

LAND AT NEWGATE LANE (NORTH) AND LAND AT NEWGATE LANE (SOUTH), FAREHAM

PROOF OF EVIDENCE ON HOUSING NEED AND SUPPLY MATTERS

ON BEHALF OF FAREHAM LAND LP AND BARGATE HOMES LTD

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1. BACKGROUND

- 1.1 My name is Neil Tiley. I am an associate member of the Royal Town Planning Institute and have worked in the private sector for over six years. I currently hold the position of Director having previously been an Associate Director and before that a Principal Planner at Pegasus Group.
- 1.2 Prior to this I was employed in Local Government for 11 years, including as a Planning Manager at Wiltshire Council for 5 years; as a Senior Planner at Wiltshire County Council for 2 years; as the Demographer at Wiltshire County Council for 2 years; and as a Senior Research Assistant responsible for monitoring and analysing housing completions for 2 years.
- 1.3 I have a wealth of experience in assessing housing land supply, having been responsible for the production of such assessments and acting as an expert witness at the majority of housing land supply appeals in Wiltshire over the period 2009 to 2014. I have continued to regularly act as an expert witness dealing specifically with housing need and supply matters for Pegasus Group.
- 1.4 I also have significant experience in household projections from my time as a Demographer and having had responsibility for the calculation of the objectively assessed need in Wiltshire.
- 1.5 The evidence which I have prepared and provide for these appeals (APP/A1720/W/20/3252180 and APP/A1720/W/20/3252185) is true and has been prepared and is given in accordance with the guidance of my professional institution and I confirm that the opinions expressed are my true and professional opinions.

2. INTRODUCTION

- 2.1 This Proof of Evidence addresses the housing land supply position of Fareham Borough Council in accordance with the current NPPF¹.
- 2.2 Whilst the Council accepts that it is unable to demonstrate a five-year land supply, it has been established in case law that the extent of a shortfall and the period over which this is likely to persist may be material to the weight afforded to policies and to the provision of housing². I therefore address these factors as far as is possible based on the available evidence.

¹ Published on 24th July 2018 and subsequently revised on 19th February 2019

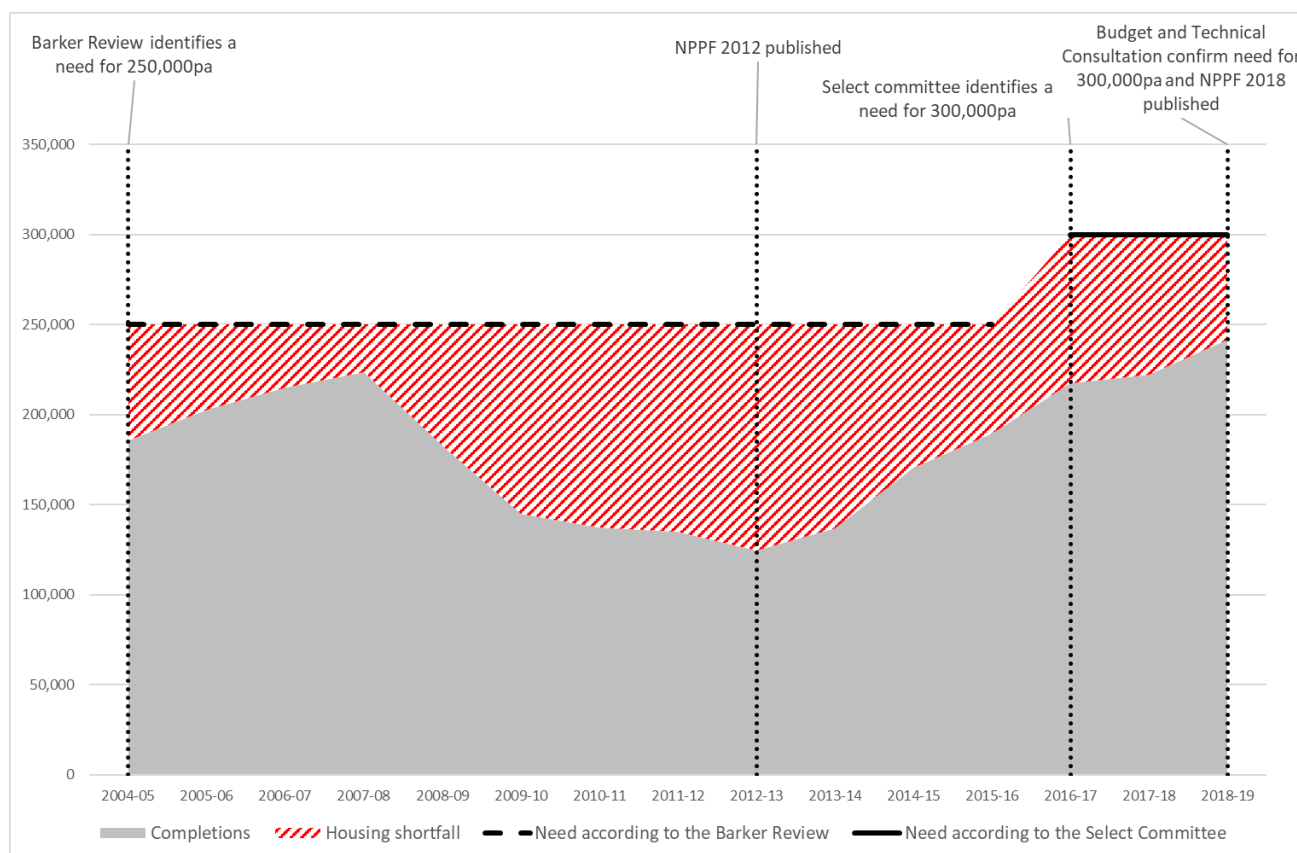
² See for example, paragraph 60 of the High Court Judgment of *Phides Estates (Overseas) Limited vs the Secretary of State for Communities and Local Government et al [2015] EWHC 827 (Admin)* (CDK.1); and paragraph 28 of the High Court Judgment of *Shropshire Council vs the Secretary of State for Communities and Local Government et al [2016] EWHC 2733 (Admin)* (CDK.2).

3. THE HOUSING CRISIS

The National Position

- 3.1 The national housing crisis is well documented and evidenced in a vast array of documents, including in relation to its causes, its implications and the necessary response as briefly described below.
- 3.2 The housing crisis has arisen largely as a result of the discrepancy between the number of homes built and the need.
- 3.3 The Barker Review in 2004 identified that there was a need to build circa 250,000 homes per annum to prevent spiralling house prices and a shortage of affordable homes. However, in the period 2004 to 2012, an average of only 178,000 homes per annum were built.
- 3.4 The former NPPF was then introduced in 2012 containing the Government objectives to significantly boost the supply of housing and to meet objectively assessed housing needs. However, in the period from 2012 to 2019, an average of only 187,000 homes per annum were built.
- 3.5 As a result of the continued shortfall against the need identified in the Barker Review, the Select Committee on Economic Affairs to the House of Lords identified a need to deliver 300,000 homes per annum in the Building More Homes report, July 2016 (CDD.5). This number has been confirmed as being needed by the Government in the Budget 2018, the Technical Consultation on Updates to National Planning Policy and Guidance, October 2018 (CDD.1), Planning for the Future, March 2020 (CDD.2) and the White Paper, August 2020. The balance of need and supply is presented graphically in Figure 2.1 below.

Figure 2.1 – a comparison of need and supply nationally



3.6 This demonstrates that housing supply nationally has not come close to meeting needs over the previous 15 years in any single year and also illustrates the cumulative shortfall in housing supply. Indeed, over the last 15 years there have been a total of 2,729,000 completions as compared to a need for 3,750,000 based on the need for 250,000 identified in the Barker Review. This equates to a shortfall of over a million homes in 15 years.

3.7 As housing need has significantly exceeded the supply, the greater competition for those houses that do exist has had an uplifting effect on the average market value of properties with adverse implications on the accessibility of the housing market to households. There are many statistics which demonstrate the decreasing accessibility of the market including (but not limited to):

- The lower quartile house price to lower quartile earnings ratio increased from 6.27 to 7.29 from 2004 to 2018 in England according to MHCLG;
- The median house price to median earnings ratio increased from 6.60 to 8.00 from 2004 to 2018 in England according to MHCLG;

- The average house price across the UK increased from £139,027 in 2004 to £211,792 in 2018 according to Nationwide;
- The percentage of overcrowded households has increased from 2.5% to 3.2% from 2004 to 2018 in England according to MHCLG;
- The number of concealed families has increased from 161,254 in 2001 to 275,954 in 2011 across England according to the Census; and
- The number of households living in shared dwellings has increased from 65,998 in 2001 to 77,955 in 2011 across England according to the Census.

3.8 It is clear that housing supply was not meeting housing need under the former NPPF with significant adverse effects on accessibility. These effects manifest themselves in real households facing real difficulty and often being unable to access appropriate housing.

3.9 In response, the Government published the current NPPF in 2018³. This seeks to significantly boost the supply of housing from that achieved under the former NPPF to address the under-delivery of housing and the existing backlog in housing supply through a number of mechanisms including the use of the standard method for calculating the minimum local housing need and the use of a more realistic and balanced definition of a deliverable site.

3.10 The Government has recently reconfirmed the need to deliver 300,000 homes per annum in paragraph 2.25 of the White Paper, Planning for the Future, August 2020.

³ Which was then amended to provide additional clarity in 2019.

4. POLICY CONTEXT

New National Planning Policy Framework (NPPF)

4.1 The current NPPF was published on 24th July 2018. It was then subject to further minor revisions on 19th February 2019.

4.2 The Government's imperative to significantly boost the supply of housing to address the national housing crisis which currently exists, is set out in paragraph 59 of the NPPF, which requires local planning authorities:

"To support the Government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay."
(my emphasis)

4.3 Paragraph 73 of the NPPF maintains the requirement of the former NPPF that a Council maintain an assessment of the deliverable supply with an appropriate buffer. It identifies that the five-year land supply should be assessed by reference to the adopted housing requirement where this is less than five-years old, but in other cases it should be assessed against the local housing need.

4.4 Footnote 7 identifies that policies should be considered out-of-date in circumstances including:

"...for applications involving the provision of housing... where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 73..."

4.5 The NPPF also identifies a new definition of deliverability in the Glossary, as follows:

"To be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years. In particular:

a) sites which do not involve major development and have planning permission, and all sites with detailed planning permission, should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years (e.g. they are no longer viable, there is no longer a demand for the type of units or sites have long term phasing plans).

b) where a site has outline planning permission for major development, has been allocated in a development plan, has a grant of permission in principle, or is identified on a brownfield register, it should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years.”

- 4.6 Paragraph 67 of the NPPF indicates that planning policies should identify a supply of specific, developable sites or broad locations for growth, for years 6-10 and where possible for years 11-15.

National Planning Policy Guidance (PPG)

- 4.7 The relevant sections of the PPG were updated on 13th September 2018, on 20th February 2019 and again on 22nd July 2019 to provide guidance consistent with the current NPPF. These are provided in Appendix 1.

APPENDIX 1: EXTRACTS OF THE PPG

Planning for the Future (March 2020)

- 4.8 It was announced that the standard method would be reviewed within Planning for the Future, March 2020 (CDD.2). In paragraph 10, this identified that the new approach was intended to encourage greater building within and near to urban areas and ensure that the country is planning for the delivery of 300,000 homes per year. This compares to the circa 266,000 homes identified by the current methodology⁴.

Planning for the Future and Changes to the Current Planning System (August 2020)

- 4.9 The Government has recently published two documents for consultation, namely Planning for the Future (the White Paper) and Changes to the Current Plan (CDD.3).
- 4.10 The White Paper proposes to fundamentally reform the planning system. The document remains subject to consultation at the time of writing and the required legislative reforms to enact the proposals, if these are maintained, are unlikely to have occurred by the time of this appeal. Accordingly, these proposed reforms should be afforded no weight for the purposes of this appeal, although the objectives behind the proposed reforms including to significantly boost the supply of housing and to deliver 300,000 homes per annum should be afforded due

⁴ As set out in paragraph 7 of the Technical Consultation on Updates to National Planning Policy and Guidance, October 2018 (CDD.1).

weight. Given that these objectives align with the current NPPF I consider that they should be afforded significant weight.

- 4.11 The White Paper also identifies in paragraph 3.23 that a revised NPPF will be subject to consultation in the autumn of 2020. Again, this revised NPPF will not be in place by the time that these appeals are heard and so should be afforded no weight. However, once again the objectives behind the revised NPPF may be material and I reserve the right to comment upon these as appropriate.
- 4.12 The accompanying consultation on Changes to the Current Planning System (CDD.3) proposes a number of changes to national policy and guidance which can be brought in through changes to the PPG or Written Ministerial Statements in the relatively short-term.
- 4.13 Two of the proposals within this consultation document may be material to the current appeals. The first of these is the proposal to revise the standard method as set out on pages 8 to 18 of the consultation document. The Government has identified a proposed revised standard method for calculating the local housing need⁵ which was subject to consultation until 1st October 2020. As I understand it, this proposed method is subject to widespread objections from numerous parties and the Government has committed to review the objections with the intent to seek to modify and improve the proposed method as is evident from the fact that Housing secretary, Robert Jenrick MP has identified that there is “more work to be done” on the proposed revised standard method. The Government has proceeded to pass a motion for a delay and a meaningful vote on the policy’s implementation.
- 4.14 Accordingly, I consider that the proposed revised method should be afforded at most very limited weight at present. This accords with the position of the housing minister, Christopher Pincher who has been quoted as stating:

“Until such time, all the figures that are bandied about in the media, some of which were quoted in the House today, are entirely speculative.”

- 4.15 Indeed, until such time as the PPG is revised to reflect a new method, the five-year land supply should continue to be assessed using the current method. However, it is possible that a revised standard method (taking account of the consultation responses) will be in place by the time that the appeals are

⁵ As distinct from the standard method for calculating the housing requirement proposed in the White Paper.

determined and it will then be necessary to assess the five-year land supply against the resultant figure.

- 4.16 The second proposal (Delivering First Homes⁶) which may be material relates to the proposed requirement for 25% of affordable homes to be provided as First Homes. This proposal is however beyond the scope of my evidence.

Adopted Development Plan

- 4.17 The Development Plan in Fareham Borough includes the Core Strategy (adopted August 2011), the Development Sites and Policies Plan (adopted June 2015) and the Welborne Plan (adopted June 2015).

- 4.18 Policy CS2 of the Core Strategy identifies a housing requirement for Fareham Borough for 3,729 dwellings to be provided in the Borough excluding the Strategic Development Area (SDA) in the period 2006 to 2026. Policy CS13 identifies an additional housing requirement for between 6,500 and 7,500 homes at the SDA within the plan period⁷.

- 4.19 The Development Sites and Policies Plan and Welborne Plan were examined by the same Inspector at the same time. The Inspector identifies in paragraph 44 of his Final Report on the Development Sites and Policies Plan (CDE.4) that:

“There was criticism from some representors that LP2 is not based on the 2014 Strategic Market Housing Assessment. However, it is not the role of LP2 to reassess objectively assessed need – that will be one of the tasks of the forthcoming review of the Local Plan, which will also be able to accommodate the requirements of the revised SHS (to be completed early next year).”

- 4.20 It has been established by the courts that a housing requirement must reflect not only the assessed need for housing but also any policy considerations⁸. As the Development Sites and Policies Plan did not review the objectively assessed need for housing it cannot have reviewed the housing requirement as a matter of law, although it can and has reviewed the supply necessary to meet the housing requirement of the Core Strategy.

⁶ Pages 19 to 24.

⁷ See paragraph 12 of the Core Strategy Inspectors Final Report (CDE.3).

⁸ See paragraph 37 of the High Court Judgment of *Gallagher Estates Ltd and Lioncourt Homes Ltd vs Solihull Metropolitan Borough Council* [2014] EWHC 1283 (Admin) (CDK.3).

- 4.21 The Welborne Plan similarly does not consider the need for housing and does not provide a housing requirement. Policy WEL3 identifies a capacity to deliver 6,000 homes by 2036 without any consideration of the housing needs and so similarly it does not provide a housing requirement⁹. Even if this was considered to represent a housing requirement, contrary to the interpretation of the courts, it would require the delivery of 285.7 homes per annum. Whilst in Table 10.1 a housing trajectory is set out this does not provide a housing requirement, but rather the means by which Policy WEL3 will be met.
- 4.22 Policy DSP40 of the Development Sites and Policies Plan sets out a series of criteria for how sites should be considered in the absence of a five-year land supply.

⁹ As compared to the housing requirement for between 6,500 and 7,500 by 2026 identified in Policy CS13 of the Core Strategy.

5. SUBSTANTIAL UNDER-DELIVERY

- 5.1 Footnote 7 of the NPPF identifies that the 'tilted balance' of paragraph 11d is engaged where an LPA is unable to demonstrate a five-year land supply or where there is a record of substantial under delivery with a Housing Delivery Test result below 75%. This provides two specific routes to the 'tilted balance'. I address the Housing Delivery Test below and the five-year land supply position in subsequent sections.
- 5.2 Paragraph 215 of the NPPF identifies a transitional arrangement. This sets out that the threshold for having a record of substantial under-delivery will only be 45% using the Housing Delivery Test result of November 2019, but that this will be 75% using the Housing Delivery Test result of November 2020.
- 5.3 The published November 2019 Housing Delivery Test result for Fareham Borough was 99%. Accordingly, based on the published result there is not a record of substantial under-delivery. However, it appears that the Housing Delivery Test has been miscalculated in Fareham as it has in a number of other LPAs¹⁰. I have alerted MHCLG to this and they have responded identifying that the result has been calculated on the basis of information provided by the Council.

The corrected Housing Delivery Test results

- 5.4 The information provided by the Council to MHCLG is not only incorrect it is inconsistent with the position of the Council for numerous years as it relies upon the Development Sites and Policies Plan and the Welborne Plan having reviewed the housing requirement. This is contrary to the conclusion of the Inspector examining those plans as set out above, contrary to the position advanced by the Council to numerous appeals¹¹ following the publication of the NPPF in July 2018 and contrary to the position adopted in every Five Year Housing Land Supply Assessment of the Council since September 2018. Indeed, in paragraph 2.8 of the April 2019 Five Year Housing Land Supply Assessment (Appendix 2) the Council even expressed surprise that the Housing Delivery Test results had been calculated against housing requirements rather than against the household projections as would be appropriate where the housing requirement was more than five-years old.

¹⁰ For instance, in Ashford Borough, in response to the error having been identified, MHCLG have subsequently issued a note revising the published results.

¹¹ See for example paragraph 9 of the appeal at Land west of Old Street, Stubbington (Appendix 3).

APPENDIX 2: APRIL 2019 FIVE YEAR HOUSING LAND SUPPLY ASSESSMENT
APPENDIX 3: LAND WEST OF OLD STREET, STUBBINGTON APPEAL DECISION

5.5 MHCLG has provided the opportunity to dispute the results and I have responded accordingly. I attach all of the correspondence between myself and MHCLG in Appendix 4. This provides further detail as to why the information provided by the Council is erroneous.

APPENDIX 4: CORRESPONDENCE WITH MHCLG

5.6 Even had the results been calculated in accordance with the Housing Delivery Test Measurement Rule Book, it would remain the case that Fareham Borough would not currently experience a record of substantial under-delivery although it would have a record of significant under-delivery that would require the application of a 20% buffer as set out in paragraph 73 of the NPPF.

5.7 The necessary information is also now available to accurately estimate the Housing Delivery Test results of November 2020 which should be published prior to the appeals being heard. I therefore proceed to calculate the results using the approach of the Housing Delivery Test Measurement Rule Book (CDD.4), and on the basis of the approach adopted in the currently published results which are based on erroneous information.

5.8 The Housing Delivery Test Measurement Rule Book provides the method by which the Housing Delivery Test results are calculated. It identifies that it is to be calculated using the net homes delivered over the previous three years divided by the number of homes required over the same period.

5.9 In paragraph 12, the Measurement Rule Book identifies that where the adopted housing requirement is less than five-years old as it was¹² in Fareham Borough until 4th August 2016, the number of homes required should be calculated to be the lowest of either the adopted housing requirement (using a stepped requirement where available) or the local housing need.

5.10 Paragraph 13 of the Measurement Rule Book indicates that where the housing requirement is set out as a range, the lower end of the range should be used. Paragraph 1.10 of the Core Strategy identifies a requirement for between 6,500 and 7,500 homes at a new settlement and an additional requirement for 3,729 homes across the remainder of the Borough. This provides a total housing

¹² As contained in the Core Strategy.

requirement for between 10,229 and 11,229 homes over the period 2006-2026, or an average of 511 to 561 per annum. The Table following paragraph 4.16 of the Core Strategy sets a stepped housing requirement for the remainder of the Borough, but no such stepped housing requirement is set out for the SDA.

- 5.11 In the year 2016/17, there is a stepped housing requirement for 94 homes for the remainder of the Borough in addition to the annualised requirement for between 325 and 375 at the SDA. This provides for a minimum requirement in 2016/17 for 419 homes (=94+325).
- 5.12 Paragraph 14 of the Measurement Rule Book identifies that once the housing requirement is more than five-years old, the number of homes required is calculated using the minimum local housing need using the standard method. Paragraph 21 then identifies a transitional arrangement such that for the years from 2015-18, rather than using the local housing need, the average household growth identified by specific projections should be used.
- 5.13 The minimum local housing need for 2016/17 is therefore to be calculated using the average household growth for the period 2016-26 calculated using the 2012 based projections. This identifies a transitional minimum local housing need for 427.6 homes in 2016/17 as set out by MHCLG in Appendix 4. This is greater than the adopted housing requirement of the Core Strategy of 419 homes¹³ and so in accordance with paragraph 12, the adopted housing requirement should be used until this became five-years old on 4th August 2016.
- 5.14 As set out in paragraph 20, when a housing requirement became more than five-years old during a year, the housing requirement should be apportioned based on the number of the days in the year. The period from 1st April 2016 to 4th August 2016 represents 34.2% of a year and therefore the number of homes required from 1st April to 4th August 2016 according to the Core Strategy was 143.5 (=34.2% of 419).

¹³ It should be noted that the Council has provided a housing requirement for 267 homes in 2016/17 based on the Development Sites and Policies Plan and the Welborne Plan, notwithstanding that as identified above these do not review the housing requirement and furthermore even if they were considered to provide housing requirements (contrary to the interpretations of the courts and the longstanding position of the Council), the Development Sites and Policies Plan provides for 135 homes in 2016/17 as set out in Table 14 and the Welborne Plan provides for an average of 286 homes per annum. This would provide a housing requirement of 421 dwellings which in addition to the need for Gypsy and Traveller pitches identified in Appendix 4 would provide for 423 homes as compared to the 267 identified by the Council in the Delta return to MHCLG.

- 5.15 For the remaining 65.8% of the year, where the adopted housing requirement was more than five-years old, the number of homes required should be calculated using the transitional minimum local housing need which equates to 281.2 (=65.8% of 427.6). In addition to the 143.5 set out above, this provides for a total of 424.7 homes required in 2016/17.
- 5.16 For 2017/18, the Measurement Rule Book identifies that the transitional minimum local housing need should be calculated based on the average household growth for the period 2017-27 identified in the 2014 projections. This equates to 401.5 homes as set out by MHCLG in Appendix 4.
- 5.17 For 2018/19 and 2019/20, the number of homes required should be calculated using the standard method which applied on 1st April 2018 and 1st April 2019 respectively, which equate to 543.1 homes and 522.5 homes¹⁴.
- 5.18 In Appendix 4, MHCLG indicate that the standard method resulted in a figure of only 472.7 homes at 1st April 2018 owing to the fact that the figure was capped from 543.1 as a result of the Council's mistaken position that the housing requirement was less than five-years old. This position of the Council is wholly at odds with the Council's own Five Year Land Supply Position Statements and their position to previous appeals. For example, the Council identified a local housing need for 544 homes per annum¹⁵ with a base-date of 1st April 2018 in paragraph 2.4 of their September 2018 Five Year Housing Land Supply Statement (Appendix 5). This therefore demonstrably required that the Council accepted that the housing requirement was more than five-years old at the point.

APPENDIX 5: SEPTEMBER 2018 FIVE YEAR HOUSING LAND SUPPLY ASSESSMENT

- 5.19 Therefore, had MHCLG been informed that the adopted housing requirement was that contained in the adopted Core Strategy, in accordance with the position of the Council for many years, the number of homes required over the period 2016-19 is 1,369.3 (=424.7+401.5+543.1) rather than the figure of 943.9 identified in the Housing Delivery Test results as a result of the error in the Council's submission to MHCLG. The number of homes required in the period 2017-20 will

¹⁴ The Council identify a need for 520 homes per annum in the April 2019 Five Year Housing Land Supply Statement (Appendix 2) presumably owing to a minimal rounding error.

¹⁵ The minimal difference between 544 and 543.1 is presumably again explained by a minimal rounding error on behalf of the Council.

be 1,467.1 (=401.5+543.1+522.5) and this should be reflected in the November 2020 Housing Delivery Test results.

5.20 The number of homes delivered from 2016-19 are correctly identified in the current published results and Fareham Borough Council have identified that an additional 285 completions were achieved in 2019/20¹⁶.

5.21 The respective correctly calculated Housing Delivery Test calculations are set out in Table 5.1 below for the period 2016-19 which should be those in the current Housing Delivery Test results, and for the period 2017-20 which will be reflected in the 2020 results.

Table 5.1 – Housing Delivery Test calculations¹⁷

	Number of homes required					Number of homes delivered					HDT result
	2016/17	2017/18	2018/19	2019/20	Total	2016/17	2017/18	2018/19	2019/20	Total	
Corrected 2019 results	424.7	401.5	543.1		1,369.3	356	291	290		937	68.4%
Correct 2020 results		401.5	543.1	522.5	1,467.1		291	290	285	866	59.0%

5.22 It is therefore apparent that once the Housing Delivery Test results are calculated in accordance with the Housing Delivery Test Measurement Rule Book, and in accordance with the accepted and correct position of the Council that the Development Sites and Policies Plan and the Welborne Plan did not review the housing requirement, it would currently be necessary to apply a 20% buffer as the result would be less than 85% but that there would not be a record of substantial under-delivery as the result would be in excess of 45%.

5.23 However, the 2020 Housing Delivery Test results which are due in November, will demonstrate that there is both a record of significant under-delivery which requires the application of a 20% buffer as the result will be below 85% and that there is also a record of substantial under-delivery as the result will be below 75%.

The Housing Delivery Test results based on the erroneous information provided by the Council

¹⁶ In response to an e-mail request.

¹⁷ Records of substantial under-delivery are highlighted in red and records of significant under-delivery are highlighted in orange.

- 5.24 Even if it was incorrectly considered that the Development Sites and Policies Plan and the Welborne Plan had reviewed the housing requirement, contrary to the interpretation of the courts and the longstanding position of the Council, then it would be necessary to calculate the results against the housing requirements of those plans until they became five-years old on 8th June 2020. The currently published results do not even do this.
- 5.25 The Development Sites and Policies Plan provides for 135 homes in 2016/17 and 2017/18, 134 homes in 2018/19, and 125 homes in 2019/20 as set out in Table 14 on page 216 and for an average of 2.5 Gypsy and Traveller pitches in 2016/17, and 0.2 pitches annually from 2017 to 2022 as set out in paragraph 5.196. The Welborne Plan provides for 6,000 homes over the period 2015-36 or an average of 285.7 per annum. As described above, both of these plans provide the mechanisms to deliver the housing requirements of the Core Strategy, but even if they were treated as having reviewed the housing requirements, they would therefore provide for 423.2 homes in 2016/17, 420.9 in 2017/18, 419.9 in 2018/19 and 410.9 in 2019/20.
- 5.26 In 2016/17, the housing requirement of 423.2 is below the average projected household growth of 427.6 identified in Appendix 4 and so the housing requirement would be used.
- 5.27 In 2017/18, the housing requirement of 420.9 is greater than the average projected household growth of 401.5 identified in Appendix 4 and so the projected household growth would be used.
- 5.28 In 2018/19, the housing requirement of 419.9 is below the capped standard method of 472.7¹⁸ identified in Appendix 4 and so the housing requirement would be used.
- 5.29 The Development Sites and Policies Plan and Welborne Plan became more than five-years old on 8th June 2020. This is 18.6% of the way into the monitoring year of 2019/20. It would therefore be necessary to use the housing requirement of 410.9 for 18.6% of the year¹⁹ and for the remaining 81.4% of the year it would be necessary to apply the current standard method of 513.7. This would provide a total requirement for 494.6 homes.

¹⁸ It would be appropriate to cap this if it was concluded that the housing requirement was less than five-years old, noting that this is contrary to the position of the Council in previous Five Year Housing Land Supply Statements.

¹⁹ As this is less than the standard method of 513.7 that applies currently.

5.30 Therefore, even if it was concluded that the Development Policies and Sites Plan and the Welborne Plan did review the housing requirement, the number of homes required would be 1,244.6 for 2016-19 (=423.2+401.5+419.9) and 1,316 for 2017-20 (=401.5+419.9+494.6).

5.31 As identified above, there were 937 completions in the period 2016-19 and 866 in the period 2017-20. If the housing requirement has been reviewed in the Development Sites and Policies Plan and Welborne Plan, the Housing Delivery Test results should therefore be 75.3% in 2019 and 65.8% in 2020. The corresponding calculations are set out in Table 5.2 below.

Table 5.2 – Housing Delivery Test calculations on the premise that the housing requirements were reviewed in 2015²⁰

	Number of homes required					Number of homes delivered					HDT result
	2016/17	2017/18	2018/19	2019/20	Total	2016/17	2017/18	2018/19	2019/20	Total	
2019 results	423.2	401.5	419.9		1,244.6	356	291	290		937	75.3%
2020 results		401.5	419.9	494.6	1,316.0		291	290	285	866	65.8%

5.32 Accordingly, the position is exactly the same regardless of whether or not the housing requirement was reviewed in the Development Sites and Policies Plan and the Welborne Plan, namely that there is currently a record of significant but not substantial under-delivery, and that the November 2020 results will demonstrate that there is both a record of significant and substantial under-delivery.

5.33 I will continue to work with MHCLG to resolve this issue and am hopeful that a revised result will be published prior to the inquiry. However, at present the published results incorrectly indicate that there is not a record of significant under-delivery and accordingly I accept that in accordance with Footnote 39 it is therefore appropriate to apply a 5% buffer as set out in the Statement of Common Ground. I nevertheless consider that it is material that the five-year land supply position of the Council has been inflated not as a result of increased supply but rather owing to an error of the Council in their submissions to MHCLG.

5.34 Assuming that the 2020 results are published by the time of the inquiry, the existence or otherwise of a five-year land supply is also unlikely to be material to the engagement of the 'tilted balance' as this will be engaged as a result of

²⁰ Records of substantial under-delivery are highlighted in red and records of significant under-delivery are highlighted in orange.

substantial under-delivery. Nevertheless, I proceed to consider the five-year land supply position in the following chapters as this may be material to the weight afforded to the policies of the Development Plan and to the provision of additional housing.

6. FIVE-YEAR HOUSING LAND SUPPLY CONTEXT

6.1 The Council previously contended that it was able to demonstrate a 4.66 year land supply in the period 2019-24.

6.2 There were a number of S78 appeal decisions which were determined in this context. I am aware of two which considered the extent of the shortfall.

6.3 In paragraph 90 of the appeal decision regarding Land to the east of Downend Road, Portchester (APP/A1720/W/19/3230015) (CDJ.1), Inspector Gould identified in November 2019 that:

“The 5yrHLS evidence put before me shows that there are a significant number of dwellings subject to applications with resolutions to grant planning permission that are subject to unresolved matters, including the execution of agreements or unilateral undertakings under Section 106 of the Act. In many instances those resolutions to grant planning permission are 18 or more months old and I consider they cannot be considered as coming within the scope of the Framework’s deliverability definition. I therefore consider that the Council’s claimed 4.66 years HLS position is too optimistic and that the appellant’s figure of 2.4 years better represents the current situation.”

6.4 Similarly, in paragraph 23 of the appeal decision regarding Rear of 77 Burr ridge Road, Burr ridge (APP/A1720/W/18/3209865) (CDJ.2), Inspector Parker independently identified in November 2019 that:

“The Council indicated that it was satisfied that the sites listed within its supply calculation would deliver within 5 years. However, it has not provided clear evidence sought by the Framework in relation to at least 1700 dwellings. The information before me does not enable me to reach a definitive figure for the current housing land supply position, but the probability is that it is significantly below that published by the Council, and much closer to that advanced by the appellant.”

6.5 According to paragraph 20 of this decision, the appellant considered the position to be 2 years or below.

6.6 Both of these Inspectors had therefore concluded that the Council did not have sufficient evidence to demonstrate that a large number of sites identified within the deliverable supply were deliverable in accordance with the NPPF definition.

6.7 In March 2020, the Council acknowledged the over-optimism in their previous assessment in a committee report in respect of a planning application at Land at Stubbington Lane, Fareham (CDH.9) wherein the Council stated:

“Members will note from the ‘Five Year Housing Land Supply Position’ report considered at the April 2019 Planning Committee that this Council currently has a housing land supply of 4.66 years. During the latter part of 2019 several appeal decisions were received in which Planning Inspector’s considered the Council’s 5YHLS position, including the appeal by Miller Homes on land at Winnham Farm (appeal reference: APP/A1720/W/19/3230015). In that appeal decision the Inspector was of a view that the Council’s claimed supply figure of 4.66 years was too optimistic, and that the appellant’s figure of 2.4 years better represented the situation at the time.”

6.8 Therefore, it appeared to be common ground between the Council, every Inspector to have considered this matter and myself that the Council’s housing land supply position was significantly lower than that previously identified by the Council and of the order of at most 2.4 years.

6.9 Since these appeal decisions, it has however become evident that there is no identified solution to unlocking the infrastructure necessary to support the development of the strategic site at Welborne such that this site can no longer be considered deliverable. This would be expected to reduce the land supply position even further.

6.10 However, the Council then prepared a Five-Year Housing Land Supply Position Statement, June 2020 for planning committee (Appendix 6) which identified a 2.72 year land supply which notwithstanding the newly arising issues at Welborne is greater than the position indicated by previous Inspectors.

APPENDIX 6: EXTRACTS OF THE REPORT TO PLANNING COMMITTEE

6.11 The Council then published an Update Report (Appendix 7) shortly before the planning committee sat which suggested that the Council could demonstrate a 4.03 year land supply. This is wholly at odds with the position identified by previous Inspectors, the position accepted by the Council in response to previous planning applications and the position of officers in the original committee report.

APPENDIX 7: UPDATE REPORT

6.12 The reason for this *volte face* is identified in the Update Report as being attributed to the Secretary of State’s position in a recent Consent Order (Appendix 8)

namely that the definition of a deliverable site does not provide a 'closed list'. However, this Consent Order is not relevant to and does not address the issue identified by the previous Inspectors in Fareham (and seemingly accepted by the Council) that the Council does not have sufficient evidence to demonstrate that their supply is deliverable.

APPENDIX 8: CONSENT ORDER

- 6.13 The 4.03 year land supply was endorsed by planning committee and this is the position the Council advance at this appeal as set out in the Statement of Common Ground.
- 6.14 A 4.03 year land supply means that only 81% of the housing need will be met across the following five-years. Even if this position was to be accepted, the inability of circa one in five households to be able to access appropriate accommodation in the next five-years, especially in light of the current housing crisis, is a significant matter to be weighed in the planning balance.

7. THE FIVE-YEAR REQUIREMENT

The Housing Requirement or Local Housing Need

- 7.1 The Core Strategy which contains the housing requirement was adopted on 4th August 2011 and so the housing requirement is more than five years old. In such circumstances paragraph 73 and footnote 32 of the NPPF identify that the housing land supply position should be calculated against the local housing need calculated using the standard method.
- 7.2 It is agreed in the Statement of Common Ground that the standard method provides the minimum local housing need. As this provides a minimum, even where there is a five-year land supply against this figure, this may not be sufficient to meet housing needs over the next five years. Accordingly, the weight to be afforded to the shortfall should be considered in the context of an agreed absence of a sufficient supply even against a minimum need.
- 7.3 According to the PPG (24-004), the minimum local housing need identified by the standard method is calculated using the average annual household growth for the next 10 consecutive years identified by the 2014-based household projections. As the five-year land supply is calculated from 1st April 2020, the average household growth should be calculated for the period 2020 to 2030. The 2014-based projections identify that over this period, the average household growth was projected to be 389.7 households per annum in Fareham Borough or 390 (rounded) as agreed in the Statement of Common Ground.
- 7.4 The PPG (2a-004) then identifies that this should be adjusted based on the affordability of the area using the median workplace-based affordability ratio within a specified formula. The latest median workplace-based affordability ratio in Fareham Borough was 9.09 as agreed in the Statement of Common Ground.
- 7.5 Once this is input to the appropriate formula, this produces an adjustment factor of 1.318, meaning that the average household growth needs to be uplifted by 31.8% to produce an annual local housing need for 513.7 homes per annum (hpa).
- 7.6 The PPG (2a-004) proceeds to identify that in certain circumstances this figure may be capped. Where the relevant strategic policies were adopted more than five years ago, as they were in Fareham, the local housing need would be capped at 40% above the higher of the average household growth or the adopted housing

requirement. Given that the annual local housing need of 513.7hpa is less than 40% above the average household growth, a cap does not apply in Fareham Borough as agreed in the Statement of Common Ground. Therefore, there is a minimum annual local housing need for **514hpa** (rounded).

The approach to addressing under-delivery

- 7.7 The PPG (68-031) identifies that the standard method incorporates under-delivery as part of the affordability ratio so there is no requirement to address under-delivery separately.

The buffer

- 7.8 Paragraph 73 of the NPPF identifies that where the position has not been agreed through an annual position statement or a recently adopted plan, as is the case in Fareham Borough, a buffer of 20% should be applied where there is a record of significant under-delivery over the three previous years, but a 5% buffer should apply in all other cases.
- 7.9 Footnote 39 identifies that from November 2018 the record of delivery should be assessed using the Housing Delivery Test. The current Housing Delivery Test results indicate that 99% of the number of homes required have been delivered in the period 2016 to 2019 such that there is not a record of significant under-delivery and it is therefore appropriate to apply a **5% buffer** currently as agreed in the Statement of Common Ground. However, as identified above, the Housing Delivery Test results have been miscalculated in Fareham Borough and I am working with MHCLG to get these corrected. Assuming that the 2019 results are corrected in time for the inquiry, it would be necessary to apply a 20% buffer and I therefore present the position on that basis also.
- 7.10 The Housing Delivery Test results of November 2020 will also indicate that less than 85% of the number of homes required have been delivered and as such it will therefore be necessary to apply a 20% buffer.

The five-year requirement

- 7.11 Based on the preceding analysis, the potential five-year requirements are calculated in Table 7.1 below against the minimum local housing need.

Table 7.1 – the five-year housing requirement

		5% buffer	20% buffer
A	Annual minimum local housing need	513.7	
B = A x 5	Base five-year requirement 20120-25	2,568.4	
C = B x 1.05 or B x 1.2	Five-year requirement including buffer 2020-25	2,696.8	3,082.1

- 7.12 For the purposes of paragraph 73 of the NPPF there is therefore currently a need for a deliverable supply of at least **2,697 homes** (rounded) in the period 2020-25 or 539.4 per annum. This is slightly less than the requirement for 2,699 homes identified in row D of the table towards the end of the Council’s Five-Year Housing Land Supply Position statement (Appendix 7). The reason for this minimal difference, which is unlikely to be material, is that the Council has used the rounded standard method of 514 whereas I have used the unrounded figure of 513.7.
- 7.13 However, if the Housing Delivery Test results of 2019 are corrected or if the Housing Delivery Test results of November 2020 are published, there will be a five-year requirement for at least 3,082 homes (rounded) or 616.4 per annum by the time the appeals sit.

8. THE DELIVERABLE SUPPLY

National Policy

8.1 The NPPF identifies that in order for site to be deliverable:

“...sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years. In particular:

a) sites which do not involve major development and have planning permission, and all sites with detailed planning permission, should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years (e.g. they are no longer viable, there is no longer a demand for the type of units or sites have long term phasing plans).

b) where a site has outline planning permission for major development, has been allocated in a development plan, has a grant of permission in principle, or is identified on a brownfield register, it should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years.”

8.2 The NPPF therefore identifies three pre-conditions which need to be met in order to a site to be considered deliverable, namely that they must be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered within five years.

8.3 The definition then identifies two tests which apply to specified sources of supply to determine whether or not sites are deliverable, namely those in Category A (sites which do not involve major development and have planning permission and all sites with detailed planning permission) and those in Category B (with outline planning permission for major development, allocated in a development, with a grant of permission in principle or identified on a brownfield register).

8.4 In order for a site to be considered deliverable, it is therefore necessary to meet all three of the pre-conditions and to pass the appropriate test.

8.5 The deliverable supply represents a snapshot in time, namely that which existed at the base-date. Accordingly, where the pre-conditions require that a site is available or suitable now, this indicates that a site was required to have been available or suitable at the base-date, namely 1st April 2020 as agreed in the Statement of Common Ground. Similarly, where the pre-conditions require that

there is a realistic prospect of completions within five-years, this is the five-year period which runs from the base-date.

- 8.6 Any sites which subsequently became suitable or available, or which are capable of delivering within five-years of the subsequent determination of a planning application will respond to a different five-year requirement and cannot be taken into account²¹. To do so would necessitate consideration of the number of completions which had occurred in the interim (which no longer stand a realistic prospect of delivery as they have already been delivered), and the backlog which has accrued in the intervening period. This information has not been provided by the Council, and so it is not currently possible to adjust the base-date and take account of any planning permissions which have subsequently been granted (unless these were allocated or subject to outline planning permission at the base date and thereby the suitability of these sites had already been established).
- 8.7 The tests identify that for sites to be considered deliverable, those sites within Category A should be considered to be deliverable unless there is a clear evidence that homes will not be delivered within five years (providing the pre-conditions are met), and those within Category B should only be considered deliverable where there is clear evidence that housing completions will begin within five-years (and providing the pre-conditions are met).
- 8.8 This provides for greater balance in the assessment of the deliverable supply. Under the former NPPF it was permissible to assume that all sites were deliverable if there was a realistic prospect of delivery. Taken in combination, such an approach gave rise to an unrealistic cumulative assessment. For example, where there was a 25% chance of a site delivering this may have been considered a realistic prospect. However, with ten such sites, the chances of them all delivering are less than one in a million. The approach of the former NPPF therefore produced unrealistic cumulative assessments of the deliverable supply across the country.
- 8.9 The revised definition of deliverability addresses this by providing a much more balanced and realistic assessment of the supply, by identifying that Category A

²¹ This is consistent with the findings of a very significant number of appeal decisions which are so numerous that it would be impracticable to list them all. Nevertheless, examples include paragraph 31 of the Woolmer Green appeal decision (CDJ.3), paragraph 67 of the Woolpit appeal decision (CDJ.4), paragraph 62 of the Bures Hamlet appeal decision (CDJ.5), paragraph 79 of the Charminster appeal decision (CDJ.6) and paragraph 58 of the Windacres Farm appeal decision (CDJ.11).

sites should be considered deliverable in principle, but that Category B sites should not be considered deliverable unless there is clear evidence that these will actually achieve housing completions within five years. This is likely to result in the delivery from Category A sites being overestimated but may underestimate the delivery from Category B sites which in the round provides for a more realistic assessment of the overall supply.

- 8.10 The over-optimism which arises from the inclusion of all Category A sites in the deliverable supply is evident from the fact that of the 14 sites with full planning permission in the Council's trajectory, 4 are anticipated to have taken more than five-years from the grant of full planning permission until the first completion²². These Category A sites would be considered deliverable according to the definition of a deliverable supply notwithstanding that a reasonable proportion do not in fact even achieve the first completion within five-years.
- 8.11 In my view, the use of the word 'will' within the test for Category B sites requires a higher degree of confidence of delivery than within the previous definition which only required that there was a realistic prospect of delivery.
- 8.12 Numerous respondents to the consultation on the draft NPPF identified that the new definition sets a presumption against the deliverability of such sites and that these should only be considered deliverable as an exception. The Planning Officers Society identified that:

"The proposed change would mean that rather than needing to show that there is a reasonable prospect that delivery on sites can happen, LPAs would be required to demonstrate somehow that it definitely will happen. This would be beyond an LPA's control, since only landowners or developers could give the answer, and even then, in many cases they could only indicate their intention or expectation, not say that it will definitely happen." (my emphasis)

- 8.13 Similarly, the Local Government Association identified that:

"The revised definition of 'deliverable' sets an unfairly high test on local planning authorities for sites which do not have a detailed planning permission in place (including sites that have been allocated and subject to a separate examination through the plan-making process), requiring "clear evidence that housing completions will

²² Including at 3-33 West Street which is anticipated to take 13 years, New Park Garage which is anticipated to take over 10 years, 100 Wickham Road which is anticipated to take over 6 years and Swanwick Marina which is anticipated to take over 7 years.

(our emphasis) begin on site within five years". Placing the onus on local planning authorities to do this for each site is unreasonable, and in many cases impossible to do, as sites with outline planning permissions, will often be subject to ownership transactions and revised options for delivery before a final construction programme can be drawn up.

This change in definition would in effect mean, that only sites with detailed planning permissions could make up a five year supply picture, and risks local planning authorities being challenged on existing site allocations in local plans based on this new definition." (my emphasis)

- 8.14 Whilst I do not go as far as these consultees, I agree that the threshold for a Category B site to be included in the deliverable supply has been considerably raised through the necessity for clear evidence that completions will be achieved.
- 8.15 In paragraphs 21 to 23 of the recent recovered appeal decision at Land off Audlem Road/Broad Lane, Stapeley (Appendix 9) the Secretary of State has identified a number of sites:

"...where there is outline planning permission or the site is on a brownfield register and the Secretary of State is satisfied that there is additional information that indicates a realistic prospect that housing will be delivered on the site within 5 years."

APPENDIX 9: STAPELEY APPEAL DECISION

- 8.16 The Secretary of State then proceeds to consider the position on the basis that the deliverable supply lies in a range which either includes or excludes such sites in Category B with a realistic prospect of delivery. This clearly indicates that the Secretary of State considers that the use of the word 'will' in the test for Category B sites requires more than a realistic prospect of delivery as otherwise the Secretary of State would have not have needed to consider the position that arose from excluding these sites from the deliverable supply.
- 8.17 The revised definition provides for greater balance and thereby provides greater confidence that housing need will actually be met rather than there just being a remote prospect of this being achieved. This supports the explicit purpose of a five-year land supply assessment as identified in the PPG (68-003) namely that there are sufficient sites available to meet the housing requirement/local housing need. The need for a more balanced definition, with greater weight being afforded to ensuring that housing needs are addressed during the current housing crisis

(rather than there being a remote prospect of this being achieved), is considered to be an appropriate response by the Government.

- 8.18 In addition to specific deliverable sites, paragraph 70 of the NPPF identifies that a windfall allowance can also be included where there is compelling evidence that they will provide a reliable source of supply, informed by the SHLAA, historic rates and expected future trends.

The Council's Position

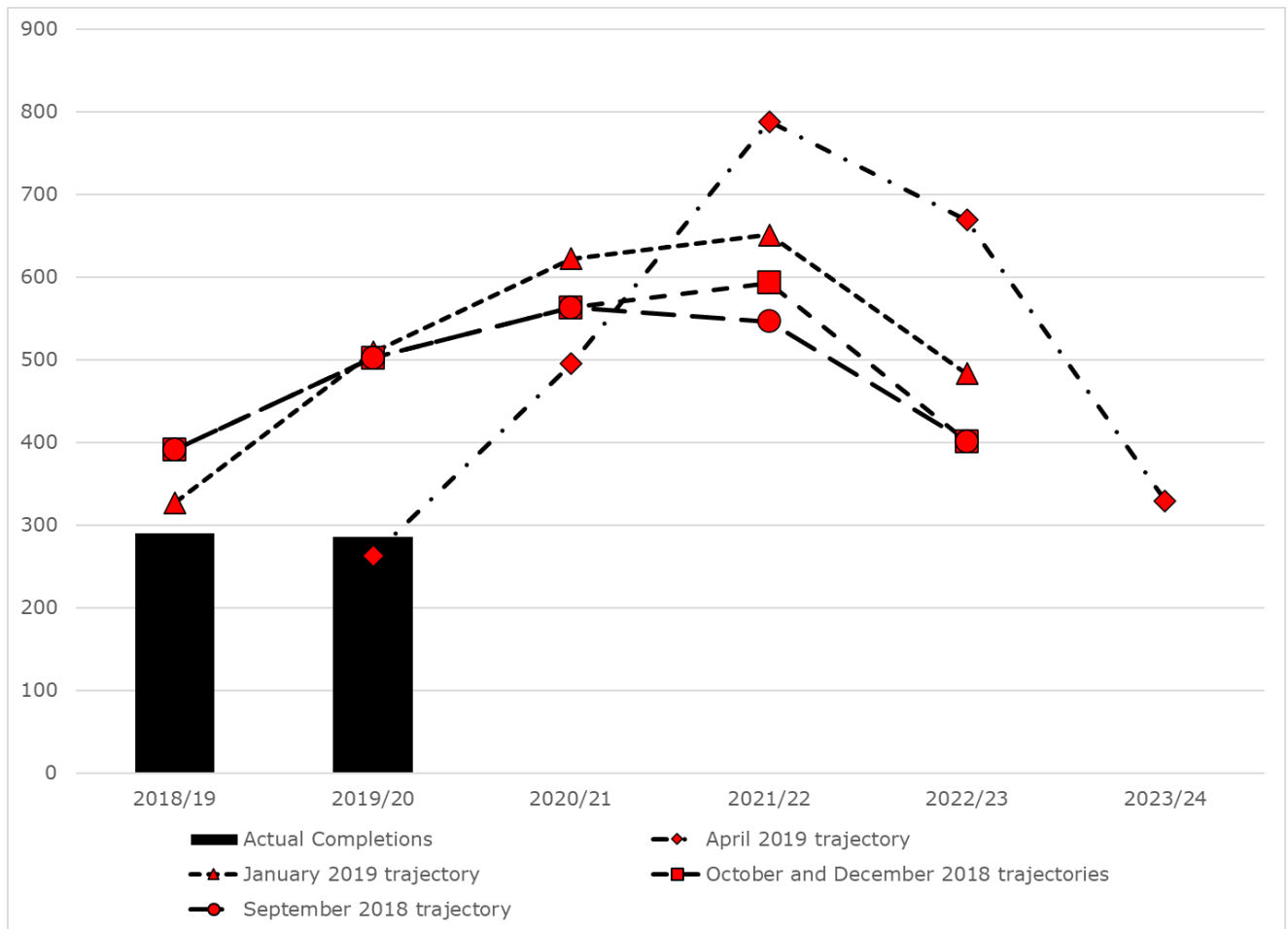
- 8.19 The NPPF was published in July 2018 and contained a new definition of a deliverable site to that within the former NPPF. This definition was clarified in the subsequent revision to the NPPF in February 2019 but remains substantively unchanged.
- 8.20 The accuracy of the Council's previous trajectories using this definition provide an indication of the realism of the supply upon which the Council rely. However, as there have only been two years of completions since the new definition was introduced this provides only a high-level indication.
- 8.21 The Council has produced numerous trajectories since July 2018. The first three were published in September, October and December 2018 and each indicated that there would be 391 completions in 2018/19. The fourth was published in January 2019 and indicated that there would be 327 completions in 2018/19. However, there were in fact only 290 completions in 2018/19 below both the 391 and 327 anticipated by the Council.
- 8.22 The fifth trajectory was published in April 2019. The Council predicted that there would be 263 completions in 2019/20 and the Council now record that 285 completions were achieved.
- 8.23 Therefore, in the first year of the trajectory, in which it would be expected that there is the greatest level of knowledge about the likely completions, the trajectories of the Council using the current definition have ranged between underestimating the supply by 8% to overestimating this by 35%.
- 8.24 It is especially notable that in January 2019, 10 months into the monitoring year of 2018/19, when the Council should have had a very good idea of the number of completions that would be achieved in that year, they still overestimated the supply by 13%.

- 8.25 In the second year of the trajectory, every trajectory of the Council has over-estimated the supply by between 76% and 79%. This clearly indicates that the Council’s previous trajectories have been generally over-optimistic in the first year, but simply unrealistic in the second year.
- 8.26 The respective trajectories are recorded in Table 8.1 and presented graphically in Figure 8.1 below.

Table 8.1 – the realism of previous trajectories

	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24
Actual Completions	290	285				
April 2019 trajectory		263	495	788	669	329
January 2019 trajectory	327	509	622	651	483	
December 2018 trajectory	391	502	563	593	401	
October 2018 trajectory	391	502	563	593	401	
September 2018 trajectory	391	502	563	546	401	

Figure 8.1 – the realism of the Council’s previous trajectories



8.27 The preceding analysis demonstrates that even in the more certain short-term, the trajectories of the Council are likely to be over-optimistic. Accordingly, the trajectory of the Council should be treated with due caution.

8.28 The current Five-Year Housing Land Supply Position Statement identifies a deliverable supply of 2,177 homes comprising:

- i. 155 homes on small permitted sites;
- ii. 371 homes on large sites (of 5 or more homes) with detailed planning permission at the base-date;
- iii. 99 homes on large sites (of 10 or more homes) with outline planning permission at the base-date;
- iv. 624 homes on sites allocated in the development plan at the base-date;

- v. 145 homes on sites identified on a brownfield register at the base-date;
- vi. 709 homes on unallocated sites subject to a resolution to grant planning permission at the base-date; and
- vii. A windfall allowance of 74 homes.

8.29 The supply of the Council is therefore made up of:

- 526 homes (i and ii) which fall in Category A of the definition of a deliverable site and should therefore be considered deliverable in the absence of evidence to the contrary;
- 868 homes (iii, iv, and v) which fall in Category B and should therefore only be considered deliverable where there is clear evidence that completions will begin on site within five years;
- 709 homes (vi) which do not fall in Category A or B; and
- A windfall allowance of 74 homes (vii) which should be considered deliverable where there is compelling evidence that this will provide a reliable source of supply.

8.30 I address each of these in the following chapters.

9. CATEGORY A SITES

Small permitted sites

9.1 The Council consider that 155 homes are deliverable on small permitted sites according to the Statement of Common Ground. I accept that these are deliverable in the absence of any evidence to the contrary. The respective positions are set out in Table 9.1 below.

Table 9.1 – the deliverable supply from small permitted sites

	Position of the Council	Position of the Appellant
Small permitted sites	155	155

Large sites with detailed planning permission

9.2 Similarly, with one exception as described below, I agree that the large sites with detailed planning permission identified by the Council are deliverable.

9.3 1 Station Industrial Park, Duncan Road, Park Gate - The Council include 15 homes in the deliverable supply from this site. This site is in active B1 office use as the head office of Foreman Homes as agreed in the Statement of Common Ground. This site cannot therefore be described as being available for development now and so does not meet one of the pre-conditions for a deliverable site.

9.4 The fact that an occupied site should not be considered to be available now has been confirmed in case law. In paragraph 34ii of the High Court Judgment of *Wainhomes (South West) Holdings Ltd vs the Secretary of State for Communities and Local Government [2013] EWHC 597 (Admin)* (CDK.4) the definition of availability is set out. It identifies that:

“The parties are agreed that a site which is, for example, occupied by a factory which has not been derequisitioned, or which is contaminated so that housing could not be placed upon it, is not "available now" within the meaning of the first sentence of Footnote 11. However, what is meant by "available now" is not explained in Footnote 11 or elsewhere. It is to be read in the context that there are other requirements, which should be assumed to be distinct from the requirement of being "available now", though there may be a degree of overlap in their application. This suggests that being available now is not a function of (a) being a suitable location for development now or (b) being achievable with a realistic prospect that housing will be delivered on the site within five years and that development of the site is viable. Given the presence of

those additional requirements, I would accept Ms Busch's submission for the Secretary of State: "available now" connotes that, if the site had planning permission now, there would be no other legal or physical impediment integral to the site that would prevent immediate development" (my emphasis)

- 9.5 Given the continued occupation of the building by a business, there is a physical impediment integral to the site that would prevent immediate development, and therefore this site is not available now and is therefore not deliverable in terms of the NPPF.
- 9.6 The respective positions on large sites with detailed planning permission are set out in Table 9.2 below.

Table 9.2 – the deliverable supply from large sites with detailed planning permission

	Position of the Council	Position of the Appellant
1 Station Industrial Park	15	0
Other sites with detailed planning permission	356	356
Sites with detailed planning permission	371	356

10. CATEGORY B SITES

- 10.1 Such sites should only be considered deliverable where there is 'clear evidence' that completions will begin on site within five years. As set out in the appeal decision at 77 Burrige Road (CDJ.2), the Council had not previously provided clear evidence to demonstrate that such sites are deliverable.
- 10.2 The Council's current Five Year Housing Land Supply Position statement (Appendix 7) provides absolutely no evidence that these sites are deliverable and accordingly they should not be considered deliverable.
- 10.3 Nevertheless, I have taken it upon myself to review the available evidence from other sources and to consider the deliverability of these sites individually, as set out below.
- 10.4 The PPG (68-007) identifies examples of what clear evidence may include. The use of the word 'include' in this section of the PPG indicates that it is likely to be necessary to have more than one of these (or other) types of evidence to provide the necessary clear evidence.
- 10.5 The examples listed in the PPG include (but are not limited to) a planning performance agreement that sets out the timescale for the approval of reserved matters and discharge of conditions, and a written agreement between the LPA and the developer which confirms the developers delivery intentions and anticipated start and build-out rates. These examples both constitute written agreements between the relevant parties.
- 10.6 Even where such written agreements have been presented, numerous S78 Inspectors have found that depending upon their content, this still does not provide clear evidence²³. In Fareham Borough, there is nothing even approaching such a written agreement in support of the deliverability of almost any site.

APPENDIX 10: RUDGWICK APPEAL DECISION

APPENDIX 11: STURRY APPEAL DECISION

Large sites with outline planning permission

- 10.7 The Council include 99 homes on sites which benefited from outline planning permission without an approval of reserved matters at the base-date according to

²³ See for example paragraph 13 of Land to the south of Cox Green Road, Rudgwick (Appendix 10), paragraph 23 of Land off Popes Lane, Sturry (Appendix 11) and paragraph 21 of the Stapeley recovered appeal decision (Appendix 9).

the Statement of Common Ground. The deliverability of one of these sites is considered below.

- 10.8 Land east of Brook Lane & South of Brookside Drive, Warsash – this site gained outline planning permission for the development of up to 85 homes in May 2018 at appeal. An application for the approval of reserved matters was then submitted in March 2019 but remains undetermined. As agreed in the Statement of Common Ground, in May 2019, Natural England identified that the application could have potential significant effects on the Solent Special Protection Areas and Ramsar sites and the Solent Maritime Special Area of Conservation and therefore required that a Habitats Regulation Assessment was undertaken.
- 10.9 No such assessment has been prepared on behalf of the applicant in the subsequent 13 months. The Council’s website indicates that there has been no activity in support of the application since April 2019²⁴. It is therefore entirely unclear whether actions are being taken to progress the application or whether the necessary evidence is being prepared on behalf of the applicant to demonstrate that the site is suitable for development.
- 10.10 In the absence of this necessary evidence, it is not considered that the site can be considered suitable for development now as a result of the potential significant effects on numerous Natura 2000 sites.
- 10.11 Furthermore, as is the case for the majority of sites, the Council has provided no evidence whatsoever to demonstrate that completions will begin on site as required by the NPPF.
- 10.12 The Council’s trajectory appears to suggest that this site will achieve a full years’ completions from April 2021 (in 5 months’ time).
- 10.13 Prior to the first completion:
- the HRA will need to be prepared, submitted and reviewed by Natural England;
 - potentially, additional information will need to be prepared or the design of the scheme revised to respond to the numerous comments submitted in response to the application;

²⁴ Although additional objections have been received in the intervening period.

- the Council will need to determine the application;
- assuming that approval of reserved matters is granted, the technical work to discharge conditions will need to be undertaken;
- applications for the discharge of conditions will need to be prepared, submitted and determined;
- pre-commencement works necessary to discharge relevant conditions and to provide the necessary infrastructure (including sewerage, utilities, internal roads etc) will need to be undertaken;
- planning obligations will need to be fulfilled including making the appropriate financial contributions and potentially providing any infrastructure required by the S106 package;
- the developer will need to market the homes; and
- the residential development can then commence.

10.14 It is not considered that there would be a realistic prospect of this being achieved in less than a year as required by the Council's trajectory, even if there was evidence to support the position of the Council.

10.15 This is supported by the fact that the developer, Taylor Wimpey, is not (and was not) even advertising this site as coming soon on their website.

10.16 Furthermore, in light of recent events, the delivery timetable for sites is likely to have been compromised including owing to the length of time it may take to determine the outstanding planning application, to undertake technical works, to discharge conditions, to undertake pre-commencement works and to undertake development²⁵.

10.17 Fareham Borough Council has identified that:

"We are focussing on essential services such as paying Housing Benefit and Council Tax Support."

²⁵ These factors would not have the same effect on the appeal sites as the determination of the outline planning applications are unaffected by the Council's resource given that these are at appeal, and that thereafter the resource burden will fall to the Appellants to progress technical work and applications for the approval of reserved matters and the discharge of conditions, by which time it is to be hoped that normality will have been restored and so the delivery of the appeal schemes will be largely unaffected.

10.18 It is therefore likely that the resource available to determine the outstanding planning application and to discharge conditions has been reduced such that these would be expected to take longer than would otherwise have been the case.

10.19 Similarly, Taylor Wimpey have identified on their website that:

“Unfortunately the recent Coronavirus pandemic has impacted the length of time it’s taking us to complete our homes.”

10.20 Whilst such delays would not in themselves preclude development within five-years, sufficient evidence would need to be made available to demonstrate that notwithstanding these delays the site will still achieve completions within five-years.

10.21 In the absence of any clear evidence that completions will begin on site within five years and given the potential for significant effects on designated sites which may preclude this site from delivering at all, it is not considered that this site is deliverable.

10.22 The respective positions on large sites with outline planning permission are set out in Table 10.1 below.

Table 10.1 – the deliverable supply from large sites with outline planning permission

	Position of the Council	Position of the Appellant
Land east of Brook Lane and South of Brookside Drive, Warsash	85	0
Other sites with outline planning permission	14	14
Sites with outline planning permission	99	14

Allocations

10.23 The Council include 624 homes on sites which are allocated in the development plan, but which did not benefit from planning permission at the base-date according to the Statement of Common Ground. As above, the Council has provided no evidence whatsoever to demonstrate that completions will begin on site within five-years on the majority of these, let alone clear evidence. As a result, these have not been demonstrated to be deliverable in accordance with the NPPF. Nevertheless, each is discussed in turn below.

10.24 Heath Road, Locks Heath – this site was allocated in the Development Sites and Policies Plan for 70 homes in June 2015. An outline planning application for 70 homes was submitted in November 2017 and the Council resolved to grant planning permission in February 2018 subject to a S106 agreement. In the intervening 32 months no agreement has been reached on the S106 and planning permission has not been granted. There is absolutely no evidence from the parties to the S106 agreement as to how this is progressing and whether or how quickly the remaining issues can be overcome.

10.25 As set out above, the Council has provided absolutely no evidence, clear or otherwise, that completions will begin on site within five years. In particular, there is no evidence of the developer's proposed delivery intentions.

10.26 Prior to the first completion, it will be necessary for:

- the S106 to be agreed;
- the technical work necessary to discharge conditions to be undertaken;
- applications for the discharge of conditions to be submitted and determined;
- the site to be marketed and sold to a developer with the necessary legals completed;
- applications for the approval of reserved matters to be prepared, submitted, consulted upon and determined;
- pre-commencement works necessary to discharge relevant conditions and to provide the necessary infrastructure (including sewerage, utilities, internal roads etc) will need to be undertaken;
- planning obligations will need to be fulfilled including making the appropriate financial contributions and potentially providing any infrastructure required by the S106 package;
- the developer will need to market the homes; and
- the residential development can then commence.

- 10.27 In the absence of any clear evidence that completions will begin on site within five years and given the significant amount of work which remains to be undertaken before the first housing completion could realistically be delivered, it is not considered that this site is deliverable.
- 10.28 This accords with the approach of the Secretary of State in paragraph 21 of the Stapeley appeal decision (Appendix 9), where it is identified that Category B sites without an application for the approval of reserved matters and without a written agreement²⁶ should not be considered deliverable.
- 10.29 Wynton Way, Fareham – this site was allocated in the Development Sites and Policies Plan in June 2015 for 10 homes. There is no evidence that a planning application has even been submitted on this site in the subsequent 5 years.
- 10.30 The previous Five-Year Housing Land Supply Position Statement of April 2019 indicated that pre-application discussions have taken place. Pre-application discussions are by their nature confidential and so cannot be relied upon as providing clear evidence, especially as we do not know what these pre-application discussions may have identified. Furthermore, these pre-application discussions have not resulted in the submission of a planning application in the subsequent 18 months.
- 10.31 Given the absence of clear evidence this site should not be considered deliverable.
- 10.32 As above, this accords with the approach of the Secretary of State in the Stapeley decision.
- 10.33 335-337 Gosport Road, Fareham – this site was allocated in the Development Sites and Policies Plan in June 2015 for 10 homes. There is no evidence that a planning application has even been submitted on this site in the subsequent 5 years.
- 10.34 The previous Five-Year Housing Land Supply Position Statement of April 2019 indicated that pre-application discussions have taken place. As above, pre-application discussions are by their nature confidential and so cannot be relied upon as providing clear evidence.
- 10.35 Given the absence of clear evidence this site should not be considered deliverable.

²⁶ Such as a planning performance agreement, pro-forma or statement of common ground.

- 10.36 As above, this accords with the approach of the Secretary of State in the Stapeley decision.
- 10.37 East of Raley Road, Locks Heath (north) – it is unclear from the Five Year Land Supply Position Statement whether this site relates to only the northern part of the allocation or the entirety of the allocation. The wider site was originally allocated in the Local Plan Review of 2000 for 50 homes and this allocation was carried forward in the Development Sites and Policies Plan in June 2015. There is no evidence that a planning application has even been submitted on this site in the subsequent 20 years since it was originally allocated.
- 10.38 There is also absolutely no evidence in support of the deliverability of this site either within the previous or current assessment of the Council.
- 10.39 Given the absence of clear evidence this site should not be considered deliverable.
- 10.40 As above, this accords with the approach of the Secretary of State in the Stapeley decision.
- 10.41 33 Lodge Road, Locks Heath - this site was originally allocated in the Local Plan Review of 2000 for 10 homes and this allocation was carried forward in the Development Sites and Policies Plan in June 2015. An outline planning application was submitted for the erection of 9 dwellings (P/20/0257/OA) in March 2020.
- 10.42 The outline planning application was however refused on 13th May 2020 owing to the fact that the Council did not consider that there was sufficient evidence to demonstrate that the site offered a suitable location for the proposed development. Accordingly, this site does not meet one of the pre-conditions for a site to be considered deliverable.
- 10.43 Furthermore, the Council has yet again provided absolutely no evidence in support of the deliverability of this site.
- 10.44 Land off Church Road – this site was originally allocated in the Local Plan Review of 2000 for 20 homes and this allocation was carried forward in the Development Sites and Policies Plan in June 2015. There is no evidence that a planning application has even been submitted on this site in the subsequent 20 years since it was originally allocated.

- 10.45 The Council also include 26 homes in the deliverable supply, notwithstanding that this site has only been tested for and is only allocated for 20 homes.
- 10.46 The Council has also provided absolutely no evidence that this site is deliverable at any capacity. Accordingly, this site should not be considered to be deliverable.
- 10.47 As above, this accords with the approach of the Secretary of State in the Stapeley decision.
- 10.48 Welborne – this site was allocated in the Welborne Plan in June 2015 for a mixed-use development including approximately 6,000 homes and the remodelling of Junction 10 of the M27. An outline planning application was submitted in March 2017 and the Council resolved to grant planning permission in October 2019 subject to a S106.
- 10.49 I have been able to identify some evidence in support of the deliverability of this site. The applicant has submitted a number of Infrastructure Delivery Plans and Phasing Plans in support of the application to outline the intended delivery rates for this site. The first was submitted in March 2017 (IDP17) (CDG.3) and this identified that the first 120 homes would be delivered in 2018/19 with a further 180 in 2019/20. Development has not even commenced in April 2020. It is therefore apparent that whilst the Infrastructure Delivery Plans provide an indication of the developer’s aspirations for the site, they do not provide clear evidence that completions will begin on site within five years as required by the NPPF.
- 10.50 It is also demonstrable that the Infrastructure Delivery Plans provide an overly optimistic view of the trajectories, as is commonly the case with information provided by applicants. The fact that such information is overly optimistic has been identified in numerous S78 appeal decisions including in paragraph 28 of the appeal decision at Land South of Filands, Malmesbury (APP/Y3940/A/12/2183526) (CDJ.7) which states:
- “Relying heavily on largely unsupported land owner, developer and agent, assurances as appropriate proof of when sites are likely to come forward, as the LPA seems to be doing, is not to my mind sufficient evidence of deliverability.”**
- 10.51 The IDP17 was superseded by a new Infrastructure Delivery Plan in December 2018 (IDP18) (CDG.4) which identified that the first 30 homes would be completed in 2020/21 and this trajectory is maintained in the latest Infrastructure

Delivery Plan of March 2019 (IDP19) (CDG.5) which is now a year old. The IDP19 identified that the sequencing will be subject to the outcome of the outline planning application and subsequent reserved matters applications and depending on these it "...may commence in 2019/20". Once again, in the absence of outline planning permission it is evident that the trajectories identified in the latest IDPs have not been achieved.

10.52 The IDP19 identified that by 31st March 2024 (in the next 3 years and 9 months):

- 690 homes would have been delivered;
- the development of Village Centre/s and employment area/s would have commenced;
- the new Junction 10 of the M27 including new slip roads off the M27 and A32, Welborne Approach, Broadway and four associated roundabouts would have been delivered;
- the A32 North roundabouts would have been delivered;
- Welborne Way would have been delivered;
- most of Dashwood Boulevard and Dashwood Avenue have been delivered;
- Knowle Road improvements have been implemented;
- part of West Way has been delivered;
- other off-site highway works have commenced;
- connected pedestrian and cycle routes to key community assets have been delivered;
- overhead powerlines have been undergrounded;
- water mains have been diverted (if required);
- an onsite drainage solution has been delivered;
- the Village Centre Community Building has been delivered;
- a Health Outreach Facility has been provided within the retail units;

- children's play space has been delivered within neighbourhoods;
- strategic planting to the northern, north-eastern and south-western boundaries has been provided;
- structural planting associated with the highway infrastructure has been provided;
- buffer planting associated with Dashwood SANG and Blakes Copse has been provided;
- Dashwood Park and Welborne Green have been provided; and
- the playing fields associated with the primary school have been provided.

10.53 Even if work had commenced in 2019/20 as assumed in the IDP19, this does not appear to be an achievable aspiration. However, given that work was not commenced in 2019/20 or even in 2020/21 this is clearly no longer realistic.

10.54 In such circumstances, where the evidence provided in a written agreement has been superseded by events, the Secretary of State has concluded that such sites should not be considered deliverable in paragraph 21 of the Stapeley decision. I agree with this position, but nevertheless proceed to consider whether there is any current evidence to demonstrate that this site is realistically deliverable.

10.55 The Council resolved to grant outline planning permission subject to a S106 which was required to secure:

- **"The creation of an Estate Management Company...;**
- **The appointment of a New Community Development Worker for a period of not less than ten years;**
- **Provision for an Education Steering Group;**
- **Contribution and land for the delivery of three primary schools;**
- **Contribution and land for the delivery of one secondary school;**
- **A Community Use Agreement(s) for the school(s) facilities for public use outside of the times needed for educational use;**
- **Nursery and pre school marketing strategy;**
- **Provision of the Local Centre;**

- **Provision of the District Centre;**
- **Provision of healthcare facilities;**
- **Provision of the Community Hub;**
- **Delivery of Green Infrastructure...;**
- **GI Delivery and management arrangements;**
- **Delivery of the Temporary SANGS Strategy;**
- **Provision of SANGS;**
- **In perpetuity management of SANGS including step-in rights by the Estate Management Company;**
- **SRMP Contribution;**
- **Public Transport – BRT provisions on site and contributions;**
- **Safeguarding of the Rail Halt Land;**
- **A32 access works;**
- **Off site Local Highway Network mitigation and safety schemes;**
- **Framework residential travel plan;**
- **Neighbourhood travel plans;**
- **Framework employment travel plan;**
- **Safeguarding the land for the Household Waste Recycling Centre;**
- **Contribution towards the Household Waste Recycling Centre to include a proportionate cost of the legal fees;**
- **Affordable housing...;**
- **Self Build Housing;**
- **Passivhaus where viability allows;**
- **Lifetime homes where viability allows;**
- **Extra Care accommodation;**
- **Business incubation centre;**
- **Employment and training plan for construction;**
- **Equalisation arrangements for the Sawmills site;**
- **Public access to the site;**
- **Improvements to existing rights of way;**
- **Closure, stopping up and diversion of existing rights of way.”**

10.56 This extensive list of proposed planning obligations will clearly take a considerable amount of time to negotiate and put in place within a S106 agreement.

10.57 Similarly, in terms of proposed planning conditions, prior to the approval of the first application for the approval of reserved matters for residential development, it is necessary for:

- A site wide Strategic Design Code to be submitted to and approved in writing by the LPA;
- A Street Design Manual to be submitted to and approved in writing by the LPA;
- A Neighbourhood Design Code for the relevant neighbourhood to be submitted to and approved in writing by the LPA;
- A Site-wide Housing Strategy to be submitted to and approved by the LPA; and
- A Site Wide Biodiversity Enhancement Strategy to be submitted to and approved by the LPA.

10.58 Then, prior to residential development taking place, it is necessary for:

- Details of the proposed ground and slab levels of the development in relation to existing ground levels for the relevant neighbourhood to be submitted to and approved by the LPA;
- A Written Scheme of Investigation for the relevant neighbourhood has been submitted to and approved in writing by the LPA;
- A desk-top Contamination Assessment for the relevant neighbourhood has been submitted to and approved in writing by the LPA;
- A Construction Environmental Management Plan for the relevant neighbourhood has been submitted to and approved in writing by the LPA;
- A Demolition Method Statement for the relevant neighbourhood, where relevant, has been submitted to and approved in writing by the LPA;
- A surface water drainage scheme for the relevant neighbourhood has been submitted to and approved in writing by the LPA;

- Details of ecological mitigation, compensation and enhancement measures for the relevant neighbourhood have been submitted to and approved in writing by the LPA;
- An Arboricultural Impact Assessment and Method Statement for the relevant neighbourhood has been submitted to and approved in writing by the LPA;
- Any tree or hedgerow protective measures required within a neighbourhood have been installed;
- Foul Drainage Details for the relevant neighbourhood have been submitted to and approved in writing by the LPA;
- Details of roads, footpaths, cycleways, parking, street lighting, public transport connections, highway surface water drainage and a timetable for the delivery of these within the relevant neighbourhood have been submitted to and approved in writing by the LPA;
- An Energy Strategy for the relevant neighbourhood has been submitted to and approved in writing by the LPA;
- Details of water efficiency measures for the relevant neighbourhood have been submitted to and approved in writing by the LPA; and
- A Housing Statement for the relevant neighbourhood has been submitted to and approved in writing by the LPA.

10.59 Then prior to occupation, it is necessary for:

- The Dashwood SANG has been laid out and made accessible to the public;
- A reserved matters application for parking and Dashwood has been submitted to and approved in writing by the LPA, and has been laid out in accordance with the approved details and is open to use;
- A planting scheme has been implemented for the areas identified as advanced mitigation planting between Dashwood and Blakes Copse; and
- Details of the sources of all the funding necessary to carry out the Junction 10 works has been submitted to and approved in writing by the LPA.

10.60 There are therefore a very significant number of conditions to address prior to commencement, which will mean that there is not a realistic prospect of the first completion being achieved for a number of years yet.

10.61 Condition 52 is of particular note as this requires all of the sources of funding to deliver the remodelling of Junction 10 of the M27 to be detailed prior to the commencement of any development (other than that in support of Junction 10). According to the latest Phasing Plan submitted in support of the application (Appendix 12) it is also intended that the entirety of this remodelled junction will be delivered prior to the first completion.

APPENDIX 12: EXTRACT OF PHASING PLAN

10.62 A report was presented to the Executive Member for Economy, Transport and Environment of Hampshire County Council on 14th January 2020 (CDH.8) which identified in paragraph 26 that the works would cost between £85 million and £100 million and in paragraph 29 that there was a funding gap of between £55 million and £70 million. The report concludes that:

“Whilst there has been significant progress over the last year on the scheme development, the report outlines a fundamental impasse in the progression of the business case and scheme development work, pending resolution of critical issues relating to significant gap funding, and the approach to scheme delivery. These difficulties mean it is not possible to progress the Full Business Case development at this time.” (my emphasis)

10.63 More recently, in early October 2020, newspaper articles have referred to Council leaders submitting a letter to the prime minister requesting funding to address this issue. The leaders are quoted as stating:

“The delivery of Welborne Garden Village is under threat unless government funding can be found as a matter of urgency. Without urgent funding support from the government the whole development could be stalled for a considerable while.”

10.64 It is therefore apparent that there are significant barriers to the delivery of this site for which no solutions have currently been identified. In the light of such constraints, this site should not be considered to be deliverable.

10.65 Even once the S106 is agreed and outline planning permission is granted, it will be necessary for:

- the technical work necessary to discharge conditions to be undertaken;

- applications for the discharge of conditions to be submitted and determined;
- applications for the approval of reserved matters to be prepared, submitted, consulted upon and determined;
- pre-commencement works necessary to discharge relevant conditions and to provide the necessary infrastructure (including sewerage, utilities, internal roads etc) will need to be undertaken;
- planning obligations will need to be fulfilled including making the appropriate financial contributions, preparing the necessary strategies/plans and delivering the infrastructure (including some of that listed above) in accordance with the appropriate trigger points;
- the developer will need to market the homes; and
- the residential development can then commence.

10.66 Given the extent of barriers to overcome it is not considered that there is a realistic prospect of the first completions being achieved for a number of years even if the funding issues were able to be overcome for which there is currently no evidence.

10.67 The Start to Finish report (Appendix 15) identifies 6 strategic scale (of more than 1,000 homes) sites in Hampshire. I have been able to identify the relevant dates for 4 of these²⁷. From my research I have identified that from gaining a resolution to grant planning permission it has taken on average 4 years and 10 months until the first completion is achieved on these strategic scale sites in Hampshire, ranging from 2 years and 9 months at Land East of Icknield Way (Test Valley) to 7 years and 3 months at Elvetham Heath (Hart).

10.68 Given the number and extent of proposed planning obligations at Welborne, it would be expected that the lead-in time for this site would be longer than that on an average site, even without the potential delays associated with the effects of coronavirus. Even optimistically assuming that notwithstanding the extent of the

²⁷ The site at West of Waterlooville does not appear to have gained a resolution to grant planning permission and so no corresponding information can be discerned for this site; and the site at Velmead Farm was permitted in 1984 and as such I have been unable to identify the relevant committee reports and dates.

planning obligations the average lead-in time was achieved this would mean that the first completion would not be achieved until August 2024.

10.69 However, as considered above, the effects of coronavirus are likely to lengthen this lead-in time given that it is likely to take longer to negotiate the S106 than would otherwise have been the case, longer to undertake technical works, longer to discharge conditions, longer to undertake pre-commencement works, and longer to develop the site than would have been the case when the other strategic sites were delivered.

10.70 The trajectory of the Council assumes that the first completion will be achieved in late 2022/23, 3 years after the resolution to grant outline planning permission. This would appear unrealistic by comparison with any other strategic site in Hampshire when the extent of proposed planning obligations are taken into account. This becomes even more unrealistic when the likely effects of coronavirus are considered.

10.71 The Five Year Housing Land Supply Position Statement (Appendices 6 and 7) indicates that the developer has been contacted and that they have provided this new trajectory upon which the Council rely. However, this trajectory is not in the public domain and so it cannot be considered to be 'clear' evidence and in any event as identified above the trajectory is contingent upon the receipt of funding for which there is no identified solution and is wholly unrealistic in any case.

10.72 In the absence of any up-to-date or realistic evidence and given the absence of any committed funding solution to the remodelling of Junction 10, I do not consider that this site can be considered deliverable.

10.73 The respective positions on allocations are set out in Table 10.2 below.

Table 10.2 – the deliverable supply from allocations

	Position of the Council	Position of the Appellant
Wynton Way, Fareham	10	0
335-337 Gosport Road, Fareham	8	0
East of Raley Road	50	0
33 Lodge Road	10	0
Land off Church Road	26	0
Heath Road, Locks Heath	70	0
Welborne	450	0
Allocated sites	624	0

Sites identified on the brownfield land register

10.74 The Council include 145 homes on two sites which are identified on Part 1 of the Brownfield Land Register.

10.75 In order to be eligible for inclusion on the register, Regulation 4 of the Town and Country Planning (Brownfield Land Register) Regulations 2017 requires that a site must be:

- at least 0.25ha or capable of supporting at least 5 dwellings;
- suitable for residential development as it is allocated, has planning permission, has permission in principle, or is suitable in the opinion of the LPA having regard to adverse impacts and any relevant representations received;
- available for residential development as the relevant owner or developer has expressed an intention to sell or develop the land, or is available in the opinion of the LPA taking account of publicly available information and any relevant representations received;
- achievable such that in the opinion of the LPA development is likely to take place within 15 years having regard to publicly available information and any relevant representations received.

10.76 It is therefore apparent from the Regulations that in order for a site to be included on the register it need not be deliverable, as there is no requirement for sites to have a realistic prospect of delivery within five-years. All that is required is that such sites are developable within 15 years.

10.77 Furthermore, the suitability, availability and achievability of sites should take account of any representations received according to the Regulations. However, no public consultation has been undertaken on sites identified on Part 1 of the register in Fareham and so there has not been the opportunity for any representations to be received to determine the suitability, availability and achievability of the sites. In the absence of any such consultation, including with statutory consultees and members of the public, with a final conclusion having been reached in the light of expert technical and/or local responses, there would need to be compelling evidence that these sites offer suitable locations for

development as would be the case on sites which have been examined either through a Local Plan examination or the grant of planning permission.

10.78 In this context, the PPG (68-014) indicates that only sites identified on Part 2 of the Brownfield Land Register should be included in the deliverable supply. To be included in Part 2 of the register it is necessary for sites to be subject to consultation to ensure that these do offer a suitable location for development and on this basis, they would meet one of the pre-conditions for a deliverable site.

10.79 The NPPF does not preclude the inclusion of Part 1 sites in the deliverable supply. However, as identified above, in order to include these, in addition to the need for clear evidence that completions will begin on site within five years, there would need to be sufficient evidence for a decision-taker to reach a conclusion on the suitability of the site for development equivalent to that which would arise in support of the approval of a planning permission, an allocation in a Local Plan, or the grant of permission in principle through inclusion on Part 2 of the register. I consider that this would as a minimum require consultation with statutory consultees and local residents.

10.80 The individual sites are considered below.

10.81 Warsash Maritime Academy - the Council include 100 homes in the deliverable supply on this site. The previous Five-Year Housing Land Supply Position Statement of April 2019 indicated that there has been a request for a screening opinion on this site but no evidence, let alone clear evidence, has been provided that completions will begin on site within five years.

10.82 In response to the request for a screening opinion:

- Natural England identified that the proposed development could have significant direct and indirect impacts upon the Lee-on-the-Solent to Itchen Estuary Site of Special Scientific Interest, the Solent Maritime Special Area of Conservation, the Solent and Southampton Water Special Protection Area, and the Solent and Southampton Ramsar Site, and requested that either an Environmental Statement was required to consider these or that in the absence of this a detailed assessment of these potential impacts is undertaken in support of any planning application;

- Hampshire County Council identified that there would be a need for a full Transport Assessment and a Travel Plan;
- Hampshire County Council identified that the likely significant ecological effects on the Solent and Southampton Water Special Protection Area, the Solent and Southampton Ramsar Site, the Solent Maritime Special Area of Conservation, and the Lee-on-the-Solent to Itchen Estuary Site of Special Scientific Interest are likely to trigger the requirement for requirement for an Environmental Statement.

10.83 The Council concluded that an Environmental Statement was required in March 2019. It is therefore apparent that a significant amount of work is required before this site can be considered to offer a suitable location for development and accordingly the site should not be considered to be deliverable.

10.84 Once again in the absence of an application for detailed planning permission and the absence of any written agreement, this site should not be considered deliverable according to the Secretary of State in paragraph 21 of the Stapeley decision.

10.85 Fareham Magistrates Court – the Council include 45 homes in the deliverable supply on this site. The Five-Year Housing Land Supply Position Statement provides absolutely no evidence, let alone clear evidence that completions will begin on site within five years, other than noting that an outline planning application has been received.

10.86 The outline planning application was submitted in November 2018 and was subject to consultation. The latest consultation response was received in May 2019 and there has been no further progress on the application since this time. There is no evidence as to why the application has not progressed, but this could be symptomatic of a technical issue which remains to be resolved, and/or that the applicant is no longer actively progressing the scheme.

10.87 Furthermore, even assuming that the applicant is progressing the scheme and that any remaining issues can be satisfactorily resolved, such that outline planning permission is granted, it will remain necessary to undertake the necessary technical work to discharge conditions including an intrusive site investigation as requested by Environmental Health, to sell the site to a developer, prepare, submit and determine applications for the approval of

reserved matters, and undertake pre-commencement works prior to commencing development. There is no evidence of the applicant's intentions for this site to demonstrate that it is even intended that this will be achieved by 31st March 2025.

10.88 Given the absence of clear evidence, particularly the absence of the delivery intentions of the developer including start and build-out rates, this site should not be considered deliverable.

10.89 As above, this accords with the approach of the Secretary of State in the Stapeley decision.

10.90 The respective positions on allocations are set out in Table 10.3 below.

Table 10.3 – the deliverable supply from sites identified on a Brownfield Land Register

	Position of the Council	Position of the Appellant
Warsash Maritime Academy	100	0
Fareham Magistrates Court	45	0
Sites identified on a Brownfield Register	145	0

11. SPECIFIC SITES THAT ARE NOT WITHIN CATEGORY A OR B

- 11.1 The definition of a deliverable site within the NPPF provides two lists of sources of supply (Category A and B) and identifies how the deliverability of each of these should be tested. The sites included in these lists comprise sites which have planning permission, which are allocated, which have been identified on the brownfield register or which have a grant of permission in principle.
- 11.2 The test which applies to Category A sites can from a plain reading only apply to Category A sites and the test which applies to Category B sites can similarly only be applied to Category B sites.
- 11.3 The Council nevertheless include 709 homes on unallocated sites which were the subject of a resolution to grant planning permission at the base-date (1st April 2020). Such sites do not fall into either Category A or Category B and so cannot be considered to be deliverable using either the test that applies to Category A or B sites.
- 11.4 The definition does not provide a framework for considering any other source of supply to those included in Category A or B. Indeed, if other sites were to be considered deliverable, it is entirely unclear how these should be assessed. As a result, I interpret the definition of a deliverable site to provide a closed list of sites that can be considered deliverable.
- 11.5 This position is supported by the PPG (68-007) which identifies that the test applicable to Category A and B sites can only apply to those sites. It states:

“As well as sites which are considered to be deliverable in principle, this definition also sets out the sites which would require further evidence to be considered deliverable, namely those which:

- **have outline planning permission for major development;**
- **are allocated in a development plan;**
- **have a grant of permission in principle; or**
- **are identified on a brownfield register.”**

- 11.6 Similarly, the PPG (68-014) provides guidance to assess the deliverability of only those sites within Category A or B (and windfall) in support of Annual Position Statements.

- 11.7 Accordingly, from a plain reading, the definition of a deliverable site within the NPPF provides a closed list of sources of supply that can be considered deliverable and this is supported by the PPG.
- 11.8 This interpretation is consistent with the finding of the overwhelming majority of S78 Inspectors of which I am aware that have addressed this matter of principle²⁸. This is acknowledged by the Council in the draft Five Year Housing Land Supply Position statement (Appendix 6) which states:

“What constitutes 'deliverable' has now been the subject of many planning appeals around the country including within Fareham. Many Planning Inspectors have regarded the definition within the National Planning Policy Framework as a 'closed list' i.e. if a site does fall within the definitions at a) or b), set out within the preceding section of this report, it should not be included within the Council's 5 Year Housing Land Supply...

... Based on the definition of 'deliverable' within Annex 2 of the National Planning Policy Framework and the manner in which Planning Inspectors have applied it in their decision making, it is considered appropriate to remove "the resolutions to grant" from the Council's 5 Year Housing Land Supply at this time, except those that relate to allocated housing sites within the Council's adopted local plan.”

- 11.9 The one exception of which I was aware to the consistent interpretation of Inspectors that have addressed this issue was reached in an appeal decision at Charminster (APP/D1265/W/18/3206269) (CDJ.6). In paragraph 80 of this appeal decision, the Inspector concluded that sites outside of Category A and B could be included in the deliverable supply where there was clear evidence but acknowledged that this was inconsistent with the PPG. The Inspector appears to suggest that the words “in particular” within the definition indicate that Category A and B sites provide particular (but not exclusive) examples of the sites that may be considered deliverable. This interpretation is not only acknowledged to be contrary to the PPG, it is also contrary to the interpretation of every other S78 Inspector²⁹, who in my opinion correctly interpret the words “in particular” to relate to the particular tests which are to be applied to Category A and B sites. In

²⁸ See for example, paragraphs 30, 31 and 33 of the Woolmer Green appeal decision (CDJ.3), paragraphs 65 and 67 of the Woolpit appeal decision (CDJ.4), paragraph 62 of the Bures Hamlet appeal decision (CDJ.5), paragraph 46 of the West Bergholt appeal decision (CDJ.8), paragraph 36 of the Thrapston appeal decision (CDJ.9 and CDJ.10), paragraph 18 of the Winsford appeal decision (Appendix 14) and paragraph 58 of the Windacres Farm appeal decision (CDJ.11).

²⁹ Inspector Hill was presented a number of appeal decisions that adopt a PPG compliant interpretation but does not even acknowledge these within the appeal decision.

adopting this different interpretation, that the Inspector accepted was contrary to the PPG, the Inspector unnecessarily relies upon the PPG being directly contrary to the NPPF. No such tension exists when the definition is interpreted as a closed list in accordance with the position of every other S78 Inspector and the PPG.

11.10 Consistent with the position of every other S78 Inspector and the PPG, numerous Councils also agree that the definition of a deliverable site either provides or operates as a closed list. This is the consistent interpretation of the overwhelming majority of decision-takers.

11.11 However, there has recently been a significant development on this matter. The Thrapston appeal decision (CDJ.9 and CDJ.10) has been the subject of a legal challenge on the basis that East Northamptonshire Council, having accepted that the definition of a deliverable site provided a closed list at the hearing as recorded in paragraph 9 of the costs decision, now consider that it is not a closed list. The Secretary of State conceded that the appeal decision should be quashed owing to the fact that the Secretary of State also considered that the definition of a deliverable site does not provide a closed list. East Northamptonshire Council then granted planning permission for a very similar outstanding application on the appeal site, such that there was no reason for the Interested Party (the Appellant) to defend the challenge. Accordingly, the Interested Party did not defend the challenge and a consent order has now been issued that quashes the Thrapston appeal decision (CDJ.9 and CDJ.10). It is however significant that whether or not the definition provides a closed list was not heard by the courts as it inevitably will be at some point. All that can be gleaned from the quashing of this decision is that the legal team of one Council and the Secretary of State disagreed with the PPG and the consistent findings of other Inspectors that the definition of a deliverable site provides a closed list. Whilst this is a significant material consideration which I have taken account of, it does not change my view that the definition of a deliverable site does provide a closed list.

11.12 If the definition does not provide a closed list as set out by the Secretary of State in the Consent Order, it is entirely unclear how the definition should operate. Neither the papers of the Secretary of State nor the Consent Order provide any explanation of the level of evidence necessary to consider such sites deliverable. It could be interpreted that:

- other sources of supply can be considered to be deliverable where they meet the pre-conditions without being subject to further tests (such as

those which apply to Category A and B sites). However, this would give rise to the perverse conclusion that sites outside of the 'closed list' can be considered deliverable in the absence of clear evidence notwithstanding that they are less likely to achieve completions than the Category B sites which can only be considered deliverable where there is clear evidence; or

- one of the tests which apply to Category A or B sites applies to other sites, namely that they are considered deliverable in principle or that they can only be considered deliverable where there is clear evidence. However, this would be directly contrary to the PPG (68-007) and would require the decision taker to introduce their own wording into the definition to make this interpretation work.

11.13 As a result of the perversities of these approaches, my professional opinion remains that the definition of a deliverable site provides a closed list, and I cannot see how it can be construed in any other way.

11.14 I am aware of another appeal decision which has subsequently sought to reflect the position of the Secretary of State in the Consent Order namely in paragraph 22 of the appeal decision at Land off Maldon Road, Tiptree (CDJ.15). The Inspector states:

"The remaining three sites fall outside of both Categories (a) and (b). However, in the light of the Consent Order agreed by the SoS in the case of East Northants Council v SoS and Another, it is now clear that this need not prevent these sites from being deliverable, provided that they otherwise meet the requirements set out in the NPPF's definition." (emphasis added)

11.15 Through the use of the word 'otherwise' the Inspector appears to acknowledge that to treat the definition as anything other than a closed list does not fully meet the requirements of the definition. Nevertheless, the Inspector proceeds to treat the definition as an open list and assumes that sites outside of Category A and B can be considered deliverable where there is clear evidence. The Inspector does not appear to have been made aware of the fact, or if he was, he does not address the fact, that this is directly contrary to the PPG (68-007).

11.16 To further complicate matters, the Secretary of State has subsequently relied upon appeal decisions and the recommendation of an Inspector all of which indicate that the definition of a deliverable site provides or at least operates as a closed list when determining an appeal at Farnham (Appendix 13). In paragraph

185 of the Inspectors recommendation, it is identified that all LAA sites should be discounted from the deliverable supply. As identified in paragraph 93 of the recommendation the only evidence provided to justify the exclusion of these sites was that they are outside of the closed list and so it is apparent that Inspector Chamberlain has interpreted the definition to provide a closed list³⁰.

APPENDIX 13: FARNHAM APPEAL DECISION

11.17 The Secretary of State then considers the five-year land supply position in light of more recent evidence in paragraphs 18 to 23. The Secretary of State refers to the appeal decision at Windacres Farm (CDJ.11) which identified a 3.9 year land supply with a 20% buffer. In this decision, notwithstanding the agreed position between the parties that sites outside of the closed list could be included in principle, Inspector Gilbert-Wooldridge concluded that such sites should not be included in the deliverable supply as set out in paragraphs 58 and 65 to 72 of that decision. The Secretary of State also refers to the appeal decision at Loxwood Road (CDJ.12) at which Waverley Borough Council accepted the deliverable supply position identified in the Windacres Farm appeal decision (which relies upon the definition operating as a closed list). Between these two appeal decisions, the Housing Delivery Test result was published, which resulted in a 5% rather than 20% buffer. This change of buffer resulted in the 3.9 year land supply identified in the Windacres Farm decision being increased to a 4.5 year land supply. Both of these positions are nevertheless reliant upon Inspector Gilbert-Wooldridge's interpretation that the definition of a deliverable site operates a closed list which is broadly consistent with the position of Inspector Chamberlain in the recommendation to the Secretary of State that it provides a closed list. The Secretary of State concluded that Waverley Borough Council is able to demonstrate a 4.5 year land supply, a position which is again reliant upon the definition operating as a closed list. Similarly, the Secretary of State has not indicated any disagreement with the recommended position of Inspector Chamberlain that the definition provides a closed list.

11.18 It is therefore apparent, that notwithstanding that the Secretary of State considered that the definition of a deliverable site did not provide a closed list in the papers submitted to the legal challenge on 27th March 2020 as translated into the Consent Order of 7th May 2020 (Appendix 8), the Secretary of State subsequently applied the definition on the basis that it does operate as a closed list. The approach adopted in this recovered appeal decision represents the most

³⁰ As he did in the quashed Thrapston appeal decision.

recent position of the Secretary of State, it is consistent with the PPG and with the consistent interpretation of the overwhelming majority of Inspectors as well as my professional opinion. I therefore consider that the definition of a deliverable site at least operates as a closed list and as such all of the 709 homes identified by the Council should be discounted from the deliverable supply.

11.19 Clearly, if the definition of a deliverable site is not treated as a closed list, it will be necessary for the Inspector in these appeals to apply one of the above interpretations (or a different interpretation). The Council has not made it clear how they interpret the definition and as described above the NPPF and PPG do not provide any assistance in this regard. I would suggest, that if contrary to my professional opinion, the definition is not treated as providing a closed list, it would be necessary to have something beyond clear evidence (if such a thing can exist) to consider these sites deliverable, owing to the fact that the PPG (68-007) indicates that clear evidence would not be sufficient and that these sites are less deliverable than Category B sites which can only be considered deliverable with clear evidence.

11.20 Thankfully, for the purposes of the current appeals, I do not consider that it is necessary to determine whether or not the definition of a deliverable site provides a closed list, nor do I consider it necessary to determine how a site outside of the closed list should be considered even if it is concluded that it is not a closed list. This is due to the fact that even if (contrary to my professional opinion and the latest position of the Secretary of State) the definition of a deliverable site does not provide a closed list *per se*, S78 Inspectors and the Secretary of State have consistently found that sites that were subject to a resolution to grant planning permission at the base-date of the assessment are ineligible for inclusion.

11.21 This point is clearly set out in paragraph 18 of the Winsford appeal decision (Appendix 14) in which the Secretary of State states:

“The Secretary of State disagrees with the reasons given at IR 365 to 367, and does not consider that the sites, amounting to 222 dwellings, are deliverable since they do not fall within category a or b of the Framework’s definition of deliverable, and he does not consider that there is clear evidence of deliverability within five years as required by the Framework, given the outstanding issues of the need for legal agreements and agreements on reserved matters.”

APPENDIX 14: WINSFORD APPEAL DECISION

11.22 I interpret this to mean that sites subject to resolution to grant planning permission at the base-date were not deliverable for two reasons, namely that they were outside of the closed list and that given the outstanding need for legal agreements and reserved matters approvals at the base-date there was not clear evidence (not that this would be sufficient in any case according to the PPG). However, even if this decision is not interpreted as excluding sites outside of the closed list *per se*, the only way that this could be read would still require that sites subject to a resolution to grant planning permission at the base-date cannot be considered deliverable owing to the outstanding need for legal agreements and reserved matters.

11.23 The sites that the Secretary of State discounted from the deliverable supply in this decision included both sites subject to a resolution to grant outline and full planning permission³¹. Therefore, the Secretary of State's position must be, regardless of whether the definition provides a closed or open list, that sites should not be considered deliverable given the outstanding need for legal agreements even if there is no need for a subsequent reserved matters application.

11.24 It is particularly noteworthy that the Secretary of State has even discounted such sites where they have subsequently gained planning permission as is the case at Winnington Business Park as outlined in paragraph 367 of the Inspectors Report.

11.25 The same approach has also been adopted in the following appeal decisions³²:

- Highnam appeal decision (CDJ.13) – the Inspector did not grapple with whether or not the definition of a deliverable site provided a closed list, and proceeded on the basis that sites outside of the closed list could not be considered deliverable in the absence of clear evidence, notwithstanding that this does not accord with the PPG. Nevertheless, the Inspector found that none of these sites were deliverable as set out in paragraphs 215 and 216. The conclusion that these were not deliverable was implicitly adopted by the Secretary of State in paragraph 14 of the appeal decision;

³¹ Such as at Hartford Manor.

³² This list is somewhat limited given that there are very few appeal decisions that have not concluded that it is a closed list.

- Land to the East of Downend Road, Portchester appeal decision (CDJ.1) – the Inspector does not appear to reach a conclusion on whether or not the definition provides a closed list, but in paragraph 90 of this recent appeal in Fareham Borough, the Inspector concluded that given the unresolved issues including the execution of legal agreements or unilateral undertakings and the length of time since the resolutions to grant planning permission were granted, these sites are not deliverable.

11.26 These appeal decisions all appear to work on the premise that sites outside of Category A and B can be considered deliverable where there is clear evidence notwithstanding that this is contrary to the PPG. Nevertheless, even in this context, these decision-takers have concluded that unallocated sites subject to a resolution to grant planning permission at the base-date should not be considered deliverable.

11.27 In particular, the Secretary of State identifies in the Winsford appeal decision³³, that sites cannot be considered to be deliverable where there was an outstanding need for legal agreements. This applies to any site subject to a resolution to grant planning permission at the base-date of the assessment such that even if the definition of a deliverable site does not provide a closed list *per se*, such sites are ineligible for inclusion.

11.28 The Council revised its position entirely as a result of the recent position of the Secretary of State as set out in the Consent Order (Appendix 8) that the definition of a deliverable site does not provide a closed list, as explained in the Update Report (Appendix 7).

11.29 Even if the Council is correct and that the definition does not provide a closed list *per se* and that it doesn't operate as a closed list, it would remain the case that such sites could only be considered deliverable where they offered a suitable location for development at the base-date³⁴, and there was sufficient evidence (beyond clear) that completions will be achieved within five-years. In Fareham Borough all of these sites would not meet either of these requirements.

11.30 In this LPA there is also absolutely no evidence that completions will be achieved within five-years.

³³ And this is consistent with the approach adopted in the Downend Road appeal decision (CDJ.1).

³⁴ As agreed in the Statement of Common Ground.

11.31 Nevertheless, I proceed to consider the sites that are subject to a resolution to grant planning permission in further detail below.

11.32 Land at Brook Lane, Warsash – this site is subject to an undetermined outline planning application for up to 180 homes. The application gained a resolution to grant outline planning permission in January 2018 subject to the applicant entering into a S106 agreement to secure:

- Financial contribution to secure satisfactory mitigation of the ‘in combination’ effects that the increase in residential units on the site would cause through increased recreational disturbance on the Solent Coastal Special Protection Area;
- Financial contribution towards highway improvements to the highway network resulting from the impacts of the development;
- The provision of open space, towards the delivery of a play area and associated maintenance;
- Vehicular, pedestrian and cycle access to adjoining land;
- The delivery of 40% of the permitted dwellings as affordable housing;
- Travel Plan and related monitoring cost and bond.

11.33 In the subsequent 2 years and 9 months, the required S106 has not been agreed and as a result outline planning permission has not been granted. Even where such sites have subsequently gained planning permission, as was the case at Winnington Business Park³⁵, the Secretary of State has concluded that they are not deliverable given the outstanding need for legal agreements at the base-date. In the absence of a subsequent grant of planning permission, the Land at Brook Lane is less deliverable than sites which the Secretary of State has discounted from the deliverable supply and should therefore be discounted even if the definition does not provide a closed list *per se*.

11.34 The suitability of the site for the proposed development is dependent upon securing these planning obligations and so in the absence of these, it is unclear

³⁵ As set out in paragraph 367 of the Inspectors Report to the Winsford appeal decision (Appendix 14).

how the site could be considered to offer a suitable location for the proposed development.

11.35 Furthermore, even if contrary to the PPG, such sites could be considered deliverable where there was clear evidence, the Council has provided absolutely no evidence, let alone clear evidence, that completions will begin on this site.

11.36 The Council also assume that this site will deliver the first completions in circa 2 years' time, in mid-2022. Even assuming that outline planning permission was granted forthwith, notwithstanding that there is no evidence that this will be the case, and that an application for the approval of reserved matters is then forthcoming shortly thereafter, notwithstanding that there is no evidence that this will be the case, and that the application for the approval of reserved matters is not subject to significant objections and is able to be approved in a timely fashion, not that there is any evidence of this, then Figure 4 of the Start to Finish Report (Appendix 15) identifies that for a site of between 100 and 499 homes, it takes on average 1.9 years from the approval of reserved matters until the first completion is achieved. The trajectory of the Council would therefore be considered to be wholly unrealistic, even in the absence of the current pandemic. Perhaps unsurprisingly, the developer Foreman Homes, is not advertising this site as coming soon.

APPENDIX 15: START TO FINISH REPORT

11.37 Accordingly, as this site was only subject to a resolution to grant planning permission at the base-date, it cannot be considered to be deliverable according to the NPPF, the PPG, the finding of virtually every S78 Inspector, and the Secretary of State. Furthermore, even if an alternative interpretation of the definition of a deliverable site and of the meaning of clear evidence, the Council has provided absolutely no evidence that this site will achieve completions within five-years and the trajectory upon which the Council relies is wholly unrealistic.

11.38 Land East of Brook Lane (South), Warsash – this site is subject to an undetermined outline planning application for 140 homes, which gained a resolution to grant planning permission in January 2018 subject to the applicant agreeing a S106 to secure:

- Financial contribution to secure satisfactory mitigation of the 'in combination' effects that the increase in residential units on the site would

cause through increased recreational disturbance on the Solent Coastal Special Protection Area;

- Financial contribution towards highway improvements to the highway network resulting from the impacts of the development;
- The provision of open space to the Council, including contributions for its maintenance;
- A financial contribution towards the delivery of a play area and associated maintenance;
- Access to adjoining land;
- The delivery of 40% of the permitted dwellings as affordable housing;
- Travel Plans and related costs.

11.39 In the subsequent 2 years and 9 months, the required S106 has not been agreed and as a result outline planning permission has not been granted. As set out in relation to the preceding site, sites such as this have been discounted from the deliverable supply by the Secretary of State even where they have subsequently gained planning permission. In the absence of the subsequent grant of planning permission, this site should similarly be discounted.

11.40 As with all such sites, this has been concluded to offer a suitable location for the proposed development providing these planning obligations are secured. In the absence of these planning obligations, the site by definition, does not offer a suitable location for the proposed development and therefore cannot be considered to be deliverable as it does not meet one of the pre-conditions.

11.41 As with the preceding site, the Council has provided absolutely no evidence, let alone clear evidence that completions will be forthcoming within five-years, such that even if contrary to the PPG such sites could be considered deliverable where there was clear evidence, this site still should not be considered deliverable.

11.42 Similarly, the Council consider that this site will deliver in mid-2022 which is wholly unrealistic and takes no account of the timescales for securing outline planning permission, undertaking the technical work in support of the discharge of conditions and the preparation of an application for the approval of reserved matters, preparing, submitting and determining applications to discharge

conditions and for the approval of reserved matters, undertaking pre-commencement works and then delivering the housing. This lead-in time will also be adversely affected by the current pandemic.

11.43 The developer, Bargate Homes, is nevertheless advertising this site as coming soon on their website, although they identify that they have yet to produce marketing material and have no sales presence. This may provide some indication that the developer at least has an intention to deliver the site in the coming years but whether or not this is realistic, especially given current circumstances, is another matter.

11.44 Regardless of the intent of the developer to deliver at an unspecified time, which in itself does not provide clear evidence in my opinion, in accordance with the NPPF, PPG, and the findings of S78 Inspectors and the Secretary of State this site should not be considered to be deliverable.

11.45 South of Greenaway Lane, Warsash – this site is subject of an outline planning application for up to 157 homes which gained a resolution to grant planning permission in October 2018 subject to the applicant entering into a S106 agreement to secure:

- Financial contribution to secure satisfactory mitigation of the ‘in combination’ effects that the increase in residential units on the site would cause through increased recreational disturbance on the Solent Coastal Special Protection Area;
- Financial contribution towards highway improvements to the highway network resulting from the impacts of the development;
- Travel Plan and related monitoring cost and bond;
- Payment towards a Traffic Regulation Order on Brook Lane and Lockwood Road to install parking controls;
- A financial contribution towards the delivery of a play area and associated maintenance;
- The provision of ecological corridors and subsequent maintenance arrangements;

- The provision of two additional hibernacula on the receptor site (Warsash Common LNR);
- Vehicular, pedestrian and cycle access connectivity to adjoining land;
- The delivery of 35% of the permitted dwellings as affordable housing;
- A financial contribution towards education provision.

11.46 In the subsequent 2 years, the S106 has not been able to be agreed and as a result outline planning permission has not been granted.

11.47 As described above:

- even when planning permission has subsequently been granted such sites should not be considered deliverable according to the Secretary of State;
- such sites cannot be considered to offer a suitable location for the proposed development now in the absence of the necessary planning obligations and so cannot be considered deliverable; and
- the Council has provided absolutely no evidence, let alone clear evidence, that this site will achieve completions within five-years, notwithstanding that this test would be contrary to the PPG.

11.48 Once again, the Council consider that this site will achieve the first completions in mid-2022 which appears wholly unrealistic, especially once account is taken of the current pandemic. The promoters' website also identifies that this site is subject to multiple ownerships that may act to constrain the delivery timetable.

11.49 In light of the above, this site should not be considered to be deliverable.

11.50 East & West of 79 Greenaway Lane, Warsash – this site is the subject of an outline planning application for up to 30 homes which gained a resolution to grant planning permission in July 2018 subject to the applicant entering into a S106 agreement to secure:

- Financial contribution to secure satisfactory mitigation of the 'in combination' effects that the increase in residential units on the site would cause through increased recreational disturbance on the Solent Coastal Special Protection Areas;

- Vehicular, pedestrian and cycle access connectivity to adjoining land;
- The delivery of 45% of the permitted dwellings as affordable housing.

11.51 In the subsequent 2 years and 3 months, the S106 has not been agreed and accordingly outline planning permission has not been granted. In August 2018, a full planning application was submitted for the development of 6 homes to replace 6 of the homes proposed in the outline planning application. This full planning application was considered by planning committee in January 2019 and gained a resolution to grant planning permission subject to agreeing a S106. Full planning permission was granted for 6 homes in August 2020.

11.52 For much the same reasons as with the preceding sites, this site should not be considered to be deliverable even if the definition does not provide a closed list *per se*, including because:

- Sites that were the subject of a resolution to grant planning permission at the base-date should not be considered deliverable according to the Secretary of State including those which have subsequently gained planning permission;
- Sites which were only considered to offer a suitable location for the proposed development providing certain planning obligations are agreed, cannot be considered to have offered a suitable location in the absence of these planning obligations and so cannot be considered deliverable;
- The Council has provided absolutely no evidence that completions will be achieved, even if contrary to the PPG this was the appropriate test.

11.53 Land South of Funtley Road, Funtley – this site was subject to an outline planning application for up to 55 homes and a community building incorporating a local shop. It gained a resolution to grant outline planning permission in July 2018 subject to the agreement of a S106 which according to the officer's recommendation was required to secure:

- The delivery of 40% of the permitted dwellings as affordable housing;
- Three of the permitted dwellings as custom-build properties;
- Provision of a pedestrian and cycle public right of way through the site from Funtley Road (north) to Thames Drive (south); associated works to

upgrade bridge over M27 motorway (including structural survey) and commuted sum for future maintenance;

- Provision of, laying out (including provision of capital equipment to establish the park) and transfer of community park land to Fareham Borough Council and a financial contribution of £802,000 towards the associated ongoing maintenance costs of operating the community park;
- The on-site provision of public open space including local equipped area of play (LEAP) in accordance with the Council's adopted Planning Obligations SPD, a financial contribution towards associated maintenance costs and transfer of the public open space to Fareham Borough Council;
- The details of the design, delivery and management of SUDs on and off site;
- A financial contribution towards the production of school travel plans in the area (£15,000);
- A financial contribution towards the revision of the existing traffic regulation order (TRO) to allow the speed limit restrictions on Funtley Road to be amended (£5,000);
- Submission and implementation of travel plan;
- Details of the delivery of the community building, the transfer of land 0.1 hectares in size on application site and funding on a pro-rate basis of £2,000 per sq. m of community use floorspace (to a maximum of £500,000) for provision of community/shop building and associated management arrangements for community use element along with pedestrian and vehicular access rights between the site of the community building and Funtley Road, or at the request of the local planning authority the same sum for the provision or improvement of community facilities within Funtley calculated on a pro-rata basis minus the floorspace of any remaining shop use on the application site.

11.54 The S106 was agreed and outline planning permission was granted on 2nd September 2020. As with the preceding sites, this site cannot be considered deliverable, even if the definition is not treated as a closed list *per se*, including because:

- Sites that were the subject of a resolution to grant planning permission at the base-date should not be considered deliverable even where they have subsequently gained outline planning permission according to the Secretary of State³⁶;
- Sites which were only considered to offer a suitable location for the proposed development providing certain planning obligations were agreed, cannot be considered to have offered a suitable location in the absence of these planning obligations having been agreed and so cannot be considered deliverable;
- The Council has provided absolutely no evidence that completions will be achieved, even if contrary to the PPG this was the appropriate test;
- The lead-in time assumed by the Council is wholly unrealistic. In this case, the Council consider that the first completion will be achieved in circa 2 years' time, notwithstanding that on average at least even prior to the current pandemic, according to Figure 4 of the Start to Finish report (Appendix 15), the first completion occurs 2 years after the approval of reserved matters for a site of this size and this site is not even yet subject to an application for the approval of reserved matters.

11.55 The developer, Reside Developments, identify this as a future development on their website, but do not provide any indication as to when they intend that this will be delivered.

11.56 Land South West of Sovereign Crescent, Locks Heath – this site is subject to a full planning application for 38 homes which gained a resolution to grant planning permission in September 2018 subject to officers negotiating a satisfactory affordable housing mix, the receipt of final comments from Southern Water and the resultant potential imposition of further conditions, and the agreement of a S106 which according to the officer's recommendation was required to secure:

- The provision and transfer of the areas of open space, wildlife corridor and buffer zones to Fareham Borough Council, including associated financial contributions for its future maintenance;

³⁶ See paragraph 367 of the Inspectors report and paragraph 18 of the Winsford recovered appeal decision (Appendix 14).

- Pedestrian and cycle access for members of the public through the site from the footpath adjacent to the north-west corner of the site, adjacent the vehicular access former from The Florins and through to the public bridleway adjacent to the southern edge of the site in perpetuity;
- A financial contribution towards the Solent Recreation Mitigation Partnership (SRMP);
- 15 of those proposed units on-site as affordable housing and a financial contribution equivalent to 0.2 units towards the provision of off-site affordable housing;
- A financial contribution towards education provision.

11.57 The final comments were received from Southern Water in March 2019. However, it is not apparent that a satisfactory mix of affordable housing has been agreed and in the subsequent 2 years and 1 month, the S106 has not been agreed and planning permission has not been granted.

11.58 As with the preceding sites, this site cannot be considered deliverable, even if the definition is not treated as a closed list *per se*, including because:

- Sites that were the subject of a resolution to grant planning permission at the base-date should not be considered deliverable according to the Secretary of State;
- Sites which are only considered to offer a suitable location for the proposed development providing certain planning obligations are agreed, cannot be considered to offer a suitable location in the absence of these planning obligations and so cannot be considered deliverable;
- The Council has provided absolutely no evidence that completions will be achieved, even if contrary to the PPG this was the appropriate test;
- The lead-in time assumed by the Council is wholly unrealistic. In this case, the Council consider that the first completion will be achieved in circa 1 years' time, notwithstanding that on average at least even prior to the current pandemic, according to Figure 4 of the Start to Finish report (Appendix 15), the first completion occurs 2 years after the grant of full planning permission for a site of this size.

11.59 The developer, Foreman Homes, is also not advertising this site as coming soon on its website.

11.60 Mourant Drive, Portchester – this site is subject to a full planning application for 48 homes which gained a resolution to grant planning permission in December 2018 subject to the receipt of a satisfactory amended plan and the applicant entering into S106 agreement to secure:

- Financial contribution to secure satisfactory mitigation of the ‘in combination’ effects that the increase in residential units on the site would cause through increased recreational disturbance on the Solent Coastal Special Protection Areas;
- The provision and management of public open space and ecological enhancement area for the lifetime of the development;
- Education contribution;
- The delivery of affordable housing and contribution;
- No clearance work to be undertaken on the site before 1st February 2019; the Council must be advised in advance of any proposals to undertake clearance work at the site; the Council to be given advance notice of any clearance works to be undertaken at the site and the Council’s officers/representatives given unfettered access to view all clearance related works; all clearance work to be overseen by Radian’s appointed ecologists in accordance with a scheme first agreed in advance with the Council.

11.61 In the subsequent 1 year and 10 months, the S106 has not been agreed and planning permission has not been forthcoming.

11.62 As with the preceding sites, this site cannot be considered deliverable, even if the definition is not treated as a closed list *per se*, including because:

- Sites that were the subject of a resolution to grant planning permission at the base-date should not be considered deliverable according to the Secretary of State;
- Sites which are only considered to offer a suitable location for the proposed development providing certain planning obligations are agreed,

cannot be considered to offer a suitable location in the absence of these planning obligations and so cannot be considered deliverable;

- The Council has provided absolutely no evidence that completions will be achieved, even if contrary to the PPG this was the appropriate test;
- The lead-in time assumed by the Council is wholly unrealistic. In this case, the Council consider that the first completion will be achieved in circa 1 years' time, notwithstanding that on average at least even prior to the current pandemic, according to Figure 4 of the Start to Finish report (Appendix 15), the first completion occurs 2 years after the grant of full planning permission for a site of this size.

11.63 This site is not even identified as coming soon on the development company's website. The website also acknowledges, as will be the case for all developers, that in light of the current pandemic, there is the possibility of delays in the delivery of homes.

11.64 Southampton Road, Titchfield – this site was the subject of an outline planning application for the delivery of approximately 105 homes. The application gained a resolution to grant outline planning permission in December 2018 and gained outline planning permission in July 2020.

11.65 As with the preceding sites, this site cannot be considered deliverable, even if the definition is not treated as a closed list *per se*, including because:

- Sites that were the subject of a resolution to grant planning permission at the base-date should not be considered deliverable according to the Secretary of State even where they have subsequently gained outline planning permission³⁷;
- Sites which were only considered to offer a suitable location for the proposed development providing certain planning obligations are agreed, cannot have been considered to offer a suitable location in the absence of these planning obligations and so cannot be considered deliverable;
- The Council has provided absolutely no evidence that completions will be achieved, even if contrary to the PPG this was the appropriate test;

³⁷ See paragraph 367 of the Inspectors report and paragraph 18 of the Winsford recovered appeal decision (Appendix 14).

- The lead-in time assumed by the Council is wholly unrealistic. In this case, the Council consider that the first completion will be achieved in circa 2 years' time, notwithstanding that on average at least even prior to the current pandemic, according to Figure 4 of the Start to Finish report (Appendix 15), the first completion occurs 1.9 years after the approval of reserved matters for a site of this size.

11.66 The developer, Reside Developments, identify this as a future development on their website, but do not provide any indication as to when they intend that this will be delivered.

11.67 Egmont Nurseries, Brook Avenue – once again this site is subject to an outline planning application (for 8 homes) which benefits from a resolution to grant planning permission. The Council reached this resolution in December 2018 and is subject to the applicant entering into a S106 agreement to secure:

- A financial contribution to secure satisfactory mitigation of the 'in combination' effects that the increase in residential disturbance on the Solent Coastal Special Protection Areas;
- A financial contribution towards off-site provision of affordable housing in accordance with core strategy policy CS18.

11.68 The S106 has not been agreed and planning permission has not been granted in the subsequent 1 year and 10 months.

11.69 As with the preceding sites, this site cannot be considered deliverable, even if the definition is not treated as a closed list *per se*, including because:

- Sites that were the subject of a resolution to grant planning permission at the base-date should not be considered deliverable according to the Secretary of State;
- Sites which are only considered to offer a suitable location for the proposed development providing certain planning obligations are agreed, cannot be considered to offer a suitable location in the absence of these planning obligations and so cannot be considered deliverable;
- The Council has provided absolutely no evidence that completions will be achieved, even if contrary to the PPG this was the appropriate test;

- The lead-in time assumed by the Council is wholly unrealistic. In this case, the Council consider that the first completion will be achieved in circa 2 years' time, notwithstanding that on average at least even prior to the current pandemic, according to Figure 4 of the Start to Finish report (Appendix 15), the first completion occurs 1.9 years after the approval of reserved matters for a site of this size.

11.70 The respective positions on sites which are not included in Category A or B are set out in Table 11.1 below.

Table 11.1 – the deliverable supply from sites outside of Category A and B

	Position of the Council	Position of the Appellant
Land at Brook Lane, Warsash	180	0
Land East of Brook Lane, Warsash	100	0
Land South of Greenaway Lane, Warsash	145	0
East & West of 79 Greenaway Lane, Warsash	30	0
Land South of Funtley Road, Funtley	55	0
Land South West of Sovereign Crescent, Locks Heath	38	0
Moraunt Drive, Portchester	48	0
Southampton Road (Reside)	105	0
Egmont Nurseries, Brook Avenue	8	0
Sites outside of Category A and B	709	0

12. WINDFALL ALLOWANCE

12.1 I agree with the windfall allowance of 74 homes assumed by the Council as set out in Table 12.1 below.

Table 12.1 – the windfall allowance

	Position of the Council	Position of the Appellant
Windfall allowance	74	74

13. DELIVERABLE SUPPLY CONCLUSIONS

13.1 The preceding analysis demonstrates that not only have the Council's previous trajectories generally been over-optimistic, but also that the Council misapply the definition of a deliverable site, assume unrealistic lead-in times, and do not provide any clear evidence in support of sites. Once the definition of a deliverable site is correctly applied, it is apparent that the deliverable supply is significantly lower than identified by the Council.

13.2 The respective positions on all components of the deliverable supply is summarised in Table 13.1 below.

Table 13.1 – respective positions on the deliverable supply

Source of supply	Position of the Council	Position of the Appellant
Category A: sites which should be considered deliverable unless there is clear evidence to the contrary		
Small permitted sites	155	155
Large permitted sites with detailed consent	371	356
1 Station Industrial Park	15	0
Other sites with detailed planning permission	356	356
Category B: sites which should only be considered deliverable where there is clear evidence that completions will begin on site within five years		
Large permitted sites with outline planning permission	99	14
Land east of Brook Lane & South of Brookside Drive, Warsash	85	0
Other sites with outline planning permission	14	14
Allocations	624	0
Wynton Way, Fareham	10	0
335-337 Gosport Road, Fareham	8	0
East of Raley Road	50	0
33 Lodge Road	10	0
Land off Church Road	26	0
Heath Road, Locks Heath	70	0
Welborne	450	0
Sites identified on a Brownfield Register	145	0
Warsash Maritime Academy	100	0
Fareham Magistrates Court	45	0
Sites outside of Category A and B		
Large unallocated sites subject to a resolution to grant planning permission	709	0
Land at Brook Lane, Warsash	180	0
Land East of Brook Lane (South), Warsash	100	0
Land South of Greenaway Lane, Warsash	145	0
East & West of 79 Greenaway Lane, Warsash	30	0
Land South of Funtley Road, Funtley	55	0
Land South West of Sovereign Crescent, Locks Heath	38	0
Moraunt Drive, Portchester	48	0
Southampton Road, Titchfield	105	0

Egmont Nurseries, Brook Avenue	8	0
Windfall allowance		
Windfall allowance	74	74
Total	2,177	599

14. THE FIVE-YEAR LAND SUPPLY

14.1 The respective current five-year land supply positions of the Council and myself are calculated in Table 14.1 below.

Table 14.1 – the respective five-year housing land supply positions

		Position of the Council	Position of the Appellant
A (see Table 7.1)	Five-year requirement including 5% buffer 2020-25	2,699	2,697
B	Deliverable supply	2,177	599
C = B/A x 5	Five-year land supply	4.03	1.11
D = B-A	Shortfall/surplus	-520	-2,098

14.2 Based on the preceding analysis, I consider that Fareham Borough Council is currently able to demonstrate a deliverable supply of 599 homes against a five-year requirement for 2,697 homes. This equates to a **1.11 year land supply** with a shortfall of 2,098 homes.

14.3 As a result, not only is the 'tilted balance' of paragraph 11d of the NPPF engaged, the five-year land supply shortfall is significant.

14.4 As set out previously, by the time the appeals are heard, it is likely that the Council will be subject to a 20% buffer and I therefore present the five-year land supply positions that would arise as a result in Table 14.2 below.

Table 14.2 – the potential respective five-year housing land supply positions

		Position of the Council	Position of the Appellant
A (see Table 7.1)	Five-year requirement including 20% buffer 2020-25	3,084 ³⁸	3,082
B	Deliverable supply	2,177	599
C = B/A x 5	Five-year land supply	3.53	0.97
D = B-A	Shortfall/surplus	-907	-2,483

³⁸ This is calculated based on the rounded annual housing need for 514 homes per annum in accordance with the approach of the Council.

15. THE FUTURE FIVE-YEAR LAND SUPPLY POSITION

15.1 As set out in paragraph 60 of the High Court Judgment of *Phides Estates (Overseas) Limited vs the Secretary of State for Communities and Local Government et al [2015] EWHC 827 (Admin)* (CDK.1), the extent of the shortfall may be material to the weight afforded to policies and housing supply, but so may the length of time this is likely to persist. I therefore analyse the available evidence to determine whether the five-year land position is likely to improve in the short-term.

Emerging Local Plan

15.2 Fareham Borough Council is in the process of preparing a review of their Local Plan. The Council published a new Local Development Scheme in August 2020 which indicated that this is intended that the Local Plan Review will be adopted in the autumn/winter of 2021. This will only provide the housing requirement against which the five-year land supply is assessed once it is adopted.

15.3 The housing requirement proposed in the Local Plan Review will be subject to at least annual changes as the standard method is reviewed annually, the proposed allocations will need to be reviewed accordingly and the Local Plan Review may need to be subject to at least an additional round of consultation/s. It is therefore not possible to accurately calculate the five-year land supply position thereafter given the potential for significant changes to both the housing requirement and the supply.

The proposed revised standard method

15.4 As set out above, the Government has published a proposed revised standard method for consultation which is subject to objections, including because it produces anomalously high and low figures in numerous LPAs. If this proposed method were to be introduced into the PPG without any change, it would identify a minimum local housing need for 403 homes per annum in Fareham Borough rather than the 514 homes per annum identified using the current standard method. It is immediately apparent that in Fareham Borough the proposed revised method does not accord with the Government's stated objective to encourage greater building within and near to urban areas as set out in paragraph 10 of Planning for the Future, March 2020 (CDD.2).

15.5 This revised standard method is subject to objections including from MPs, planning consultancies, LPAs and QCs owing to the seemingly anomalous results it produces. The development industry and others are working pro-actively with the Government to address these issues through revisions to the proposed method. The only such method that I am aware of in the public domain is that provided by Turley's (Appendix 16) which would provide for 554 homes per annum in Fareham Borough. Whilst it is only one example, it provides some indication that alternative methods are being put before the Government which address the fact that the Government's proposal results in a lower figure in the urban area of Fareham which is contrary to the objective of the standard method.

APPENDIX 16: A STANDARD METHOD THAT WORKS FOR ALL

15.6 As set out previously, given that this proposal remains subject to consultation, it is contrary to the stated objective of the Government and is known to be subject to widespread objections, I consider that the proposed revised standard method should be afforded at most very limited weight at present. It does not form part of national policy and guidance and so is not currently applicable for the purposes of this appeal.

15.7 Fareham Borough has also identified that it intends to undertake a Regulation 19 consultation on its emerging Local Plan in Autumn 2020 in the Local Development Scheme of August 2020 (Appendix 17). Assuming this is achieved, the transitional arrangement proposed in paragraph 43 of Changes to the Current Planning System (CDD.3) will apply, such that the current standard method will continue to apply for plan-making purposes in Fareham Borough.

APPENDIX 17: LOCAL DEVELOPMENT SCHEME

15.8 It is therefore apparent that the revised standard method that eventually forms part of national guidance will only affect the five-year land supply position of Fareham Borough prior to adoption of the emerging Local Plan (assuming this is prepared in accordance with the proposed transitional arrangements) and that it will remain necessary to at least meet the minimum local housing need identified by the current standard method within the emerging Local Plan. Accordingly, there will be the same imperative to boost the supply prior to and within the emerging Local Plan to ensure that a five-year land supply will be able to be demonstrated at the point of adoption.

Housing Delivery Test

- 15.9 The Housing Delivery Test results for the period 2017-2020 can be calculated with some accuracy. These are due to be published in November 2020³⁹ and as identified above, based on the available evidence these will identify a result of circa 60% such that the 'tilted balance' will be automatically engaged. This would also amount to a record of significant under-delivery which requires the application of a 20% buffer from November 2020 onwards. This will also further increase the five-year land supply shortfall from that currently identified by the Council.
- 15.10 Therefore, not only is it likely that there be a record of substantial under-delivery by the time that these appeals are heard, it is also likely that it will be necessary to apply a 20% buffer which will further reduce the five-year land supply position.
- 15.11 In summary, there is no evidence that the five-year land supply position will improve in Fareham Borough and the available evidence indicates that the shortfall is likely to increase in the short-term including as a result of the increased buffer and the continued application of the current standard method for plan-making purposes (providing the proposed transitional arrangements are accorded with). It is therefore not only evident that there is a pressing need to identify additional sources of supply now to restore a five-year land supply, this is likely to become even more evident in the coming years although for a period prior to adoption this will be influenced (in one direction or the other) by the revised standard method that eventually gets adopted.

³⁹ See the PPG (68-038)

16. THE LOCAL HOUSING NEED

- 16.1 As set out above, there is a national housing crisis, which is causing real harm to real households. However, the housing needs will vary from area to area and I consider the position in Fareham Borough below.
- 16.2 GL Hearn prepared an Objectively Assessed Housing Need Update in April 2016 (CDG.2) on behalf of the Partnership for Urban South Hampshire (PUSH) including Fareham Borough. This calculated the objectively assessed need for housing and identified a need for 305 homes per annum in Fareham (east) and 115 homes per annum in Fareham (west)⁴⁰ providing a total need for 420 homes per annum from 2011 to 2036.
- 16.3 In the period since 2011, only 2,259 homes have been built in Fareham Borough at an average of 282 per annum. This compares to the identified objectively assessed need for 420 per annum. As set out in Table 16.1, this equates to a **shortfall of 1,101 homes** in the previous 8 years.

Table 16.1 – the shortfall in delivery

	Cumulative OAN	Cumulative completions	Shortfall
2011/12	420	277	-143
2012/13	840	517	-323
2013/14	1,260	671	-589
2014/15	1,680	958	-722
2015/16	2,100	1,329	-771
2016/17	2,520	1,678	-842
2017/18	2,940	1,969	-971
2018/19	3,360	2,259	-1,101

- 16.4 It can be calculated from Table 28 of the Objectively Assessed Housing Need Update that in Fareham Borough in 2016 there were already 7 homeless households, 85 households in temporary accommodation, 882 households in overcrowded accommodation, 199 concealed households, 40 households in affordable homes that remained in affordable housing need, and 788 other households in affordable need.
- 16.5 The shortfall in delivery is likely to have adversely affected the ability of households to access housing, with adverse effects on affordability which in turn is likely to have required households to migrate out of Fareham to access

⁴⁰ See tables 61 and 62.

appropriate accommodation and/or to fall into affordable need including those households that have become homeless or are accommodated in overcrowded, shared or otherwise unsuitable accommodation. The position is therefore now likely to be worse than that identified in the Objectively Assessed Housing Need Update.

- 16.6 The Objectively Assessed Housing Need Update also calculated the need for affordable homes on the basis of different affordability thresholds, namely the proportion of household income which can be spent on housing. The results are presented in Tables 45 to 48 of the report and are summarised in Table 16.2 below.

Table 16.2 – the affordable housing need

Affordability threshold	Annual affordable need
25%	385 (=265+120)
30%	302 (=209+93)
35%	234 (=164+70)
40%	175 (=125+50)

- 16.7 The Housing Evidence: Overview Report (Appendix 18) took account of this evidence and recommended that the emerging Local Plan Review proceeded on the basis of a 30% affordability ratio, identifying in paragraph 2.1 to Figure 2.1, an annual affordable housing need for 302 homes per annum in the period 2011 to 2036.

APPENDIX 18: EXTRACTS OF THE HOUSING EVIDENCE: OVERVIEW REPORT

- 16.8 As set out in paragraph 2.3 and Figure 2.1 of the report, the vast majority of the need for affordable housing arises from households that have yet to form (344 per annum) and from existing households falling into need (92 per annum). Only a limited proportion of the affordable housing need was accounted for by those households that were in need at the time of the assessment (21 per annum).
- 16.9 In the period from 2011 to 2019, MHCLG record that a total of 610 affordable homes have been delivered in Fareham Borough at an average of 76 per annum. This equates to a **shortfall of 1,806 affordable homes** against the need for 302 affordable homes per annum as calculated in Table 16.3 below. Indeed, Fareham Borough has the 26th lowest proportion of public sector housing⁴¹ of any of the 326 LPAs nationally. This underlines the fact that not only has there been a

⁴¹ Including properties owned by the Local Authority, private registered providers or other public sector bodies.

chronic under-supply but also that the existing affordable housing stock is very low.

Table 16.3 – the affordable housing shortfall

	Cumulative affordable need	Cumulative delivery	Shortfall
2011/12	302	127	-175
2012/13	604	218	-386
2013/14	906	276	-630
2014/15	1,208	413	-795
2015/16	1,510	440	-1,070
2016/17	1,812	525	-1,287
2017/18	2,114	566	-1,548
2018/19	2,416	610	-1,806

16.10 It is therefore apparent that not only has there been an under-delivery of homes in totality, there has been a particularly acute shortfall in the delivery of affordable homes. This is likely to have resulted in a greater need for both market and affordable homes. The provision of market homes will firstly provide the opportunity for those households that are able to access such accommodation but who have been unable to owing to the shortfall in supply to do so. It will also provide the opportunity for households in affordable homes or those in affordable need to access market housing (including in the private rental sector) where they are able to do so. The provision of affordable homes will also address the affordable housing needs that currently exist in Fareham Borough.

16.11 The Council published an Affordable Housing Strategy in 2019 (CDG.8). This does not appear to have been informed by an evidence-based analysis as the Overview Report was but provides a useful update.

16.12 It indicates that there were currently circa 3,000 households in need of affordable/social rent in 2019. This compares to the 2,002 households that were currently in need at the time the Objectively Assessed Housing Need Update was prepared in 2016⁴². It would therefore appear that the need for affordable housing has indeed increased, and this is likely to be at least partially as a result of the significant shortfall in both market and affordable delivery.

⁴² Calculated from the 1,439 households in Fareham (east) and 563 in Fareham (west) as identified in Table 28.

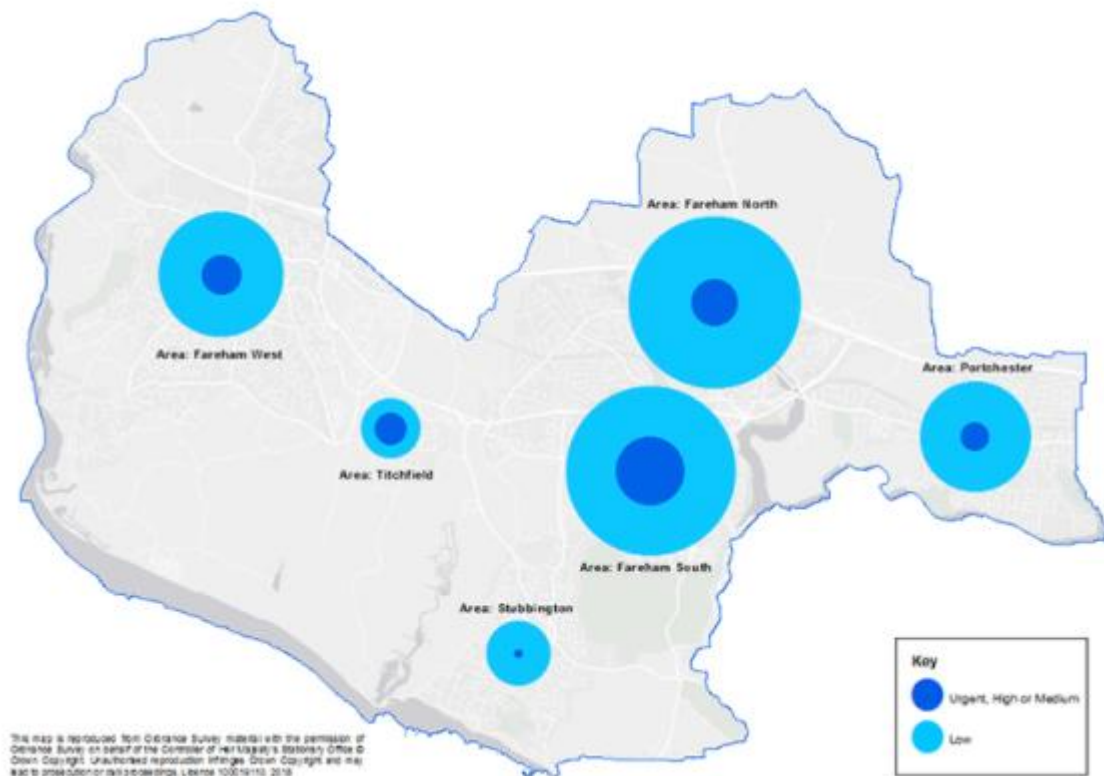
- 16.13 The Affordable Housing Strategy correctly identifies on page 12 that notwithstanding the apparent increase in the number of households in need of affordable housing, the housing waiting list has not grown significantly in recent years. The waiting list is only available for those seeking affordable/social rent and so this may indicate that a greater proportion of households in affordable need are now seeking intermediate housing. Alternatively, or additionally, it may indicate that households have been disincentivised from registering given the chronic under-supply of affordable housing in the Borough.
- 16.14 On page 14 of the Affordable Housing Strategy, it is suggested that there is a need for 3,500 affordable homes to 2036. This is based on the existing need for 3,000 affordable homes and an allowance of 500 homes to provide for new households and those falling into need.
- 16.15 There does not appear to be any evidence in support of the extent of this allowance, which assumes that 1 in 7 affordable homes will cater to newly arising households and those falling into need. This compares to the detailed technical assessment provided in the Objectively Assessed Housing Need Update⁴³ which identifies that circa 19 in 20 affordable homes will cater to newly arising households and those falling into need⁴⁴. The Affordable Housing Strategy departs significantly from the evidence base in this regard and there does not appear to be any evidence or justification for this.
- 16.16 Nevertheless, even on the basis of this unevidenced assumption, the Affordable Housing Strategy identifies a need for 3,500 affordable homes over the period to 2036, or circa 220 per annum as set out in the Statement of Common Ground. Given that an average of only 76 affordable homes have been built per annum in Fareham Borough since 2011, it remains the case that even on the basis of the Affordable Housing Strategy, there is a significant need to boost the supply of additional affordable housing to address needs. Indeed, the delivery of affordable housing needs to almost treble.
- 16.17 On page 12, the Affordable Housing Strategy identifies that circa 300 households are in greatest need. The provision of affordable housing to address these needs is a significant matter to be weighed in the planning balance.

⁴³ As summarised in Figure 2.1 of the Overview Report.

⁴⁴ Calculated from the 21 households currently in need out of the total of 456, or circa 1 in 20.

16.18 Fareham Borough Council’s website identifies how the need for affordable housing is distributed across the Borough taking account of the individual household’s relationships to particular areas including where children attend school, where the wider family live and access to work. This shows that there is an acute need for affordable housing, and in particular an acute need for those households with more urgent needs, in Fareham South, which is where the appeal sites are located. The relevant extract is set out in Figure 16.1 below.

Figure 16.1 – extract of the Council’s website



16.19 The chronic under-delivery of housing has significant adverse effects on the accessibility of housing.

16.20 In Fareham Borough, a household is currently required on average to spend 9.09 times the annual average income to access housing according to the ONS. The PPG (2a-004) indicates that where a household is required to spend 4 times its income, then no affordability adjustment is required to the projections, which infers that this is the level at which the Government consider that the affordability of housing is acceptable. Housing in Fareham Borough is 2.3 times less affordable than this 'acceptable level', which is likely to compromise the ability of a larger proportion of households to access the market, with consequent social harms

(including overcrowding, shared households, food and fuel poverty, homelessness etc).

16.21 The resultant pressures on the accessibility of housing are likely to result in a greater number of households falling into affordable need as they are unable to access suitable market accommodation viably. If this issue is to be addressed, it will be necessary to address the existing need for affordable housing, and to provide market housing to provide the opportunity for households to access the market and prevent them falling into affordable need.

16.22 Whilst all of the preceding analysis may seem rather dry, these represent real issues faced by large sectors of the community, which can only be addressed by providing the necessary housing. The harms of an under-supply of suitable housing is not limited to the financial effects on households which are significant in isolation but is far more wide-reaching. For example, it has implications for social mobility and health for young and old alike.

16.23 Shelter published an assessment of the impacts of unsuitable housing on children entitled *Chance of a Lifetime* (Appendix 19). This identifies that in unsuitable homes (including homelessness, overcrowded or otherwise unsuitable housing):

- Children are up to 10 times more likely to contract meningitis which can be life threatening and which can have long-term effects including deafness, blindness and behavioural problems;
- Children are more likely to suffer from TB which can lead to serious medical problems and is sometimes fatal;
- Children are more likely to experience respiratory problems which may lead to the loss of sleep, restricted physical activity and missing school;
- Children are more likely to experience slow growth in childhood which is associated with an increased risk of coronary heart disease in later life;
- Domestic fires are more likely;
- Children are more likely to suffer mental health issues;
- Children miss school more frequently due to illnesses and infections;
- Children are more likely to suffer from delayed cognitive development;

- Children are more likely to have long-term health problems and low educational attainment, with an increased likelihood of unemployment or working in low-paid jobs in adulthood;
- Children are more likely to become offenders.

APPENDIX 19: CHANCE OF A LIFETIME

16.24 Similarly, the Affordable Housing Strategy recognises that there is a particular need to provide affordable housing for older people, including as a result of the significant growth of older people in the Borough⁴⁵.

⁴⁵ This growth of the older population is again symptomatic of an area in which housing is prohibitively inaccessible for younger households.

17. CONCLUSIONS

17.1 The preceding analysis demonstrates that:

- i. The Council will have a record of substantial under-delivery in the near future which will automatically engage the 'tilted balance', regardless of the five-year land supply position;
- ii. As agreed in the Statement of Common Ground, the Council is unable to demonstrate a five-year land supply such that the 'tilted balance' of paragraph 11d is engaged⁴⁶;
- iii. Even based on the Council's figures, circa 1 in 5 households will not be provided the opportunity to access appropriate housing in the next five-years;
- iv. It is likely that the five-year land supply shortfall will increase prior to the inquiry as a result of the Housing Delivery Test results expected in November 2020 or as a result of the correction of the miscalculated Housing Delivery Test results of November 2019, both of which will require the application of a 20% buffer, such that the Council will identify a 3.53 year land supply;
- v. The Council's assessment of the five-year land supply significantly over-estimates the five-year land supply position including because:
 - The deliverable supply of the Council has been found to be significantly over-estimated by every S78 appeal Inspector to have considered this matter;
 - The Council includes a site in the deliverable supply which is not available now according to the interpretation of the courts;
 - The Council includes planning permissions which cannot be demonstrated to be suitable now including owing to the likely significant effects on Natura 2000 sites and the absence of any evidence that these can be appropriately mitigated;
 - The Council has provided no evidence, let alone clear evidence, in support of the overwhelming majority of sites within Category B

⁴⁶ Providing any restrictive policies of the NPPF do not disengage the 'tilted balance'.

- (or outside of Category A and B) of the definition of a deliverable site, such that these should not be considered to be deliverable;
- The Council relies upon allocated sites delivering a number of homes which has not been tested or found to be deliverable;
 - The Council assume that brownfield sites can be considered to be suitable now without these having been subject to any consultation including with statutory consultees or members of the public to determine the suitability or otherwise of these sites;
 - The Council include a significant number of sites outside of Category A and B, notwithstanding that these are ineligible for inclusion according to the NPPF, the PPG, the findings of all but two S78 Inspectors and the approach most recently adopted by the Secretary of State;
 - The Council include unallocated sites that are subject to a resolution to grant planning permission, which are ineligible for inclusion according to the Secretary of State;
 - The Council assume that sites which they considered were not suitable for development in the absence of planning obligations, could be considered to be suitable in the absence of these planning obligations; and
 - The Council assume wholly unrealistic lead-in times on a number of sites.
- vi. There has been a chronic under-supply of housing and affordable housing in Fareham Borough over recent years;
- vii. This under-supply is likely to have resulted in significant adverse effects which can only be addressed through the provision of additional housing;
- viii. There is a significant unmet need for affordable housing in the Borough, and particularly in Fareham South;
- ix. The affordability of housing in Fareham is significantly worse than the Government indicate as being 'acceptable'.