstrate 5 years’ worth of deliverable housing sites, robust, up to date evidence needs to be available to support the preparation of strategic policies and planning decisions. Annex

2 of the National Planning Policy Framework defines a deliverable site. As well as sites which are considered to be deliverable in principle, this definition also sets out the sites which would require further evidence to be considered deliverable, namely those which:

- have outline planning permission for major development; are allocated in a development plan;*
- have a grant of permission in principle; or are identified on a brownfield register.*

Such evidence, to demonstrate deliverability, may include:

- current planning status – for example, on larger scale sites with outline or hybrid permission how much progress has been made towards approving reserved matters, or whether these link to a planning performance agreement that sets out the timescale for approval of reserved matters applications and discharge of conditions;*
- firm progress being made towards the submission of an application – for example, a written agreement between the local planning authority and the site developer(s) which confirms the developers' delivery intentions and anticipated start and build-out rates;*
- firm progress with site assessment work; or*
- clear relevant information about site viability, ownership constraints or infrastructure provision, such as successful participation in bids for large-scale infrastructure funding or other similar projects.*

Plan-makers can use the Housing and Economic Land Availability Assessment in demonstrating the deliverability of sites.” (my emphasis)

2.14 As recognised above, the guidance set out in PPG on assessing whether or not a site is ‘deliverable’ treats certain categories of site differently depending on their planning status and / or the progress made in bringing them forward for development. The guidance highlighted here is relevant to those sites that have not yet secured detailed consent (Full/Reserved Matters), or where an outline consent has been issued but no reserved matters application is in place, which places the ‘burden of proof’ on the Council to present the ‘clear’ evidence to demonstrate that these sites are deliverable. This is of relevance to

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Tandridge, given the Council is relying on Category B sites to make-up a significant proportion of the claimed supply.

3 Deliverability Considerations in Decision-Making

- 3.1 Further advice and guidance on how these factors should be interpreted can be taken from the findings of relevant Section 78 decisions and rulings from the courts. Some of the pertinent points raised in these cases are examined below.

The starting point for the assessment – the ‘base date’

- 3.2 As is the nature of the process, supply assessments represent the position at a point in time, namely that which existed at the *base date*. Notably, the assessment would also quantify the number of completions up to the base date, in order to ensure a consistent and balanced consideration with respect to the flow of sites both into and out of the supply. If not, the assessment risks becoming unbalanced and lacking credibility as a basis for calculating the supply position. This was recognised in the appeal decision on Land at Market Square, Basildon [Appendix A] issued on 17 December 2021, which states in the Decision Letter (DL) *inter alia*:

“...it is important that the annual housing land supply calculation should not be distorted by ad hoc additions or deductions throughout the monitoring year. Therefore, those dwellings arising from planning permissions, resolutions, or applications post-dating the annual report should be discounted. (DL92)” (my emphasis)

- 3.3 There are many other decisions that have dealt with this matter, including the appeal decision at Farleigh Fields, North Somerset District recovered by the Secretary of State on 21 March 2017 [Appendix B]. Paragraph 326 of the Inspector’s DL states:

“It is common ground that it is appropriate to assess supply for the five year period starting from 1 April 2016, however NSC includes sites in its anticipated supply that have been consented since that base date. As the appellant identifies, there is a significant body of appeal decisions in which Inspectors have indicated that such an approach is not appropriate in the absence of proper accounting.... I share those Inspectors’ broad view that if such sites are to be included then account must also be taken of the housing requirement that has accrued during the same period. NSC has not factored in that increased requirement or the increased backlog accrued after 1 April 2016, such that there is an imbalance in its inputs and a consequential artificial inflation of its supply of housing land over the five year period in relative terms. Accordingly, all of those sites, which amount to 328 dwellings, should be omitted for the purposes of this exercise.” (TT emphasis)

- 3.4 The Secretary of State at the time agreed with the Inspector's recommendations, stating at paragraph 18 of their letter that:

"The Secretary of State has gone on to consider the disputed 'large consented sites'. For the reasons set out by the Inspector at IR325-327, he concludes that 328 units should be removed from supply, reducing the subtotal further to 7,885 (IR326)." (TT emphasis)

- 3.5 It is fair and reasonable to conclude from these decisions that in order to ensure the supply position follows the relevant period and uses relevant, consistent, and proportionate evidence, sites not deemed as deliverable at the base date should not be included in the five-year period. For example, simply because an application may have been validated and was under consideration prior to the base date does not demonstrate it is deliverable at the base date.

The Suitability of Sites

- 3.6 For any site to be considered deliverable, it must be shown to be suitable. The PPG¹ offers some advice, stating:

"A site or broad location can be considered suitable if it would provide an appropriate location for development when considered against relevant constraints and their potential to be mitigated." (my emphasis)

- 3.7 In terms of constraints, according to the same paragraph of the PPG this could include inter alia: *"appropriateness and likely market attractiveness for the type of development proposed"*

and

"potential impacts including the effect upon landscapes including landscape features, nature and heritage conservation."

- 3.8 It also states that:

¹ Paragraph: 018 Reference ID: 3-018-20190722 Revision date: 22 07 2019

“When assessing sites against the adopted development plan, plan-makers will need to take account of how up to date the plan policies are and consider the relevance of identified constraints on sites / broad locations and whether such constraints may be overcome.” (my emphasis)

- 3.9 Some helpful guidance on how constraints and other objections might be considered in the supply assessment can be found in the High Court ruling issued at *Wainhomes (South West) Holdings Ltd and the Secretary of State for Communities and Local Government et al [2013] EWHC 597 (Admin)* [**Appendix C**] which states, at paragraph 34(iv):

“(iv) Where sites without planning permission are subject to objection, the nature and substance of the objections may go to the question whether the site offers a suitable location; and they may also determine whether the development is achievable with a realistic prospect that housing will be delivered on the site within five years. Even if detailed information is available about the site and the objections, prediction of the planning outcome is necessarily uncertain. All that probably need be said in most cases is that where sites do not have planning permission and are known to be subject to objections, the outcome cannot be guaranteed. Accordingly, where there is a body of sites which are known to be subject to objections, significant site specific evidence is likely to be required in order to justify a conclusion that 100% of all those sites offer suitable locations and are achievable with a realistic prospect that they will be delivered within five years.” (my emphasis)

- 3.10 It is fair and reasonable to conclude from this part of the *Wainhomes* judgment that it is necessary to consider the nature of any objections affecting sites and the potential for significant site-specific evidence to demonstrate a given site offers a suitable location for development, as part of the overall test of deliverability.

The need for clear evidence

- 3.11 The definition of the Framework identifies that Category B sites should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years. As highlighted above, the PPG (paragraph 68-007) requires that robust, up to date evidence is provided.
- 3.12 A number of appeal decisions have interpreted this to require that there needs to be something cogent to provide strong evidence that in reality a site will deliver housing in the

timescale and in the numbers contended for, rather than simply relying upon mere opinion. Some examples (though clearly not exhaustive) are provided here.

- 3.13 Turning to a SofS decision from July 2020 at Audlem Road and Broad Lane, Stapeley [Appendix D] the absence of written agreements is clearly a matter capable of ruling sites from inclusion in the supply. As part of Paragraph 21 of the decision, it is noted that,

“He considers that, on the basis of the evidence before him, the following should be removed from the supply: sites with outline planning permission which had no reserved matters applications and no evidence of a written agreement”.

- 3.14 Where evidence is provided, this does not automatically render sites as deliverable, and it is necessary to interpret the information, both in terms of age and validity. As part of the Woburn Sands decision [Appendix E], the SofS agreed with the Inspector that the latest evidence should be used when considering deliverability, as set out in DL12:

“The Secretary of State has considered the Inspector’s analysis at IR12.4-12.64. For the reasons given at IR12.8-12.12 the Secretary of State agrees with the Inspector that it is acceptable that the evidence can post-date the base date provided that it is used to support sites identified as deliverable as of 1 April 2019 (IR12.11)....”. (my emphasis)

- 3.15 Putting this approach into practice, this would allow the consideration of evidence for outline schemes where there had been firm progress with Reserved Matters applications for example. Similarly, it also stands that where sites have not progressed as planned, this evidence can also be accounted for to give an up-to-date position. This particular point is explored further as part of the Audlem Road appeal highlighted above where, also at paragraph 21, the SofS removes components of supply where:

“...there is no application and the written agreement indicates an application submission date of August 2019 which has not been forthcoming, with no other evidence of progress”.

- 3.16 Turning to the matter of substance of evidence, the PPG² indicates that evidence can take the form of written agreements between local planning authorities and the site developers to set out the delivery intentions and start/build rates. This particular point was brought under scrutiny as part of the Popes Lane, Sturry, decision in Canterbury City [Appendix F]. As part of the disputed case on supply, the Council in this case had sought to reinforce their evidence on a number of sites through Statements of Common Ground with developers/landowners. The Inspector however was unconvinced of the robustness of this exercise, as indicated in DL23 of the decision:

“For a number of the disputed sites, the Council’s evidence is founded on site-specific SCGs which have been agreed with the developer or landowner of the site in question. I appreciate that the PPG refers to SCGs as an admissible type of evidence, and I have had full regard to that advice. But nevertheless, the evidential value of any particular SCG in this context is dependent on its content. In a number of cases, the SCGs produced by the Council primarily record the developer’s or landowner’s stated intentions. Without any further detail, as to the means by which infrastructure requirements or other likely obstacles are to be overcome, and the timescales involved, this type of SCG does not seem to me to demonstrate that the development prospect is realistic. In addition, most of the site-specific SCGs are undated, thus leaving some uncertainty as to whether they represent the most up-to-date position.”

- 3.17 From the reading of this decision, it is clear that a written account alone does not signify the test of deliverable has been met and it is necessary to interrogate assumptions in such statements to ensure that there is a realistic prospect of delivery. It was this particular point reflected upon as part of the Caddywell Lane decision [Appendix G] from March 2020. In his reading of the PPG, Inspector Stephens states in Paragraph 56 that clear evidence must be something cogent, as opposed to mere assertions, that there must be strong evidence that a given site will in reality deliver housing in the timescale and numbers contended.

² PPG Paragraph 68-020-20190722

Inspector Stephens goes onto discuss what he regards to be a demonstration of clear evidence, in Paragraph 57 of the decision, stating:

“Clear evidence requires more than just being informed by landowners, agents or developers that sites will come forward, rather, that a realistic assessment of the factors concerning the delivery has been considered. This means not only are the planning matters that need to be considered but also the technical, legal and commercial/financial aspects of delivery assessed. Securing an email or completed pro-forma from a developer or agent does not in itself constitute ‘clear evidence’. Developers are financially incentivised to reduce competition (supply) and this can be achieved by optimistically forecasting delivery of housing from their own site and consequentially remove the need for other sites to come forward”.

- 3.18 It is fair and reasonable to conclude from these cases that the choice or selection of sites to include in the supply calculation is one that should be based on sound planning judgments based underpinned by up to date and credible evidence. On this point, the Council has provided no specific evidence on any of those sites where clear evidence is required. This is a significant issue. The main findings from our analysis on the Council’s claimed deliverable supply sources in section 7 of this statement.

4 The latest housing land supply position in Tandridge

4.1 This section briefly outlines the Council's approach on land supply, including the latest supply calculation for decision-making purposes. It highlights the main assumptions that have informed the Council's current position.

The Council's approach on land supply – key assumptions

4.2 The Council's latest, full land supply assessment is set out in *Tandridge District Council Annual Monitoring Report 2024/2025 December 2025* ('AMR 2024/25'). The extract below (Table 4.1) summarises the latest supply calculation.

Table 4-1 Tandridge land supply calculation, December 2025

COMPONENT						OUTPUT
Standard Method annual requirement						827
Annual requirement +20%						993
Five-year requirement (inc. buffer)						4,964
Total Supply						2,158
Year	2025/26	2026/27	2027/28	2028/29	2029/30	TOTAL
FUL <=9	123	66	22	0	0	211
FUL >=10	43	123	133	95	80	474
UC <=9	38	13	5	0	0	56
UC >=10	20	20	20	20	9	89
OUT > 10	0	0	264	276	210	750
PA / CoU / CLU	27	3	4	0	0	34
C2 / Communal	0	20	20	20	24	84
Windfall	0	0	0	230	230	460
Over / Under Provision						-2,806
Total Years Supply						2.17

Source: AMR 2024/25 (Table 12 Identified Supply Figures)

4.3 The Council has identified a total supply from deliverable sites amounting to **2,158** dwellings over the next five years. On this basis, the Council claims they can now demonstrate **2.17** years' worth of deliverable land against their requirement figure for the 2025-2030 period. For comparison, this is a slight improvement on the previous published position (1.92 years) but still represents a substantial shortfall against the national policy threshold of five years (minimum) expected of all local authorities, contrary to paragraph 78 of the Framework.

Housing Delivery Test and Housing Action Plans

- 4.4 The Council has prepared a Housing Action Plan ('HAP') every year since 2021. This is in accordance with paragraph 79 of the Framework, which stipulates that where delivery falls below 95% of the requirement over the previous three years, the authority should prepare an 'action plan' to assess the causes of under-delivery and 'identify actions' to 'increase delivery in future years'. This is determined against the Housing Delivery Test score prepared for each respective three-year period.
- 4.5 We can see that in 2021 edition the Council had achieved a **50%** HDT score based on 2017-2020 delivery period in 2021 and referenced in the first action plan issued by the Council in June 2021 (HAP 2021, para 4.4). The most recent score is even lower, at **42%**, based on 2020-2023 period published in 2024 and referred to in the latest Housing Action Plan dated December 2025 (HAP 2025, para 20.85).
- 4.6 The full set of HDT scores for Tandridge are set out below. This provides a clear 'ready reckoner' of past and current performance in delivering housing against the required number of homes in Tandridge since 2015, based on published figures³.

Table 4-2 Housing Delivery Test Scores in Tandridge

period	HDT Score
2015-2018	65%
2016-2019	50%
2017-2020	50%
2018-2021	38%
2019-2022	38%
2020-2023	42%
Av.	47%

Source: MHCLG

- 4.7 What we see is a consistent and persistent under-delivery of housing in Tandridge since the HDT was in operation, of less than 50% on average. This was regardless of whether the Council had prepared an action plan or not. This was also the measure of delivery performance in the context of the national lockdown announced on 23 March 2020, which

³ [Housing Delivery Test - GOV.UK](https://www.gov.uk/guidance/housing-delivery-test)

was described as an ‘unprecedented event’ which saw temporary disruption to local authority planning services and the construction sector across the UK. Government adjusted the HDT methodology to reflect these impacts in the results for 2017-20 and 2018-21, by reducing the ‘homes required’ within the 2019 to 2020 year by a month and within the 2020 and 2021 year by four months.

- 4.8 New HDT scores for all local authorities, including Tandridge, are expected to be published very shortly covering the periods 2021-2024 and 2022-2025.
- 4.9 Taken together, this demonstrates a clear reluctance or inability on the part of the Council to deliver the number of homes required to meet the needs of the district.

Emerging Local Plan

- 4.10 According to the Council, following the withdrawal of ‘Our Local Plan 2033’ on 18 April 2024 it was agreed that the Council would start work on a new Local Plan.
- 4.11 TDC recently undertook consultation on the Regulation 18 version of their Plan titled ‘*Regulation 18: Early Engagement Consultation*’ document and invited comments from interested parties. This consultation closed on 01 March 2026⁴. The consultation points to an indicative date for adoption by ‘Mid 2028’ but, more importantly, the intention to submit the Plan for examination sometime in ‘mid 2027’. The expected submission date therefore goes beyond the 31 December 2026 deadline announced by government (updated 6 March 2026) for those Councils wishing to prepare a Local Plan under the current plan-making system⁵. The recent consultation represents the start of the process for preparing the Plan. In these circumstances, it is self evident the Council will not be in a position to submit the final plan by the end of this year (a period of less than 10 months) and meet the government’s deadline.

⁴ <https://www.tandridge.gov.uk/Your-council/News-and-consultation/Consultations/Local-Plan-consultation-closed-1-March-2026>

⁵ [Rollout of the new local plan-making system - GOV.UK](#) (6 March 2026)

- 4.12 Consequently, the (new) Tandridge Local Plan will need to be produced under the new plan-making system as set out in the Levelling Up and Regeneration Act (2023), which will streamline the new process to 30 months. (NB: guidance on the new local plan-making system ‘roadmap’ was published on 2 March 2026, which indicates the 30-month plan preparation process will start on the date the LPA passes through Gateway 1⁶).
- 4.13 Under the new system, we anticipate that the Council will be required to start the process of preparing the Local Plan by publishing a ‘notice to commence’ plan preparation by 30 June 2026 and then publish a ‘Gateway 1 self-assessment’ by 31 October 2026. On this timeframe, we would not expect the new Plan to be adopted until at least early 2029.
- 4.14 Given the Council will not secure an adopted Plan under the current system (and therefore with no new housing site allocations) it is unlikely that the land supply position will improve materially (or at all) in the short-term unless more permissions are issued on other suitable sites via the planning application process.

⁶ [Gateway 1: what you need to do - GOV.UK](#)

5 The base date and assessment period

- 5.1 The AMR 2024/25 states that the base date for the latest assessment is 1 October 2025 (AMR 2024/25, 2.87). It also states the assessment period is 2025-2030.
- 5.2 The Council has described this as an 'interim' position. This is "...to ensure that the Council's evidence reflects the most recent and accurate data available..." (AMR 2024/25, para 2.88). According to the Council, the amended base date of 1 October 2025 has been selected, "...to incorporate recent planning permissions, site delivery trajectories, and changes in site status since the start of the monitoring year, ensuring that the position presents the most up-to-date and robust evidence of deliverable supply..." (para 2.89)
- 5.3 We do not object in principle to using a base date that deviates from the (usual) 1 April calendar date. Nonetheless, whichever approach is used must be robust and credible, based on adequate and proportionate evidence.
- 5.4 In reality, the Council's approach is confusing and not informed by up to date evidence. Specifically, the Council has only identified new supply sources (planning permissions) and points to 'changes in site status' and 'site delivery trajectories'. This, we assume, accounts for sites the Council considers to be deliverable and sites granted consent between 1 April and 30 September 2025. However, it is not apparent from the assessment that the Council has deducted completions from any sites identified in the supply but where completions had occurred during this 'interim' period. This would relate to those sites that are either under construction or which benefited from detailed planning permission, and where delivery is expected during year 1 (2025/26).
- 5.5 The lack of clarity on completions is further highlighted in Table 4 and 5 of the AMR 2024/25, which both refer to an 'April – March' monitoring year. This is not consistent with an October (mid-year) base date for the supply assessment. We also note there are no completions figures provided in the AMR covering the April 2025 – September 2025 period. In effect, the Council has changed its land supply assessment period, but has not changed its monitoring

processes to align with the new approach. This further undermines the move to a 1 October 2025 base date, even if this is only an interim measure.

- 5.6 In light of the concerns set out above, the Council has not provided sufficient evidence that they have monitored completions on housing sites between 1 April and 30 September 2025 and it is unclear whether completions during this period have been factored into the re-basing of the base date to 1 October 2025 for latest supply assessment. This has resulted in an ‘unbalanced’ assessment, where only newly consented sites have been included. In line with the Basildon and Farleigh Fields cases outlined above, all sources of supply that post-date the 1 April 2025 monitoring date should be removed from the supply.
- 5.7 On this basis, we recommend that a 1 April 2025 is the appropriate base date for this appeal. The five year period should cover 1 April 2025 to 31 March 2030.

6 The Housing Land Requirement

- 6.1 According to the AMR 2024/25, the (five-year) housing (land) requirement has been calculated using the Standard Method, identifying an annual housing need of 827 dwellings per annum. As a result of the Council's Housing Delivery Test result, a 20% buffer has been applied, resulting in an annual requirement of **993** dwellings, and a five-year requirement amounting to **4,964** dwellings (AMR, 2024/25, para 2.84).
- 6.2 We agree this is the correct requirement figure for this appeal. Nonetheless, we expect new assumptions on dwelling stock and affordability ratios to be published in the coming months, which will necessitate an update to the housing figures to ensure they are kept up to date.

7 Assessment of Land Supply

7.1 Section 4 of this statement outlines the supply components the Council is relying on in their latest assessment. The table below lists these sources by component.

Table 7-1 TDC Identified Supply Figures

AMR 2024/25	Component	2025/26	2026/27	2027/28	2028/29	2029/30	TOTAL
Table 3	FUL <=9	123	66	22	0	0	211
Table 4	FUL >=10	43	123	133	95	80	474
Table 5	UC <=9	38	13	5	0	0	56
Table 6	UC >=10	20	20	20	20	9	89
Table 7	OUT > 10	0	0	264	276	210	750
Table 8	PA / CoU / CLU27		3	4	0	0	34
Table 9	C2 Communal	/0	20	20	20	24	84
	Windfall	0	0	0	230	230	460
	Total						2,158

Source: AMR 2024/25, Table 12

7.2 The AMR 2024/25 lists these various sources on a site-by-site basis in the appendices to the report. We have reviewed the supply components and set out our findings on those sources, below.

Sites with full planning permission that are for 9 units or fewer (FUL <9)

7.3 The Council has identified 108 sites with detailed planning permission of 9 or less dwellings. These are listed in Appendix 1 (Table 3) of the AMR 2024/25. The claimed supply from this source totals 211 dwellings.

7.4 Of these, 23 sites were granted permission after 1 April 2025, but prior to 1 October. These total 47 dwellings on those sites. As explained, the rebasing of the base date to 1 October 2025 is disputed. If these sites are removed, this reduces the supply from this source to **164** dwellings.

7.5 No other adjustments are sought.

7.6 **Appendix H** of this statement provides a schedule of the disputed sites in this category.

Sites with full planning permission that are for 10 units or more (FUL 10>)

7.7 The Council has identified 8 sites with detailed planning permission of 10 or more dwellings. These are listed in Appendix 1 (Table 4) of the AMR 2024/25. The claimed supply from this source totals 474 dwellings.

7.8 Of these, 3 sites were granted permission after 1 April 2025, but prior to 1 October. These total 245 dwellings on those sites. As explained, the rebasing of the base date to 1 October 2025 is disputed. If these sites are removed, this reduces the supply from this source to **229** dwellings.

7.9 No other adjustments are sought.

7.10 **Appendix I** of this statement provides a schedule of disputed sites in this category.

Sites that are under construction that are for 9 units or fewer (UC <9)

7.11 The Council has identified 21 sites with detailed planning permission of 9 or less dwellings. These are listed in Appendix 1 (Table 5) of the AMR 2024/25.

7.12 Under the Framework definition, sites in this category are deemed as deliverable unless clear evidence indicates otherwise. The claimed supply from this source totals **56** dwellings. No deductions are proposed from this source.

Sites that are under construction that are for 10 units or more (UC 10>)

7.13 The Council has identified 1 site currently being built out for 10 or more dwellings. This is listed in Appendix 1 (Table 6) of the AMR 2024/25.

7.14 Under the Framework definition, sites in this category are deemed as deliverable unless clear evidence indicates otherwise. The claimed supply from this source totals **89** dwellings. No deductions are proposed from this source.

Outline permissions for sites of 10 units or more (OUT 10>)

- 7.15 The Council has identified 8 sites with detailed planning permission of 10 or more dwellings. These are listed in Appendix 1 (Table 7) of the AMR 2024/25. The claimed supply from this source totals 750 dwellings. This is by far the largest contributor to the claimed supply, by component.
- 7.16 Nonetheless, under the Framework definition it must be demonstrated with clear evidence that sites with outline planning permission are deliverable within the next five years. Seven of these sites are disputed, as explained below.
- 7.17 **Appendix J** of this statement provides a full schedule of disputed sites in this category.

Development Site At 532253 143328, Plough Road, Smallfield

- 7.18 This site was granted permission in outline for up to 120 dwellings on 17 July 2024.

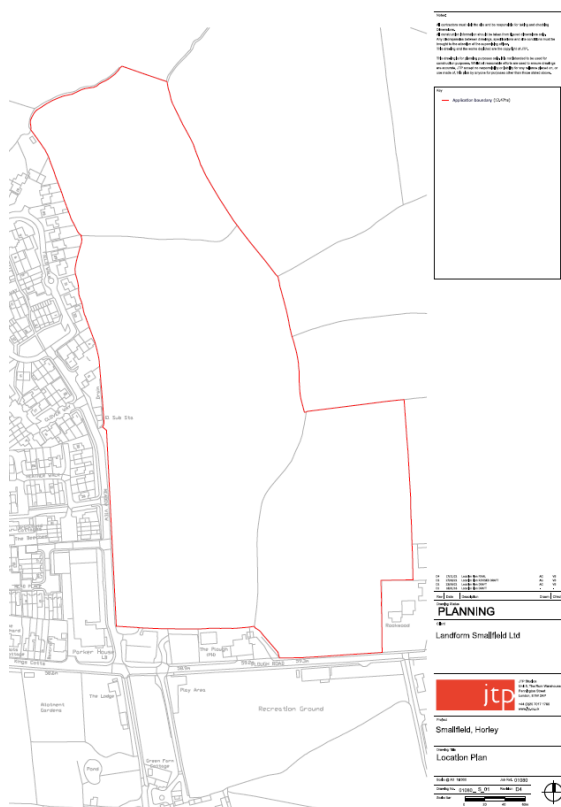


Figure 7-1 Development Site At 532253 143328, Plough Road, Smallfield - Location Plan (taken from planning application)

- 7.19 Subsequent to the outline, a reserved matters application (2025/723) was submitted in August 2025, but has not yet been determined. This is due to a number of outstanding

objections on flooding and drainage issues in relation to the RM that remain unresolved submitted by Surrey CC, who acts as the Lead Local Flood Authority in Tandridge district [Appendix J.1]. It is not clear when these issues will be resolved and allow the application to be determined. This case clearly falls within the remit of *Wainhomes* outlined above, whereby proposals subject to significant objections should not be considered deliverable.

7.20 A number of pre-commencement conditions attached to the outline consent have not been discharged or even applied for at this time (NB: only one application has been submitted for condition 15). Furthermore It is likely that additional pre-commencement conditions will be applied to any RM consent, given the outstanding issues, which will also need to be discharged prior to development coming forward.

7.21 On balance, whilst some progress has been made towards delivery of housing, it remains unclear when development is likely to commence. The current trajectory is not supported by clear evidence. The trajectory should be pushed back by at least one year. As a consequence, the supply within the next five years should be reduced by 40 dwellings.

Five-year projection	LPA	TT RPS	Difference
Plough Lane, Smallfield	120	80	40

Orchard Court, 33 East Grinstead Road, Lingfield

7.22 This site was granted consent in outline for 54 older persons units on 7 June 2024.

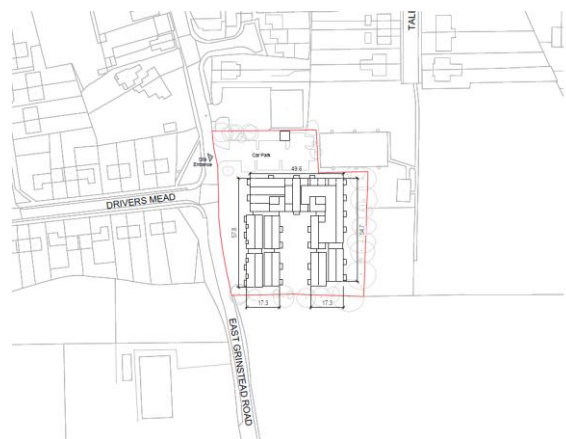


Figure 7-2 Orchard Court - Location Plan (taken from planning application)

- 7.23
- This site is owned by Surrey County Council. It appears the existing buildings have been demolished (indicated on Googlemaps). However, there are no records of any discharge of conditions applications being submitted pursuant to the original outline consent. No RM application has been submitted. Furthermore, no developer has been identified and it is unclear whether the site has been or is being marketed for sale. On this basis, no clear evidence has been provided to demonstrate any progress towards a reserve matters application. Consequently, the realistic prospects of delivery within the next five years has not been demonstrated. Remove the site in full.
- 7.24
- As a consequence, the supply within the next five years should be reduced by 54 dwellings.

Five-year projection	LPA	TT RPS	Difference
Orchard Court, 33 East Grinstead Road, Lingfield	54	0	-54

Stables, Red Lane Farm, Red Lane, Limpsfield, Oxted

- 7.25
- This site was granted in outline for 12 dwelling on 22 September 2025.

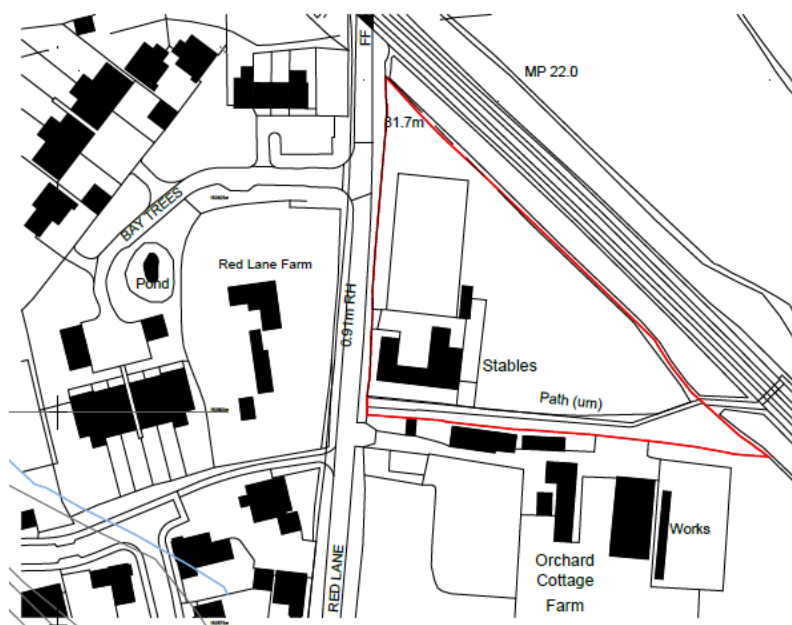


Figure 7-3 Stables, Red Lane Farm - Location Plan (taken from planning application)

- 7.26 A variation of condition application (2025/1517) was validated on 21 January 2026, but has not yet been determined. It is acknowledged the applicant (Chartwell Land) is a local housebuilder with a recent track record in the area and it is assumed they will buildout the site. However, no discharge conditions applications submitted as yet, and no firm progress towards a reserve matters application. Furthermore, the site was granted consent after 1 April 2025. As explained, the rebasing of the base date to 1 October 2025 is disputed.
- 7.27 On this basis, lack of clear evidence to demonstrate firm progress towards a reserve matters application. Consequently, the realistic prospects of delivery within the next five years has not been demonstrated.
- 7.28 As a consequence, the supply within the next five years should be reduced by 12 dwellings.

Five-year projection	LPA	TT RPS	Difference
Stables, Red Lane Farm, Red12 Lane, Limpsfield		0	-12

Former Shelton Sports Club, Shelton Avenue And Land Adjacent To 267 Hillbury Road, Warlingham

7.29 This site was granted outline consent for up to 150 dwellings on 20 June 2025.

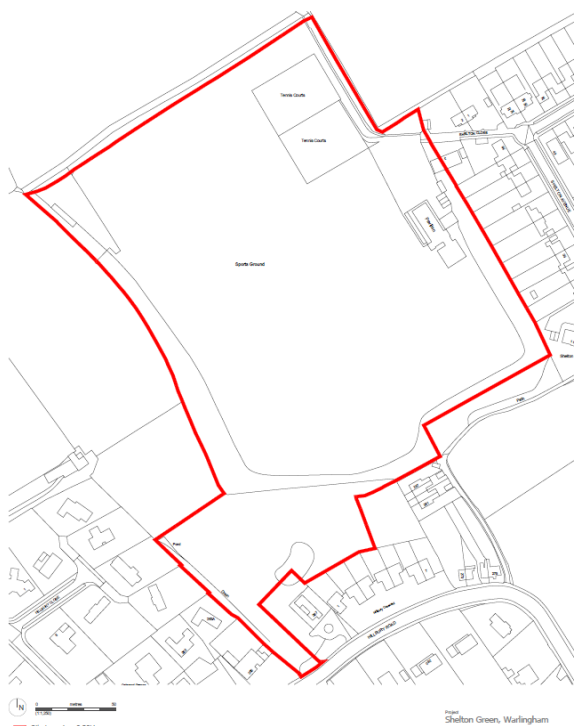


Figure 7-4 Former Shelton Sports Club - Location Plan (taken from planning application)

7.30 It is acknowledged the applicant (Chartwell Land) is a local housebuilder with a recent track record in the area and it is assumed they will buildout the site. However, no discharge conditions applications submitted as yet, and no firm progress towards a RM application. Furthermore, the site was granted consent after 1 April 2025. As explained, the rebasing of the base date to 1 October 2025 is disputed.

7.31 On this basis, lack of clear evidence to demonstrate firm progress towards a reserve matters application. Consequently, the realistic prospects of delivery within the next five years has not been demonstrated.

7.32 As a consequence, the supply within the next five years should be reduced by 150 dwellings.

Five-year projection	LPA	TT RPS	Difference
Former Shelton Sports Club	150	0	-150

1 Park Lane, Warlingham

7.33 This site was granted outline consent for up to 45 dwellings on 24 July 2025.



Figure 7-5 1 Park Lane - Site Plan (taken from planning application)

7.34 The online register indicates that this application has only been approved pending completion of a s106 Agreement, and so a formal consent has not yet been issued (hence why a decision notice has not been issued available on the register. No discharge conditions applications submitted as yet on the outline, and no firm progress towards a reserve matters application. Lack of clear evidence provided. Furthermore, the site was granted consent after 1 April 2025. As explained, the rebasing of the base date to 1 October 2025 is disputed.

7.35 On this basis, there is a lack of clear evidence to demonstrate firm progress towards a reserve matters application. The realistic prospects of delivery within the next five years has not been demonstrated.

7.36 As a consequence, the supply within the next five years should be reduced by 45 dwellings.

Five-year projection	LPA	TT RPS	Difference
1 Park Lane, Warlingham	45	0	-45

Rede Cottage, 57 Redehall Road, Smallfield, Horley

7.37 This site was granted outline consent for up to 85 dwellings on 2 July 2025.



Figure 7-6 Rede Cottage - Site Plan (taken from planning application)

7.38 A similar situation exists here to that which is evident on the Park Lane site. The online register indicates that this application has only been approved pending completion of a s106 Agreement, and so a formal consent has not yet been issued (hence why a decision notice has not been issued available on the register. No discharge conditions applications submitted as yet on the outline, and no firm progress towards a reserve matters application. Lack of clear evidence provided. Furthermore, the site was granted consent after 1 April 2025. As explained, the rebasing of the base date to 1 October 2025 is disputed.

7.39 On this basis, there is a lack of clear evidence to demonstrate firm progress towards a reserve matters application. The realistic prospects of delivery within the next five years has not been demonstrated.

7.40 As a consequence, the supply within the next five years should be reduced by 85 dwellings.

	LPA	TT RPS	Difference
Five-year projection			
Rede Cottage, 57 Redehall Road	85	0	-85

Land West Of Chapel Road, Smallfield

7.41 This application was approved on appeal for 270 dwellings in June 2025.

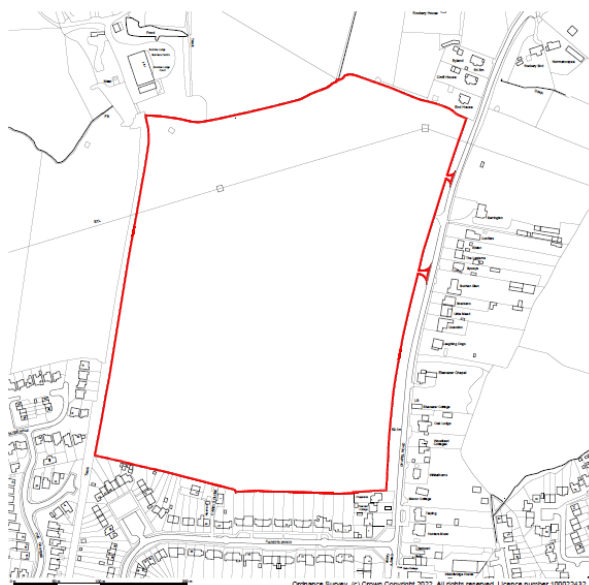


Figure 7-7 Location Plan – Land West of Chapel Road (taken from planning application)

7.42 According to the agent, the site has subsequently been put on the market and expressions of interest have been received. Whilst the site may be sold, it has yet to be sold and so it is unclear what the future trajectory is for the site, who will secure the reserve matters consent and who will build out the site, or whether a fresh outline /full application may be submitted once the site is acquired by the new owner. No clear evidence has been presented to demonstrate realistic prospect that homes will be delivered in the next five years. In addition, the site was granted consent after 1 April 2025. As explained, the rebasing of the base date to 1 October 2025 is disputed.

7.43 On this basis, there is a lack of clear evidence to demonstrate firm progress towards a reserve matters application. The realistic prospects of delivery within the next five years has not been demonstrated.

7.44 As a consequence, the supply within the next five years should be reduced by 270 dwellings.

7.45 The total deductions identified from this source amounts to 656 dwellings. If these sites are removed, this reduces the supply from this source to from 750 to **94** dwellings.

Five-year projection	LPA	TT RPS	Difference

Permissions for Prior Approval, Change of Use, or Certificate of Lawful Use (PA / CoU / CLU)

- 7.46 The Council has identified 18 sites with detailed planning permission of 9 or less dwellings. These are listed in Appendix 1 (Table 8) of the AMR 2024/25.
- 7.47 Under the Framework definition, sites in this category are deemed as deliverable unless clear evidence indicates otherwise (as they are minor developments, bar one site). The claimed supply from this source totals **34** dwellings.
- 7.48 No deductions are proposed from this source.

Permissions for C2 (Extra Care) / Communal development (C2 / COM)

- 7.49 The Council has identified 1 site with detailed planning permission in this category. These are listed in Appendix 1 (Table 9) of the AMR 2024/25.
- 7.50 Under the Framework definition, sites in this category are deemed as deliverable unless clear evidence indicates otherwise. The claimed supply from this source totals **84** dwellings.
- 7.51 No deductions are proposed from this source.

Windfall Allowance

- 7.52 Paragraph 75 of the Framework makes clear that where an allowance is to be made for windfall sites as part of anticipated supply, there should be compelling evidence that they will provide a reliable source of supply. Any allowance should be realistic having regard to the strategic housing land availability assessment, historic windfall delivery rates and expected future trends.
- 7.53 The AMR 2024/25 includes an allowance of **460** dwellings within the deliverable supply. This is based a review of past delivery rates observed between 2013/14-2024/25, set out at Table

13 of the AMR. The Council has applied the allowance over the last two years of the five-year period (230 in 2028/29, and 230 in 2029/30).

7.54 On balance, we do not object to the inclusion of a windfall allowance in the forward supply calculation presented in the AMR 2024/25. We would however strongly resist any suggestion that the allowance should be increased as there is no evidence to justify any change.

7.55 Nonetheless, the Council's own evidence demonstrates the important contribution that windfall development has made to the overall completion rates (and thus in meeting housing need) seen in Tandridge during this period. This is explained in the following table.

Table 7-2 Total (net) dwelling completions and contribution from windfall sites, 2013-25, Tandridge

Monitoring year	Total completions (net)	Windfalls
April 2013 – March 2014	256	256
April 2014 – March 2015	142	142
April 2015 – March 2016	322	322
April 2016 – March 2017	228	228
April 2017 – March 2018	332	332
April 2018 – March 2019	244	244
April 2019 – March 2020	262	262
April 2020 – March 2021	117	117
April 2021 – March 2022	238	238
April 2022 – March 2023	303	303
April 2023 – March 2024	238	238
April 2024 – March 2025	183	183
Adjustment for 2018/729 allocation		-111
Total	2,865	2,754
% of total completions delivered on windfall sites		96%
Source:	AMR 2024/25 (Table 4)	AMR 2024/25 (Table 13); TT RPS

7.56 According to the data, **96%** of all completions in Tandridge between 2013 and 2025 were secured on sites not allocated in a development plan. This is not the usual situation we might expect to see elsewhere across the country. Whilst this may belie the wider objective of a 'plan-led' system at the local level, it nonetheless is clear evidence that the Council would have failed to meet the housing needs of Tandridge without development coming forward on windfall sites.

7.57 Windfall development has been a critical source of housing supply in Tandridge. As explained in section 4 of this statement, the Council is not in position to adopt a new Local Plan (which we assume would include sites allocated for housing) any time soon. Consequently, windfall development will continue to be an important characteristic of housing delivery in Tandridge for the foreseeable future.

Summary of deductions

7.58 The following table draws together the various adjustments identified based on our assessment.

Table 7-3 Deductions from supply

	TDC	RPS	Deductions
FUL <=9	211	164	47
FUL >=10	474	229	245
UC <=9	56	56	0
UC >=10	89	89	0
OUT > 10	750	94	656
PA / CoU / CLU	34	34	0
C2 / Communal	84	84	0
Windfall	460	460	0
total deductions			948

7.59 The deductions we put forward in this statement total **948** dwellings. On this basis, when apply the deduction the deliverable supply in Tandridge is **1,210** dwellings over the next five years. This is summarised in the following table.

Table 7-4 Impact of deductions

	Supply
TDC	2,158
minus deductions	948
RPS	1,210

7.60 The next section of this statement presents an adjusted land supply calculation for Tandridge derived from our assessment.

8 Adjusted land supply calculation

- 8.1 The following table provides our land supply calculation for the appeal, taking into account the various adjustments identified in this statement.

Table 8-1 Land supply calculation for Tandridge (2025-30)

	TDC	RPS
Standard Method annual requirement	827	827
Annual requirement +20%	993	993
Five-year requirement (inc. buffer)	4,964	4,964
Total Supply	2,158	1,210
Over / Under Provision	-2,806	-3,754
Total Years Supply	2.17	1.22

- 8.2 On our analysis, we contend that the correct position is **1.22 years'** worth of deliverable sites in Tandridge. This amounts to a **shortfall of 3,754 dwellings** when adjusted against the requirement.
- 8.3 This clearly shows there is a pressing need to grant more applications for residential development in Tandridge in order to tackle the shortfall in supply, which we would describe as being substantial.

9 Summary and conclusions

9.1 This statement addresses housing land supply and other housing-related matters in the Borough and responds to the Tandridge District Council's ('the Council') latest land supply position, which for the purposes of assessment draws on information published by the Council.

9.2 It relates to a planning appeal against the non-determination of outline planning permission TA/2025/771 for 30 homes (50% affordable) with associated works including provision of vehicular and pedestrian access, landscaping, drainage, and other associated infrastructure, ("the Site"). RPS became involved in the appeal around the time the appeal was being lodged.

Housing Delivery

9.3 There has been a consistent and persistent under-delivery of housing in Tandridge since the HDT was in operation (in 2018) of less than 50% on average (47%). The current measure is 42% (2020-2023). This demonstrates a clear reluctance or inability on the part of the Council to deliver the number of homes required to meet the needs of the district.

The Council's latest position on land supply

9.4 The Council's latest, full land supply assessment is set out in *Tandridge District Council Annual Monitoring Report 2024/2025 December 2025*. The Council claims they can now demonstrate 2.17 years' worth of deliverable land against their requirement figure for the 2025-2030 period. This is based on a claimed supply amounting to 2,158 dwellings. Our assessment has identified a number of issues regarding the land supply position in Tandridge, which are pertinent to this appeal.

The base date and assessment period

9.5 The AMR 2024/25 states that the base date for the latest assessment is now 1 October 2025. We do not object in principle to using a base date that deviates from the (usual) 1 April calendar date. However, it is not apparent whether the Council has deducted

completions from any sites identified in the supply where those completions had occurred during the period prior to the re-based starting point (between 1 April and 30 September 2025). This has resulted in an ‘unbalanced’ assessment, where only newly consented sites have been added into the supply without the commensurate number of completions during that period being removed. This is not a robust or credible approach.

- 9.6 On this basis, we recommend that a 1 April 2025 is the appropriate base date for this appeal. The five year period should cover 1 April 2025 to 31 March 2030.

Housing Land Requirement

- 9.7 As a result of the Council’s persistent under-delivery of housing in recent years, a 20% buffer has been applied to the standard method figure, resulting in an annual requirement of **993** dwellings, and a five-year requirement amounting to **4,964** dwellings.

- 9.8 We agree this is the correct requirement figure for this appeal.

Assessment of supply

- 9.9 Our assessment has identified 948 dwellings that should be discounted from the deliverable supply. When applying this deductions, we argue the correct supply is **1,210** dwellings over the next five years. Details on those elements in dispute are discussed in section 7 of this statement, with site-by-site comments presented in the appendices.

Land supply calculation (adjusted)

- 9.10 On our analysis, we contend that the correct position is **1.22 years**’ worth of deliverable sites in Tandridge. This amounts to a **shortfall of 3,754 dwellings** when adjusted against the requirement. Our calculations are set out below.

	TDC	RPS
Standard Method annual requirement	827	827
Annual requirement +20%	993	993
Five-year requirement (inc. buffer)	4,964	4,964
Total Supply	2,158	1,210
Over / Under Provision	-2,806	-3,754
Total Years Supply	2.17	1.22

- 9.11 In this context, it is worth noting that the Council is unlikely to adopt a new Local Plan in the foreseeable future, given the plan that was in the process of being prepared was withdrawn in April 2024. The consequence of this situation is that there are no immediate prospects that the shortfall in housing supply in Tandridge will be remedied any time soon.

Scale of the shortfall

- 9.12 On this analysis, there is a pressing and demonstrable need to grant more applications for residential development in Tandridge in order to tackle the shortfall in housing land supply, which we would describe as being 'substantial'. We draw this conclusion having regard to the *Hallam*⁷ judgement in 2018 [**Appendix K**] which recognised that the size of the shortfall is a relevant consideration is determining the weight to ascribe to relevant policies for housing. Notably, it states:

"47...in a case where the local planning authority is unable to demonstrate five years' supply of housing land, the policy leaves to the decision-maker's planning judgment the weight he gives to relevant restrictive policies. Logically, however, one would expect the weight given to such policies to be less if the shortfall in the housing land supply is large, and more if it is small...."

- 9.13 In light of this judgement, the scale of the housing shortfall currently impacting on the delivery of housing in Tandridge adds substantial weight to the provision of housing on the application site, in our professional opinion.

⁷ [Hallam Land Management Ltd v Secretary of State for Communities And Local Government & Anor \[2018\] EWCA Civ 1808 \(31 July 2018\)](#)

Land at Mount Avenue, Chaldon, Tandridge, CR3 5BB

Housing Land Supply Statement

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Prepared by:

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Appendices

See separate enclosures

Executive Summary

This statement addresses housing land supply and other housing-related matters in the Borough and responds to the Tandridge District Council's ('the Council') latest land supply position, which for the purposes of our assessment draws on information published by the Council (and other relevant information).

According to government figures, there has been a consistent and persistent under-delivery of housing in Tandridge since the Housing Delivery Test (HDT) came in to effect in 2018.

The Council claims they can now demonstrate 2.17 years' worth of deliverable land against their requirement figure for the 2025-2030 period. The Council accepts that a five-year supply of deliverable land cannot be demonstrated in Tandridge.

Nonetheless, our assessment has identified a number of issues regarding the land supply position in Tandridge, which are pertinent to this appeal.

The AMR 2024/25 states that the base date for the latest assessment is now 1 October 2025. However, by doing so, this has resulted in an 'unbalanced' assessment, where only newly consented sites have been added into the supply without the commensurate number of completions during that period being removed. This is not a robust or credible approach. In our view, 1 April 2025 is the appropriate base date for this appeal. The five year period should cover 1 April 2025 to 31 March 2030.

On our analysis, we contend that the correct position is 1.22 years' worth of deliverable sites in Tandridge. This amounts to a shortfall of 3,754 dwellings when adjusted against the requirement. In our view, the scale of the housing shortfall currently impacting on the delivery of housing in Tandridge adds substantial weight to the provision of housing on the application site.

1 Introduction

- 1.1 This statement relates to a planning appeal against the non-determination of outline planning application ref. TA/2025/771 for 30 homes (50% affordable) with associated works including provision of vehicular and pedestrian access, landscaping, drainage, and other associated infrastructure (“the Site”).
- 1.2 It addresses housing land supply and other housing-related matters in the Borough and responds to the Tandridge District Council’s (‘the Council’) latest land supply position, which for the purposes of assessment draws on information published by the Council.
- 1.3 It is noted the Council is now claiming it can demonstrate 2.17 years’ worth of housing land, as set out in the Annual Monitoring Report (‘AMR 2025’) dated December 2025. This is disputed.
- 1.4 This statement should also be read in conjunction with the Housing Land Supply Statement of Common Ground prepared for this appeal (to be agreed) which sets out the parties’ respective position on matters relating to housing land supply and other housing-related matters.

2 National Policy and Guidance on Land Supply

2.1 This section provides a summary of the pertinent national policy and guidance on housing land supply which has helped inform the approach and analysis set out in this statement

2.2 The relevant version of the National Planning Policy Framework for this appeal was published on 12 December 2024 ('the Framework'). The Framework is a material consideration in the determination of planning applications and appeals where housing land supply is a relevant matter. Relevant extracts from the Framework are set out below.

The Presumption in favour of sustainable development

2.3 Paragraph 11(d) requires all plans and decisions to apply the 'presumption in favour of sustainable development':

"...where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date..." (subject to further provisions in limbs i and ii of the paragraph).

2.4 Footnote 8 of the Framework clarifies that 'out of date' means:

"...for applications involving the provision of housing, situations where: the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer as set out in paragraph 78); or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years. See also paragraph 227..."

2.5 Paragraph 78 states local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing, and should include a buffer of 20% where there has been 'significant' under delivery of housing over the previous three years (when measured against the Housing Delivery Test) to improve the prospect of achieving the planned supply. This is applicable in this appeal given the acknowledgement that the Council cannot demonstrate a five-years supply of deliverable sites and has failed the HDT.

Delivering a sufficient supply of homes

- 2.6 Paragraph 61 makes clear the importance of boosting the supply of housing, by stating:

“To support the Government’s objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay. The overall aim should be to meet as much of an area’s identified housing need as possible, including with an appropriate mix of housing types for the local community.”

- 2.7 In this context, paragraph 62 is important with respect to determining the correct approach to determining the minimum number of homes needed in the area where plans are more than five years old. The Council has applied the standard method in their latest assessment. We agree this is the correct approach in Tandridge at this time.

Identifying land for homes

- 2.8 In order to ensure that housing requirements are met, paragraph 78 states:

“Strategic policies should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years’ worth of housing against their housing requirement set out in adopted strategic policies³⁸, or against their local housing need where the strategic policies are more than five years old³⁹. The supply of specific deliverable sites should in addition include a buffer (moved forward from later in the plan period)....” (RPS emphasis)

- 2.9 The Glossary to the Framework sets out the definition what constitutes a ‘deliverable’ site:

“To be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years. In particular:

a) sites which do not involve major development and have planning permission, and all sites with detailed planning permission, should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years (for example because they are no longer viable, there is no longer a demand for the type of units or sites have long term phasing plans).

b) where a site has outline planning permission for major development, has been allocated in a development plan, has a grant of permission in principle, or is identified on a brownfield register, it should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years.” (TT emphasis)

- 2.10 The Framework (and Planning Practice Guidance (“PPG”)) identifies three criteria which need to be addressed for sites to be considered deliverable, namely that; they are available now, offer a suitable location for development now, and are achievable with a realistic prospect that housing will be delivered within five years.
- 2.11 The definition is then broken down into two sub-sets of site, classified according to their planning status. These are often referred to as category ‘A’ and category ‘B’ sites, depending on their status. Category A sites should be considered to be deliverable unless there is clear evidence that homes will not be delivered within five years; Category B sites should only be considered deliverable where there is clear evidence that housing completions will begin within five years. For sites in either category, they must all also meet the three criteria in the definition. The Framework therefore differentiates between sites with detailed permission and other types of sites (including outline applications and sites with no consent) where clear evidence is a requirement.
- 2.12 Additional advice is provided in PPG on implementing aspects of the Framework, including that which relates to housing land supply and delivery. Set out below are those sections of the PPG that are worthy of note.

Demonstrating a 5-year housing land supply

- 2.13 In response to the question ‘*What constitutes a ‘deliverable’ housing site in the context of plan-making and decision-taking?*’ (Paragraph: 007 Reference ID: 68-007-20190722 Revision date: 22 July 2019) in the context of housing land supply, the PPG provides additional detail to that set out in the Framework. It states:

“In order to demonstrate 5 years’ worth of deliverable housing sites, robust, up to date evidence needs to be available to support the preparation of strategic policies and planning decisions. Annex

2 of the National Planning Policy Framework defines a deliverable site. As well as sites which are considered to be deliverable in principle, this definition also sets out the sites which would require further evidence to be considered deliverable, namely those which:

- have outline planning permission for major development; are allocated in a development plan;*
- have a grant of permission in principle; or are identified on a brownfield register.*

Such evidence, to demonstrate deliverability, may include:

- current planning status – for example, on larger scale sites with outline or hybrid permission how much progress has been made towards approving reserved matters, or whether these link to a planning performance agreement that sets out the timescale for approval of reserved matters applications and discharge of conditions;*
- firm progress being made towards the submission of an application – for example, a written agreement between the local planning authority and the site developer(s) which confirms the developers' delivery intentions and anticipated start and build-out rates;*
- firm progress with site assessment work; or*
- clear relevant information about site viability, ownership constraints or infrastructure provision, such as successful participation in bids for large-scale infrastructure funding or other similar projects.*

Plan-makers can use the Housing and Economic Land Availability Assessment in demonstrating the deliverability of sites.” (my emphasis)

2.14 As recognised above, the guidance set out in PPG on assessing whether or not a site is ‘deliverable’ treats certain categories of site differently depending on their planning status and / or the progress made in bringing them forward for development. The guidance highlighted here is relevant to those sites that have not yet secured detailed consent (Full/Reserved Matters), or where an outline consent has been issued but no reserved matters application is in place, which places the ‘burden of proof’ on the Council to present the ‘clear’ evidence to demonstrate that these sites are deliverable. This is of relevance to

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Tandridge, given the Council is relying on Category B sites to make-up a significant proportion of the claimed supply.

3 Deliverability Considerations in Decision-Making

- 3.1 Further advice and guidance on how these factors should be interpreted can be taken from the findings of relevant Section 78 decisions and rulings from the courts. Some of the pertinent points raised in these cases are examined below.

The starting point for the assessment – the ‘base date’

- 3.2 As is the nature of the process, supply assessments represent the position at a point in time, namely that which existed at the *base date*. Notably, the assessment would also quantify the number of completions up to the base date, in order to ensure a consistent and balanced consideration with respect to the flow of sites both into and out of the supply. If not, the assessment risks becoming unbalanced and lacking credibility as a basis for calculating the supply position. This was recognised in the appeal decision on Land at Market Square, Basildon [Appendix A] issued on 17 December 2021, which states in the Decision Letter (DL) *inter alia*:

“...it is important that the annual housing land supply calculation should not be distorted by ad hoc additions or deductions throughout the monitoring year. Therefore, those dwellings arising from planning permissions, resolutions, or applications post-dating the annual report should be discounted. (DL92)” (my emphasis)

- 3.3 There are many other decisions that have dealt with this matter, including the appeal decision at Farleigh Fields, North Somerset District recovered by the Secretary of State on 21 March 2017 [Appendix B]. Paragraph 326 of the Inspector’s DL states:

“It is common ground that it is appropriate to assess supply for the five year period starting from 1 April 2016, however NSC includes sites in its anticipated supply that have been consented since that base date. As the appellant identifies, there is a significant body of appeal decisions in which Inspectors have indicated that such an approach is not appropriate in the absence of proper accounting.... I share those Inspectors’ broad view that if such sites are to be included then account must also be taken of the housing requirement that has accrued during the same period. NSC has not factored in that increased requirement or the increased backlog accrued after 1 April 2016, such that there is an imbalance in its inputs and a consequential artificial inflation of its supply of housing land over the five year period in relative terms. Accordingly, all of those sites, which amount to 328 dwellings, should be omitted for the purposes of this exercise.” (TT emphasis)

- 3.4 The Secretary of State at the time agreed with the Inspector's recommendations, stating at paragraph 18 of their letter that:

"The Secretary of State has gone on to consider the disputed 'large consented sites'. For the reasons set out by the Inspector at IR325-327, he concludes that 328 units should be removed from supply, reducing the subtotal further to 7,885 (IR326)." (TT emphasis)

- 3.5 It is fair and reasonable to conclude from these decisions that in order to ensure the supply position follows the relevant period and uses relevant, consistent, and proportionate evidence, sites not deemed as deliverable at the base date should not be included in the five-year period. For example, simply because an application may have been validated and was under consideration prior to the base date does not demonstrate it is deliverable at the base date.

The Suitability of Sites

- 3.6 For any site to be considered deliverable, it must be shown to be suitable. The PPG¹ offers some advice, stating:

"A site or broad location can be considered suitable if it would provide an appropriate location for development when considered against relevant constraints and their potential to be mitigated." (my emphasis)

- 3.7 In terms of constraints, according to the same paragraph of the PPG this could include inter alia: *"appropriateness and likely market attractiveness for the type of development proposed"*

and

"potential impacts including the effect upon landscapes including landscape features, nature and heritage conservation."

- 3.8 It also states that:

¹ Paragraph: 018 Reference ID: 3-018-20190722 Revision date: 22 07 2019

“When assessing sites against the adopted development plan, plan-makers will need to take account of how up to date the plan policies are and consider the relevance of identified constraints on sites / broad locations and whether such constraints may be overcome.” (my emphasis)

- 3.9 Some helpful guidance on how constraints and other objections might be considered in the supply assessment can be found in the High Court ruling issued at *Wainhomes (South West) Holdings Ltd and the Secretary of State for Communities and Local Government et al [2013] EWHC 597 (Admin)* [**Appendix C**] which states, at paragraph 34(iv):

“(iv) Where sites without planning permission are subject to objection, the nature and substance of the objections may go to the question whether the site offers a suitable location; and they may also determine whether the development is achievable with a realistic prospect that housing will be delivered on the site within five years. Even if detailed information is available about the site and the objections, prediction of the planning outcome is necessarily uncertain. All that probably need be said in most cases is that where sites do not have planning permission and are known to be subject to objections, the outcome cannot be guaranteed. Accordingly, where there is a body of sites which are known to be subject to objections, significant site specific evidence is likely to be required in order to justify a conclusion that 100% of all those sites offer suitable locations and are achievable with a realistic prospect that they will be delivered within five years.” (my emphasis)

- 3.10 It is fair and reasonable to conclude from this part of the *Wainhomes* judgment that it is necessary to consider the nature of any objections affecting sites and the potential for significant site-specific evidence to demonstrate a given site offers a suitable location for development, as part of the overall test of deliverability.

The need for clear evidence

- 3.11 The definition of the Framework identifies that Category B sites should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years. As highlighted above, the PPG (paragraph 68-007) requires that robust, up to date evidence is provided.
- 3.12 A number of appeal decisions have interpreted this to require that there needs to be something cogent to provide strong evidence that in reality a site will deliver housing in the

timescale and in the numbers contended for, rather than simply relying upon mere opinion. Some examples (though clearly not exhaustive) are provided here.

- 3.13 Turning to a SofS decision from July 2020 at Audlem Road and Broad Lane, Stapeley [Appendix D] the absence of written agreements is clearly a matter capable of ruling sites from inclusion in the supply. As part of Paragraph 21 of the decision, it is noted that,

“He considers that, on the basis of the evidence before him, the following should be removed from the supply: sites with outline planning permission which had no reserved matters applications and no evidence of a written agreement”.

- 3.14 Where evidence is provided, this does not automatically render sites as deliverable, and it is necessary to interpret the information, both in terms of age and validity. As part of the Woburn Sands decision [Appendix E], the SofS agreed with the Inspector that the latest evidence should be used when considering deliverability, as set out in DL12:

“The Secretary of State has considered the Inspector’s analysis at IR12.4-12.64. For the reasons given at IR12.8-12.12 the Secretary of State agrees with the Inspector that it is acceptable that the evidence can post-date the base date provided that it is used to support sites identified as deliverable as of 1 April 2019 (IR12.11)....”. (my emphasis)

- 3.15 Putting this approach into practice, this would allow the consideration of evidence for outline schemes where there had been firm progress with Reserved Matters applications for example. Similarly, it also stands that where sites have not progressed as planned, this evidence can also be accounted for to give an up-to-date position. This particular point is explored further as part of the Audlem Road appeal highlighted above where, also at paragraph 21, the SofS removes components of supply where:

“...there is no application and the written agreement indicates an application submission date of August 2019 which has not been forthcoming, with no other evidence of progress”.

- 3.16 Turning to the matter of substance of evidence, the PPG² indicates that evidence can take the form of written agreements between local planning authorities and the site developers to set out the delivery intentions and start/build rates. This particular point was brought under scrutiny as part of the Popes Lane, Sturry, decision in Canterbury City [Appendix F]. As part of the disputed case on supply, the Council in this case had sought to reinforce their evidence on a number of sites through Statements of Common Ground with developers/landowners. The Inspector however was unconvinced of the robustness of this exercise, as indicated in DL23 of the decision:

“For a number of the disputed sites, the Council’s evidence is founded on site-specific SCGs which have been agreed with the developer or landowner of the site in question. I appreciate that the PPG refers to SCGs as an admissible type of evidence, and I have had full regard to that advice. But nevertheless, the evidential value of any particular SCG in this context is dependent on its content. In a number of cases, the SCGs produced by the Council primarily record the developer’s or landowner’s stated intentions. Without any further detail, as to the means by which infrastructure requirements or other likely obstacles are to be overcome, and the timescales involved, this type of SCG does not seem to me to demonstrate that the development prospect is realistic. In addition, most of the site-specific SCGs are undated, thus leaving some uncertainty as to whether they represent the most up-to-date position.”

- 3.17 From the reading of this decision, it is clear that a written account alone does not signify the test of deliverable has been met and it is necessary to interrogate assumptions in such statements to ensure that there is a realistic prospect of delivery. It was this particular point reflected upon as part of the Caddywell Lane decision [Appendix G] from March 2020. In his reading of the PPG, Inspector Stephens states in Paragraph 56 that clear evidence must be something cogent, as opposed to mere assertions, that there must be strong evidence that a given site will in reality deliver housing in the timescale and numbers contended.

² PPG Paragraph 68-020-20190722

Inspector Stephens goes onto discuss what he regards to be a demonstration of clear evidence, in Paragraph 57 of the decision, stating:

“Clear evidence requires more than just being informed by landowners, agents or developers that sites will come forward, rather, that a realistic assessment of the factors concerning the delivery has been considered. This means not only are the planning matters that need to be considered but also the technical, legal and commercial/financial aspects of delivery assessed. Securing an email or completed pro-forma from a developer or agent does not in itself constitute ‘clear evidence’. Developers are financially incentivised to reduce competition (supply) and this can be achieved by optimistically forecasting delivery of housing from their own site and consequentially remove the need for other sites to come forward”.

- 3.18 It is fair and reasonable to conclude from these cases that the choice or selection of sites to include in the supply calculation is one that should be based on sound planning judgments based underpinned by up to date and credible evidence. On this point, the Council has provided no specific evidence on any of those sites where clear evidence is required. This is a significant issue. The main findings from our analysis on the Council’s claimed deliverable supply sources in section 7 of this statement.

4 The latest housing land supply position in Tandridge

4.1 This section briefly outlines the Council's approach on land supply, including the latest supply calculation for decision-making purposes. It highlights the main assumptions that have informed the Council's current position.

The Council's approach on land supply – key assumptions

4.2 The Council's latest, full land supply assessment is set out in *Tandridge District Council Annual Monitoring Report 2024/2025 December 2025* ('AMR 2024/25'). The extract below (Table 4.1) summarises the latest supply calculation.

Table 4-1 Tandridge land supply calculation, December 2025

COMPONENT						OUTPUT
Standard Method annual requirement						827
Annual requirement +20%						993
Five-year requirement (inc. buffer)						4,964
Total Supply						2,158
Year	2025/26	2026/27	2027/28	2028/29	2029/30	TOTAL
FUL <=9	123	66	22	0	0	211
FUL >=10	43	123	133	95	80	474
UC <=9	38	13	5	0	0	56
UC >=10	20	20	20	20	9	89
OUT > 10	0	0	264	276	210	750
PA / CoU / CLU	27	3	4	0	0	34
C2 / Communal	0	20	20	20	24	84
Windfall	0	0	0	230	230	460
Over / Under Provision						-2,806
Total Years Supply						2.17

Source: AMR 2024/25 (Table 12 Identified Supply Figures)

4.3 The Council has identified a total supply from deliverable sites amounting to **2,158** dwellings over the next five years. On this basis, the Council claims they can now demonstrate **2.17** years' worth of deliverable land against their requirement figure for the 2025-2030 period. For comparison, this is a slight improvement on the previous published position (1.92 years) but still represents a substantial shortfall against the national policy threshold of five years (minimum) expected of all local authorities, contrary to paragraph 78 of the Framework.

Housing Delivery Test and Housing Action Plans

- 4.4 The Council has prepared a Housing Action Plan ('HAP') every year since 2021. This is in accordance with paragraph 79 of the Framework, which stipulates that where delivery falls below 95% of the requirement over the previous three years, the authority should prepare an 'action plan' to assess the causes of under-delivery and 'identify actions' to 'increase delivery in future years'. This is determined against the Housing Delivery Test score prepared for each respective three-year period.
- 4.5 We can see that in 2021 edition the Council had achieved a **50%** HDT score based on 2017-2020 delivery period in 2021 and referenced in the first action plan issued by the Council in June 2021 (HAP 2021, para 4.4). The most recent score is even lower, at **42%**, based on 2020-2023 period published in 2024 and referred to in the latest Housing Action Plan dated December 2025 (HAP 2025, para 20.85).
- 4.6 The full set of HDT scores for Tandridge are set out below. This provides a clear 'ready reckoner' of past and current performance in delivering housing against the required number of homes in Tandridge since 2015, based on published figures³.

Table 4-2 Housing Delivery Test Scores in Tandridge

period	HDT Score
2015-2018	65%
2016-2019	50%
2017-2020	50%
2018-2021	38%
2019-2022	38%
2020-2023	42%
Av.	47%

Source: MHCLG

- 4.7 What we see is a consistent and persistent under-delivery of housing in Tandridge since the HDT was in operation, of less than 50% on average. This was regardless of whether the Council had prepared an action plan or not. This was also the measure of delivery performance in the context of the national lockdown announced on 23 March 2020, which

³ [Housing Delivery Test - GOV.UK](https://www.gov.uk/government/publications/housing-delivery-test)

was described as an ‘unprecedented event’ which saw temporary disruption to local authority planning services and the construction sector across the UK. Government adjusted the HDT methodology to reflect these impacts in the results for 2017-20 and 2018-21, by reducing the ‘homes required’ within the 2019 to 2020 year by a month and within the 2020 and 2021 year by four months.

- 4.8 New HDT scores for all local authorities, including Tandridge, are expected to be published very shortly covering the periods 2021-2024 and 2022-2025.
- 4.9 Taken together, this demonstrates a clear reluctance or inability on the part of the Council to deliver the number of homes required to meet the needs of the district.

Emerging Local Plan

- 4.10 According to the Council, following the withdrawal of ‘Our Local Plan 2033’ on 18 April 2024 it was agreed that the Council would start work on a new Local Plan.
- 4.11 TDC recently undertook consultation on the Regulation 18 version of their Plan titled ‘*Regulation 18: Early Engagement Consultation*’ document and invited comments from interested parties. This consultation closed on 01 March 2026⁴. The consultation points to an indicative date for adoption by ‘Mid 2028’ but, more importantly, the intention to submit the Plan for examination sometime in ‘mid 2027’. The expected submission date therefore goes beyond the 31 December 2026 deadline announced by government (updated 6 March 2026) for those Councils wishing to prepare a Local Plan under the current plan-making system⁵. The recent consultation represents the start of the process for preparing the Plan. In these circumstances, it is self evident the Council will not be in a position to submit the final plan by the end of this year (a period of less than 10 months) and meet the government’s deadline.

⁴ <https://www.tandridge.gov.uk/Your-council/News-and-consultation/Consultations/Local-Plan-consultation-closed-1-March-2026>

⁵ [Rollout of the new local plan-making system - GOV.UK](#) (6 March 2026)

- 4.12 Consequently, the (new) Tandridge Local Plan will need to be produced under the new plan-making system as set out in the Levelling Up and Regeneration Act (2023), which will streamline the new process to 30 months. (NB: guidance on the new local plan-making system ‘roadmap’ was published on 2 March 2026, which indicates the 30-month plan preparation process will start on the date the LPA passes through Gateway 1⁶).
- 4.13 Under the new system, we anticipate that the Council will be required to start the process of preparing the Local Plan by publishing a ‘notice to commence’ plan preparation by 30 June 2026 and then publish a ‘Gateway 1 self-assessment’ by 31 October 2026. On this timeframe, we would not expect the new Plan to be adopted until at least early 2029.
- 4.14 Given the Council will not secure an adopted Plan under the current system (and therefore with no new housing site allocations) it is unlikely that the land supply position will improve materially (or at all) in the short-term unless more permissions are issued on other suitable sites via the planning application process.

⁶ [Gateway 1: what you need to do - GOV.UK](#)

5 The base date and assessment period

- 5.1 The AMR 2024/25 states that the base date for the latest assessment is 1 October 2025 (AMR 2024/25, 2.87). It also states the assessment period is 2025-2030.
- 5.2 The Council has described this as an 'interim' position. This is "...to ensure that the Council's evidence reflects the most recent and accurate data available..." (AMR 2024/25, para 2.88). According to the Council, the amended base date of 1 October 2025 has been selected, "...to incorporate recent planning permissions, site delivery trajectories, and changes in site status since the start of the monitoring year, ensuring that the position presents the most up-to-date and robust evidence of deliverable supply..." (para 2.89)
- 5.3 We do not object in principle to using a base date that deviates from the (usual) 1 April calendar date. Nonetheless, whichever approach is used must be robust and credible, based on adequate and proportionate evidence.
- 5.4 In reality, the Council's approach is confusing and not informed by up to date evidence. Specifically, the Council has only identified new supply sources (planning permissions) and points to 'changes in site status' and 'site delivery trajectories'. This, we assume, accounts for sites the Council considers to be deliverable and sites granted consent between 1 April and 30 September 2025. However, it is not apparent from the assessment that the Council has deducted completions from any sites identified in the supply but where completions had occurred during this 'interim' period. This would relate to those sites that are either under construction or which benefited from detailed planning permission, and where delivery is expected during year 1 (2025/26).
- 5.5 The lack of clarity on completions is further highlighted in Table 4 and 5 of the AMR 2024/25, which both refer to an 'April – March' monitoring year. This is not consistent with an October (mid-year) base date for the supply assessment. We also note there are no completions figures provided in the AMR covering the April 2025 – September 2025 period. In effect, the Council has changed its land supply assessment period, but has not changed its monitoring

processes to align with the new approach. This further undermines the move to a 1 October 2025 base date, even if this is only an interim measure.

- 5.6 In light of the concerns set out above, the Council has not provided sufficient evidence that they have monitored completions on housing sites between 1 April and 30 September 2025 and it is unclear whether completions during this period have been factored into the re-basing of the base date to 1 October 2025 for latest supply assessment. This has resulted in an ‘unbalanced’ assessment, where only newly consented sites have been included. In line with the Basildon and Farleigh Fields cases outlined above, all sources of supply that post-date the 1 April 2025 monitoring date should be removed from the supply.
- 5.7 On this basis, we recommend that a 1 April 2025 is the appropriate base date for this appeal. The five year period should cover 1 April 2025 to 31 March 2030.

6 The Housing Land Requirement

- 6.1 According to the AMR 2024/25, the (five-year) housing (land) requirement has been calculated using the Standard Method, identifying an annual housing need of 827 dwellings per annum. As a result of the Council's Housing Delivery Test result, a 20% buffer has been applied, resulting in an annual requirement of **993** dwellings, and a five-year requirement amounting to **4,964** dwellings (AMR, 2024/25, para 2.84).
- 6.2 We agree this is the correct requirement figure for this appeal. Nonetheless, we expect new assumptions on dwelling stock and affordability ratios to be published in the coming months, which will necessitate an update to the housing figures to ensure they are kept up to date.

7 Assessment of Land Supply

7.1 Section 4 of this statement outlines the supply components the Council is relying on in their latest assessment. The table below lists these sources by component.

Table 7-1 TDC Identified Supply Figures

AMR 2024/25	Component	2025/26	2026/27	2027/28	2028/29	2029/30	TOTAL
Table 3	FUL <=9	123	66	22	0	0	211
Table 4	FUL >=10	43	123	133	95	80	474
Table 5	UC <=9	38	13	5	0	0	56
Table 6	UC >=10	20	20	20	20	9	89
Table 7	OUT > 10	0	0	264	276	210	750
Table 8	PA / CoU / CLU27		3	4	0	0	34
Table 9	C2 Communal	/0	20	20	20	24	84
	Windfall	0	0	0	230	230	460
	Total						2,158

Source: AMR 2024/25, Table 12

7.2 The AMR 2024/25 lists these various sources on a site-by-site basis in the appendices to the report. We have reviewed the supply components and set out our findings on those sources, below.

Sites with full planning permission that are for 9 units or fewer (FUL <9)

7.3 The Council has identified 108 sites with detailed planning permission of 9 or less dwellings. These are listed in Appendix 1 (Table 3) of the AMR 2024/25. The claimed supply from this source totals 211 dwellings.

7.4 Of these, 23 sites were granted permission after 1 April 2025, but prior to 1 October. These total 47 dwellings on those sites. As explained, the rebasing of the base date to 1 October 2025 is disputed. If these sites are removed, this reduces the supply from this source to **164** dwellings.

7.5 No other adjustments are sought.

7.6 **Appendix H** of this statement provides a schedule of the disputed sites in this category.

Sites with full planning permission that are for 10 units or more (FUL 10>)

7.7 The Council has identified 8 sites with detailed planning permission of 10 or more dwellings. These are listed in Appendix 1 (Table 4) of the AMR 2024/25. The claimed supply from this source totals 474 dwellings.

7.8 Of these, 3 sites were granted permission after 1 April 2025, but prior to 1 October. These total 245 dwellings on those sites. As explained, the rebasing of the base date to 1 October 2025 is disputed. If these sites are removed, this reduces the supply from this source to **229** dwellings.

7.9 No other adjustments are sought.

7.10 **Appendix I** of this statement provides a schedule of disputed sites in this category.

Sites that are under construction that are for 9 units or fewer (UC <9)

7.11 The Council has identified 21 sites with detailed planning permission of 9 or less dwellings. These are listed in Appendix 1 (Table 5) of the AMR 2024/25.

7.12 Under the Framework definition, sites in this category are deemed as deliverable unless clear evidence indicates otherwise. The claimed supply from this source totals **56** dwellings. No deductions are proposed from this source.

Sites that are under construction that are for 10 units or more (UC 10>)

7.13 The Council has identified 1 site currently being built out for 10 or more dwellings. This is listed in Appendix 1 (Table 6) of the AMR 2024/25.

7.14 Under the Framework definition, sites in this category are deemed as deliverable unless clear evidence indicates otherwise. The claimed supply from this source totals **89** dwellings. No deductions are proposed from this source.

Outline permissions for sites of 10 units or more (OUT 10>)

- 7.15 The Council has identified 8 sites with detailed planning permission of 10 or more dwellings. These are listed in Appendix 1 (Table 7) of the AMR 2024/25. The claimed supply from this source totals 750 dwellings. This is by far the largest contributor to the claimed supply, by component.
- 7.16 Nonetheless, under the Framework definition it must be demonstrated with clear evidence that sites with outline planning permission are deliverable within the next five years. Seven of these sites are disputed, as explained below.
- 7.17 **Appendix J** of this statement provides a full schedule of disputed sites in this category.

Development Site At 532253 143328, Plough Road, Smallfield

- 7.18 This site was granted permission in outline for up to 120 dwellings on 17 July 2024.

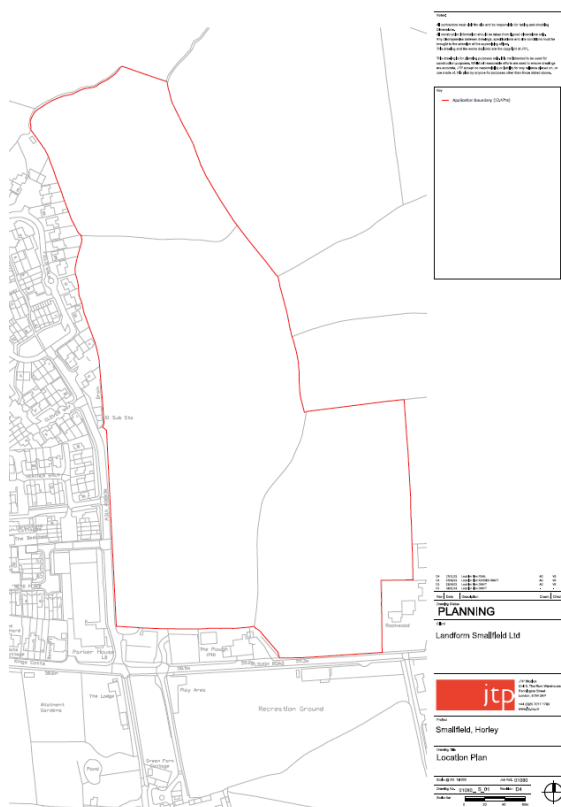


Figure 7-1 Development Site At 532253 143328, Plough Road, Smallfield - Location Plan (taken from planning application)

- 7.19 Subsequent to the outline, a reserved matters application (2025/723) was submitted in August 2025, but has not yet been determined. This is due to a number of outstanding

objections on flooding and drainage issues in relation to the RM that remain unresolved submitted by Surrey CC, who acts as the Lead Local Flood Authority in Tandridge district [Appendix J.1]. It is not clear when these issues will be resolved and allow the application to be determined. This case clearly falls within the remit of *Wainhomes* outlined above, whereby proposals subject to significant objections should not be considered deliverable.

7.20 A number of pre-commencement conditions attached to the outline consent have not been discharged or even applied for at this time (NB: only one application has been submitted for condition 15). Furthermore It is likely that additional pre-commencement conditions will be applied to any RM consent, given the outstanding issues, which will also need to be discharged prior to development coming forward.

7.21 On balance, whilst some progress has been made towards delivery of housing, it remains unclear when development is likely to commence. The current trajectory is not supported by clear evidence. The trajectory should be pushed back by at least one year. As a consequence, the supply within the next five years should be reduced by 40 dwellings.

Five-year projection	LPA	TT RPS	Difference
Plough Lane, Smallfield	120	80	40

Orchard Court, 33 East Grinstead Road, Lingfield

7.22 This site was granted consent in outline for 54 older persons units on 7 June 2024.

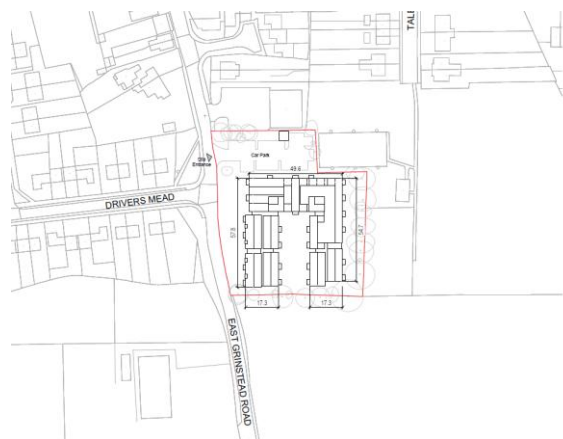


Figure 7-2 Orchard Court - Location Plan (taken from planning application)

- 7.23 This site is owned by Surrey County Council. It appears the existing buildings have been demolished (indicated on Googlemaps). However, there are no records of any discharge of conditions applications being submitted pursuant to the original outline consent. No RM application has been submitted. Furthermore, no developer has been identified and it is unclear whether the site has been or is being marketed for sale. On this basis, no clear evidence has been provided to demonstrate any progress towards a reserve matters application. Consequently, the realistic prospects of delivery within the next five years has not been demonstrated. Remove the site in full.
- 7.24 As a consequence, the supply within the next five years should be reduced by 54 dwellings.

Five-year projection	LPA	TT RPS	Difference
Orchard Court, 33 East Grinstead Road, Lingfield	54	0	-54

Stables, Red Lane Farm, Red Lane, Limpsfield, Oxted

- 7.25 This site was granted in outline for 12 dwelling on 22 September 2025.

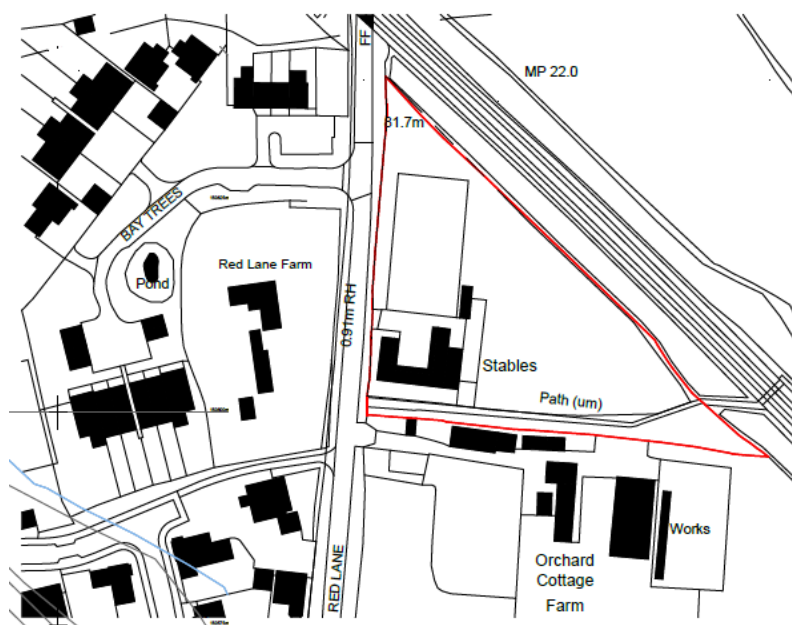


Figure 7-3 Stables, Red Lane Farm - Location Plan (taken from planning application)

- 7.26 A variation of condition application (2025/1517) was validated on 21 January 2026, but has not yet been determined. It is acknowledged the applicant (Chartwell Land) is a local housebuilder with a recent track record in the area and it is assumed they will buildout the site. However, no discharge conditions applications submitted as yet, and no firm progress towards a reserve matters application. Furthermore, the site was granted consent after 1 April 2025. As explained, the rebasing of the base date to 1 October 2025 is disputed.
- 7.27 On this basis, lack of clear evidence to demonstrate firm progress towards a reserve matters application. Consequently, the realistic prospects of delivery within the next five years has not been demonstrated.
- 7.28 As a consequence, the supply within the next five years should be reduced by 12 dwellings.

Five-year projection	LPA	TT RPS	Difference
Stables, Red Lane Farm, Red12 Lane, Limpsfield		0	-12

Former Shelton Sports Club, Shelton Avenue And Land Adjacent To 267 Hillbury Road, Warlingham

7.29 This site was granted outline consent for up to 150 dwellings on 20 June 2025.

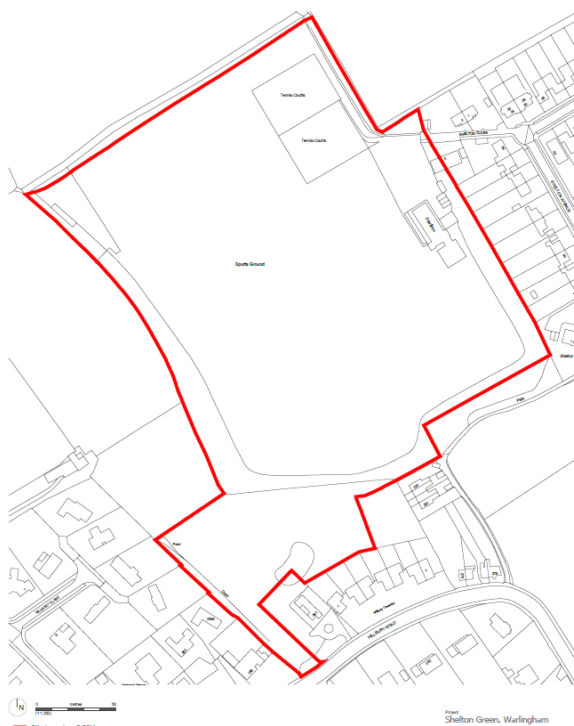


Figure 7-4 Former Shelton Sports Club - Location Plan (taken from planning application)

7.30 It is acknowledged the applicant (Chartwell Land) is a local housebuilder with a recent track record in the area and it is assumed they will buildout the site. However, no discharge conditions applications submitted as yet, and no firm progress towards a RM application. Furthermore, the site was granted consent after 1 April 2025. As explained, the rebasing of the base date to 1 October 2025 is disputed.

7.31 On this basis, lack of clear evidence to demonstrate firm progress towards a reserve matters application. Consequently, the realistic prospects of delivery within the next five years has not been demonstrated.

7.32 As a consequence, the supply within the next five years should be reduced by 150 dwellings.

Five-year projection	LPA	TT RPS	Difference
Former Shelton Sports Club	150	0	-150

1 Park Lane, Warlingham

7.33 This site was granted outline consent for up to 45 dwellings on 24 July 2025.



Figure 7-5 1 Park Lane - Site Plan (taken from planning application)

7.34 The online register indicates that this application has only been approved pending completion of a s106 Agreement, and so a formal consent has not yet been issued (hence why a decision notice has not been issued available on the register. No discharge conditions applications submitted as yet on the outline, and no firm progress towards a reserve matters application. Lack of clear evidence provided. Furthermore, the site was granted consent after 1 April 2025. As explained, the rebasing of the base date to 1 October 2025 is disputed.

7.35 On this basis, there is a lack of clear evidence to demonstrate firm progress towards a reserve matters application. The realistic prospects of delivery within the next five years has not been demonstrated.

7.36 As a consequence, the supply within the next five years should be reduced by 45 dwellings.

Five-year projection	LPA	TT RPS	Difference
1 Park Lane, Warlingham	45	0	-45

Rede Cottage, 57 Redehall Road, Smallfield, Horley

7.37 This site was granted outline consent for up to 85 dwellings on 2 July 2025.



Figure 7-6 Rede Cottage - Site Plan (taken from planning application)

7.38 A similar situation exists here to that which is evident on the Park Lane site. The online register indicates that this application has only been approved pending completion of a s106 Agreement, and so a formal consent has not yet been issued (hence why a decision notice has not been issued available on the register. No discharge conditions applications submitted as yet on the outline, and no firm progress towards a reserve matters application. Lack of clear evidence provided. Furthermore, the site was granted consent after 1 April 2025. As explained, the rebasing of the base date to 1 October 2025 is disputed.

7.39 On this basis, there is a lack of clear evidence to demonstrate firm progress towards a reserve matters application. The realistic prospects of delivery within the next five years has not been demonstrated.

7.40 As a consequence, the supply within the next five years should be reduced by 85 dwellings.

	LPA	TT RPS	Difference
Five-year projection			
Rede Cottage, 57 Redehall Road	85	0	-85

Land West Of Chapel Road, Smallfield

7.41 This application was approved on appeal for 270 dwellings in June 2025.

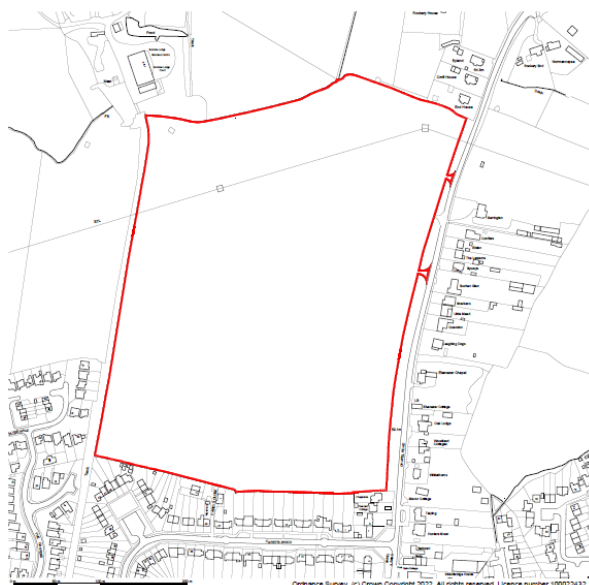


Figure 7-7 Location Plan – Land West of Chapel Road (taken from planning application)

7.42 According to the agent, the site has subsequently been put on the market and expressions of interest have been received. Whilst the site may be sold, it has yet to be sold and so it is unclear what the future trajectory is for the site, who will secure the reserve matters consent and who will build out the site, or whether a fresh outline /full application may be submitted once the site is acquired by the new owner. No clear evidence has been presented to demonstrate realistic prospect that homes will be delivered in the next five years. In addition, the site was granted consent after 1 April 2025. As explained, the rebasing of the base date to 1 October 2025 is disputed.

7.43 On this basis, there is a lack of clear evidence to demonstrate firm progress towards a reserve matters application. The realistic prospects of delivery within the next five years has not been demonstrated.

7.44 As a consequence, the supply within the next five years should be reduced by 270 dwellings.

7.45 The total deductions identified from this source amounts to 656 dwellings. If these sites are removed, this reduces the supply from this source to from 750 to **94** dwellings.

Five-year projection	LPA	TT RPS	Difference

Permissions for Prior Approval, Change of Use, or Certificate of Lawful Use (PA / CoU / CLU)

- 7.46 The Council has identified 18 sites with detailed planning permission of 9 or less dwellings. These are listed in Appendix 1 (Table 8) of the AMR 2024/25.
- 7.47 Under the Framework definition, sites in this category are deemed as deliverable unless clear evidence indicates otherwise (as they are minor developments, bar one site). The claimed supply from this source totals **34** dwellings.
- 7.48 No deductions are proposed from this source.

Permissions for C2 (Extra Care) / Communal development (C2 / COM)

- 7.49 The Council has identified 1 site with detailed planning permission in this category. These are listed in Appendix 1 (Table 9) of the AMR 2024/25.
- 7.50 Under the Framework definition, sites in this category are deemed as deliverable unless clear evidence indicates otherwise. The claimed supply from this source totals **84** dwellings.
- 7.51 No deductions are proposed from this source.

Windfall Allowance

- 7.52 Paragraph 75 of the Framework makes clear that where an allowance is to be made for windfall sites as part of anticipated supply, there should be compelling evidence that they will provide a reliable source of supply. Any allowance should be realistic having regard to the strategic housing land availability assessment, historic windfall delivery rates and expected future trends.
- 7.53 The AMR 2024/25 includes an allowance of **460** dwellings within the deliverable supply. This is based a review of past delivery rates observed between 2013/14-2024/25, set out at Table

13 of the AMR. The Council has applied the allowance over the last two years of the five-year period (230 in 2028/29, and 230 in 2029/30).

7.54 On balance, we do not object to the inclusion of a windfall allowance in the forward supply calculation presented in the AMR 2024/25. We would however strongly resist any suggestion that the allowance should be increased as there is no evidence to justify any change.

7.55 Nonetheless, the Council's own evidence demonstrates the important contribution that windfall development has made to the overall completion rates (and thus in meeting housing need) seen in Tandridge during this period. This is explained in the following table.

Table 7-2 Total (net) dwelling completions and contribution from windfall sites, 2013-25, Tandridge

Monitoring year	Total completions (net)	Windfalls
April 2013 – March 2014	256	256
April 2014 – March 2015	142	142
April 2015 – March 2016	322	322
April 2016 – March 2017	228	228
April 2017 – March 2018	332	332
April 2018 – March 2019	244	244
April 2019 – March 2020	262	262
April 2020 – March 2021	117	117
April 2021 – March 2022	238	238
April 2022 – March 2023	303	303
April 2023 – March 2024	238	238
April 2024 – March 2025	183	183
Adjustment for 2018/729 allocation		-111
Total	2,865	2,754
% of total completions delivered on windfall sites		96%
Source:	AMR 2024/25 (Table 4)	AMR 2024/25 (Table 13); TT RPS

7.56 According to the data, **96%** of all completions in Tandridge between 2013 and 2025 were secured on sites not allocated in a development plan. This is not the usual situation we might expect to see elsewhere across the country. Whilst this may belie the wider objective of a 'plan-led' system at the local level, it nonetheless is clear evidence that the Council would have failed to meet the housing needs of Tandridge without development coming forward on windfall sites.

7.57 Windfall development has been a critical source of housing supply in Tandridge. As explained in section 4 of this statement, the Council is not in position to adopt a new Local Plan (which we assume would include sites allocated for housing) any time soon. Consequently, windfall development will continue to be an important characteristic of housing delivery in Tandridge for the foreseeable future.

Summary of deductions

7.58 The following table draws together the various adjustments identified based on our assessment.

Table 7-3 Deductions from supply

	TDC	RPS	Deductions
FUL <=9	211	164	47
FUL >=10	474	229	245
UC <=9	56	56	0
UC >=10	89	89	0
OUT > 10	750	94	656
PA / CoU / CLU	34	34	0
C2 / Communal	84	84	0
Windfall	460	460	0
total deductions			948

7.59 The deductions we put forward in this statement total **948** dwellings. On this basis, when apply the deduction the deliverable supply in Tandridge is **1,210** dwellings over the next five years. This is summarised in the following table.

Table 7-4 Impact of deductions

	Supply
TDC	2,158
minus deductions	948
RPS	1,210

7.60 The next section of this statement presents an adjusted land supply calculation for Tandridge derived from our assessment.

8 Adjusted land supply calculation

- 8.1 The following table provides our land supply calculation for the appeal, taking into account the various adjustments identified in this statement.

Table 8-1 Land supply calculation for Tandridge (2025-30)

	TDC	RPS
Standard Method annual requirement	827	827
Annual requirement +20%	993	993
Five-year requirement (inc. buffer)	4,964	4,964
Total Supply	2,158	1,210
Over / Under Provision	-2,806	-3,754
Total Years Supply	2.17	1.22

- 8.2 On our analysis, we contend that the correct position is **1.22 years'** worth of deliverable sites in Tandridge. This amounts to a **shortfall of 3,754 dwellings** when adjusted against the requirement.
- 8.3 This clearly shows there is a pressing need to grant more applications for residential development in Tandridge in order to tackle the shortfall in supply, which we would describe as being substantial.

9 Summary and conclusions

9.1 This statement addresses housing land supply and other housing-related matters in the Borough and responds to the Tandridge District Council's ('the Council') latest land supply position, which for the purposes of assessment draws on information published by the Council.

9.2 It relates to a planning appeal against the non-determination of outline planning permission TA/2025/771 for 30 homes (50% affordable) with associated works including provision of vehicular and pedestrian access, landscaping, drainage, and other associated infrastructure, ("the Site"). RPS became involved in the appeal around the time the appeal was being lodged.

Housing Delivery

9.3 There has been a consistent and persistent under-delivery of housing in Tandridge since the HDT was in operation (in 2018) of less than 50% on average (47%). The current measure is 42% (2020-2023). This demonstrates a clear reluctance or inability on the part of the Council to deliver the number of homes required to meet the needs of the district.

The Council's latest position on land supply

9.4 The Council's latest, full land supply assessment is set out in *Tandridge District Council Annual Monitoring Report 2024/2025 December 2025*. The Council claims they can now demonstrate 2.17 years' worth of deliverable land against their requirement figure for the 2025-2030 period. This is based on a claimed supply amounting to 2,158 dwellings. Our assessment has identified a number of issues regarding the land supply position in Tandridge, which are pertinent to this appeal.

The base date and assessment period

9.5 The AMR 2024/25 states that the base date for the latest assessment is now 1 October 2025. We do not object in principle to using a base date that deviates from the (usual) 1 April calendar date. However, it is not apparent whether the Council has deducted

completions from any sites identified in the supply where those completions had occurred during the period prior to the re-based starting point (between 1 April and 30 September 2025). This has resulted in an ‘unbalanced’ assessment, where only newly consented sites have been added into the supply without the commensurate number of completions during that period being removed. This is not a robust or credible approach.

- 9.6 On this basis, we recommend that a 1 April 2025 is the appropriate base date for this appeal. The five year period should cover 1 April 2025 to 31 March 2030.

Housing Land Requirement

- 9.7 As a result of the Council’s persistent under-delivery of housing in recent years, a 20% buffer has been applied to the standard method figure, resulting in an annual requirement of **993** dwellings, and a five-year requirement amounting to **4,964** dwellings.

- 9.8 We agree this is the correct requirement figure for this appeal.

Assessment of supply

- 9.9 Our assessment has identified 948 dwellings that should be discounted from the deliverable supply. When applying this deductions, we argue the correct supply is **1,210** dwellings over the next five years. Details on those elements in dispute are discussed in section 7 of this statement, with site-by-site comments presented in the appendices.

Land supply calculation (adjusted)

- 9.10 On our analysis, we contend that the correct position is **1.22 years**’ worth of deliverable sites in Tandridge. This amounts to a **shortfall of 3,754 dwellings** when adjusted against the requirement. Our calculations are set out below.

	TDC	RPS
Standard Method annual requirement	827	827
Annual requirement +20%	993	993
Five-year requirement (inc. buffer)	4,964	4,964
Total Supply	2,158	1,210
Over / Under Provision	-2,806	-3,754
Total Years Supply	2.17	1.22

- 9.11 In this context, it is worth noting that the Council is unlikely to adopt a new Local Plan in the foreseeable future, given the plan that was in the process of being prepared was withdrawn in April 2024. The consequence of this situation is that there are no immediate prospects that the shortfall in housing supply in Tandridge will be remedied any time soon.

Scale of the shortfall

- 9.12 On this analysis, there is a pressing and demonstrable need to grant more applications for residential development in Tandridge in order to tackle the shortfall in housing land supply, which we would describe as being 'substantial'. We draw this conclusion having regard to the *Hallam*⁷ judgement in 2018 [**Appendix K**] which recognised that the size of the shortfall is a relevant consideration is determining the weight to ascribe to relevant policies for housing. Notably, it states:

"47...in a case where the local planning authority is unable to demonstrate five years' supply of housing land, the policy leaves to the decision-maker's planning judgment the weight he gives to relevant restrictive policies. Logically, however, one would expect the weight given to such policies to be less if the shortfall in the housing land supply is large, and more if it is small...."

- 9.13 In light of this judgement, the scale of the housing shortfall currently impacting on the delivery of housing in Tandridge adds substantial weight to the provision of housing on the application site, in our professional opinion.

⁷ [Hallam Land Management Ltd v Secretary of State for Communities And Local Government & Anor \[2018\] EWCA Civ 1808 \(31 July 2018\)](#)

APPENDIX 19.0

SCC HIGHWAYS RESPONSE

From: James Lehane <James.Lehane@surreycc.gov.uk> on behalf of TDCTAN/COM/SCC <tdctan@surreycc.gov.uk>
Sent: 09 March 2026 11:32
To: Amit Patel; Statutory
Subject: Response To Application Number TA/25/771 at Land At Mount Avenue, Chaldon, CR3 5BB
Attachments: Response_TA-25-771(3).pdf

Hi Amit,

Please find attached my consultation response in relation to the above planning application.

Kind regards,

James Lehane MCIHT
Principal Transport Development Planning Officer
Environment, Infrastructure & Growth (EIG)
james.lehane@surreycc.gov.uk



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APPLICATION NUMBER	TA/25/771

DEVELOPMENT AFFECTING ROADS

TOWN AND COUNTRY PLANNING GENERAL DEVELOPMENT ORDER 1992

Location: Land At Mount Avenue, Chaldon, CR3 5BB

Development: Erection of 30 dwellings (50% affordable) with associated works including provision of vehicular and pedestrian access, landscaping, drainage, and other associated infrastructure (Outline application with all matters reserved except access, layout and scale).

Contact Officer	James Lehane	Initial Consultation Date	13 August 2025	Response Date	9 March 2026

The proposed development has been considered by THE COUNTY HIGHWAY AUTHORITY (CHA) who having assessed the application on safety, capacity and policy grounds, recommends the following conditions be imposed in any permission granted:

1. No part of the development shall be first occupied unless and until the proposed access to Mount Avenue has been constructed in general accordance with the approved plan (drawing reference 2502094-TS-002), with amendments to remove the proposed footway extension on the west side of Mount Avenue to preserve the existing turning head (subject to detailed design in the Section 278 process required to deliver these works).
2. No part of the development shall be first occupied unless and until the proposed pedestrian access to Birchwood Lane has been constructed in general accordance with the approved plan (drawing reference 2502094-TS-003), providing a permanent barrier to motor vehicle access to the site, and thereafter that permanent physical barrier shall be permanently retained and maintained to the satisfaction of the Local Planning Authority.
3. No part of the development shall be first occupied unless and until the internal site roads have been constructed in general accordance with the approved plan (drawing number PL-03 Rev P1), with the following amendments:
 - a. Provision of a raised table pedestrian crossing at the site access onto Mount Avenue, to provide pedestrian access to the footway on the eastern side of the access road and to reduce vehicle speeds entering and exiting the site.
 - b. Use of block paving within shared surface areas of the site (those areas without segregated footways) to indicate a pedestrian priority environment.
4. The development hereby approved shall not be first occupied unless and until the following cycle facilities have been provided within the development site in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority. Thereafter the said approved facilities shall be provided, retained and maintained to the satisfaction of the Local Planning Authority:

- a. High quality, secure, lit and covered cycle parking for each dwelling.
 - b. Charging points with timers for e-bikes within said facilities.
 - c. Clear hardstanding routes between the cycle stores and the site access.
5. The development hereby approved shall not be first occupied unless and until space has been laid out within the site in accordance with the approved plans (drawing number PL-03 Rev P1) for vehicles to be parked and for vehicles to turn so that they may enter and leave the site in forward gear. Thereafter the parking and turning areas shall be retained and maintained for their designated purposes.
6. No development shall commence until a Construction Transport Management Plan (CTMP), to include details of the following items, has been submitted to and approved in writing by the Local Planning Authority. Only the approved details shall be implemented during the construction of the development.
 - a. Parking for vehicles of site personnel, operatives and visitors.
 - b. Loading and unloading of plant and materials.
 - c. Storage of plant and materials.
 - d. Programme of works (including measures for traffic management).
 - e. Provision of boundary hoarding behind any visibility zones.
 - f. HGV deliveries and hours of operation.
 - g. Vehicle routing.
 - h. Measures to prevent the deposit of materials on the highway.
 - i. Before and after construction condition surveys of the highway and a commitment to fund the repair of any damage caused.
 - j. On-site turning for construction vehicles
7. The development hereby approved shall not be first occupied unless and until the following sustainable transport improvements have been provided in accordance with a scheme to be submitted to and approved by the Local Planning Authority:
 - a. Provision of speed reduction to 20mph, along with any necessary traffic calming measures, between the development and Caterham on the Hill High Street, extending the existing upcoming 20mph limit on Rook Lane (which is to the west of the development, currently planned to end just to the east of the junction with Mount Avenue). This is to include Rook Lane and Chaldon Road, extending to side roads as appropriate and feasible, subject to the necessary Traffic Regulation Order (TRO) consultation.
 - b. The developer shall fund the cost of the TRO advertising and completion (£3,000) required to deliver item a above.
 - c. The improvement of the bus stops located on Rook Lane close to the junction with Mount Avenue to include shelters, enhanced waiting areas and real time passenger information.
 - d. A continuous pedestrian crossing at the Rook Lane junction with Mount Avenue.
 - e. Pedestrian crossing improvement on Rook Lane to provide access to westbound bus services.
 - f. Information to be provided to residents regarding the availability of and whereabouts of local public transport, walking routes and cycling routes.

Reasons

The above conditions are required in order to ensure that the proposed development would not result in unacceptable detriments to the safe operation of the public highway and in order that suitable provision is made for sustainable modes of transport, in accordance with the requirements of the National Planning Policy Framework (NPPF) 2024, including paragraphs 115, 116 and 117, Policy DP5 of the Tandridge Local Plan and the objectives of the Surrey Local Transport Plan 4 (LTP4).

Further specific details concerning each condition above are provided in the 'Note to Planning Officer' section below.

Informative

The permission hereby granted shall not be construed as authority to carry out any works (including Stats connections/diversions required by the development itself or the associated highway works) on the highway or any works that may affect a drainage channel/culvert or water course. In instances where the applicant is not the Highway Authority the applicant is advised that a permit and, potentially, a Section 278 agreement must be obtained from the Highway Authority before any works are carried out on any footway, footpath, carriageway, verge or other land forming part of the highway.

All works (including Stats connections/diversions required by the development itself or the associated highway works) on the highway will require a permit and an application will need to be submitted to the County Council's Street Works Team up to 3 months in advance of the intended start date, depending on the scale of the works proposed and the classification of the road. Please see: <http://www.surreycc.gov.uk/roads-and-transport/permits-and-licences/traffic-management-permit-scheme>

The applicant is also advised that Consent may be required under Section 23 of the Land Drainage Act 1991. Please see: www.surreycc.gov.uk/people-and-community/emergency-planning-and-community-safety/flooding-advice

It is the responsibility of the developer to provide e-bike charging points with standard three-point plug sockets with timers (weatherproof if outdoors) to prevent them constantly drawing a current over night or for longer than required. Signage should be considered regarding damaged or shock impacted batteries, indicating that these should not be used/charged. Where communal bike stores with e-bike charging are required, access and fire escape routes shall not be used for the storage of e-bikes whilst charging. All communal areas where e-bikes are charged must be designed to provide detection, minimise the spread of fire from the cycle store area, and be designed to be fully compliant with Building Regulations. With regard to e-bike sockets in a domestic dwelling, detection measures should be provided, and an official e-bike charger should be used. Guidance on detection can be found in BS 5839-6 for fire detection and fire alarm systems in both new and existing domestic premises. Wherever e-bikes are charged, relevant additional fire resistance measures may be necessary as required by Building Regulations.

Note to Planning Officer

The CHA is content that the proposed development is acceptable in highways planning terms so long as the above conditions and informative notes are included in any permission granted.

The site is not in an ideal location from a sustainable transport perspective, with long walking distances to local amenities (approximately 1.7km to Caterham on the Hill High Street, 2.6km to Caterham High Street, Croydon Road and 1.8km to the supermarket on Coulsdon Road), without appropriate cycle infrastructure and with steep gradients on the route to Caterham town centre.

Rook Lane is a busy road, with high volumes of traffic at most times of day and without any segregated cycle infrastructure, which combines with the overall distance to materially limit the propensity to travel by active modes. It is therefore considered that the sustainable transport and road safety improvements required by the above recommended conditions are necessary in order that the development could be considered acceptable in the context of the 2024 NPPF requirements under paragraphs 115 and 117, as well as the Tandridge Local Plan Policy DP5 and the objectives of the LTP4.

These conditions have also been informed by the advice provided by the Planning Inspectorate in their 2025 webinar on 'What is meant by a Sustainable Location?' (link: <https://www.gov.uk/guidance/planning-inspectorate-webinars#webinar-6---what-is-meant-by-a-sustainable-location>)

Please note the following further comments concerning the above recommended conditions:

Condition 1

The proposed access arrangements onto Mount Avenue including narrowing of the available carriageway in order to provide footways on either side of the road. While the principle of this approach is suitable, the specific proposed changes in this location would result in a loss of the existing turning head area without a material enhancement in terms of pedestrian connectivity. The recommended condition seeks to retain the turning head while providing the direct pedestrian connection into the pedestrian footway on the eastern side of the proposed access.

This condition will require the developer to enter into a Section 278 Agreement with the CHA, with the final details of the scheme to be determined through this process.

Condition 2

The retention of pedestrian and cycle access via Birchwood Lane is beneficial however a physical barrier is required to ensure that this is not used as a secondary vehicular access to the development.

Condition 3

The minor amendments to the proposed site layout are in order to ensure that the site provides a low speed, pedestrian dominated environment in accordance with the Healthy Streets for Surrey Guidance. For more information, please visit: <https://www.surreycc.gov.uk/land-planning-and-development/healthy-streets>

This condition includes provision of a raised table pedestrian crossing at the site access onto Mount Avenue, both for the above reasons but also to provide connectivity with the footway on the eastern side of the access road, with regard to the amendment under condition 2.

Conditions 4 & 5

These conditions seek to secure the proposed vehicular parking and turning provision as well as to provide adequate facilities for cycle parking on site. Cycle parking for houses is generally provided within the curtilage of each dwelling however communal cycle stores can be considered also.

Condition 6

The hours of operation and delivery timings in the CTMP must avoid key periods on the highway network and local school start and finish times for HGV deliveries and ensure that no HGVs will be parked up or waiting on Rook Lane or Mount Avenue at any times. There is to be no HGV or construction access to the development from Birchwood Lane.

Condition 7

As noted above, the opportunities and appeal of travel by sustainable modes from this site are very limited. As such, the measures in this condition have been identified following detailed assessment of the submitted details, local engagement and internal consultation with Road Safety colleagues.

There is an existing planned speed reduction scheme (expected to be implemented in summer 2026) along Rook Lane to the west of the site, which extends to and includes Mount Avenue and the Rook Lane junction with Mount Avenue. By extending this scheme to reach the Caterham on the Hill town centre area (Chaldon Road / High Street / Town End), the potential for walking and cycling trips to be made between the site and local amenities would be greatly enhanced.

This speed reduction would also represent a material improvement in terms of pedestrian safety when seeking to cross Rook Lane to access amenities wider pedestrian and cycle connections.

The final version of the scheme should include residential side roads were practicable, with traffic calming measures to be provided subject to speed survey evidence and technical review. This condition will require the developer to enter into a Section 278 Agreement with the CHA, with the final details of the scheme to be determined through this process and subject to the necessary public TRO consultation.

This condition also requires the delivery of a Copenhagen style continuous footway crossing at the Rook Lane junction with Mount Avenue, which is to enhance pedestrian connectivity and road safety in this location. This is in accordance with the Healthy Streets for Surrey Guidance section 5.2 (link: <https://www.surreycc.gov.uk/land-planning-and-development/healthy-streets/requirements-and-guidance/section?id=5.2>)

The condition further requires that bus stop enhancements are provided on Rook Lane in order that passengers have appropriate facilities and that an improved crossing facility is provided to access these services. The form of this crossing will be informed by what is being delivered under item a of this condition and should be designed to tie in with any traffic calming measures.

It is noted that there is an alternative scheme of improvements outlined in Appendix C of the Transport Statement. These measures would all be beneficial however, given the lengths to the identified destinations and constraints in what can be delivered along those routes, that proposed scheme is not considered adequate to represent providing a genuine and safe choice of transport modes with active and sustainable travel options being able to compete with the private motor vehicle. As such, this alternative approach has been identified and recommended by the CHA.

APPENDIX 20.0

LLFA RESPONSE

From: Victoria Brown <Victoria.Brown1@surreycc.gov.uk> on behalf of suds/EAI/SCC
<suds@surreycc.gov.uk>
Sent: 02 September 2025 14:24
To: James Kidger
Cc: Statutory
Subject: LLFA-TA-25-1007 - Land At Mount Avenue
Attachments: LLFA-TA-25-1007 - Land at Mount Avenue.pdf

Our ref: LLFA-TA-25-1007
Your ref: 2025/771

FAO James Kidger

Please see attached response to planning application 2025/771

Victoria Brown
Critical Drainage Officer
Flood Risk, Planning and Consenting Team
Environment, Property & Growth
surreycc.gov.uk
Email: suds@surreycc.gov.uk



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Case Officer: Victoria Brown
E-mail: SUDS@surreycc.gov.uk



Flood Risk, Planning, and
Consenting Team
Whitebeam Lodge
Marrow Lane
Guildford
Surrey
GU4 7BQ

Recommendation

Further/amended information required	
No objection	
No objection – Subject to conditions	X
Objection	

Our ref: LLFA-TA-25-1007
Your ref: 2025/771
Date: 02/09/2025

Dear Planning Authority,

Land At Mount Avenue, Chaldon, CR3 5BB

Thank you for consulting Surrey County Council as the Lead Local Flood Authority on the above Outline Planning Application. We have reviewed the surface water drainage strategy for the proposed development and assessed it against the requirements of the NPPF, its accompanying PPG and the Non-Statutory Technical Standards for sustainable drainage systems.

As part of our statutory consultee role our advice relates to surface water flood risk and surface water drainage only, the Environment Agency should be contacted for advice in relation to fluvial flood risk.

Consultation request date: 14/08/2025

The following documents submitted as part of the above application have been reviewed and should be referred to as part of any future submissions or discharge of planning conditions:

- Site Investigation Report, ST Consult, Project ID: J15961, Dated 26/06/2025;
- Flood Risk Assessment and Drainage Strategy, Project No. 14219, Dated: 24/06/2025;

We are satisfied that the proposed drainage scheme meets the requirements set out in the aforementioned documents and are content with the development proposed, subject to our advice below.

Our advice would be that, should planning permission be granted, suitably worded conditions are applied to ensure that the SuDS Scheme is properly implemented and maintained throughout the lifetime of the development. Suggested conditions are below:

- 1) The development hereby permitted shall not commence until details of the final design of a surface water drainage scheme have been submitted to and approved in writing by the planning authority. The final solution should follow the principles set out in the approved drainage strategy. The design must satisfy the SuDS Hierarchy and be compliant with the national standards for sustainable drainage systems and the NPPF. The required drainage details shall include:

- a) The results of BRE 365/Falling head test or testing as appropriate to be completed. Where infiltration is proposed confirmation is required of a 1m unsaturated zone from the base of any proposed soakaway to the seasonal high groundwater level and confirmation of half-drain times.
- b) Hydraulic calculations to demonstrate the proposed final solution will effectively manage the 1 in 30 (+35% allowance for climate change) & 1 in 100 (+40% allowance for climate change) storm events and 10% allowance for urban creep.
- c) Detailed design drawings for all sustainable drainage elements including cross sections and detailed drainage layout plan.
- d) An exceedance flow routing plan demonstrating no increase in surface water flood risk on or off site. The plan must include proposed levels and flow directions.
- e) Details of drainage management responsibilities and maintenance regimes for all drainage elements.
- f) Details of how surface water will be managed during construction including measures to protect on site and downstream systems prior to the final drainage system being operational.

Reason: To ensure the design meets the national standards for SuDS and the final drainage design does not increase flood risk on or off site.

- 2) Prior to the first occupation of the development, a verification report must be submitted to and approved by the Local Planning Authority. This must demonstrate that the surface water drainage system has been constructed as per the agreed scheme (or detail any minor variations), confirming any defects have been rectified. Provide the details of any management company. Provide an 'As-Built' drainage layout and state the national grid reference of key drainage elements.

Reason: To ensure the Drainage System is constructed to the national standards for SuDS.

Informative

If proposed works result in infiltration of surface water to ground within a Source Protection Zone the Environment Agency will require proof of surface water treatment to achieve water quality standards.

Sub ground structures should be designed so they do not have an adverse effect on groundwater.

If there are any further queries please contact the Flood Risk, Planning, and Consenting Team via SUDS@surreycc.gov.uk. Please use our reference number in any future correspondence.

Yours faithfully

Victoria Brown
Critical Drainage Officer
For the Flood Risk, Planning, and Consenting Team

APPENDIX 21.0

SWT RESPONSE

Date: 23/10/2025

Our reference: 321550/KB/001



Surrey
Wildlife Trust

School Lane, Pirbright,
Woking, Surrey, GU24 0JN
01483 795449
planning@surreywt.org.uk

surreywildlifetrust.org/epas

Dear James,

Planning reference: 2025/771

Proposals: Erection of 30 dwellings (50% affordable) with associated works including provision of vehicular and pedestrian access, landscaping, drainage, and other associated infrastructure (Outline application with all matters reserved except access, layout and scale).

Site Address: Land At Mount Avenue, Chaldon, CR3 5BB

Thank you for consulting with Surrey Wildlife Trust with regards to the above planning application. Our advice is restricted to ecological issues and does not prejudice further representation Surrey Wildlife Trust may make as a non-statutory organisation on related, or other, issues. We do not comment on whether a planning application should be granted or refused, but rather provide a technical review of the ecological information that has been submitted to ensure that all ecological aspects have been appropriately considered prior to determination or discharging of conditions.

The Local Planning Authority (LPA) has a duty to conserve biodiversity in line with the planning and legislative context. Relevant legislation and planning policies are detailed in Appendix 1. We have reviewed the relevant application documents submitted on the planning portal, and other relevant publicly available information, and assessed these against published best practice guidance to determine whether the submitted information was sufficient for the LPA to assess the planning application. Following this, we assessed the proposals against relevant legislation and planning policy and recommended an appropriate course of action to ensure that the LPA is fulfilling its duty to conserve biodiversity.

Our advice and recommendations are detailed below.

This consultation response is valid for one year. Should further project information or amended designs be provided or submitted to the planning portal we may need to update our response accordingly.

Summary of Recommendations

A summary of our advice and recommendations is provided in Table 1. The detail is provided further in this document.



Table 1 Summary of Recommendations

Planning Stage	Recommendation
Prior to commencement	Badger walkover survey
	Sensitive Lighting Management Plan
	Amphibian and reptile precautionary method of working
	Ensure the retention of a 15m buffer between the development and the adjacent ancient woodland
	HPI protection strategy
	General Biodiversity Gain Condition (including on-site HMMP)
	Ecological Enhancement Plan (EEP)
	Construction and Environmental Management Plan (CEMP)
General recommendations	Precautions should be taken during construction to ensure the protection of terrestrial mammals
	Vegetation clearance should take place outside of breeding bird season or following nesting bird checks

Protected species - Badger

The submitted ecological report has identified the likely absence of active badger setts within and adjacent to the development site. However, badger may be present locally.

We recommend that prior to commencement a site walkover is undertaken by a suitably experienced ecologist to check for badger setts within the application site boundary, and a 30m buffer, where accessible. If any badger activity is detected an appropriate method of working, including details of any licences that are required, will be submitted to, and approved in writing by the LPA.

The applicant should also ensure that construction activities on site have regard to the potential presence of terrestrial mammals to ensure that these species do not become trapped in trenches, culverts or pipes. All trenches left open overnight should include a means of escape for any animals that may fall in.

If badger activity is detected, works should cease and advice from a suitably experienced ecologist sought to prevent harm to this species. If any close-boarded fencing is to be used at the site, we recommend that holes of 20cm x 20cm are included in the base to allow badger to move freely through the site.

Protected species - Bats

Bat roosts were confirmed as likely absent during the ecological surveys.

However, bats are highly mobile and move roost sites frequently. Unidentified bat roosts may still be present. A precautionary approach to works should therefore be implemented.

We advise that in line with the NPPF (2024), paragraph 187, the applicant should incorporate bat roosting opportunities as integral design features within the built development.

Sensitive lighting

The ecological report indicates that foraging and commuting bats could be impacted by the proposed development. Bats are sensitive to any increase in artificial lighting of their roosting and foraging places and commuting routes.

Paragraph 198 of the NPPF (2024) states that planning policies and decisions should “*limit the impact of light pollution from artificial light on ... intrinsically dark landscapes and nature conservation.*”

We advise that the applicant ensures that the proposed development will result in no net increase in external artificial lighting across suitable habitat for nocturnal species at the development site, to comply with legislation, planning policy and best practice guidance (BCT and Institute of Lighting Professionals, 2023).

Given the presence of priority woodland habitat on-site and the site’s proximity to ancient woodland we recommend that prior to commencement a Sensitive Lighting Management Plan is submitted to and approved in writing by the LPA.

Protected species – Breeding birds

We advise that the applicant takes action to ensure that demolition and vegetation clearance is timed to avoid the breeding bird season of early March to August inclusive.

If this is not possible and no large areas of dense vegetation are affected, we advise that the application site is inspected for active nests by an ecologist within 24 hours of any clearance works. If any active nests are found we advise that they are left undisturbed with an appropriately sized buffer around them, until it can be confirmed by an ecologist that the nest is no longer in use.

We advise that in line with the NPPF (2024), paragraph 187, the applicant should incorporate features for breeding birds, including swifts, as integral design features within the built development.

Protected species – Hazel dormouse

Hazel dormouse presence/likely absence surveys were undertaken to inform the planning application, which confirmed the species is likely absent. It would therefore appear that hazel dormouse is not a constraint to development.

We advise the applicant that habitat for the species does exist within the site, and should hazel dormouse be recorded during works, all work should cease immediately, and advice sought from Natural England or a suitability experienced ecologist to agree on the appropriate actions.

Protected species – Great crested newt and reptiles

The ecology report has identified the likely absence of great crested newt and reptile species from the application site boundary.

The ecologist has recommended a precautionary approach to works given the limited habitat present on-site suitable to support amphibians and common reptile species but noting there are records of both groups within the local vicinity. This appears to be a proportionate approach for this application.

We recommend that prior to commencement an amphibian and reptile mitigation strategy is submitted to and approved in writing by the LPA. The strategy will need to be prepared by a suitably experienced ecologist and appropriate to the local context.

We advise the applicant that habitat for great crested newt does exist within the site, and should the species be recorded during works, all work should cease immediately,

Protected species – European hedgehog

Suitable hedgehog habitat exists within the application site boundary.

We advise that in line with the NPPF (2024), paragraph 187, the applicant should incorporate features for hedgehogs as integral design features within the built development. These can include, but not be limited to:

- Ensuring the species can move across the landscape by creating gaps into all close-boarded fencing
- Creating habitat connectivity across the landscape
- Creating a wild corner with minimal habitat management
- Incorporating hedgehog homes into development.

Protected habitats – Habitat of Principal Importance (HPI) Deciduous woodland and ancient woodland,

Planning permission should be refused for developments resulting in loss or deterioration of irreplaceable habitats, including ancient woodland, unless there are wholly exceptional reasons and a suitable compensation strategy exists (paragraph 193, National Planning Policy Framework).

Standing advice states that an applicant should identify ways to avoid negative effects on ancient woodland which could include redesigning the scheme, and an appropriate buffer at least 15m wide should be incorporated into the development design (Natural England, 2022).

Ancient woodland is located adjacent to the application site boundary and could be adversely impacted by the proposals without appropriate protection.

We advise the LPA should ensure that the proposed development allows for the permanent retention of a minimum 15m buffer of semi-natural habitat between the adjacent ancient woodland and any built development (including footpaths), and that this buffer zone is secured from any future built development through planning obligation.

Habitat of Principal Importance (HPI)

Lowland mixed deciduous woodland and native hedgerow HPIs are recorded within the application site boundary and could be directly or indirectly adversely impacted by the proposed development. Impacts to HPIs are of material consideration when determining planning applications.

We recommend that prior to commencement further detail of how the lowland mixed deciduous woodland and native hedgerow HPIs will be appropriately protected is submitted to and approved in writing by the LPA.

We advise this could be presented in the Arboricultural Impact Assessment, Method Statement and Tree Protection Plan, in addition to landscaping plans and implementation of a Construction Environment Management Plan (CEMP) (see below).

Biodiversity Net Gain

The Biodiversity Net Gain Assessment (Urban Edge Environmental Consulting, 16th June 2025) details the following:

- The site baseline consists of 4.14 Habitat Units and 1.41 Hedgerow Units

- The proposed development can deliver a net gain of +13.52% in Habitat Units and +123.23% in Hedgerow Units
- Trading rules have been satisfied.

The statutory framework for biodiversity net gain requires a Biodiversity Gain Plan to be submitted and approved by the planning authority to discharge the biodiversity gain condition prior to the commencement of development.

This application will be subject to the General Biodiversity Gain Condition and will therefore be required to provide a Biodiversity Gain Plan. Development should not begin unless:

- **A biodiversity gain plan has been submitted to the planning authority; and**
- **The planning authority has approved the plan.**

Please note that Paragraph: 024 Reference ID: 74-024-20240214 of the Planning Practice Guidance published by the Ministry of Housing, Communities and Local Government and Department for Levelling Up, Housing and Communities (1 May 2024) states that:

- *“To ensure applicants are clear about this distinction, the local planning authority are strongly encouraged to not include the biodiversity gain condition, or the reasons for applying this, in the list of conditions imposed in the written notice when granting planning permission.*
- *There is a separate requirement to provide information about the biodiversity gain condition. This information must be separate to the list of conditions on the decision notice”.*

Paragraph: 015 Reference ID: 74-015-20240214 of the Planning Practice Guidance published by the Ministry of Housing, Communities and Local Government and Department for Levelling Up, Housing and Communities (1 May 2024) states: *“For the purposes of biodiversity net gain, planning obligations are one of the mechanisms under paragraph 9 of Schedule 7A necessary to secure the maintenance of significant onsite habitat enhancements for at least 30 years”.*

Paragraph 021: Reference ID74-021-20240214 of the Planning Practice Guidance published by the Ministry of Housing, Communities and Local Government and Department for Levelling Up, Housing and Communities (1 May 2024) states *“Paragraph 9 of Schedule &A of the Town and Country Planning Act 1990 requires that where an applicant relies upon a significant increase in on-site habitat biodiversity value, the habitat enhancement (significant on-site habitat enhancement’) must be subject to a planning condition, section 106 agreement, or conservation covenant requiring the habitat enhancement to be maintained for at least 30 years after the development is completed”.*

Significant enhancements are areas of habitat enhancement which contribute significantly to the proposed development’s BNG, relative to the biodiversity value before development.

Significant enhancements must be secured for 30 years in the same way as off-site gains.

What counts as a significant enhancement will vary depending on the scale of development and existing habitat, but these would normally be:

- *Habitats of medium or higher distinctiveness in the biodiversity metric.*
- *Habitats of low distinctiveness which create a large number of biodiversity units relative to the biodiversity value of the site before development.*
- *Habitat creation or enhancement where distinctiveness is increased relative to the distinctiveness of the habitat before development.*

- *Areas of habitat creation or enhancement which are significant in area relative to the size of the development.*
- *Enhancements to habitat condition, for example from poor or moderate to good.*

As the proposal includes on-site significant enhancement a Habitat Management and Monitoring Plan will be required. We recommend that prior to determination, the LPA may wish to discuss with the Applicant whether any obligations will be required to secure significant on-site habitat enhancements. Or whether it would be appropriate to secure through a planning condition. This discussion would be in line with Planning Practice Guidance (1 May 2024) on biodiversity net gain ([Biodiversity net gain - GOV.UK](https://www.gov.uk/biodiversity-net-gain)).

We do not provide legal advice. However, there are two types of legal agreement for BNG:

- Planning Obligation with an LPA.
- Conservation Covenant Agreement with a Responsible Body.

The development should not commence until a Habitat Management and Monitoring Plan, prepared in accordance with the Biodiversity Gain Plan, has been submitted and approved in writing by the local planning authority.

The Preliminary Ecological Appraisal Report (Urban Edge Environmental Consulting, 16th June 2025) provides the recommendations for a range of ecological and habitat enhancements to include:

- Enhancement of the on-site woodland
- Less intensively managed vegetation
- Native hedgerow creation and enhancement
- Planting bat-friendly plants
- Habitat piles and hibernacula
- Bird nesting boxes
- Bat roosting boxes
- Gaps in any close-boarded fencing to allow hedgehog to move freely through the site

We recommend that if the planning application is granted, then an Ecological Enhancement Plan is secured through a prior to commencement planning condition. This should be prepared by a suitably qualified and experienced ecologist

Ecological Enhancements

Local Planning Authorities have a duty to ensure development delivers benefits for biodiversity (Department for Levelling Up, Housing and Communities, 2023, Environment Act (2021) and NERC Act (2006)).

This development offers opportunities to restore or enhance biodiversity, and such measures will assist the LPA in meeting the above obligation and help offset any localised harm to biodiversity caused by the development process.

We advise that in line with the NPPF (2024), paragraph 187, the applicant should incorporate features which support priority or threatened species such as swifts, bats, and hedgehogs as integral design features within the built development.

We recommend that prior to commencement an Ecological Enhancement Plan detailing how the development will deliver ecological enhancements is submitted to and approved in writing by the LPA.

The Ecological Enhancement Plan should be based on the impact avoidance, mitigation and enhancement measures specified in the final ecological reports and should include, but not be limited to the following:

- a) Description and evaluation of features to be provided
- b) Location plan of all ecological enhancement features being provided
- c) Ecological trends and constraints on site that might influence management
- d) Prescriptions for management actions
- e) Ongoing monitoring and remedial measures

Construction Environmental Management Plan (CEMP)

Given the presence of ecological receptors on and in proximity to the site, there is a risk of causing ecological harm resulting from construction activities.

We advise that prior to commencement a CEMP is submitted to and approved in writing by the LPA. The CEMP should include, but not be limited to:

- a) Map showing the location of all ecological features
- b) Risk assessment of the potentially damaging construction activities
- c) Practical measures to avoid and reduce impacts during construction
- d) Location and timing of works to avoid harm to biodiversity features
- e) Responsible persons and lines of communication
- f) Use of protective fencing, exclusion barriers and warning signs.

I hope this information is helpful in assisting your consideration of the application. Please contact planning@surreywt.org.uk if you require any further clarifications with regards to the above.

Kind regards,

Karen Bartlett BSc (Hons) MSc - Conservation Officer

Appendix 1: National Planning Policy and Legislation

Conservation of Habitats and Species Regulations 2017 (as amended)

Provides for the protection of Natura 2000 sites (SACs, SPAs and Ramsar sites), European Protected Species and habitats. European Protected Species are protected from:

- Deliberate capture, injury or killing.
- Deliberate disturbance of a European Protected Species, such that it impairs their ability to breed, reproduce or rear their young, hibernate or migrate or significantly affect their local distribution or abundance.
- Deliberately take or destroy effect.
- Damage or destroy a breeding site or resting place.
- Keep, transport, sell or exchange any live, dead or part of a European Protected Species.

European Protected Species include, but are not limited to:

- Great crested newt
- Natterjack toad
- Otter
- Smooth snake
- Sand lizard
- All bat species
- Hazel dormouse

The LPA should be aware of its legal duty under Regulation 9(3) of Conservation of Habitats and Species Regulations 2017, as amended, which states that “*a competent authority in exercising any of its functions, must have regard to the requirements of the Directives so far as they may be affected by the exercise of those function*”.

Also, under Regulation 55 (9b) of the above regulations, the LPA must apply the following three tests when deciding whether to grant planning permission where a Protected Species (bats) may be harmed, in line with of the Conservation of Habitats and Species Regulations 2017, as amended.

- The activity must be for imperative reasons of overriding public interest or for public health and safety;
- There must be no satisfactory alternative;
- Favourable conservation status of the species must be maintained.

Natural England has stated that they would expect these three tests to be adequately considered by the LPA before planning permission is granted. Natural England will require evidence from the applicant that the LPA has considered the three tests and how they were met, before a mitigation licence can be issued. Where a mitigation licence is required to avoid breach of legislation, development cannot proceed even where a valid planning permission is granted.

Wildlife and Countryside Act 1981 (as amended)

Key piece of legislation consolidating existing wildlife legislation to incorporate the requirements of the Bern Convention and Birds Directive. It includes additional protection measures for species listed under the Conservation of Habitats and Species Regulations 2017 (as amended) and includes a list of species protected under the Act. It also provides for the designation and protection of Sites of Special Scientific Interest (SSSI).

Development which would adversely affect a SSSI is not acceptable except only in special cases, where the importance of a development outweighs the impact on the SSSI when planning conditions or obligations would be used to mitigate the impact. Developments likely to impact on a SSSI will likely require an Environmental Impact Assessment (EIA).

The Impact Risk Zones (IRZs) dataset is a GIS tool which details zones around each SSSI according to the particular sensitivities of the features for which it is notified and specifies the types of development that have the potential to have adverse impacts. Natural England uses the IRZs to make an initial assessment of the likely risk of impacts on SSSIs and to quickly determine which consultations are unlikely to pose risks and which require more detailed consideration. Local Planning Authorities (LPAs) have a duty to consult Natural England before granting planning permission on any development that is in or likely to affect a SSSI.

Further information on specific legislation relating to species protected under the Wildlife and Countryside Act 1981 (as amended) is detailed below, under Protection of Protected Species and Habitats.

Environment Act (2021)

The Environment Act (2021) makes a provision for biodiversity net gain to be a condition of planning permission in England. Planning applications will need to demonstrate a 10% biodiversity net gain can be met. A biodiversity net gain plan must be submitted and must include:

- (a) information about the steps taken or to be taken to minimise the adverse effect of the development on the biodiversity of the onsite habitat and any other habitat
- (b) the pre-development biodiversity value of the onsite habitat,
- (c) the post-development biodiversity value of the onsite habitat,
- (d) any registered offsite biodiversity gain allocated to the development and the biodiversity value of that gain in relation to the development,
- (e) any biodiversity credits purchased for the development.

Countryside and Right of Way Act 2000

Amends and strengthens the Wildlife and Countryside Act 1981 (as amended). It also details habitats and species for which conservation measures should be promoted.

Natural Environment and Rural Communities Act 2006

Section 40 of the Act places a duty on local planning authorities to conserve and enhance biodiversity in England whilst carrying out their normal functions. Section 41 comprises a list of Habitats of Principal Importance (HPIs) and Species of Principal Importance (SPIs) which should be considered.

The LPA will need to have particular regard to any relevant local nature recovery strategies, and any relevant species conservation strategy or protected site strategy prepared by Natural England.

Hedgerows Regulations 1997

Under these regulations it is an offence to intentionally or recklessly remove, or cause or permits another person to remove, a hedgerow. Important hedgerows are defined in Section 4 of the Regulations. This includes hedgerows that have existed for over 30 years or satisfies at least one criteria listed in Part II of Schedule 1.

Wild Mammals (Protection) Act 1996

Under this act wild mammals are protected from the intentional unnecessary suffering by crushing and asphyxiation.

ODPM Circular 06/05: Biodiversity and Geological Conservation – Statutory Obligations and Their Impact within the Planning System (2005)

The Government's Office of the Deputy Prime Minister (ODPM) Circular 06/05 (ODPM 2005) presents the legal requirement for planning authorities with regard to statutory designated sites. Planning approval should not be granted where impacts to statutory designated sites that are not connected to the site maintenance for nature conservation, or will have a significant effect on the site's conservation objectives and/or affect the site's integrity. Permission may be granted if the proposed development overrides public interest.

The presence of a protected species is a material planning consideration. The Circular clearly outlines that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before planning permission is granted. Otherwise, all relevant considerations may not have been addressed in making the decision.

Biodiversity Opportunity Areas (BOAs)

In order to assist in delivering the government's Biodiversity 2020 strategy, the Surrey Nature Partnership has identified seven BOAs where improved habitat management, habitat restoration and recreation of HPis is the key focus to enhancing the connectivity of habitats for SPIs to deliver biodiversity objectives at a landscape scale. The location of these is presented in the South East Biodiversity Strategy's website. The project promotes a collaborative approach across a number of regional and local organisations.

Developments within or adjacent to BOAs should be designed in consideration of the BOA objectives, which are provided at:

- <https://surreynaturepartnership.org.uk/our-work/>

The BOAs include:

- Thames Basin Heaths comprising Chobham Common North & Wentworth Heaths, Chobham South Heaths, Colony Bog, Bagshot Heath & Deepcut Heaths, Ash, Brookwood & Whitmoor Heaths, Woking Heaths;
- Thames Basin Lowlands comprising Wanborough & Normandy, Woods & Meadows, Clandon to Bookham Parkland, Esher & Oxshott Commons, Ashted & Epsom Wood Pasture, Princes Coverts & Horton Country Park;
- Thames Valley comprising Windsor Great Park, Runnymede Meadows & Slope, Staines Moor & Shortwood Common, Thorpe & Shepperton, Molesey & Hersham;
- North Downs comprising North Downs Scarp; The Hog's Back, North Downs Scarp and Dip; Guildford to the Mole Gap, North Downs Scarp; Mole Gap to Reigate, North Downs; Epsom Downs, North Downs; Banstead Wood & Chipstead Downs, North Downs Scarp; Caterham, North Downs Scarp; Woldingham,
- Wealden Greensands comprising Puttenham & Crooksbury, Farnham Heaths, Thursley, Hankley & Frensham Heaths, Devil's punch-bowl & Hindhead Heaths, Hascombe, Winkworth & Hydon's Heath and Woodland, Blackheath, Chilworth & Farley Heaths, Winterfold & Hurtwood Greensand Ridge, Leith Hill, Wotton, Abinger &

Holmwood Greensand Ridge, Limpsfield Heaths, Reigate Heaths, Holmthorpe & Bay Pond

- Low Weald comprising Chiddingfold & West Weald Woodlands, Cranleigh Woodlands, Wallis Wood, Vann Lake & Ockley Woodland, Glover's Wood & Edolph's Copse, Newdigate Wood, Earlswood & Redhill Commons;
- River Valleys comprising Hogsmill, Eden Brook, River Blackwater, River Wey, River Mole, River Thames,

Protection of protected species and habitats

Amphibians

Natterjack toad, pool frog and great crested newt are protected under the Conservation of Habitats and Species Regulations 2017 (as amended). They are also afforded additional protection under the Wildlife and Countryside Act 1981 (as amended).

Natterjack toad, common toad, great crested newt and northern pool frog are also SPIs.

Reptiles

Smooth snake and sand lizard are protected under the Conservation of Habitats and Species Regulations 2017 (as amended). They are afforded additional protection under the Wildlife and Countryside Act 1981 (as amended).

Adder, grass snake, common lizard and slow-worm are all protected from killing and injury under the Wildlife and Countryside Act 1981 (as amended). All UK reptile species are SPIs.

Birds

All wild birds are protected under the Wildlife and Countryside Act 1981 (as amended). This includes damage and destruction of their nests whilst in use, or construction. Species listed under Schedule 1 of the Act, such as barn owl, are afforded protection from disturbance during the nesting season.

The following 50 bird species are SPIs: lesser redpoll, aquatic warbler, marsh warbler, skylark, white-fronted goose, tree pipit, scaup, bittern, dark-bellied brent goose, stone-curlew, nightjar, hen harrier, northern harrier, hawfinch, corncrake, cuckoo, Bewick's swan, lesser spotted woodpecker, corn bunting, curl bunting, yellowhammer, reed bunting, red grouse, herring gull, black-tailed godwit, linnet, twite, Savi's warbler, grasshopper warbler, woodlark, common scoter, yellow wagtail, spotted flycatcher, curlew, house sparrow, tree sparrow, grey partridge, wood warbler, willow tit, marsh tit, dunnoek, Balearic shearwater, bullfinch, roseate tern, turtle dove, starling, black grouse, song thrush, ring ouzel and lapwing.

Badger

Badger is protected under the Protection of Badgers Act 1992. Under this legislation it is an offence to kill or injure a badger; to damage, destroy or block access to a badger sett; or to disturb badger in its sett. The Act also states the conditions for the Protection of Badgers licence requirements.

Bats

All bat species are protected under the Conservation of Habitats and Species Regulations 2017 (as amended), as detailed above. Bats are further protected under the Wildlife and Countryside Act 1981 (as amended), making it an offence to:

- Deliberately or recklessly damage or destroy any structure or place which bat(s) use for shelter or protection.

- Disturb bat(s) while occupying a structure or place which it uses for shelter or protection.
- Obstruct access to any structure or place which they use for shelter or protection.

Furthermore, seven bat species are SPIs, covered under Section 41 of the NERC Act 2006. These include western barbastelle, Bechstein's, noctule, soprano pipistrelle, brown long-eared, lesser horseshoe and greater horseshoe.

Hazel dormouse

Hazel dormouse is protected under the Conservation of Habitats and Species Regulations 2017 (as amended). It is afforded additional protection under the Wildlife and Countryside Act 1981 (as amended), including obstruction to a place of shelter or rest.

Hazel dormouse is also a SPI.

Hedgerow

Under the Hedgerows Regulations 1997 it is against the law to remove or destroy certain hedgerows without permission from the LPA, which are also the enforcement body for offences created by the Regulations. LPA permission is normally required before removing hedges that are at least 20 m in length, more than 30 years old and contain certain plant species. The authority will assess the importance of the hedgerow using criteria set out in the regulations. The regulations **do not** apply to hedgerows within the curtilage of, or marking a boundary of the curtilage of, a dwelling house.

Hedgerow is a HPI.

Otter

Otter is protected under the Conservation of Habitats and Species Regulations 2017 (as amended) and is afforded additional protection under the Wildlife and Countryside Act 1981 (as amended). Otter is also a SPI.

Water vole

Water vole is fully protected from capture, killing or injury; damage, destruction or blocking access to a place of shelter; disturbance whilst in a place of shelter or possessing, selling any part of a water vole, dead or alive under the Wildlife and Countryside Act 1981 (as amended).

Water vole is also a SPI.

Other mammals

West European hedgehog, brown hare, mountain hare, pine marten, harvest mouse, polecat and red squirrel are all SPIs.

The following mammals are listed under Schedule 5 of the Wildlife and Countryside Act 1981 (as amended): wildcat, brown hare (Schedule 5A), mountain hare (Schedule 5A), pine marten and red squirrel.

Invertebrates

Fifty-six terrestrial and freshwater invertebrate species are listed under Schedule 5 of the Wildlife and Countryside Act 1981 (as amended). These include Reddish buff, Norfolk hawk, Purple emperor, High brown fritillary, Northern brown argus, White-clawed crayfish, Pearl-bordered fritillary, DeFolin's lagoon snail, Chequered skipper, Fairy shrimp, Rainbow leaf beetle, New Forest cicada, Southern damselfly, Large heath, Small blue, Wartbiter, Fen raft spider, Ivell's sea anemone, Mountain ringlet, Ladybird spider, Marsh fritillary, Spangled diving beetle, Mole cricket, Field cricket, Duke of Burgundy, Silver-spotted skipper, Medicinal leech,

Lesser silver water beetle, Moccas beetle, Wood white, Violet click beetle, Large copper, Freshwater pearl mussel, heath fritillary, Glanville fritillary, Glutinous snail, Starlet sea anemone, Large tortoiseshell, Brackish hydroid, Swallowtail, Bembridge beetle, Barberry carpet, Silver-studded blue, Adonis blue, Chalk hill blue, Fiery clearwing, Sandbowl snail, Black hairstreak, White-letter hairstreak, Black-veined moth, Sussex emerald, Brown hairstreak, Northern hatchet-shell, Lulworth skipper, Tadpole shrimp, New Forest burnet.

A total of 398 invertebrates are Species of Principal Importance. These include: beetles (including stag beetle), butterflies (high brown fritillary, large heath, small blue, white-letter hairstreak, brown hairstreak, damselflies (southern damselfly), moths (marsh moth), ants, bees etc. Impacts to SPI must be considered by the LPA when assessing planning applications.

Non-native invasive plant species

Schedule 9 of the Wildlife and Countryside Act 1981 (as amended) is a list of non-native plant species for which Section 14 of the Act applies. It is an offence to plant, or otherwise cause to grow in the wild species listed under Schedule 9 of the act. These include, but are not limited to:

- Himalayan balsam
- Cotoneaster sp.
- Japanese knotweed
- Giant hogweed

Habitats of Principal Importance

Section 41 of the NERC Act 2006 details 56 HPis, of which the following could be present in south-east England: Lowland calcareous grassland, Lowland dry acid grassland, Lowland meadows, Lowland Heathland, Open Mosaic Habitats on Previously Developed Land, Lowland fens, Lowland raised bog, Reedbeds, Lowland beech and yew woodland, Lowland mixed deciduous woodland and Wet woodland.

Impacts to HPI are of material planning consideration.

Ancient woodland and veteran trees

The NPPF 2024 states that 'Planning permission should be refused for development resulting in the loss or deterioration of irreplaceable habitats, including ancient woodland and the loss of aged or veteran trees found outside ancient woodland, unless the need for, and benefits of, the development in that location clearly outweigh the loss'. In addition, Natural England's standing advice for ancient woodland indicates that a 15 m buffer is retained between ancient woodland and any works or development. Ancient woodlands, and ancient and veteran trees, may also be protected by Tree Preservation Orders.

National Planning Policy Framework (2024)

Details the Government's planning policies for England and how these should be applied, particularly to contribute to the Government's commitment to halt the decline of biodiversity. When assessing planning applications, LPAs should have regard to conserving and enhancing biodiversity by applying several principals, including:

- Avoiding impacts to biodiversity through appropriate site selection.
- Mitigating residual impacts.
- Encouraging the preservation and enhancement of biodiversity.
- Preventing the development of protected sites, such as SSSIs.

- Refusing permission where habitats that cannot be recreated, such as ancient woodland, would be lost.
- Encouraging good design that limits light pollution.

Relevant paragraphs in the NPPF (2024) are detailed below.

Paragraph Number	Detail
187	Planning policies and decisions should contribute to and enhance the natural and local environment by: (a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan); (b) recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland (c) maintaining the character of the undeveloped coast, while improving public access to it where appropriate; (d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures and incorporating features which support priority or threatened species such as swifts, bats and hedgehogs. (e) preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Development should, wherever possible, help to improve local environmental conditions such as air and water quality, taking into account relevant information such as river basin management plans; and (f) remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate
190	“When considering applications for development within National Parks, the Broads and Areas of Outstanding Natural Beauty, permission should be refused for major development other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest. Consideration of such applications should include an assessment of: (a) the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy; (b) the cost of, and scope for, developing outside the designated area, or meeting the need for it in some other way; and (c) any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.”
193	“When determining planning applications, local planning authorities should apply the following principles: (a) if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful

Paragraph Number	Detail
	impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused; (b) development on land within or outside a Site of Special Scientific Interest, and which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network of Sites of Special Scientific Interest; (c) development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons 67 and a suitable compensation strategy exists; and (d) development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to improve biodiversity in and around developments should be integrated as part of their design, especially where this can secure measurable net gains for biodiversity or enhance public access to nature where this is appropriate.”
194	“The following should be given the same protection as habitats sites: (a) potential Special Protection Areas and possible Special Areas of Conservation; (b) listed or proposed Ramsar sites 68 ; and (c) sites identified, or required, as compensatory measures for adverse effects on habitats sites, potential Special Protection Areas, possible Special Areas of Conservation, and listed or proposed Ramsar sites.”
195	“The presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site.”
198	Planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should: a) mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life⁷²; b) identify and protect tranquil areas which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason; and c) limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation.

APPENDIX 22.0

SCC ARCHAEOLOGY

From: Nigel Randall <nigel.randall@surreycc.gov.uk>
Sent: 19 August 2025 17:09
To: Statutory
Cc: James Kidger
Subject: FAO James Kidger - Chaldon, Mount Avenue, Land at
Attachments: Chaldon, Mount Avenue, Land at; 25-771 - DbA Approved - Eval.pdf

Dear James,

Thank you for your consultation. My comments are attached. I hope they are clear but please come back to me if you have any queries.

Kind regards,

Nigel



Nigel Randall
Archaeological Officer

Historic Environment Planning, Surrey County Council, Victoria Gate, Chobham Road, Woking, GU21 6JD

Mob: [REDACTED]

Please note that I work part-time; my usual office days are Tuesdays and Wednesdays. If your enquiry is urgent, please contact Tony Howe at: heritageconsultations@surreycc.gov.uk

General enquiries should be directed via email to heritageconsultations@surreycc.gov.uk (archaeology and landscapes) or buildingconsultations@surreycc.gov.uk (buildings, conservation areas and historic parks and gardens), and to the Historic Environment Record at HER@surreycc.gov.uk.

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To: Planning Department of Tandridge District Council

From: Surrey County Council, Historic Environment Planning: Archaeology

Application Number: 2025/771

Date Consultation Received: 14/08/2025

Address: Land at Mount Avenue, Chaldon, CR3 5BB

Proposal: Erection of 30 dwellings (50% affordable) with associated works including provision of vehicular and pedestrian access, landscaping, drainage, and other associated infrastructure (Outline application with all matters reserved except access, layout and scale).



Comments:

In line with the requirements of the National Planning Policy Framework (para 207), and Local Plan policy DP20, for developments above 0.4ha, the applicant has considered the archaeological implications of the proposed development and has submitted an Archaeological Desk-Based Assessment dated June 2025, as produced by their archaeological consultants RPS.

The Assessment considers the proposed development site to have a low/uncertain to moderate/uncertain potential for archaeological deposits of Mesolithic and Bronze Age date and a low potential for all other periods.

The groundworks associated with the proposed development will result in the destruction of any Heritage Assets of archaeological significance that may be present and given the size and archaeological potential of the site, in accordance with Local Plan policy DP20 and the National Planning Policy Framework (paras 207 & 208), further archaeological work is required to better clarify the presence or absence of any Heritage Assets of archaeological significance.

The initial phase of work should comprise a programme of trial trench evaluation. The evaluation will aim to determine the location, date, condition and significance of any Heritage Assets of archaeological significance that may be present, enabling suitable mitigation measures to be determined.

The evaluation should be conducted at the earliest opportunity to provide the applicant with a clearer understanding of the potential costs and programme implications should further archaeological mitigation measures be required. Further mitigation measures may involve the more detailed excavation of any archaeological assets found to be present and/or the monitoring of the development groundworks as they proceed to allow for their identification and recording prior to their destruction. In the event the evaluation reveals finds of national significance there then exists the opportunity to influence the design and logistics of the development to allow for their preservation *in situ*.

If Outline permission is granted, the required evaluation will need to be conducted and its results submitted with any Reserved Matters application. This is to ensure that the applicant is aware of the archaeological implications of the proposed development prior to the completion of the development designs, allowing for the preservation of archaeological assets within the development design, as necessary.

In this instance, given the assessed potential of the site and the potential for some degree of previous ground disturbance, it is acceptable and proportionate for the evaluation to be secured by a condition attached to any application that may be granted.

To ensure the required archaeological work is secured satisfactorily, the following condition is appropriate and should be attached to any planning permission that may be granted:

No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work, to be conducted in accordance with a written scheme of investigation which has been submitted to and approved, in writing, by the Local Planning Authority.

Signed: Nigel Randall, Archaeological Officer

Date: 19/08/2025
HEPT Ref: 6221