

**Appendices to Proof of
Evidence of Martin Taylor
BSc (Hons) MSc MRTPI MIED
Land at Chichele Road, Oxted**

Appellant: CALA Group Ltd

Planning Inspectorate Appeal No.:

APP/M3645/W/24/3345915

Tandridge District Council Application No. TA/2023/1345

29 August 2024

LICHFIELDS

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Appendices

Appendix 1 TDC Housing Waiting List

Appendix 2 Extracts from Appeal Decision Letter Ref:
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APP/J2210/W/18/3216104, Land off Popes Lane, Sturry, Kent

Appendix 4 Extracts from Appeal Decision Letter Ref:
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APP/E2001/W/18/3207411, Land to the south of Williamsfield Road, Hutton
Cranswick

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APP/YO435/W/17/3169314, Land to the East of Newport Road and to the East
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Appendix 7 Extracts from Appeal Decision Letter Ref:
APP/P1425/W/15/3119171, Land at Mitchelswood Farm, Allington Road,
Newick

Appendix 1 TDC Housing Waiting List

A1.1 Housing Waiting List as of July 2024 obtained from an FOI request (Council ref: 00206675) provided 8th August 2024

Please could you provide the following information:

1. The total number of households on the housing waiting list/register across the whole district for the last five years (2019-2024).

1/7/2024	1841
1/7/2023	1911
1/7/2022	1828
1/7/2021	1737
1/7/2020	1813

2. The total number of households currently on the housing waiting list/register across the whole district, including a breakdown of those in each priority band and size of housing needed if possible:

Property size required	Band A	Band B	Band C	Band D	Band E	Total
1 bed	37	37	482	203	92	851
2 bed	2	157	184	197	80	620
3 bed	0	166	39	99	21	325
4+ bed	0	21	5	15	4	45
Total	39	381	710	514	197	1841

3. Average current waiting time for households on the housing waiting list/register across the whole district, in years by size:

	Waiting time (years/months)		
1 bed	Housing Register Band	Number of Lettings	Wait
	Band A	16	0.6
	Band B	17	1.3
	Band C	17	2.7
	Band D	2	0.4
	Band E	0	NA
2 bed	Band A	3	0.5
	Band B	82	2.2
	Band C	0	NA
	Band D	0	NA

	Band E	0	NA
3 bed	Band A	3	0.3
	Band B	44	3.8
	Band C	0	NA
	Band D	0	NA
	Band E	0	NA
4+ bed	Band A	0	NA
	Band B	4	4.8
	Band C	0	NA
	Band D	0	NA
	Band E	0	NA
Total (Average)	NA		

4. The total number of households on the housing waiting list/register in the settlement of Oxted for the last five years (2019-2024).

You have not provided a definition that you wish to be used for “the settlement of Oxted”. However, the following applicants have an active Housing Register application from an address with a RH8 postcode.

1/7/2024 208

This information is not held for previous years.

5. The number of households currently on the housing waiting list/register in the settlement of Oxted, again by priority band and the size of housing needed if possible:

You have not provided a definition that you wish to be used for “the settlement of Oxted”. However, the following applicants have an active Housing Register application from an address with a RH8 postcode.

Property size required	Band A	Band B	Band C	Band D	Band E	Total
1 bed	10	4	56	16	13	99
2 bed	0	34	19	10	2	65
3 bed	0	24	7	6	3	40
4+ bed	0	3	0	0	1	4
Total	10	65	82	32	19	208

6. The total net number of affordable housing completions per year from monitoring year (April 2006-March 2007) to the latest year (April 2023-

March 2024). I am aware that gross affordable housing completions for this time period are set out in the latest Authority Monitoring Report (Table 4, published May 2024), but net figures [or loss figures, so that net could be calculated] would be helpful.

Loss figures from demolishing/refurb for our programme are:

2017/18 - 10 demolished.

2019/20 8 loss (refurb).

2021/22 22 demolished.

7. The total net number of affordable housing completions per year in the settlement of Oxted over the last five years.

None in Oxted but 13 in Hurst Green.

8. The average total number of lettings of social and affordable rented housing per year.

Bed Size	2020-24 Ave
1 bed	93
2 bed	69
3 bed	34
4 bed	1
Total	197

9. Information showing the number of people/entries currently on the custom and self-build register by area, e.g. X individuals in Oxted, Warlingham, etc. [I am aware that the total number of individuals by base period is set out in the latest Authority Monitoring Report (Table 17, published May 2024), but figures by local area would be helpful. If not possible, the figure for Oxted only would still be helpful so that the demand in this area as a proportion of the total can be calculated.

Godstone: 1
East Grinstead: 1
Lingfield: 1
Westerham: 1
Whyteleafe: 1

Newchapel: 1
Tatsfield: 1
Blindley Heath: 1
Caterham: 3

Appendix 2 Extracts from Appeal Decision Letter Ref: APP/Z1510/W/19/3236460, Halstead Hall, Mount Hill, Halstead

A2.1 Relevant passages highlighted. Full appeal decision can be accessed here:

A2.2 <https://acp.planninginspectorate.gov.uk/ViewDocument.aspx?fileid=387006>

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Appeal Decision

Hearing Held on 14 January 2020

Site visit made on 14 January 2020

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 18th August 2020

Appeal Ref: APP/Z1510/W/19/3236460

Halstead Hall, Mount Hill, Halstead CO9 1SL

- 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 R Catchpole of Stow Healthcare Group against Braintree District Council.
 - The application Ref: 18/01481/FUL, is dated 10 August 2018.
 - The development proposed is described as 'demolish outbuildings, extend and refurbish existing redundant building to form 25 bed dementia unit and erect bin and cycle stores, erect 30 bungalows and layout associated car parking, drainage and landscaping'.
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Decision

1. The appeal is dismissed and planning permission is refused.

Application for costs

2. An application for costs was made by Mr R Catchpole of Stow Healthcare Group against Braintree District Council. This application is the subject of a separate Decision.

Procedural Matters

3. The appeal results from the Council's failure to reach a decision on the information submitted by the appellant. There is no formal decision, as jurisdiction over that was taken away when the appeal was lodged. After the appeal was lodged, the Council considered the application at its Planning Committee and resolved that it would have refused the application. To this effect, the Council has suggested the wording it would have used had it made a formal decision. I have taken this into account, together with the assessment and conclusions submitted in the statement of the Council, which sets out its concerns regarding the proposed development.
4. The Council is currently in the process of preparing a new Local Plan. The main parties set out within their statement of common ground that the emerging Local Plan does not form part of the Development Plan and there is uncertainty as to when further progress will be made with it. As such, the main parties agree that the emerging Local Plan (eLP) should be afforded little or no weight. Having regard to the Planning Practice Guidance, I agree with the conclusions of the main parties as to the weight to be afforded to these emerging policies.

dementia care unit proposal. The Council's calculation broadly suggests that five market units would be necessary.

51. Setting aside the wide and varied differences concerning issues of viability between the parties for a moment, the appellant has provided a UU which, among other things, prevents occupation of any market housing unit prior to the expenditure of at least 25% of the estimated cost of the Green Lodge works. A further clause precludes the occupation of more than twenty dwellings until at least fifty percent of the estimated costs have been expended. Whilst these provisions would, in part, ensure that some works to Green Lodge would be undertaken, there is no mechanism within the UU to ensure that the remainder of the works beyond 50% of the estimated costs would be spent.
52. I am cognisant that the financial outlay for undertaking fifty percent of the works to Green Lodge would not be insignificant and I note the appellant's intention to construct the proposed scheme in its entirety. Nonetheless, it would be open to the appellant to construct all of the dwellings and not to undertake any further works to Green Lodge beyond 50% of the estimated costs.
53. Even if I were minded to find in favour of the appellant's case regarding the other issues concerning viability, in the absence of any provision within the UU to compel the appellant to construct the entire dementia care unit I find there is a lack of adequate safeguard to secure the use of the dementia care unit. Accordingly, on the basis of the evidence before me I am unable to consider whether any wider benefits associated with the provision of a specialist care facility justify the proposed development without the provision of affordable housing.
54. Accordingly, I conclude that the proposed development fails to make adequate provision of affordable housing. Thus, the proposal would be contrary to CS Policy CS2, the requirements of which are set out above.

Supply of land for housing

55. The Council's view of the housing land supply position for the 5-year period 2018-2023, is set out in the Position Statement published in August 2019 (Position Statement). The requirement figure of 4,598 dwellings, is agreed between the parties. Against this figure, the Position Statement shows a maximum supply of 4,737 units, a surplus of 139 units. In terms of years' supply, this equates to 5.15 years.
56. The requirement within the Framework is for a supply of sites that are deliverable. The meaning of 'deliverable' in this context is set out in the Glossary to the Framework, and further clarified in the Planning Practice Guidance (the PPG). **Following the changes to the Framework in July 2018, sites for more than minor development, which do not have detailed planning permission, can only be considered deliverable where there is clear evidence that housing completions will be achieved within the 5-year period.**
57. I note that the Council's Position Statement was revised following a number of appeal decisions² in which the Inspector concluded the supply position was

² APP/Z1510/W/16/3162004 Land off Stone Path Drive; APP/Z1510/V/17/3180729 Land east of Gleneagles Way; APP/Z1510/W/18/3209711 Woodpecker Court, Poole Street, Great Yeldham.

- 4.15 years having found that there was not clear evidence of deliverability in relation to 10 sites.
58. Notwithstanding these previous appeal decisions, it is the Council's position that a number of the sites, which were excluded by the previous Inspectors, should now be included within their housing supply figure based on additional updated evidence. Subsequently, at the hearing, the Council provided an up to date position for those schemes.
59. Since the previous appeal decisions, the scheme at Ashen Road for 16 units had been granted full planning permission. No constraints to the scheme were identified and the appellant agreed that there was adequate evidence to support the deliverability of that scheme. I see no reason to take a different view.
60. In addition, land to the east of Sudbury Road, has a full planning permission for 218 units. Construction of approximately 73 units had already commenced, albeit, the Council conceded a delay to the delivery of 33 units planned for 2019/20 and thus no units would be delivered during that year. As a result, an additional 8-13 units, approximately, are envisaged to be delivered in each later year of the trajectory. There was disagreement between the parties as to the annual build rate and whether all the units could be delivered within the five-year period. The appellant gave evidence of its own more conservative assumptions as to the lead-in time and the annual build rate based upon its own experience of these and national delivery rates. However, the appellant's considerations do not take account of specific circumstances of individual sites and is therefore not a substitute for site-specific information and knowledge; the Council's revised trajectory having been informed on account of information provided to the Council by the site manager.
61. Accordingly, notwithstanding there being some delay to the scheme, the annual build rate does not seem unrealistic. On the basis of the available evidence, I find that it has been demonstrated that housing completions will be delivered during the five-year period on this site. Thus, I am minded to include the entire 218 units within the Council's supply figure.
62. Land north east of Inworth Road has an outline permission for 165 dwellings. Notwithstanding the submission of a reserved matters application, this remains to be determined by the Council. It follows a previous reserved matters application that was deferred for alterations to the layout of the scheme. The Council's evidence concerning the progress of the application and intended timescale for approving the application was ambiguous. Although estimated dates and numbers are presented within the trajectory, these are now of some age and have not been revised to take account of the situation with the reserved matters applications.
63. In addition, there was no indication or breakdown of any advance works that are likely to be needed on site, for discharging conditions, site preparation and installing infrastructure. To my mind, I can see little if anything that amounts to clear evidence that any completions can realistically be achieved by 2020/21. As such, having regard to the presumptive effect of the Framework's definition, these circumstances would justify excluding Inworth from the current supply in its entirety. The effect of this would be to reduce the Council's deliverable supply by 165 dwellings.

64. For land to the west of Panfield, this large strategic site assumes the delivery of 200 dwellings within five years. A resolution to grant planning permission for 189 dwellings was passed by the Council in July 2019. However, a section 106 planning agreement remains to be completed. The Council's evidence at the hearing was that the planning obligation would likely occur in the 'spring' albeit the nature of the delay to the legal agreement was unclear. The Council conceded that the number of units to be delivered in the early part of the trajectory, 2020/21, would fall below the expected figures, although, in their view, the involvement of two developers would enable units to be delivered at an expedited rate in the following year.
65. In this case, there is no clear evidence of any real progress since the resolution to grant planning permission in July 2019. There is no corroborative evidence to support the Council's optimistic view of an expedited annual build rate. In any event, even if I were to accept the Council's best case scenario, there would inevitably be a lead in period before any completions were concluded. In my view, there is no clear evidence before me that there is a realistic prospect of any units being capable of delivery during 2020/21. **The Council's assumptions are not necessarily unrealistic, but neither have they been shown to be clearly realistic; for the site to be deliverable, the evidence would need to be more convincing and more up to date.** For the remaining units with outline planning permission, the Council were uncertain as to the likely timing of a reserved matters application. This casts considerable doubt on their deliverability within the five-year period. Thus, the evidence justifies excluding Panfield in its entirety from the Council's current supply.
66. In view of my findings above, it is clear that the Council's five-year supply must fall below the number that is required within that period. However, it remains necessary for me to get an approximate view of the shortfall's likely full extent. In light of this, I have considered the remaining disputed sites, albeit more briefly.
67. The remaining sites each have an extant outline planning permission. However, two sites have opted to pursue full applications for planning permission. The Council have resolved to approve one of these schemes, however, this is subject to the negotiation and preparation of a planning obligation. Limited information concerning the progress and timeframe for the legal agreement was presented to me at the hearing. In addition, for two sites **there is little corroborative evidence from each site's current developer as to when the reserved matters or a full application will be brought forward.** I am mindful that there is an outstanding objection to one scheme for which revised plans are being considered by the developer, and that whilst the planning obligation is similar to that of the outline planning permission, the scheme has been altered from 22 to 17 units.
68. **None of these circumstances make it impossible that these sites could contribute to the supply of housing land, however, that is not the test of deliverability. To justify including sites of these types it would be necessary to produce clear and specific evidence, in sufficient detail, to show that sites were available, suitable and achievable, with a realistic prospect of delivery within the required timescale. On the evidence before me, none of the remaining sites can currently justify being included within the five-year supply.** The effect of this is to reduce the deliverable land supply by a further 293 units.

69. Taking into account the deductions that I have identified above, totalling 658 units, the Council's deliverable supply is reduced to 4,079 units. Against the agreed requirement figure of 4,598 units, this amounts to a supply in the region of 4.4 years

Planning Obligation

70. Aside of the matters discussed above, the agreement also secures various financial contributions including healthcare, allotments and public open space. In general, the financial contributions were based on formulae adopted by the Council and were consistent with policy and addressed the additional pressure that would result from the additional population from the proposed scheme.
71. In my view, the obligations provided would comply with paragraph 56 of the Framework and the statutory tests contained in Regulation 122 and 123 of the Community Infrastructure Levy Regulations 2010. I therefore take account of these obligations in my decision.

Planning Balance

72. For the reasons set out in this decision, I have found the proposed development would conflict with LP Policy RLP2 and CS Policy CS5 with regard to the Council's spatial strategy for the district. It would also conflict with CS Policy CS9 and LP Policies RLP9, RLP10 and RLP90 due to its impact on the character and appearance of the surrounding area, with CS Policy CS9 due to its impact on the living conditions of future occupants of the dwellings, with LP Policy RLP84 and CS Policy CS8 due to its likely impact on protected species, and CS Core Policy CS2 because of an inadequate supply of affordable housing. Aside of LP Policy RLP21 which is permissive of the provision of specialist care outside of the settlement boundary, there are no other development plan policies that weigh positively in favour of any development on this site. The appeal proposal therefore generally fails to accord with the development plan as a whole.
73. In addressing the planning balance, an absence of a 5-year housing land supply triggers paragraph 11(d) of the Framework. As such, the Framework dictates that where the policies which are the most important for determining the application are out of date 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.
74. Since there is less than a 5-year supply of housing land, it follows that LP Policy RLP2 and CS Policy CS5 must be considered out of date. I therefore afford this conflict limited weight. In addition, albeit future occupants of the dwellings would be likely to depend on a private motor vehicle to reach some essential day to day services and facilities within Halstead and in nearby larger settlements, there would be some choice available to use accessible modes of transport to access local services and facilities. Thus, the proposal would not significantly undermine the aims of the development plan which seeks to avoid undue reliance on the private motor vehicle.
75. In terms of benefits, given my finding that the Council can only demonstrate a housing land supply in the region of 4.4 years, the contribution of 30 dwellings weighs substantially in favour of the proposal. The additional housing would

APPEARANCES

FOR THE APPELLANT:

Roger Catchpole	Managing Director Stow Healthcare
Melville Dunbar	Architect, Melville Dunbar Associates
Paul Munson	Chartered Town Planner, C/o Melville Dunbar Associates
Paul Coleman	Daniel Connal Partnership, Construction Costs Estimate
Jamie Purvis	BNP Paribas
Martin Taylor	Planning Director, Lichfields
Harry Bennett	Lichfields
Adam Hastings	Landscape Assessment
Patrick McKenna	Ecological Consultant
Paul Allen	Tree Consultant

FOR THE LOCAL PLANNING AUTHORITY:

Melanie Corbishley	Planning Case Officer, Braintree District Council
Alex Evans	Planning Policy Officer, Braintree District Council
Kieran McGrath	Tree and Landscape Officer, Braintree District Council
Neil Jones	Planning Case Officer, Braintree District Council
Andrew Golland	Viability Assessment Consultant for Braintree District Council

DOCUMENTS

- 1 Notification of appeal
- 2 Notification of hearing
- 3 Policies CS1, CS2, CS10, CS11 of the Braintree District Core Strategy (2011)
- 4 Appeal Decision APP/J3720/A/11/2153222 Land off Manor Road, Stratford upon Avon
- 5 Appeal Decision APP/Z1510/W/18/3209711 Woodpecker Court, Poole Street, Great Yeldham
- 6 Appellant's Unilateral Undertaking

PLANS

- A Drawing Number 1544-PL002 Rev D Site Layout Block Plan

Appendix 3 Extracts from Appeal Decision Letter Ref: APP/J2210/W/18/3216104, Land off Popes Lane, Sturry, Kent

A3.1 Relevant passages highlighted. Full appeal decision can be accessed here:

A3.2 <https://acp.planninginspectorate.gov.uk/ViewDocument.aspx?fileid=3403476>

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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.
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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

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.

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
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Appendix 4 Extracts from Appeal Decision Letter Ref: APP/Y0435/W/19/3234204, Rectory Farm, Woburn Sands Road, Bow Brickhill, Milton Keynes

A4.1 Relevant passages highlighted. Full appeal decision can be accessed here:

A4.2 <https://acp.planninginspectorate.gov.uk/ViewDocument.aspx?fileid=3727935>

3



Appeal Decision

Inquiry held between 25 February and 28 February 2020

Site visit made on 12 March 2020.

by Louise Nurser BA (Hons) Dip UP MRTPI

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

Decision date: 27 April 2020

Appeal Ref: APP/Y0435/W/19/3234204

Rectory Farm, Woburn Sands Road, Bow Brickhill, Milton Keynes MK17 9JY

- 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 Mr David Gill (Gill Hudson Homes Ltd) against the decision of Milton Keynes Council.
 - The application Ref 18/01372/FUL, dated 18 May 2018, was refused by notice dated 7 June 2019.
 - The development proposed is demolition of 2 no. outbuildings to create access and construction of 28 no. 2, 3, 4, and 5 bedroom residential dwellings and all ancillary works at Rectory Farm, Woburn Sands Road, Bow Brickhill, MK17 9JY.
-

Decision

1. The appeal is dismissed.

Preliminary/ procedural matters

2. Prior to the Inquiry it came to my notice that there were some inconsistencies with the plans, with particular reference to Plot 17. These were addressed by the appellant and amended copies provided to all relevant parties. Following the Wednesbury principles, no parties were prejudiced by my acceptance of the amended plans: PL-16- A3, PL-17 A3- dated February 2020.
3. The fourth reason for refusal relates to the failure to provide any financial contributions to offset the impact of the development. However, prior to the Inquiry I was provided with an executed Unilateral Undertaking (UU) relating to the provision of affordable housing, education facilities, leisure recreation and sports facilities, social infrastructure requirements, carbon neutrality requirements and the promotion of public transport. The Council considers this UU to have overcome this reason for refusal. I refer to this elsewhere in my decision letter.

Main Issues

4. From what I have seen, read and heard I consider the main issues in this appeal are: a) whether the proposed development would be consistent with the settlement strategy of the development plan; b) the effect of the proposed development on the character and appearance of the wider area; c) the effect of the proposed development on the living conditions of residents of no 59 Station Road, and future occupants of plot numbers 17 and 18, with particular

25. Similarly, the privacy of the occupants of no 59 Station Road would be adversely affected by the perception and reality of direct overlooking from the proposed properties when moving around the dressing room and master bedroom when the blinds were not pulled down. I also consider that the ground floor bedroom could be overlooked from the first and second floor bedrooms of the proposed dwelling on plot 18.
26. In coming to this conclusion, I have been aware of the existing situation relating to the proximity of the footpath to the property and that it is within the gift of the occupants of no 59 to increase their levels of privacy at ground floor level by increasing the depth and height of the screening within their garden. Indeed, on my site visit I was able, when walking along the footpath, to clearly glimpse occupants pottering about within the ground floor accommodation of no 59 Station Road. I also noted as the footpath runs parallel to the property, the baffle boards make it difficult to obtain direct views into the first-floor rooms.
27. However, I consider that there is a substantive difference between the transitory impact of walkers going past a property and the impact of housing development in such close proximity which would result in a substantial loss of privacy in bedrooms.
28. Therefore, the proposed development would have an adverse impact on the living conditions of existing and future occupants of both 59 Station Road and the proposed dwellings at plot numbers 17 and 18, and thereby conflict with both policy D5 of the Plan:MK, and the guidance contained with the SPD.

Housing supply

29. The main parties agreed through the Statement of Common Ground that the Council is required to demonstrate a five year supply of deliverable housing sites of 10,087 dwellings as of April 1, 2019. This figure includes the shortfall and a 5% buffer to ensure choice and competition in the market for land.
30. I note that the appellant expressed concerns relating to the use of the April 1 base date. However, this was agreed within the Statement of Common Ground, and I am content with this approach. Moreover, no additional sites were included by the Council following this base date. Where I have made any amendments to the contribution to the housing supply from individual sites, these have been reductions.
31. Therefore, I have taken into account the most up-to date evidence before me in relation to the five year housing land supply, consistent with the NPPG. Where sites did not demonstrate the clear evidence required to demonstrate at the base date that the sites had a realistic prospect of completions within the five year period, then these sites have not been included within the supply.
32. I have not taken a hard and fast approach to the use of pro forma which I consider in some cases to be the clear evidence required by Annex 2 of the Framework and equivalent in status to the Statement of Common Grounds referred to within the NPPG, albeit, that of course, this is guidance, and the list should not be taken as exhaustive. Moreover, I note that the Council does not take these at face value and will alter the trajectory where it considers it to be overly ambitious. The weight which I have accorded to the status of the individual pro forma has varied depending on the specific circumstances

relating to the individual sites. This has meant that in some instances, the pro forma can be considered to be the clear evidence required by the NPPG, whilst in others they equate to nothing more than an informed guess. Similarly, whilst I have been specifically referred to potential issues relating to the role of the MKDP I have not taken a blanket approach to the significance of its involvement in the deliverability of sites and any impact on time scales. Instead, I have considered each site on its merits.

33. The Council considers it has a gross supply of 13,610 deliverable dwellings⁶. However, in the context of this appeal, the Council has reduced by 10 % the contribution from sites where development is forecast to be taking place in year 5⁷. Although, I note that moving forward the Council does not intend to apply a discount.
34. The appellant does not dispute that the Council can demonstrate 9,947 units as part of its supply. However, the appellant discounts this figure by 15.3%⁸ to arrive at an uncontested supply of 8,425 dwellings.
35. The parties have helpfully identified which sites they consider to be in dispute. I have considered the quantum of deliverable housing with a realistic prospect that housing will be delivered with 5 years on the basis of the specific evidence before me, in the context of this particular inquiry, and informed by planning judgment. I have taken into account conclusions drawn by other inspectors, in relation to specific sites, notably those involved in the Globe and Hanslope appeals and the Local Plan Inspector who had the benefit of a wider range of participants which is not available in the context of a S78 inquiry. Nonetheless, I have come to my own planning judgement on the basis of the evidence before me, and in the context of the 2019 Framework and the relevant guidance within the NPPG.

Disputed sites: allocations

36. The most recent national planning guidance makes clear that the onus is on the Council to demonstrate clear evidence that housing completions will begin on allocated sites within 5 years.
37. In common with the Globe Inspector, I agree that there is a clear intention that housing should be delivered on the Campbell Park Northside allocation. Preferred developers have been selected, a development brief adopted, and a programme of hybrid applications produced.
38. I have taken into account the appellant's concerns, relating to the realism of the proposed programme for development of some Council developments and have excluded them from the supply where appropriate. Nonetheless, I consider that there is the clear evidence to demonstrate a realistic prospect of delivery. These include the Berwick Drive site, and the Lake Estate Neighbourhood Plan sites, together with the Phelps Road and Southern Windermere site.
39. In the case of the Lake Estate Neighbourhood Plan sites, I am aware of the need to rehouse existing residents of Serpentine Court. However, there is a

⁶ In cross examination the Council accepted the loss of the Galleon Wharf site.

⁷ See Council's position re methodology

⁸ This is the same discount used by the Inspector within the Hanslope appeals CD6.4

development programme which appears to be robust and to have shown firm progress towards the submission of an application, albeit a hybrid one. There is commitment to implementation, including a successful estate wide referendum and an adopted Neighbourhood Plan. Moreover, I note that the Council has taken a conservative approach to the amount of housing which could be delivered.

40. The Berwick Drive site benefits from an adopted development brief and the most recent programme is to bring forward development rather than for it to slip back, albeit I note that it is proposed to reduce marginally the contribution of the site.
41. The remaining sites are supported by a variety of evidence which, in the context of the individual sites, is the clear evidence which is required. This includes, inter alia, development briefs for the sites, pre application discussions, preferred developers linked with sites or controlling them. In the case of Daubeney Gate, a Planning Performance Agreement has been entered into, whilst a full planning application has been submitted for land at Hindhead Knoll. Whilst both of these took place since the base date, they are consistent with the evidence that had informed the 2019 housing supply figure.
42. Therefore, taking into account the round table discussions, I consider that there is clear evidence to support the Council's approach of including the following allocations at: Campbell Park Northside, Berwick Drive, Redbridge, Rowle Close, Lake Estate Neighbourhood Plan sites, Phelps Road, Windermere Drive, land north of Vernier Crescent, Manifold, Daubeney, and Hindhead Knoll.
43. I note that there is no guarantee that any planning application that comes forward on these allocations will necessarily be approved. The evidence supporting the sites, may not always directly mirror that set out within paragraph 7 of the NPPG. However, this list is not a closed list of relevant examples, and I have carefully considered each of the sites. Nonetheless, in my judgment, the evidence put forward to support the inclusion of these sites meets the high bar set out within the Framework and NPPG. As a consequence, there is a realistic prospect of housing completions beginning within the five year period on these sites.
44. Development may well be delivered, within the five-year period, on the sites set out below: South-East Milton Keynes (SEMK), Agora, Harrowden, Hendrix Drive, Singleton Drive, Greenleys Rugby Club, Reserve site 3- Westcroft and Tickford Fields. However, taking into account the high bar set in the Framework and the NPPG, I was not convinced there was the requisite clear evidence that housing completions will begin on these sites so as to enable me to conclude that there was a realistic prospect of housing being delivered. Consequently, I could not include them within the five year supply.
45. For example, there was uncertainty over the delivery of the large greenfield sites, such as Tickford Fields and SEMK. Tickford Fields is a large site which is in the full ownership of the MKDP. An agent has been appointed to market the site. An outline application was submitted in January of this year. However, the inclusion of the site within the five year supply appears to be based on an educated guess rather than clear evidence. This position is reinforced by the complications relating to the delivery of a school, and the slippage in the timetable, which has already taken place, since the examination of the MK:Plan. This is underlined by the comment within the pro forma box: *'MKC to*

decide how to take the site forward for development which is why details are not available⁹.

46. The SEMK site makes a modest contribution to the housing supply. However, notwithstanding the Statement of Common Ground between the Council and developers, and initial preparatory work that has taken place, it is unclear how the delay to the announcement on the route of the proposed Expressway might impact on the delivery of housing.
47. The smaller allocation at the Harrowden site, whilst part of the Council's programme to provide Council housing seems to have little corroborating evidence that it in fact, will begin to deliver within the five year period. Similarly, I am not convinced that there is the clear evidence to include the following sites owned by MKDP: Hendrix Drive, Singleton Drive and Reserve Site 3.
48. There may be a clear intention that brownfield allocations, such as the Agora site, be redeveloped for housing. In progressing the Agora site there has been continued engagement with the Council. This has included a revised timetable set out within the pro forma, the removal of the risk of listing, and latterly formal pre application discussions and permission to demolish the former shopping centre. However, in this case, the potential barriers to development, such as viability matters and physical constraints such as the demolition of the shopping centre which has yet to take place, cumulatively, cast doubt that there is the clear evidence to enable me to conclude that there is a realistic prospect that housing completions will begin on site within five years.
49. Similarly, the Greenleys site is well advanced with a development partner identified. Nonetheless, the time scale set out within the pro forma is predicated on a start date in June 2020 and there has already been slippage in the programme, such as the exchange of contracts. An application has yet to be submitted, and planning obligation matters relating to the provision of a replacement rugby pitch and changing room will require agreement. Therefore, whilst I am aware that pre application discussions and consultation have taken place, in this instance, the timetable set out within the pro forma does not appear to have the status, consistent with that suggested within paragraph 7 of the NPPG.
50. Consequently, I conclude that of the disputed sites which have allocations, there is a realistic prospect that they will provide a contribution of 657 dwellings.

Disputed sites: outline permissions

51. As with allocations, the onus is on the Council to demonstrate clear evidence to support including outline planning permissions within its five year supply of housing.
52. In my judgment, Tattenhoe Phases 4 and 5, Towergate Farm, the Western Expansion Area remainder site 10, Eagle and Church Farms, and Eaton Leys, should be considered deliverable.

⁹ Page 652 of Appendix 6 of JW PoE.

53. Both Tattenhoe sites, Phases 4 and 5, form part of a large outline permission. Site wide conditions have been discharged, site wide infrastructure has been delivered and a primary school is now open. Delivery on the wider site has been consistent with previous anticipated start and build-out rates. Homes England have provided pro forma for Phases 4 and 5 which clearly set out anticipated start and build-out rates. Phase 4 now has a developer on board. Moreover, Homes England who controls the site has a remit to increase the pace and delivery of housing. Consequently, there is the requisite evidence to include the proposed housing within the supply.
54. Similarly, Tower Gate is owned by Homes England. Firm progress, including the selection of a preferred developer, has been made with the site consistent with the timetable set out within the pro forma.
55. I note that the strategic infrastructure is in place for all of the sites programmed to be delivered within the projected five-year supply at the Western Expansion Area (WEA) (remainder of site 10). In the past, multiple housebuilders have been able to deliver the site leading to very high completion rates. Nonetheless, I accept that the availability of serviced sites should not, in isolation, necessarily equate to a conclusion that development will be forthcoming in the next five years, and that interest in development, in itself, may not be enough.
56. The Disposal Strategy published in December 2019, sets out a timetable for disposal of the remaining land, and development of the sites. I am aware that there was a temporary hiatus in the disposal of sites to market, with land disposals expected to resume in June 2020, and that at the later end of the period the disposal programme sits tightly with the need to apply for reserved matters. However, I draw comfort from a recently approved REM application¹⁰, which took just over half a year from submission to completions on site.
57. Previous housing delivery has been consistent with the pro forma provided by the lead developer. Therefore, on the basis of the evidence before me, notwithstanding that it is not known who the housebuilders will be on the remaining sites, and that there are no pending reserved matter applications at the moment, it is my judgment that there is sufficient evidence to include both sites within the housing supply. However, in this particular instance rather than accepting the figures put forward by the Council in the table of disputed sites, within the Addendum to the agreed Housing Statement of Common Ground, I have used the conservative figure of 492, made up of the anticipated start and build-out rates, derived from the Disposal Strategy. In the interests of clarity had the Disposal Strategy not been published, I would have still concluded that the site should remain within the supply.
58. In relation to the remainder of WEA site 11, given the Council's suggested reduction in housing delivery following the publication of the Disposal Strategy, which I consider to be sensible, there is little difference between both parties at 317 and 324 dwellings respectively. Therefore, I have excluded the contribution of this site from the disputed sites.
59. The developer who is currently building on the first phase of the Eagle Farm site, and has an option on the disputed site, has set out in an email that they

¹⁰ 19/013330/REM

'guess' that the reserve matter application for the site will be submitted in the summer of 2020. However, given that they are already operating on the wider site and that the infrastructure has already been delivered, irrespective of the informal nature of the evidence, I consider that this is enough to demonstrate a realistic prospect that the housing will begin within five years.

60. The developer for Church Farm has been working with the Council to be able to be in a position to submit a reserved matters application. Progress has been made and the recently submitted PPA request set out a timetable consistent with the pro forma which informs the housing supply position. I do not consider the comment relating to being, '*in the hands of MKC*', to undermine the realistic prospect of delivery of the site.
61. A Planning Performance Agreement for the Eaton Leys site had been agreed between Barratts and David Wilson Homes (BDW) and the Council before the base date. Reserved matters have been granted for all site wide infrastructure and all the site wide conditions have been discharged. I am aware that at the time of the inquiry, there were outstanding highway objections relating to a reserved matters application that had been submitted in May 2019. However, this delay in the approval of the reserved matters does not persuade me that there is not a realistic prospect that housing of around 308 units will be delivered on the site within 5 years, particularly given that access works to the site are underway and the onsite infrastructure is being delivered.
62. Nonetheless, there is sufficient doubt in relation to the Ripper, Wolverton Railway Works, Timbold Drive, Walton Manor and Tilbrook Farm sites, for me, in the context of this particular appeal, to exclude these from the supply of deliverable sites.
63. Consequently, I conclude that of the disputed sites which have outline permissions, there is a realistic prospect that they will provide a contribution of 1370 dwellings.

Conclusion on housing supply

64. In sum, there is clear evidence to enable me to conclude that there is a realistic prospect that 2,027 of the 3,677 disputed housing completions will begin on site within five years. When added to the stock of undisputed sites, this equates to a housing supply of around 5.9 years. Of course, this is not to say that all sites will be delivered, rather that there is a realistic prospect that they will be. Accurate monitoring of housing delivery will establish whether this is the case, and depending on the outcome, the Council will be required to respond appropriately. Indeed, the Council is doing so through its Housing Delivery Action Plan¹¹.
65. There is nothing within the 2019 Framework and associated NPPG which requires that discounts be applied to an individual site's contribution to the five year supply. I note that the Hanslope Inspector concluded that the application of the appellant's discount of 15.3% was appropriate, and that this judgment had been challenged unsuccessfully¹². I am also aware that a greater discount

¹¹ CD3.13

¹² CD7.6

- had been applied by the Inspector within the Woburn Sands IR, and that the Secretary of State did not demur from this approach¹³.
66. However, I also note other examples that have been drawn to my attention of the Secretary of State, and other inspectors not applying a discount¹⁴. Also, I am aware that for the purposes of this particular inquiry, that the Council has taken a precautionary approach by applying a discount of 10% on all sites where the forecast delivery suggests that an element of the site will be delivered in the fifth year.
67. In the past, as illustrated in Mr Dix's evidence, there appears to have been a mismatch between the Council's assessment of the deliverability of a site and the actual historic delivery of housing on the ground. However, recently, there has been a significant increase in delivery consistent with the housing requirement. Such spikes in development may be short lived and associated with the construction of apartments. However, last year the Council exceeded its annual requirement, and so far, the Council is on course to meet this year's required, and projected completions with a number of developments delivering with multiple developers on site. Moreover, three quarters of the way through this year, units under construction should provide 100% of next year's requirement¹⁵. This gives me confidence that, on the whole, the Council is not including sites within the supply which do not have a realistic prospect of delivery.
68. The plan led supply of housing sites has diversified so as to boost housing delivery, with less reliance on large strategic sites, through the Site Allocation Plan (2018) and Plan:MK (2019). A minimum target for housing has been set within the plan. However, the housing allocations in locations consistent with the plan's strategy provide the capacity for an additional 18% more dwellings¹⁶ over the plan period.
69. The same advocate and housing witness attended the Hanslope hearings and this inquiry. However, I note that my conclusion differs from that of the Hanslope appeals inspector and is consistent with that of the Globe Inspector. I am aware that different evidence was presented at both hearings and that different witnesses were involved. I struggle to understand how evidence submitted by the Council at two different hearings, which took place in the same month would be substantively different. However, I understand that the evidence at the later Globe appeal had been presented in a more, *'timely, clear and coherent manner'*¹⁷.
70. Nevertheless, for the purposes of this appeal, I have undertaken a rigorous consideration of the contribution of the individual housing sites and the evidence before me, consistent with the Annex 2 definition of deliverable and guided by the advice set out within paragraph 7 of the NPPG, and the legal cases to which I have been referred. This assessment has resulted in my excluding 14 of the disputed sites from the supply, where in my judgment there is no clear evidence that housing completions will begin within 5 years.

¹³ CD6.2

¹⁴ CD6.11

¹⁵ Paragraph 5.4 of the J Williamson's PoE

¹⁶ CD5.2 paragraphs 144 and 148

¹⁷ JW PoE para 4.10.2

71. Therefore, in the absence of national policy or guidance requiring me to apply a discount, I have not included either discount within my final calculations. Nonetheless, even if I were to have concluded that the application of a discount was appropriate on the basis of an optimism bias, and had applied the discount of 15.3%, the Council would still, on the basis of the evidence before me at this inquiry, be able to demonstrate a supply of just over five years of housing. As a consequence, I conclude that the Council is able to demonstrate a five year supply of housing with a realistic prospect of delivery.

Other matters

72. The appellant has provided an executed UU. However, with the exception of the affordable housing element these matters relate to the mitigation of the impact of the scheme, to which I accrue no benefit. Nonetheless, the UU does provide for affordable housing which would weigh in favour of the development. I conclude that the affordable housing element is necessary and at 32% is consistent with policy HN2 of Plan:MK and the provisions of the recently adopted Affordable Housing Supplementary Planning Document. As such the contribution is 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.

73. Milton Keynes has not been able to deliver the significant uplift in affordable housing required to meet its targets and already has experienced a deficit of 41%¹⁸ over the plan period. The policy wording of HN2(A) attributes strong support to the provision of affordable housing over and above the 31% requirement. Nonetheless, in the particular circumstances of a relatively small scheme which, as mathematical necessity must either provide less than the 31% requirement or more, I accord the provision of a contribution of 32% affordable housing no greater weight than I would otherwise. Nonetheless, given the pressing need for additional affordable housing, I consider this to be a significant benefit of the proposed development.

74. The appeal site is located close to the village facilities and has access to public transport. However, this would equally apply to other sites including those within the village settlement. Therefore, I accord this benefit little weight in favour of the proposed development. Nonetheless, the appeal scheme is a small site under the control of a local builder. It would provide a mix of market housing and has the potential to be built out relatively quickly, to which I adduce moderate weight.

75. The proposed development would result in the demolition of two buildings associated with the builders' yard. However, as I have previously set out, I do not consider that these, in themselves, detrimentally impact on the street scene and therefore, their demolition would not in itself result in a positive benefit.

76. I have found that the Council is able to demonstrate a five year supply of deliverable sites.

¹⁸ CD5.13

Planning balance

77. I have found that the Council is able to demonstrate a five year supply of deliverable housing, therefore the tilted balance is not engaged. Consequently, I must determine the appeal on the basis of its compliance with the development plan.
78. As set out above, I have found that the appeal proposal would conflict with policies DS1, DS2, DS5 of Plan:MK in relation to the development strategy of the plan. I have also found that the appeal proposal would conflict with policies D1, D2 and D5 of Plan:MK and the New Residential Development Design Guide, SPD in relation to the impact on the character and appearance of the wider area and impact on the living conditions of residents of no 59 Station Road and future occupants of plots numbers 17 and 18. As such, I consider that the proposal is contrary to the development plan as a whole. I accord this conflict very significant weight.
79. The positive benefits of the scheme include affordable and market housing, which could be delivered quickly. Cumulatively, I accord these benefits significant weight. I have accorded the location of the proposed development little weight and consider that the demolition of the existing buildings on the site would have a neutral impact and therefore would not weigh in favour of the proposal.
80. Cumulatively, I consider that the appeal proposal's benefits would not provide material considerations that would overcome the conflict with the plan taken as a whole. A decision other than in accordance with the development plan would not be justified. Even, had I come to the conclusion that the Council was unable to demonstrate a five year housing land supply, the harm that I have identified would be sufficient to lead me to dismiss the appeal on the basis that the adverse impacts significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

Conclusion

81. For the reasons set out above I dismiss the appeal.

L. Nurser

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Matthew Henderson	Instructed by Sharon Bridglalsingh, Director Law and Governance, Milton Keynes Council.
He called	
Mr James Williamson BA (Hons) MSc, MRTPI	Senior Planning Officer, Milton Keynes Council
Mr Paul Keen MA MRTPI	Area Team Leader, Milton Keynes Council

FOR THE APPELLANT:

Mr Peter Goatley, assisted by Mr James Corbet Burcher	Instructed by Smith Jenkins Town Planning
He called	
Mr Samuel Dix MA (Hons), MSc, MRTPI	Associate, Smith Jenkins 1
Mrs Jennifer Smith BSc (Hons) Dip TP, MRTPI	Managing Director, Smith Jenkins Town Planning

INTERESTED PERSONS:

Mr Chris Barrington	Local resident
Ms Sue Malleson	Local resident

DOCUMENTS

I1	Appearances on behalf of the appellant.
I2	Opening statement on behalf of the appellant.
I3	Opening statement on behalf of the Council with appearances appended.
I4	Site visit plan.
I5	Updated list of Core Documents.
I6	Blind Pond Farm Officer Report 19/03437/FUL delegated decision 18/02/2020.
I7	Amended plans plot 17: PL-16- A3, PL-17 A3- dated February 2020
I8	Photographs provided by Mr Barrington.
I9	Landscape Sensitivity Study to Residential Development in the Borough of Milton Keynes and Adjoining Areas: Milton Keynes Council, October 2016.
I10	Site photos: Land north of Blind Pond Lane (Blind Pond Farm 2) Ref. 19/03437/FUL provided by the appellant.
I11	Accommodation schedule with drawing numbers/ core document references.
I12	Updated list of application drawings numbers and documents.
I13	Further photographs provided by Mr Barrington.

Appendix 5 Extracts from Appeal Decision Letter Ref: APP/E2001/W/18/3207411, Land to the south of Williamsfield Road, Hutton Cranswick

A5.1 Relevant passages highlighted. Full appeal decision can be accessed here:

A5.2 <https://acp.planninginspectorate.gov.uk/ViewDocument.aspx?fileid=3270243>

Q



Appeal Decision

Inquiry held on 2 - 9 April 2019

Site visit made on 8 April 2019

by Phillip J G Ware BSc DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th June 2019

Appeal Ref: APP/E2001/W/18/3207411

Land to the south of Williamsfield Road, Hutton Cranswick YO25 9BH

- 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 Williamsfield Developments Ltd against the decision of East Riding of Yorkshire Council.
 - The application Ref DC/17/03880/STOUT/STRAT, dated 14 November 2017, was refused by notice dated 26 January 2018.
 - The development proposed is the erection of up to 67 dwellings.
-

Decision

1. The appeal is dismissed.

Procedural matters

2. The proposal is in outline, with all matters reserved aside from the access to the site.
3. A Unilateral Planning Obligation¹ was submitted in draft form, discussed at the Inquiry and subsequently finalised. I have taken it into account.

Main Issues

4. Two matters cited in the reasons for refusal were not subsequently pursued by the Council². These relate to issues concerning isolated dwellings in the countryside and the proximity of a public right of way (no.14).
5. The proposed access from the north, through a development under construction, has not been the subject of objection by the Council or the local highway authority. Residents' concerns related to highway and drainage matters were comprehensively addressed in the Transport and Drainage Assessments³, and I have no reason to disagree with the conclusions therein.
6. With that background, there are two main issues in this appeal:

¹ Document 9

² Statement of Common Ground Section 7

³ Statement of Common Ground paragraphs 6.2 – 6.5

The provision of general needs and affordable housing

21. An initial point is that the provision of general needs housing and a policy compliant level of affordable housing is to be welcomed in terms of local and national policies aimed at boosting the supply of housing. This is a significant benefit of the proposal.
22. However the importance of the extent of the housing land supply relates particularly to paragraph 11 of the National Planning Policy Framework (the Framework). The Council's claimed ability to demonstrate a five-year supply of deliverable housing is disputed by the appellants. The primary consequence of any failure to maintain this level of supply is to render policies for the provision of housing out-of-date in accordance with the Framework, and thereby trigger the so-called 'tilted balance'.
23. The parties agreed a range of matters, most particularly the relevant requirement figure, gross versus net completions, the current shortfall and the need to make up the deficit within 5 years and the use of a 5% buffer. The key issue between the parties is whether the Council's supply figures are reasonable in the light of the Framework and Planning Policy Guidance (PPG). This dispute focusses around whether a number of the Council's claimed supply sites are deliverable. The appellants confirmed at the Inquiry that this was their underlying concern.
24. During the course of the Inquiry, and particularly during the round table session on housing land supply, the parties moved closer together – but they remained just below and above the 5 year supply point at 4.5 and 5.1 (rounded figures) respectively⁸. The issue relates not so much to the details of individual sites but to a number of general criticisms by the appellants of the Council's overall approach. I will deal with these in turn below.
25. Before turning to these general criticisms, it is important to note that the housing land supply position has been considered three times in the relatively recent past – as part of the local plan examination and in relation to the two appeals concerning Williamsfield Road Phases 1 and 2⁹. In each case, although I do not have details of the material before those Inspectors, it was concluded that the Council had a five year supply. In addition, it is noteworthy that the appellant did not suggest that, even were there to be a shortfall in housing land supply, that would in itself justify allowing the appeal in the event of a conflict with locational and landscape policies.
26. Although I have sufficient material to come to a conclusion on the general extent of the supply, the proper forum for determining the precise position is as part of the development plan process. In that forum a full range of all interested parties' views can be taken into account, which I cannot replicate in the context of a s78 appeal with inevitably more limited evidence.
27. I will now turn to the general themes related to the appellant's criticisms of the Council's position, as discussed at the Inquiry. These can be summarised as follows:

⁸ The appellant's position is that, setting the bar as per the Council's highest case, there is still a shortfall in the 5 year supply – 4.9 years

⁹ As set out at Council's closing Paragraph 29.

- The authority did not seek any formal Statements of Common Ground (SOCG) between those in control/with knowledge of the sites and the Council. Instead there was, in most instances, an ostensibly less formal exchange of correspondence and the completion of a proforma. The appellant considers that this approach reduces the reliability of the results. Although PPG refers to the use of a SOCG, this approach is not mandatory and other mechanisms are not discouraged. I fail to see any fundamental difference between the way the Council has approached the collation of information and a slightly more formal SOCG. The site specific evidence was produced using a robust methodology and the Council, in a number of instances, did not automatically accept the results of the exercise at face value – for example in some cases the authority assumed a longer lead in time. Although the Council could have adopted the SOCG approach, it is far from clear that this would have resulted in significantly different results.
- The appellant's position is that the Council did not adopt an approach to deliverability in line with the definition in the Glossary to the Framework. This states that (amongst other matters) for housing sites to be considered deliverable, they 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 includes the need for clear evidence. The 2019 Framework has 'raised the bar' related to deliverability in comparison with earlier Framework iterations and other national advice. However there is no definition of what constitutes 'clear evidence' of future delivery and, as the appellant accepted, there is no defined minimum criterion. In my view, the appellant – in using a 'highly likely' test - has raised the bar significantly above that advised in national policy and guidance. This would make it difficult for any recently adopted plan to survive an appeal against a s78 refusal based on five year housing land supply. In contrast, I find that the Council's approach is soundly based on national policy and guidance.
- The appellants criticised some of the Council's supply sites on the basis that they were not under the control of a housebuilder, but of a land promoter. I appreciate that this puts the sites one step further away from actual development, but it is clearly in land promoters' interests to sell rapidly to housebuilders. Their business model would require this, as without a rapid sale they cannot obtain a speedy return on their investment. The involvement of promoters is recognised in national guidance, and there is no implication that such sites are less likely to come forward during the first five year period. The fact that the responses to the Council's enquiries came from different participants in the process does not necessarily lead to an automatic reduction in the weight to be attributed to some replies.
- In some cases there was no response to the Council's enquiry as to potential delivery. In such cases the authority used the judgement and expertise of its officers to assess the likelihood of delivery, using a careful methodology. It is noteworthy that the Council did not include all such 'nil-return' sites.

28. For these reasons, I find the Council's approach to the assessment of the supply side of the equation to be robust and in line with national policy and

guidance. Under these circumstances, there is no need to interrogate the sites in individual detail as the criticism of the inclusion of contested sites fall very largely within the ambit of the above matters. On the evidence before me, I conclude that the Council has a five year supply of deliverable housing sites, and the 'tilted balance' does not apply.

29. In conclusion on the first main issue, the site is not suitable for development, in the light of the locational policies in the development plan and other material considerations, including the housing land supply position.

The effect on the character and appearance of the area

30. Although national policy recognises the intrinsic character and beauty of the countryside, the appeal site and its surroundings are not a designated or valued landscape in terms of the Framework. The land to the east of the site is Hutton Cranswick Meadow, which is a candidate local wildlife site.
31. The appellant accepted that the proposal conflicts with LPSD policies ENV1 and ENV2, and it is common ground that the difference between the parties centres on the extent of the conflict and the weight to be accorded to it. There are two landscape character areas surrounding Hutton Cranswick¹⁰, but a more localised assessment is necessary in this case.
32. The site is a long and relatively narrow finger of land projecting south of the existing Phase 1 and 2 developments into open countryside. To the east, west and south of the appeal site are open fields, whose generally long narrow form has a degree of local significance, as was discussed at the Inquiry. Beyond the immediate fields there are some housing areas. This is especially the case in relation to Beech View and Laburnum Avenue, to the west beyond the railway line, within an area which apparently grew up around a historic link to a manor. However, from the evidence and from my site visit, it is clear that there is a considerable degree of separation between this part of the existing settlement and the appeal site, even allowing for the occasional intrusion of passing trains.
33. On that basis, the proposal would not relate well to the existing settlement pattern but would represent an extension of the settlement into largely open and undeveloped countryside. The development would impact on several key characteristics of those fields. In my opinion, the area has a high-medium sensitivity to change, and the proposal would result in a high-medium magnitude of change. Overall I agree with the Council's assessment that the effect would be substantial adverse.
34. I am conscious that the appeal decisions which allowed Phases 1 and 2 to the north dealt with the 'rounding off' of the existing settlement. However this is not an argument which can be applied to the appeal proposal due to the lack of any significant relationship with existing development. Nor would the appeal proposal appear as a logical continuation of Phase 2, as there would be an intervening public open space which would further emphasise the disconnect between the appeal scheme and existing development.
35. In coming to my conclusions on landscape impact, I have carefully considered the differences between the professional landscape witnesses on a range of

¹⁰ LCT 16 and LCT 16E

Planning balance and conclusion

40. For the reasons set out above, the proposal conflicts with the locational and landscape policies in the development plan. The evidence before me leads to the conclusion that the authority has a five year housing land supply, and therefore as the proposal conflicts with an up-to-date development plan permission should not usually be granted.
41. The material considerations in this case which weigh in favour of the grant of permission are the provision of housing, especially affordable housing, along with the very limited benefit of some other elements included in the obligation. However these matters taken together do not come close to outweighing the policy and landscape harms. The fact that the site is agreed to be in a sustainable location in relation to the provision of facilities and related to accessibility is welcomed, but this is essentially neutral in the planning balance and could be repeated in other sites within and close to the settlement.
42. For the reasons given above I conclude that the appeal should be dismissed.

P. J. G. Ware

Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:	
Mr C Banner QC and Mr M Henderson of Counsel	Instructed by the Head of Legal Services
They called	
Mr W Blackledge BA DIPLA CMLI	Managing Director, 2B Landscape Consultancy Ltd
Mr O Robinson MA MRTPI	Principal Planning Officer
Ms S Hunt BA(Hons) MA MRTPI	Planning (Development Management)

FOR THE APPELLANT:	
Mr A Williamson	Consultant, Walker Morris solicitors, instructed by Mr G Whiteford (Walker Morris)
He called	
Mr M Steel BA DipLD CMLI	Mark Steele Consultants Ltd
Mr R Boulton BSc (Hons) MRTPI	Senior Director, DLP Planning Ltd
Mr S Sadler BA(Hons) TP MRTPI	Head of Planning, Walker Morris Planning Consultancy

DOCUMENTS

1	Appeal at Bures Hamlet (APP/Z1510/W/18/3207509)
2	Appeal at Ginton (APP/J0540/W/18/3204584)
3	Landscape context plan
4	Timetable for the preparation of Development Plan Documents
5	Appeal at Station Road, Hutton Cranswick (APP/E2001/W/18/3218477)
6	Consultation on Annual Position Statement 2018 draft methodology
7	Closing statement on behalf of the Council
8	Closing statement on behalf of the appellant
9	Planning Obligation dated 12 April 2019

Appendix 6 Extracts from Appeal Decision Letter Ref APP/Y0435/W/17/3169314, Land to the East of Newport Road and to the East and West of Cranfield Road, Woburn Sands

A6.1 Relevant passages highlighted. Full appeal decision can be accessed here:

A6.2 <https://acp.planninginspectorate.gov.uk/ViewDocument.aspx?fileid=3801716>

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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.

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.

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

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

Appendix 7 Extracts from Appeal Decision Letter Ref: APP/P1425/W/15/3119171, Land at Mitchelswood Farm, Allington Road, Newick

A7.1 Relevant passages highlighted. Full appeal decision can be accessed here:

A7.2 <https://acp.planninginspectorate.gov.uk/ViewDocument.aspx?fileid=4115487>

Q



Ministry of Housing,
Communities &
Local Government

Joseph Carr
David Lock Associates Ltd
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Central Milton Keynes
MK9 3BP

Our ref: APP/P1425/W/15/3119171
Your ref:

16 February 2021

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY DLA DELIVERY LTD
LAND AT MITCHELSWOOD FARM, ALLINGTON ROAD, NEWICK, EAST SUSSEX BN8
4NH
APPLICATION REF: LW/14/0703**

1. I am directed by the Secretary of State to say that consideration has been given to the report of John Felgate BA(Hons) MA MRTPI, who held a public local inquiry on the basis of a written format which closed on 10 August 2020 into your client's appeal against the decision of Lewes District Council to refuse your client's application for outline planning permission for up to 50 residential dwellings (including affordable housing), open space and landscaping, new vehicular and pedestrian accesses, and car parking, in accordance with application Ref. LW/14/0703, dated 9 September 2014.
2. In May 2016, 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 by way of his letter dated 23 November 2016. That decision was challenged by way of an application to the High Court and was subsequently quashed by order of the Court dated 4 August 2017. 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 23 November 2016 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, except where stated, and agrees with his recommendation. He has decided to dismiss the appeal and refuse 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

6. As set out in IR2.9, the Secretary of State has considered the scheme on the basis of the amendments made at the first inquiry. He agrees with the Inspector for the reasons set out in IR2.11 and Inquiry Document PINS-12 that the inclusion of an element of self-build or custom-build housing in the proposed development was admissible, and that no additional consultation was necessary. The Secretary of State does not therefore consider that these issues raise any matters that would require him to refer back to the parties for further representations prior to reaching his decision on this appeal, and he is satisfied that no interests have thereby been prejudiced.

Matters arising since the close of the inquiry

7. The Secretary of State has considered the post-inquiry exchange of correspondence mentioned at IR2.5. On 19 January 2021, the Housing Delivery Test: 2020 measurement was published. The measurement for Lewes DC changed from 93% (action plan) to 100% (no action needed). The Secretary of State is satisfied that neither of these issues affect his decision, and no other new issues have been raised which warrant further investigation or necessitate additional referrals back to parties.

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 the Lewes District Local Plan (LLP) Part 1: Joint Core Strategy (adopted May 2016), Part 2: Site Allocations & Development Management Policies (adopted February 2020) and the Policies Map, together with the Newick Neighbourhood Plan (made July 2015). The Secretary of State considers that relevant development plan policies include those set out at IR3.3-3.14.
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'), as well as the East Sussex County Landscape Assessment (2016), and the National Character Area 121 Low Weald (2013).

Main issues

Location of housing

11. For the reasons given in IR9.3-9.20, the Secretary of State agrees with the Inspector that in terms of policies relating to the location of new housing, the appeal proposal would involve a clear and direct conflict with LLP2 Policy DM1 (IR9.8). He further finds that, while there are no specific conflicts with NNP policies in terms of housing location policies, the lack of positive accord with the NNP's general aims and strategy (IR9.19 and IR11.2) carries limited weight against the scheme. He agrees for the reasons set out in IR11.3 that Policy DM1 should carry moderate weight.

Effects on the character and appearance of the landscape

12. For the reasons given in IR9.21-9.28, the Secretary of State agrees with the Inspector that the landscape of this part of the Low Weald is one of relatively high quality, justifying

some degree of protection (IR9.24), that the landscape in the vicinity of the appeal site possesses some local significance in terms of its value (IR9.26), and that the existing landscape around the appeal site is one of relatively high quality, and of some local value to the district (IR9.28).

13. With regard to the appeal site itself, the Secretary of State agrees with the Inspector for the reasons given in IR9.29-9.37 that while northern part of the site plays only a limited role in the local landscape, and as such, its value to the setting of the village is equally limited (IR9.29), in all other respects, the appeal site, and in particular its central and southern sections, forms an integral part of the attractive and high-quality Low Weald landscape, and that as such, these parts of the site seem highly sensitive to built development (IR9.37).
14. For the reasons given in IR9.38-9.45, the Secretary of State agrees with the Inspector that the development's effect would be to cause substantial visual harm to the character and appearance of the landscape and village setting. He attaches substantial weight to this harm (IR9.85). He also finds that the proposal would be in conflict with national policy in the Framework (NPPF 170) in terms failing to recognise the intrinsic character and beauty of the countryside, and in the loss of woodland. He considers this should attract moderate weight.
15. With regard to the other matters relating to landscape and visual impact, the Secretary of State agrees with the Inspector for the reasons given in IR9.46-9.58 that they do not change or add anything of significance to his conclusions with regard to the present appeal proposal in terms of its effects on the character and appearance of the landscape and village setting (IR9.52). He agrees with the Inspector that the proposed development would fail to conserve or enhance the District's natural environment or its distinctive landscape qualities, and that it would fail to respect the landscape's character, or to blend well with the local built environment (IR9.53-54). He further agrees in IR9.58 that the proposed development would have a seriously damaging impact on the character and appearance of the local landscape, resulting in conflict with Policies CP10(1) and EN1.

Housing

16. For the reasons given in IR9.59-9.80, the Secretary of State agrees with the Inspector that the Council has been unable to show a 5-year supply of deliverable sites, and that this triggers the tilted balance under NPPF paragraph 11(d) (IR9.80). In reaching his conclusions on housing, the Secretary of State has taken into account that the District's housing policies leave a sizeable part of the OAN unmet, and that it would provide opportunities for self or custom-build housing (IR9.81-9.84, IR9.88-9.91 and IR11.4).
17. The Secretary of State has also taken into account the Inspector's assessment of the need for and provision of affordable housing at IR9.85-9.87 and IR11.6. However, as the Inspector notes in IR9.86, none of the circumstances set out in IR9.85 is particularly unusual, and the amount of affordable housing proposed is what would be expected from any other development of the same size; i.e. it is no more than required by policy. He agrees that in the light of the genuine need for affordable housing, the provision of 20 affordable units is a benefit of the scheme, and considers that overall the housing benefits of the appeal scheme command significant weight.

Effects on Ashdown Forest

18. The Secretary of State notes that the August 2020 Unilateral Undertaking precludes any residential development within the part of the site that falls within the 7km Zol (IR9.93). For the reasons given in IR9.92-9.117, the Secretary of State agrees with the Inspector that the proposed development, either alone or in combination with any other plans or projects, would not be likely to have any significant effect on the Ashdown Forest SPA or SAC, or on the conservation objectives for either of those areas or their qualifying features and species. The Secretary of State therefore concludes that in this respect the scheme would not conflict with any development plan policies, and that none of the offered contributions to SANG or SAMM are necessary (IR9.116-117).

Other matters

19. The Secretary of State agrees with the Inspector for the reasons given in IR9.118-9.120 that the economic benefits of the scheme attract limited weight (IR9.118), the play area attracts modest weight in favour (IR9.119) and the proposed open space little weight (9.120). He further agrees for the reasons set out in IR9.121-126, that there is no basis on which the possibility of a biodiversity gain can be given weight (IR9.121), that the appeal site is not unsustainable in terms of its accessibility to everyday services and facilities (IR9.122), and that there is no substantiated evidence to support objection on the basis of pressures on schools, health facilities and other local services (IR9.123), highway safety and traffic (IR9.124). He considers that external lighting or construction traffic could be controlled by condition (IR9.126).

Planning conditions

20. The Secretary of State has given consideration to the Inspector's analysis at IR10.1-10.13, 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

21. The Secretary of State has had regard to the Inspector's analysis at IR2.14-2.20, IR9.91 and IR9.119-120, the Section 106 agreement dated 11 August 2020, the Unilateral Undertaking dated 16 August 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 IR2.16 that, with the exception of the contributions to suitable alternative natural greenspace (SANG), strategic access management and monitoring (SAMM), the agreement and undertaking comply 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 agreement and undertaking overcome his reasons for dismissing this appeal and refusing planning permission.

22. For the reasons set out in IR2.17, and given his findings in paragraph 18 of this letter, the Secretary of State has found that none of the offered contributions to SANG or SAMM are necessary. He has therefore not taken them into account in reaching his conclusions.

Planning balance and overall conclusion

23. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with Policies DM1, CP10(1), and EN1 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.
24. As the Secretary of State has concluded that the authority is unable to demonstrate a five year housing land supply, paragraph 11(d) of the Framework indicates that planning permission should be granted unless: (i) the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or (ii) any adverse impacts of doing so significantly and demonstrably outweigh the benefits, when assessed against policies in the Framework taken as a whole.
25. The proposed development would have a seriously damaging impact on the character and appearance of the local landscape, and there would be substantial visual harm to the character and appearance of the landscape and village setting. This harm carries substantial weight. The conflict with national policy in the Framework (NPPF 170) in terms of failing to recognise the intrinsic character and beauty of the countryside, and in the loss of woodland carries moderate weight, and the lack of positive accordance with the NNP's general aims and strategy carries limited weight against the scheme.
26. The housing benefits of the scheme carry significant weight, the economic benefits attract limited weight, and the play area attracts modest weight, and the proposed open space little weight.
27. The Secretary of State considers that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against policies in the Framework taken as a whole. Overall, he considers that the material considerations in this case indicate a decision in line with the development plan – i.e. a refusal of permission.
28. The Secretary of State therefore concludes that the appeal should be dismissed and planning permission refused.

Formal decision

29. 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 up to 50 residential dwellings (including affordable housing), open space and landscaping, new vehicular and pedestrian accesses, and car parking, in accordance with application Ref. LW/14/0703, dated 9 September 2014.

Right to challenge the decision

30. 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.

31. A copy of this letter has been sent to Lewes District Council and to Mr Patrick Cumberlege and Baroness Julia Cumberlege, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Andrew Lynch

Andrew Lynch

This decision was made by the Secretary of State and signed on his behalf



Report to the Secretary of State

by **John Felgate** BA(Hons) MA MRTPI
an Inspector appointed by the Secretary of State

Date 17th November 2020

TOWN & COUNTRY PLANNING ACT 1990

LEWES DISTRICT COUNCIL

APPEAL BY DLA DELIVERY LIMITED

PROPOSED DEVELOPMENT AT

MITCHELSWOOD FARM, ALLINGTON ROAD, NEWICK

- 9.54. For the same reasons, I also find that it would fail to respect the landscape's character, or to blend well with the local built environment, as sought by NNP Policy EN1.
- 9.55. Other than with regard to the HLS position, there is no evidence to suggest that either of these policies is out of date or inconsistent with the NPPF.

Differences from first Inspector's findings on landscape matters

- 9.56. My findings and conclusions on these matters relating to landscape and visual impact differ from those of Inspector Birkinshaw. On one particular point, the difference between us relates to a matter of fact, in that Mr Birkinshaw considered that the site did not fall within the Low Weald³⁴⁵, whereas I have found that it does, based on the NCA. All other differences between us are ones of opinion or interpretation.
- 9.57. In arriving at my findings, as indicated earlier, I have had the benefit of new evidence which was not available to the first inquiry. In particular, this includes the evidence of Mr Russell-Vick, which highlights some matters to a greater degree than previously, including the differences in character between the various parts of the site, the landscape value of the woodland, and the effects on views from the southeast. I have also had the benefit of the appellants' correction to the photomontage. In all cases, the conclusions that I have drawn from the evidence are my own.

Conclusion on effects on character and appearance

- 9.58. I conclude that the proposed development would have a seriously damaging impact on the character and appearance of the local landscape, resulting in conflict with Policies CP10(1) and EN1.

Five-year housing land supply

Housing requirement

- 9.59. There is no dispute that the relevant five-year period is 1 April 2019 to 31 March 2024. There is also no disagreement as to the buffer or the windfall allowance. Based on the 2019 Position Statement, the housing requirement for this period is 1,750 units [5.24, 6.25].
- 9.60. The Council's claimed supply of 1,958 units, or 5.59 years, would mean a surplus of 208 units.

Inclusion of updated information

- 9.61. To ensure consistency of approach, it seems to me that the assessment should be based on the 2019 Position Statement as far as possible. Where the position has changed, or updated information is available that sheds new light on the assumptions about sites that are already included in the assessment, then I see no reason why that information should not be taken into account. However, this cannot in my view extend to the introduction of new sites that were not included in the 2019 supply [5.26, 6.26, 6.27].

³⁴⁵ RD 2.6: First Inspector's report, para 179

- 9.62. I appreciate that where new sites have come forward since April 2019, they may be capable of contributing to housing delivery within the period under consideration, to March 2024. But that possibility is taken into account by way of the windfall allowance. In any event, the better way to deal with new sites in my view is by including them in the next 5-year assessment, based on the position at 1 April 2020 or some subsequent date.
- 9.63. I have therefore confined my consideration primarily to the Council's 'Scenario 1', whilst also having regard for the latest available information about the disputed sites, as contained in the evidence from both sides.

Disputed sites

- 9.64. With regard to the Reprodex House site [5.27, 6.34], although the site benefits from a resolution to grant outline permission, subject to the necessary legal agreement, that resolution appears to date from April 2017. As at the close of the present inquiry, the negotiations had not been completed and no permission had been granted. The Council remains optimistic for a resolution in the near future, but no foundation for that view is evident. The scheme is said to involve mixed uses and the demolition of a large warehouse, which suggests some degree of complexity. No housebuilder appears to be involved at this stage. Given the length of the delay that has already occurred, the evidence before me does not provide any apparent basis for confidence that the development will be able to proceed in its present form. There is therefore not the clear evidence that the NPPF requires of any realistic prospect of housing completions within the relevant period. I therefore consider that the site cannot currently be counted as deliverable, and for the purposes of this appeal, these 80 units should be discounted.
- 9.65. The Newhaven Marina site [5.27, 6.35] has a live planning application which, at the time of the inquiry remained under consideration. The principle of development has been established through allocations in the 2003 Local Plan and LLP2, and through an earlier planning permission in the mid-2000's. Clearly though, a great deal of time has passed since then. A local developer is now said to be involved, but the site is evidently not an easy one. From the evidence before me, the current scheme is for a mix of uses that includes a hotel, offices and retail as well as marina facilities and 259 apartments. There are existing uses on the site which are to be accommodated and relocated. In view of the coastal location, there are also a range of technical and environmental issues. Overall it seems to me that the prospects for achieving any housing on this site, within the 5-year period, currently rest on being able to deliver a more than usually complex scheme, within a relatively short timescale, on a site with a history of failure. In this context, the evidence before me does not amount to clear evidence that this prospect is realistic. I therefore again find that the site cannot be considered deliverable, and that the 75 units that are included in the Council's 5-year supply should be discounted.
- 9.66. The Woods Fruit Farm site [5.27, 6.34] is allocated for 38 dwellings in the NNP, and is in the hands of an experienced local housebuilder. A scheme is currently being pursued through the planning process, with one application subject to appeal, and a duplicate under consideration by the Council. There

are said to be no technical objections. However, these current proposals are for a substantially larger development than that proposed in the NPP, on greenfield land that extends well beyond the allocated land. There appears to be no current proposal that corresponds to the 38 dwellings that the Council relies on in its 5-year supply statement. It is possible that the appeal may be allowed, but no reliance can be placed on that possibility. Alternatively it is possible that a further application may be made which accords more closely with the NNP allocation. But that is a matter of conjecture. As things stand, there is no evidence of progress on any scheme that is supported by current policies. In the absence of such a scheme, or a planning permission, there is no clear evidence of a realistic prospect that any dwellings will be delivered within the relevant period. These 38 units should therefore be discounted.

- 9.67. With regard to the Springfield Industrial Estate [5.27, 6.34], although the site has previously had an outline permission for residential development, that permission expired over 18 months ago. It is also over a year since pre-application discussions were held regarding a new scheme. In the light of this apparent lack of progress, the fact that the site is allocated in a neighbourhood plan, and is in the hands of an experienced social housing developer, is not sufficient to demonstrate a realistic prospect that completions will be achieved within the 5 years. The site therefore cannot be counted as deliverable. This results in the loss of a further 30 units.
- 9.68. The Harbour Heights site [5.28, 6.36] has been allocated for development since the 2003 Local Plan. A hybrid application was submitted in May 2019, following extensive site assessment work. However, the application was subsequently withdrawn, and no further application appears to have been received. The withdrawn scheme was for a mixed-use development including 431 residential units. Relocation of existing uses will be needed. The Position Statement anticipates 125 units within the 5-year period, but the Council accepts that this should now be reduced to 75. Based on the evidence presented, the scheme appears to be large and complex, and the site is another that has failed to deliver over many years. Although some progress has been made, this does not amount to clear evidence that any units will be delivered within the relevant period. Nevertheless, in the present appeal, the appellants have sought only a reduction of the figure to 35 units, rather than the deletion of the site altogether. In the circumstances, I see no basis for assuming any figure other than this. For the purposes of my calculations therefore, I propose to reduce the expected delivery for this site to 35 units, resulting in the loss of a further 90 units compared to the Position Statement.
- 9.69. The Nuggets site [5.28, 6.36] had a resolution to grant in June 2019, for 22 units, but negotiations appear to have stalled. There is as yet no planning permission, and no sign that one will be forthcoming in the near future. Given the stage reached, there is a reasonable prospect that these issues can be resolved in due course, but based on the evidence available, this seems most likely to be towards the end of the 5-year period. I agree with the appellants that it would be unrealistic to expect more than about one year's completions within that time, amounting to 10 units. This is a reduction of 12 units from the Council's figure.

- 9.70. Of the remaining disputed sites [5.27, 6.34, 6.35], most are relatively small. Given my findings on the sites discussed above, it is not necessary for me to examine these smaller sites in any great detail. Neaves House has a long-standing resolution in its favour, since April 2019. But the allocation is for affordable housing only, whereas the present scheme is for a mix of tenures. There is no evidence that this scheme has a realistic prospect that that any housing will be delivered. I have therefore discounted the site, with the loss of these 6 units. The land at South of Valley Road has been allocated since 2003, and an application has been undetermined since March 2019. The problem appears to relate to the ownership of the land required for access, and there is no clear evidence that this is likely to be resolved in the near future. These 9 units are therefore discounted. The Strawlands site is allocated, but an outline application has remained undetermined since April 2019. No developer appears to be involved. There is no clear evidence of deliverability, and I have discounted these 12 further units. The Valley Road 1&2 site is not allocated, and as yet no application of any kind appears to have been made. There is no evidence to support its inclusion in the supply, and I have discounted the site, with the loss of 6 units. At Elm Court, the Council appears to have accepted that the site is no longer deliverable, and I agree. This results in the loss of a further 9 units. In total, the deletion of these five small sites reduces the supply by 42 units.
- 9.71. The Parker Pens and Newlands School sites [5.28, 6.36], for 145 and 150 units, both have full permission, and there is no clear evidence that they will not be delivered. The lead times and build rates for these sites appear realistic. I therefore make no adjustments in respect of these two sites.
- 9.72. Overall, the net result from these considerations is a deduction of 367 units from the Council's supply figure. This reduces the deliverable supply to 1,591 units, or 4.5 years.

Liverpool or Sedgfield

- 9.73. The PPG makes it clear that the question of how a past shortfall should be made up is to be dealt with in the plan-making process. In the present case, the Liverpool method was accepted by the Inspectors at the LLP1 and LLP2 examinations, and I see no exceptional need for this to be revisited for the purposes of this appeal [5.25,6.28]. In any event, this would not change my finding, that the Council has not demonstrated a 5-year supply.

Covid-19 impact

- 9.74. I appreciate that in the early days of the lockdown period, construction was halted on many sites, and transactions were slowed or paused. Subsequently, construction has resumed, and the housing market has recovered to some extent, but prospects for the immediate future are uncertain. However, there is no evidence before me to suggest that any sites that were previously deliverable have become undeliverable. Nor is there any site-specific evidence as to the effects on delivery rates on particular sites. In this respect the situation in the present appeal appears similar to that in the Farnham case, where the SoS declined to make any across-the-board adjustment [5.30, 6.32].

- 9.75. In any event, a general adjustment would not change the position with regard to my finding on the 5-year supply, as set out above. I therefore propose to make no such adjustment in this case.

Scenarios 2 and 3

- 9.76. For the reasons already explained [9.61 – 9.63], I consider the most appropriate method of assessing the 5-year supply for the purposes of this appeal to be based on the Council's Scenario 1 [6.25]. However, in the light of my findings on the disputed sites, there would still not be a 5-year supply, on the basis of either Scenario 2 or Scenario 3 [6.26, 6.27]. It is therefore unnecessary for me to explore these alternative approaches any further.

Timing of housing delivery at the appeal site

- 9.77. Although the appeal site is said to have no physical or other impediments to early development, there are reasonable grounds for doubt in that regard [5.32, 6.37, 7.7]. The changes made to the site's boundaries in 2016 have left it awkwardly-shaped, and difficult to develop efficiently. It is not known whether the land deleted from the site at that time might eventually become available for development again. The exclusion of the appeal site's two corner areas, through the undertaking, appears as something of a temporary expedient. There is nothing to stop further alternatives to this arrangement from being explored in any future application. The reasons for the exclusion of the 'blue land' from the present application are unknown, but there is nothing to suggest that that land would not be potentially available to assist in delivery of a more comprehensive scheme.
- 9.78. From a developer's or landowner's perspective therefore, as well as from a planning point of view, a permission based on the present appeal proposal would potentially fail to make the best or most economic use of the land. Consequently, in the event of this appeal being allowed, it seems to me quite probable that some efforts would first be made to resolve these outstanding issues, potentially involving further land assembly negotiations as well as further planning applications, rather than proceeding to the earliest possible commencement.
- 9.79. For these reasons, I consider there is a degree of uncertainty as to whether the development now proposed would be likely to contribute to the housing supply within the period of the present 5-year supply calculation, or to what extent. But equally, there is no clear evidence that it could not. In any event, the site would be able to contribute in the medium or longer term.

Conclusions on the 5-year supply

- 9.80. I conclude that the Council has been unable to show a 5-year supply of deliverable sites. As a result, the potential benefits of providing 50 dwellings through the appeal scheme command significant weight. Although there is uncertainty as to the timing of implementation, to my mind this does not significantly reduce the weight that attaches to the potential delivery of housing on the site, given the proven need. In any event, the lack of a 5-year supply triggers the tilted balance under NPPF paragraph 11(d).

Other matters relating to housing

ANNEX 1: MAIN CONTRIBUTORS IN RELATION TO THE SECOND INQUIRY

MAIN PARTIES

FOR THE LOCAL PLANNING AUTHORITY:

Robert Williams, of Counsel

He called:

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BA MRTPI

Philip Russell-Vick

DipLA CMLI

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FOR THE APPELLANT:

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Heather Sargent, of Counsel

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OTHER RESPONDENTS

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Trevor Burgess

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Malcolm McDonnell

Rebecca Pearson

Rich Allum

Sarnia Armitage

Philip Beck

Denise Carter

Newick Parish Council

Newick Village Society

CPRE Sussex

The Ramblers

Natural England