

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

APPENDICES TO PROOF OF EVIDENCE ON HOUSING NEED AND SUPPLY MATTERS

ON BEHALF OF FAREHAM LAND LP AND BARGATE HOMES LTD

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APPENDICES:

Page No:

1.	EXTRACTS OF THE PPG	A1.1 - A1.43
2.	FIVE YEAR HOUSING LAND SUPPLY POSITION, APRIL 2019	A2.1 - A2.14
3.	LAND WEST OF OLD STREET, STUBBINGTON APPEAL DECISION	A3.1 - A3.11
4.	CORRESPONDENCE WITH MHCLG	A4.1 - A4.8
5.	FIVE YEAR HOUSING LAND SUPPLY POSITION, SEPTEMBER 2018	A5.1 - A5.12
6.	EXTRACT OF REPORT TO PLANNING COMMITTEE, 24 TH JUNE 2020	A6.1 - A6.11
7.	UPDATE REPORT TO PLANNING COMMITTEE, 24 TH JUNE 2020	A7.1 - A7.15
8.	THRAPSTON CONSENT ORDER	A8.1 - A8.4
9.	LAND OFF AUDLEM ROAD/BROAD LANE, STAPELEY AND LAND OFF PETER DE STAPELEIGH WAY, NANTWICH APPEAL DECISION	A9.1 - A9.133
10.	LAND TO THE SOUTH OF COX GREEN ROAD, RUDGWICK APPEAL DECISION	A10.1 - A10.15
11.	LAND OFF POPES LANE, STURRY APPEAL DECISION	A11.1 - A11.23
12.	EXTRACT OF WELBORNE PHASING PLAN	A12.1 - A12.1
13.	LAND AT HAWTHORNS, FARNHAM APPEAL DECISION	A13.1 - A13.68
14.	LAND OFF DARNHALL SCHOOL LANE, WINSFORD APPEAL DECISION	A14.1 - A14.107
15.	START TO FINISH, LICHFIELDS	A15.1 - A15.34
16.	A STANDARD METHOD THAT WORKS FOR ALL, TURLEY	A16.1 - A16.4
17.	LOCAL DEVELOPMENT SCHEME	A17.1 - A17.15
18.	EXTRACT OF HOUSING EVIDENCE: OVERVIEW REPORT	A18.1 - A18.2
19.	CHANCE OF A LIFETIME	A19.1 - A19.40

APPENDIX 1
EXTRACTS OF THE PPG

Guidance

Housing and economic needs assessment

Guides councils in how to assess their housing needs.

Published 20 March 2015

Last updated 22 July 2019 — [see all updates](#)

From:

[Ministry of Housing, Communities & Local Government](#)

Contents

1. [Housing need](#)
2. [Identifying the need for different types of housing](#)
3. [Affordable housing](#)
4. [Economic need](#)

Where plans are being prepared under the transitional arrangements set out in Annex 1 to the revised [National Planning Policy Framework](#), the policies in the [previous version of the framework published in 2012](#) will continue to apply, as will any previous guidance which was associated with it, and which has been superseded since the new framework was published in July 2018. See [superseded guidance](#) relevant to plans that were submitted under transitional arrangements

This guidance was updated on 20 February 2019. See [previous guidance](#)

Housing need

What is housing need?

Housing need is an unconstrained assessment of the number of homes needed in an area. Assessing housing need is the first step in the process of deciding how many homes need to be planned for. It should be undertaken separately from assessing land availability, establishing a housing requirement figure and preparing policies to address this such as site allocations. For further details on how constraints should be considered once a housing need figure has been identified, please see [Housing and economic land availability assessment guidance](#).

Paragraph: 001 Reference ID: 2a-001-20190220

Revision date: 20 02 2019

What is the standard method for assessing local housing need?

The National Planning Policy Framework expects strategic policy-making authorities to follow the standard method in this guidance for assessing local housing need.

The standard method uses a formula to identify the minimum number of homes expected to be planned for, in a way which addresses projected household growth and historic under-supply.

The standard method set out below identifies a minimum annual housing need figure. It does not produce a housing requirement figure.

Paragraph: 002 Reference ID: 2a-002-20190220

Revision date: 20 02 2019

Is the use of the standard method for strategic policy making purposes mandatory?

No, if it is felt that circumstances warrant an alternative approach but authorities can expect this to be scrutinised more closely at examination. There is an expectation that the standard method will be used and that any other method will be used only in exceptional circumstances.

Paragraph: 003 Reference ID: 2a-003-20190220

Revision date: 20 02 2019

How is a minimum annual local housing need figure calculated using the standard method?

The standard method can be used to calculate a minimum annual local housing need figure as follows:

Step 1 - Setting the baseline

Set the baseline using national [household growth projections](#) (2014-based household projections in England, table 406 unitary authorities and districts in England) for the area of the local authority. Using these projections, calculate the projected average annual household growth over a 10 year period (this should be 10 consecutive years, with the current year being used as the starting point from which to calculate growth over that period). Note that the figures displayed are rounded and individual cells need to be viewed in order to see the full number.

Step 2 - An adjustment to take account of affordability

Then adjust the average annual projected household growth figure (as calculated in step 1) based on the affordability of the area.

The most recent [median workplace-based affordability ratios](#), published by the Office for National Statistics at a local authority level, should be used.

No adjustment is applied where the ratio is 4 or below. For each 1% the ratio is above 4 (with a ratio of 8 representing a 100% increase), the average household growth should be increased by a quarter of a percent. To be able to apply the percentage increase adjustment to the projected growth figure we then need to add 1.

Where an adjustment is to be made, the precise formula is as follows:

$$\text{Adjustment factor} = \left(\frac{\text{Local affordability ratio} - 4}{4} \right) \times 0.25 + 1$$

Step 3 - Capping the level of any increase

A cap is then applied which limits the increases an individual local authority can face. How this is calculated depends on the current status of relevant strategic policies for housing.

Where these policies were adopted within the last 5 years (at the point of making the calculation), the local housing need figure is capped at 40% above the average annual housing requirement figure set out in the existing policies.

This also applies where the relevant strategic policies have been reviewed by the authority within the 5 year period and found to not require updating.

For areas covered by spatial development strategies, the relevant strategic policies are those contained within the spatial development strategy. For example, where a requirement figure for an authority in a spatial development strategy differs from that in a local plan, the figure in the spatial development strategy should be used.

Where the relevant strategic policies for housing were adopted more than 5 years ago (at the point of making the calculation), the local housing need figure is capped at 40% above whichever is the higher of:

- a. the projected household growth for the area over the 10 year period identified in step 1; or
- b. the average annual housing requirement figure set out in the most recently adopted strategic policies (if a figure exists).

Worked examples

Step 1 - Setting the baseline

An authority's household projections are:

- 110,500 households in 2019
- 120,000 households in 2029

This is a total of 9,500 new households over the 10 year period, equivalent to an average household growth of 950 per year. (Note: in this example 2019 is the starting point to measure the growth over a 10 year period; the difference between 2019 and 2020 is one year's worth of growth and the difference between 2019 and 2029 is 10 years' worth of growth).

Step 2 - An adjustment to take account of affordability

The authority's median workplace-based affordability ratio is 12.4. As this is above 4, then the following adjustment should be made.

The adjustment is calculated as:

$$\text{Adjustment factor} = \left(\frac{\text{Local affordability ratio} - 4}{4} \right) \times 0.25 + 1$$

$$\text{Adjustment factor} = \left(\frac{12.4 - 4}{4} \right) \times 0.25 + 1 = \left(\frac{8.4}{4} \right) \times 0.25 + 1 = 2.1 \times 0.25 + 1 = 1.525$$

The adjustment factor is therefore 1.525 and is used as:

Minimum annual local housing need figure = (adjustment factor) x projected household growth

Minimum annual local housing need figure = 1.525 x 950

The resulting figure is 1,449.

Step 3 - Capping the level of any increase

How the cap applies depends on the current status of relevant strategic policies for housing. Below are 3 examples. Example 1 relates to a plan that has been adopted or reviewed within the last 5 years. Examples 2a and 2b relate to plans that were adopted more than 5 years ago and have not been updated, and demonstrates situations where the cap does and does not limit the minimum annual local housing need figure.

Cap example 1

The local authority has adopted a local plan within the last 5 years, or has reviewed (and if necessary updated) the housing requirement figure in a plan adopted more than 5 years ago.

- The average annual housing requirement figure in the existing relevant policies is 850 a year
- The minimum annual local housing need figure is 1,449 (as per step 2)
- The cap is set at 40% above the housing requirement figure:

$$\text{Cap} = 850 + (40\% \times 850) = 850 + 340 = 1,190$$

The capped figure is lower than the minimum annual local housing need figure and therefore limits the increase to the local authority's minimum annual housing need figure. The minimum figure for this local authority is therefore 1,190.

Cap example 2a

A local authority adopted a local plan more than 5 years ago and has not reviewed their housing requirement figure since then.

- The average annual housing requirement figure in the existing relevant policies is 850 a year
- Average annual household growth over 10 years is 950 (as per step 1)
- The minimum annual local housing need figure is 1,449 (as per step 2)
- The cap is set at 40% above the higher of the most recent average annual housing requirement figure or household growth:

$$\text{Cap} = 950 + (40\% \times 950) = 950 + 380 = 1,330$$

The capped figure is lower than the minimum annual local housing need figure and therefore limits the increase to the local authority's minimum annual housing need figure. The minimum figure for this local authority is therefore 1,330.

Cap example 2b

A local authority adopted a local plan more than 5 years ago and has not reviewed their housing requirement figure since then.

- The average annual housing requirement figure in the existing relevant policies is 1,200 a year
- Average annual household growth over 10 years is 950 (as per step 1)
- The minimum annual local housing need figure is 1,449 (as per step 2)
- The cap is set at 40% above the higher of the most recent average annual housing requirement figure or household growth:

$$\text{Cap} = 1,200 + (40\% \times 1,200) = 1,200 + 480 = 1,680$$

The capped figure is greater than the minimum annual local housing need figure and therefore does not limit the increase to the local authority's minimum annual housing need figure. The minimum figure for this local authority is therefore 1,449.

Paragraph: 004 Reference ID: 2a-004-20190220

Revision date: 20 02 2019

Why are 2014-based household projections used as the baseline for the standard method?

The 2014-based household projections are used within the standard method to provide stability for planning authorities and communities, ensure that historic under-delivery and declining affordability are reflected, and to be consistent with the Government's objective of significantly boosting the supply of homes.

Paragraph: 005 Reference ID: 2a-005-20190220

Revision date: 20 02 2019

Why is an affordability adjustment applied?

An affordability adjustment is applied as household growth on its own is insufficient as an indicator of future housing need because:

- household formation is constrained to the supply of available properties – new households cannot form if there is nowhere for them to live; and
- people may want to live in an area in which they do not reside currently, for example to be near to work, but be unable to find appropriate accommodation that they can afford.

The affordability adjustment is applied in order to ensure that the standard method for assessing local housing need responds to price signals and is consistent with the policy objective of significantly boosting the supply of homes. The specific adjustment in this guidance is set at a level to ensure that minimum annual housing need starts to address the affordability of homes.

Paragraph: 006 Reference ID: 2a-006-20190220

Revision date: 20 02 2019

Why is a cap applied?

The standard method may identify a minimum local housing need figure that is significantly higher than the number of homes currently being planned for. The cap is applied to help ensure that the minimum local housing need figure calculated using the standard method is as deliverable as possible.

The cap reduces the minimum number generated by the standard method, but does not reduce housing need itself. Therefore strategic policies adopted with a cap applied may require an early review and updating to ensure that any housing need above the capped level is planned for as soon as is reasonably possible.

Where the minimum annual local housing need figure is subject to a cap, consideration can still be given to whether a higher level of need could realistically be delivered. This may help prevent authorities from having to undertake an early review of the relevant policies.

Paragraph: 007 Reference ID: 2a-007-20190220

Revision date: 20 02 2019

When should strategic policy-making authorities assess their housing need figure for policy-making purposes?

Strategic policy-making authorities will need to calculate their local housing need figure at the start of the plan-making process. This number should be kept under review and revised where appropriate.

The housing need figure generated using the standard method may change as the inputs are variable and this should be taken into consideration by strategic policy-making authorities.

However, local housing need calculated using the standard method may be relied upon for a period of 2 years from the time that a plan is submitted to the Planning Inspectorate for examination.

Paragraph: 008 Reference ID: 2a-008-20190220

Revision date: 20 02 2019

How often are the affordability ratios updated?

Affordability ratios are published every year (usually in March).

Paragraph: 009 Reference ID: 2a-009-20190220

Revision date: 20 02 2019

When might it be appropriate to plan for a higher housing need figure than the standard method indicates?

The government is committed to ensuring that more homes are built and supports ambitious authorities who want to plan for growth. The standard method for assessing local housing need provides a minimum starting point in determining the number of homes needed in an area. It does not attempt to predict the impact that future government policies, changing economic circumstances or other factors might have on demographic behaviour. Therefore, there will be circumstances where it is appropriate to consider whether actual housing need is higher than the standard method indicates.

This will need to be assessed prior to, and separate from, considering how much of the overall need can be accommodated (and then translated into a housing requirement figure for the strategic policies in the plan). Circumstances where this may be appropriate include, but are not limited to situations where increases in housing need are likely to exceed past trends because of:

- growth strategies for the area that are likely to be deliverable, for example where funding is in place to promote and facilitate additional growth (e.g. Housing Deals);
- strategic infrastructure improvements that are likely to drive an increase in the homes needed locally; or
- an authority agreeing to take on unmet need from neighbouring authorities, as set out in a statement of common ground;

There may, occasionally, also be situations where previous levels of housing delivery in an area, or previous assessments of need (such as a recently-produced Strategic Housing Market Assessment) are significantly greater than the outcome from the standard method. Authorities will need to take this into account when considering whether it is appropriate to plan for a higher level of need than the standard model suggests.

Paragraph: 010 Reference ID: 2a-010-20190220

Revision date: 20 02 2019

Can strategic policy-making authorities take account of past under delivery of new homes in preparing plans?

The affordability adjustment is applied to take account of past under-delivery. The standard method identifies the minimum uplift that will be required and therefore it is not a requirement to specifically address under-delivery separately.

Where an alternative approach to the standard method is used, past under delivery should be taken into account.

Paragraph: 011 Reference ID: 2a-011-20190220

Revision date: 20 02 2019

How can plan-making authorities apply the method to the overall plan period?

The method provides authorities with an annual number, based on a 10 year base line, which can be applied to the whole plan period.

The National Planning Policy Framework requires strategic policies to look ahead over a minimum 15 year period from adoption, although authorities are required to keep their policies under review.

Paragraph: 012 Reference ID: 2a-012-20190220

Revision date: 20 02 2019

How should local housing need be calculated where plans cover more than one area?

Local housing need assessments may cover more than one area, in particular where strategic policies are being produced jointly, or where spatial development strategies are prepared by elected Mayors, or combined authorities with strategic policy-making powers.

In such cases the housing need for the defined area should at least be the sum of the local housing need for each local planning authority within the area. It will be for the relevant strategic policy-making authority to distribute the total housing requirement which is then arrived at across the plan area.

Where a spatial development strategy has been published, local planning authorities should use the local housing need figure in the spatial development strategy and should not seek to re-visit their local housing need figure when preparing new strategic or non-strategic policies.

Paragraph: 013 Reference ID: 2a-013-20190220

Revision date: 20 02 2019

Where strategic policy-making authority boundaries do not align with local authority boundaries, or data is not available, should the standard method be used to assess local housing need?

Where strategic policy-making authorities do not align with local authority boundaries (either individually or in combination), or the data required for the model are not available such as in

National Parks and the Broads Authority, where local authority boundaries have changed due to reorganisation within the last 5 years or local authority areas where the samples are too small, an alternative approach will have to be used. Such authorities may continue to identify a housing need figure using a method determined locally, but in doing so will need to consider the best available information on anticipated changes in households as well as local affordability levels.

Paragraph: 014 Reference ID: 2a-014-20190220

Revision date: 20 02 2019

If authorities use a different method how will this be tested at examination?

Where data availability does not allow the standard method to be used, consideration will be given to whether it provides the basis for a plan that is positively prepared, taking into account the information available on household formation and affordability.

Where a strategic policy-making authority can show that an alternative approach identifies a need higher than using the standard method, and that it adequately reflects current and future demographic trends and market signals, the approach can be considered sound as it will have exceeded the minimum starting point.

Where an alternative approach results in a lower housing need figure than that identified using the standard method, the strategic policy-making authority will need to demonstrate, using robust evidence, that the figure is based on realistic assumptions of demographic growth and that there are exceptional local circumstances that justify deviating from the standard method. This will be tested at examination.

Any method which relies on using the 2016-based household projections will not be considered to be following the standard method as set out in [paragraph 60 of the National Planning Policy Framework](#). As explained above, it is not considered that these projections provide an appropriate basis for use in the standard method.

Paragraph: 015 Reference ID: 2a-015-20190220

Revision date: 20 02 2019

How is housing need calculated for the purposes of decision making?

There is separate guidance on how the [standard method for assessing local housing need](#) applies to calculating 5 Year Land Supply and the Housing Delivery Test.

Paragraph: 016 Reference ID: 2a-016-20190220

Revision date: 20 02 2019

Guidance

Housing and economic land availability assessment

Sets out method for assessing housing and economic land availability.

Published 6 March 2014

Last updated 22 July 2019 — [see all updates](#)

From:

[Ministry of Housing, Communities & Local Government](#)

Contents

1. [What is the purpose of the assessment of land availability?](#)
2. [Method – flowchart](#)
3. [Method – Stage 1: Identification of sites and broad locations](#)
4. [Method – Stage 2: Site/broad location assessment](#)
5. [Method – Stage 3: Windfall assessment \(where justified\)](#)
6. [Method – Stage 4: Assessment review](#)
7. [Method – Stage 5: Final Evidence Base](#)

This guidance has been updated see [previous version](#)

Guidance on 5 year housing land supply and Housing Delivery Test can now be found in the [Housing supply and delivery guidance](#).

Where plans are being prepared under the transitional arrangements set out in Annex 1 to the revised [National Planning Policy Framework](#), the policies in the [previous version of the framework published in 2012](#) will continue to apply, as will any previous guidance which has been superseded since the new framework was published in July 2018. If you'd like an email alert when changes are made to planning guidance please [subscribe](#).

What is the purpose of the assessment of land availability?

An assessment of land availability identifies a future supply of land which is suitable, available and achievable for housing and economic development uses over the plan period. The assessment is an important source of evidence to inform plan-making and decision-taking, and the identification of a [5-year supply](#) of housing land. It can also inform as well as make use of sites in [brownfield registers](#)

However, the assessment does not in itself determine whether a site should be allocated for development. It is the role of the assessment to provide information on the range of sites which are available to meet the local authority's (or, where relevant, elected Mayor or combined authority) requirements, but it is for the development plan itself to determine which of those sites are the most suitable to meet those requirements.

Plan-making authorities may carry out land availability assessments for housing and economic development as part of the same exercise, in order that sites may be identified for the use(s) which is most appropriate.

An assessment should:

- [identify sites and broad locations with potential for development](#);
- [assess their development potential](#); and
- [assess their suitability for development and the likelihood of development coming forward \(the availability and achievability\)](#).

This guidance should be read in conjunction with separate [guidance on the application of town centre planning policy](#), which includes the sequential test for locating town centre use as well as guidance on [making the most effective use of land](#).

Paragraph: 001 Reference ID: 3-001-20190722

Revision date: 22 07 2019

Should plan-makers override constraints, such as Green Belt, when carrying out the assessment to meet identified needs?

Plan-making bodies should consider constraints when assessing the suitability, availability and achievability of sites and broad locations. For example, assessments should reflect the policies in footnote 6 of the National Planning Policy Framework, which sets out the areas where the Framework would provide strong reasons for restricting the overall scale, type or distribution of development in the plan area (such as the Green Belt and other protected areas).

Paragraph: 002 Reference ID: 3-002-20190722

Revision date: 22 07 2019

Can neighbourhood planning bodies use the guidance?

Neighbourhood planning bodies may use the method set out in this guidance to assess sites but any assessment needs to be proportionate to the nature of the plan. Neighbourhood planning bodies may also make use of existing site assessments prepared by the local planning authority as a starting point when identifying sites to allocate within a [neighbourhood plan](#).

Paragraph: 003 Reference ID: 3-003-20190722

Revision date: 22 07 2019

Can plan-making authorities use a different method?

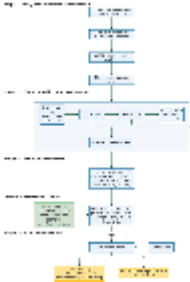
This guidance indicates what inputs and processes can lead to a robust assessment of land availability. Plan-making bodies are expected to have regard to the guidance in preparing and updating their assessments. Where they depart from the guidance, it will be important to

explain the reasons for doing so when setting out the evidence base that informs the plan. Assessment needs to be thorough but proportionate, building where possible on existing information sources outlined within the guidance.

Paragraph: 004 Reference ID: 3-004-20190722

Revision date: 22 07 2019

Method – flowchart



Methodology - flowchart

PDF, 220KB, 1 page

This file may not be suitable for users of assistive technology. [Request an accessible format.](#)

Paragraph: 005 Reference ID: 3-005-20190722

Revision date: 22 07 2019

Method – Stage 1: Identification of sites and broad locations

Determine assessment area and site size

What geographical area should the assessment cover?

The area selected for the assessment should be the plan-making area. This could be the local planning authority area, 2 or more local authority areas, areas covered by a spatial development strategy, or areas covered by the Local Enterprise Partnership.

Paragraph: 006 Reference ID: 3-006-20190722

Revision date: 22 07 2019

Who can plan makers work with?

The assessment needs to be undertaken and regularly reviewed working with other local planning authorities in the relevant housing market area or functional economic market area, in line with the [duty to cooperate](#) and need to maintain statements of common ground. It is also important to involve land owners and promoters; local property agents; developers; local communities; Local Enterprise Partnerships; businesses and their local representative organisations; parish and town councils and neighbourhood forums preparing [neighbourhood plans](#).

Paragraph: 007 Reference ID: 3-007-20190722

Revision date: 22 07 2019

Can the assessment be constrained by the need for development?

The assessment needs to identify all sites and broad locations (regardless of the amount of development needed) in order to provide a complete audit of available land. The process of the assessment will, however, provide the information to enable an identification of sites and locations that are most suitable for the level of development required.

Paragraph: 008 Reference ID: 3-008-20190722

Revision date: 22 07 2019

What sizes of site or broad locations can be considered for assessment?

Plan-makers will need to assess a range of different site sizes from small-scale sites to opportunities for large-scale developments such as village and town extensions and new settlements where appropriate.

It may be appropriate to consider all sites and broad locations capable of delivering 5 or more dwellings, or economic development on sites of 0.25 hectares (or 500 square metres of floor space) and above. Plan-makers may wish to consider alternative site size thresholds. The [National Planning Policy Framework](#) expects a minimum proportion of the sites identified as suitable for housing to be no larger than one hectare, unless there are strong reasons why this cannot be achieved.

Paragraph: 009 Reference ID: 3-009-20190722

Revision date: 22 07 2019

How can sites/broad locations be identified?

When carrying out a desktop review, plan-makers need to be proactive in identifying as wide a range of sites and broad locations for development as possible (including those existing sites that could be improved, intensified or changed). Identified sites, which have particular constraints (such as Green Belt), need to be included in the assessment for the sake of

comprehensiveness but these constraints need to be set out clearly, including where they severely restrict development. An important part of the desktop review, however, is to identify sites and their constraints, rather than simply to rule out sites outright which are known to have constraints.

It is important that plan-makers do not simply rely on sites that they have been informed about, but actively identify sites through the desktop review process that may assist in meeting the development needs of an area.

Paragraph: 010 Reference ID: 3-010-20190722

Revision date: 22 07 2019

What types of sites and sources of data should be used?

Plan makers should consider all available types of sites and sources of data that may be relevant in the assessment process but the following may be particularly relevant:



Type of site and potential data source

PDF, 56.5KB, 1 page

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Paragraph: 011 Reference ID: 3-011-20190722

Revision date: 22 07 2019

Can plan makers issue a call for sites and broad locations for development?

If the process to identify land is to be transparent and identify as many potential opportunities as possible, it is important to issue a call for sites and broad locations for development. This needs to be aimed at as wide an audience as is practicable so that those not normally involved in property development have the opportunity to contribute. This can include notifying parish councils and neighbourhood forums, landowners, developers, businesses and relevant local interest groups, as well as local publicity. A call for sites will need to set out the information sought from respondents, which could include:

- site location;
- suggested potential type of development (eg economic development uses – retail, leisure, cultural, office, warehousing etc; residential – by different tenures, types and

needs of different groups such as older people housing, private rented housing and people wishing to build or commission their own homes);

- the scale of development; and
- constraints to development.

Paragraph: 012 Reference ID: 3-012-20190722

Revision date: 22 07 2019

What can be included in the site and broad location survey?

The comprehensive list of sites and broad locations derived from data sources and the call for sites. Plan-makers can assess potential sites and broad locations prior to a more detailed survey to:

- ratify inconsistent information gathered through the call for sites and desk assessment;
- get an up to date view on development progress (where sites have planning permission);
- obtain a better understanding of what type and scale of development may be appropriate;
- gain a more detailed understanding of deliverability, any barriers and how they could be overcome; and
- identify further sites with potential for development that were not identified through data sources or the call for sites.

Paragraph: 013 Reference ID: 3-013-20190722

Revision date: 22 07 2019

How detailed does the initial survey need to be?

At this stage, there may be some sites which, when taking into account national policy and designations, it will not be appropriate to carry out these more detailed assessments for, where it is clear that they will not be suitable for development. The initial surveys need to be proportionate, with a more detailed assessment being made at Stage 2.

Sites which do not involve major development with any form of permission and all sites with detailed permission should be considered achievable within the next 5 years, unless evidence indicates otherwise.

Paragraph: 014 Reference ID: 3-014-20190722

Revision date: 22 07 2019

What information should be recorded during the survey?

During the site survey the following information can be recorded (or checked if they were previously identified through the data sources and call for sites):

- site size, boundaries, and location;
- current land use and character;
- land uses and character of surrounding area;
- physical constraints (eg access, contamination, steep slopes, flood risk, natural features of significance, location of infrastructure/utilities);
- potential environmental constraints;
- consistency with the development plan's policies;
- proximity to services and other infrastructure, such as public transport;
- where relevant, development progress (eg ground works completed, number of units started, number of units completed); and
- initial assessment of whether the site is suitable for a particular type of use or as part of a mixed-use development.

Paragraph: 015 Reference ID: 3-015-20190722

Revision date: 22 07 2019

Method – Stage 2: Site/broad location assessment

Estimating the development potential of each site/broad location

How can the development potential be calculated?

The estimation of the development potential of each identified site can be guided by the existing or emerging plan policy including locally determined policies on density. When assessing development potential, plan makers should seek to make the most efficient use of land in line with policies set out in the [National Planning Policy Framework](#).

Development potential is a significant factor that affects the economic viability of a site / broad location and its suitability for a particular use. Therefore, assessing achievability (including viability) and suitability can usefully be carried out in parallel with estimating the development potential.

Paragraph: 016 Reference ID: 3-016-20190722

Revision date: 22 07 2019

What can be considered by plan-makers when assessing whether sites / broad locations are likely to be developed?

Plan-makers will need to assess the suitability, availability and achievability of sites, including whether the site is economically viable. This will provide information on which a judgement can be made as to whether a site can be considered deliverable within the next five years, or developable over a longer period.

Paragraph: 017 Reference ID: 3-017-20190722

Revision date: 22 07 2019

What factors can be considered when assessing the suitability of sites / broad locations for development?

A site or broad location can be considered suitable if it would provide an appropriate location for development when considered against relevant constraints and their potential to be mitigated.

When considering constraints, plan-makers may wish to consider the information collected as part of the initial site survey, as well as other relevant information, such as:

- national policy;
- appropriateness and likely market attractiveness for the type of development proposed;
- contribution to regeneration priority areas;
- potential impacts including the effect upon landscapes including landscape features, nature and heritage conservation.

Plan-makers need to assess the suitability of identified sites or broad locations for different forms of development where appropriate, taking into account the range of needs for housing, economic and other uses.

When assessing sites against the adopted development plan, plan-makers will need to take account of how up to date the plan policies are and consider the relevance of identified constraints on sites / broad locations and whether such constraints may be overcome. When using the emerging plan to assess suitability, plan-makers will need to account for potential policy changes or other factors which could impact the suitability of the site / broad location. For example, an emerging site allocation may enable development to come forward. This will have to be reflected in the assessment of achievability.

Sites in existing development plans or with planning permission can generally be considered suitable for development although it may be necessary to assess whether circumstances have changed which would alter their suitability. This can be informed by a range of factors including the suitability of the land for different uses and by market signals, which will be useful in identifying the most appropriate use.

Paragraph: 018 Reference ID: 3-018-20190722

Revision date: 22 07 2019

What factors can be considered when assessing availability?

A site can be considered available for development, when, on the best information available (confirmed by the call for sites and information from land owners and legal searches where appropriate), there is confidence that there are no legal or ownership impediments to development. For example, land controlled by a developer or landowner who has expressed an intention to develop may be considered available.

The existence of planning permission can be a good indication of the availability of sites. Sites meeting the definition of deliverable should be considered available unless evidence indicates otherwise. Sites without permission can be considered available within the first five years, further guidance to this is contained in the 5 year housing land supply guidance. Consideration can also be given to the delivery record of the developers or landowners putting forward sites, and whether the planning background of a site shows a history of unimplemented permissions.

Paragraph: 019 Reference ID: 3-019-20190722

Revision date: 22 07 2019

What factors should be considered when assessing achievability including whether the development of the site is viable?

A site is considered achievable for development where there is a reasonable prospect that the particular type of development will be developed on the site at a particular point in time. This is essentially a judgement about the economic [viability of a site](#), and the capacity of the developer to complete and let or sell the development over a certain period.

Paragraph: 020 Reference ID: 3-020-20190722

Revision date: 22 07 2019

What happens when constraints are identified that impact on the suitability, availability and achievability?

Where constraints have been identified, the assessment will need to consider what action could be taken to overcome them. Examples of constraints include policies in the National Planning Policy Framework and the adopted or emerging development plan, which may affect the suitability of the site, and unresolved multiple ownerships, ransom strips tenancies or operational requirements of landowners, which may affect the availability of the site.

Paragraph: 021 Reference ID: 3-021-20190722

Revision date: 22 07 2019

How can the timescale and rate of development be assessed and presented?

Information on suitability, availability, achievability and constraints can be used to assess the timescale within which each site is capable of development. This may include indicative lead-in times and build-out rates for the development of different scales of sites. On the largest sites allowance should be made for several developers to be involved. The advice of developers and local agents will be important in assessing lead-in times and build-out rates by year.

Paragraph: 022 Reference ID: 3-022-20190722

Revision date: 22 07 2019

Method – Stage 3: Windfall assessment (where justified)

Determining the housing potential of [windfall sites](#) where justified

How should a windfall allowance be determined in relation to housing?

A windfall allowance may be justified in the anticipated supply if a local planning authority has compelling evidence as set out in [paragraph 70](#) of the National Planning Policy Framework.

Local planning authorities have the ability to identify broad locations in years 6-15, which could include a windfall allowance (using the same criteria as set out in [paragraph 67 of the National Planning Policy Framework](#)).

Paragraph: 023 Reference ID: 3-023-20190722

Revision date: 22 07 2019

Method – Stage 4: Assessment review

How should the assessment be reviewed?

Once the sites and broad locations have been assessed, the development potential of all sites can be collected to produce an indicative trajectory. This should set out how much housing and the amount of economic development that can be provided, and at what point in the future (i.e. within years 1 to 5, 6 to 10, and 11 and beyond). An overall risk assessment should be made as to whether sites will come forward as anticipated.

Paragraph: 024 Reference ID: 3-024-20190722

Revision date: 22 07 2019

What happens if the assessment indicates that there are insufficient sites / broad locations to meet needs?

When preparing strategic policies, it may be concluded that insufficient sites / broad locations have been identified to meet objectively assessed needs, including the identified local housing need.

In the first instance, strategic policy-making authorities will need to revisit their assessment, for example to carry out a further call for sites, or changing assumptions about the development potential of particular sites to ensure these [make the most efficient use of land](#).

This may include applying a range of densities that reflect the accessibility and potential of different areas, especially for sites in town and city centres, and other locations that are well served by public transport.

If insufficient land remains, then it will be necessary to investigate how this shortfall can best be planned for. If there is clear evidence that strategic policies cannot meet the needs of the area, factoring in the constraints, it will be important to establish how needs might be met in adjoining areas through the process of preparing [statements of common ground](#), and in accordance with the [duty to cooperate](#). If following this, needs cannot be met then the plan-making authority will have to demonstrate the reasons why as part of the plan examination.

Paragraph: 025 Reference ID: 3-025-20190722

Revision date: 22 07 2019

Method – Stage 5: Final Evidence Base

Following the assessment, what are the outputs?

The following set of standard outputs are expected to be produced following the assessment:

- a list of all sites or broad locations considered, cross-referenced to their locations on maps;
- an assessment of each site or broad location, including:
- where these have been discounted, evidence justifying reasons given;
- where these are considered suitable, available and achievable, the potential type and quantity of development, including a reasonable estimate of build out rates, setting out how any barriers to delivery could be overcome and when;
- an indicative trajectory of anticipated development based on the evidence available.

The assessment will need to be made publicly available in an accessible form. Following the assessment authorities can use it to demonstrate whether there is a [5 year housing land supply](#) when plan-making and decision-taking.

Paragraph: 026 Reference ID: 3-026-20190722

Revision date: 22 07 2019

Guidance

Housing supply and delivery

Guidance on 5 year housing land supply and Housing Delivery Test.

Published 22 July 2019

From:

[Ministry of Housing, Communities & Local Government](#)

Contents

1. [5 year housing land supply](#)
2. [Demonstrating a 5 year housing land supply](#)
3. [Confirming 5 year housing land supply](#)
4. [Demonstrating a housing land supply beyond 5 years](#)
5. [Calculating 5 year housing land supply](#)
6. [Counting completions when calculating 5 year housing land supply](#)
7. [Counting other forms of accommodation](#)
8. [Housing Delivery Test](#)
9. [Housing Delivery Test – Action Plans](#)

This guidance includes updated sections that were previously included in the Housing and economic land availability assessment guidance – [see previous version](#).

What policies are in place to encourage local authorities to promote a sufficient supply of land for housing and support delivery?

The standard method for calculating [local housing need](#) provides a minimum number of homes to be planned for. Authorities should use the standard method as the starting point when preparing the housing requirement in their plan, unless [exceptional circumstances](#) justify an alternative approach.

The Housing Delivery Test measures whether planned requirements (or, in some cases, local housing need) have been met over the last 3 years. The 5 year housing land supply is a calculation of whether there is a deliverable supply of homes to meet the planned housing requirement (or, in some circumstances, local housing need) over the next 5 years.

Paragraph: 001 Reference ID: 68-001-20190722

Revision date: 22 July 2019

5 year housing land supply

What is a 5 year land supply?

A 5 year land supply is a supply of specific [deliverable](#) sites sufficient to provide 5 years' worth of housing (and appropriate buffer) against a [housing requirement](#) set out in adopted strategic policies, or against a local housing need figure, using the standard method, as appropriate in accordance with paragraph 73 of the National Planning Policy Framework.

Paragraph: 002 Reference ID: 68-002-20190722

Revision date: 22 July 2019

What is the purpose of the 5 year housing land supply?

The purpose of the 5 year housing land supply is to provide an indication of whether there are sufficient sites available to meet the housing requirement set out in adopted strategic policies for the next 5 years. Where strategic policies are more than 5 years old, or have been reviewed and found in need of updating, local housing need calculated using the standard method should be used in place of the housing requirement.

Paragraph: 003 Reference ID: 68-003-20190722

Revision date: 22 July 2019

Demonstrating a 5 year housing land supply

How can an authority demonstrate a 5 year supply of deliverable housing sites?

In plan-making, strategic policies should identify a 5 year housing land supply from the intended date of adoption of the plan.

For decision-taking purposes, an authority will need to be able to demonstrate a 5 year housing land supply when dealing with applications and appeals. They can do this in one of two ways:

- using the latest available evidence such as a Strategic Housing Land Availability Assessment (SHLAA), Housing and Economic Land Availability Assessment (HELAA), or an Authority Monitoring Report (AMR);
- ['confirming'](#) the 5 year land supply using a recently adopted plan or through a subsequent annual position statement (as set out in paragraph 74 of the National Planning Policy Framework).

Paragraph: 004 Reference ID: 68-004-20190722

Revision date: 22 July 2019

What housing requirement figure should authorities use when calculating their 5 year housing land supply?

Housing requirement figures identified in adopted strategic housing policies should be used for calculating the 5 year housing land supply figure where:

- the plan was adopted in the last 5 years, or
- the strategic housing policies have been reviewed within the last 5 years and found not to need updating.

In other circumstances the 5 year housing land supply will be measured against the area's local housing need calculated using the standard method.

Paragraph: 005 Reference ID: 68-005-20190722

Revision date: 22 July 2019

Which strategic housing policies are used to calculate the 5 year housing land supply where there is more than one strategic housing requirement policy for an area?

Where there is a conflict between adopted strategic housing requirement policies (for example if a new spatial development strategy supersedes an adopted local plan), the most recently adopted policies will need to be used for the purposes of calculating 5 year housing land supply, in accordance with Section 38 (5) of the Planning and Compulsory Purchase Act 2004.

Paragraph: 006 Reference ID: 68-006-20190722

Revision date: 22 July 2019

What constitutes a 'deliverable' housing site in the context of plan-making and decision-taking?

In order to demonstrate 5 years' worth of deliverable housing sites, robust, up to date evidence needs to be available to support the preparation of strategic policies and planning decisions. [Annex 2 of the National Planning Policy Framework](#) defines a deliverable site. As well as sites which are considered to be deliverable in principle, this definition also sets out the sites which would require further evidence to be considered deliverable, namely those which:

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

Such evidence, to demonstrate deliverability, may include:

- current planning status – for example, on larger scale sites with outline or hybrid permission how much progress has been made towards approving reserved matters, or whether these link to a planning performance agreement that sets out the timescale for approval of reserved matters applications and discharge of conditions;
- firm progress being made towards the submission of an application – for example, a written agreement between the local planning authority and the site developer(s) which confirms the developers' delivery intentions and anticipated start and build-out rates;
- firm progress with site assessment work; or

- clear relevant information about site viability, ownership constraints or infrastructure provision, such as successful participation in bids for large-scale infrastructure funding or other similar projects.

Plan-makers can use the [Housing and Economic Land Availability Assessment](#) in demonstrating the deliverability of sites.

Paragraph: 007 Reference ID: 68-007-20190722

Revision date: 22 July 2019

What happens if an authority cannot demonstrate a 5 year housing land supply?

In plan-making, the Inspector examining the plan will test the evidence to ensure that the 5 year housing land supply identified in strategic policies is sound. If it is not, wherever possible the Inspector will recommend main modifications to the plan to ensure that the plan identifies a 5 year housing land supply from its date of adoption. In decision-taking, if an authority cannot demonstrate a 5 year housing land supply, including any appropriate buffer, the presumption in favour of sustainable development will apply, as set out in [paragraph 11d of the National Planning Policy Framework](#).

Paragraph: 008 Reference ID: 68-008-20190722

Revision date: 22 July 2019

Confirming 5 year housing land supply

How can authorities confirm their 5 year housing land supply?

When local planning authorities wish to confirm their 5 year housing land supply position once in a given year they can do so either through a recently adopted plan or by using a subsequent [annual position statement](#).

Paragraph: 009 Reference ID: 68-009-20190722

Revision date: 22 July 2019

How can a 5 year housing land supply be confirmed as part of the examination of plan policies?

The examination will include consideration of the deliverability of sites to meet a 5 year supply, in a way that cannot be replicated in the course of determining individual applications and appeals where only the applicant's / appellant's evidence is likely to be presented to contest an authority's position.

When confirming their supply through this process, local planning authorities will need to:

- be clear that they are seeking to confirm the existence of a 5 year supply as part of the plan-making process, and engage with developers and others with an interest in housing delivery (as set out in [Paragraph 74a of the Framework](#)), at draft plan publication (Regulation 19) stage.
 - apply a minimum 10% buffer to their housing requirement to account for potential fluctuations in the market over the year and ensure their 5 year land supply is sufficiently flexible and robust. Where the [Housing Delivery Test](#) indicates that delivery has fallen below 85% of the requirement, a 20% buffer should be added instead.
- Following the examination, the Inspector's report will provide recommendations in relation to the land supply and will enable the authority, where the authority accepts the recommendations, to confirm they have a 5 year land supply in a [recently adopted plan](#).

Paragraph: 010 Reference ID: 68-010-20190722

Revision date: 22 July 2019

Can 'recently adopted plans' adopted under the 2012 Framework be used to confirm a 5 year land supply?

Plans that have been recently adopted (as defined by footnote 38 of the Framework) can benefit from confirming their 5 year housing land supply through an annual position statement, including those adopted under the 2012 Framework.

Authorities should be aware that sites counted as part of the supply will need to be assessed under the definition of '[deliverable](#)' set out in the revised National Planning Policy Framework.

Paragraph: 011 Reference ID: 68-011-20190722

Revision date: 22 July 2019

How is a 5 year housing land supply confirmed through an annual position statement?

Where a local planning authority has a recently adopted plan (as set out in the [the National Planning Policy Framework](#)) and wishes to confirm their 5 year land supply position through an [annual position statement](#), they will need to advise the Planning Inspectorate of their intention to do so by 1 April each year.

To ensure their assessment of the deliverability of sites is robust, the local planning authority will also need to carry out an engagement process to inform the preparation of the statement, before submitting their statement to the Planning Inspectorate for review by 31 July of the same year.

So long as the correct process has been followed, and sufficient information has been provided about any disputed sites, the Planning Inspectorate will issue their recommendation in October of the same year. The local planning authority can then confirm their housing land supply until the following October, subject to accepting the recommendations of the Planning Inspectorate.

Paragraph: 012 Reference ID: 68-012-20190722

Revision date: 22 July 2019

How will an annual position statement be assessed?

When assessing an annual position statement, the Planning Inspectorate will carry out a 2 stage assessment:

- first, they will consider whether the correct process has been followed, namely whether:
 - the authority has a 'recently adopted plan' (defined by footnote 38 of the Framework) or they are renewing a confirmed land supply following a previous annual position statement; and
 - satisfactory stakeholder engagement has been carried out.
- second, they will look at whether the evidence is sufficient to demonstrate a 5 year supply of deliverable housing sites (with the appropriate buffer), using 1st April as the base date in the relevant year. In doing so, they will consider whether the sites identified in the assessment are 'deliverable' within the next five years, in line with the definition in [Annex 2 of the Framework](#).

The Planning Inspector's assessment will be made on the basis of the written material provided by the authority, and the Inspector will not refer back to the local planning authority or other stakeholders to seek further information or to discuss particular sites. It is therefore important that the authority has carried out a robust stakeholder engagement process and that adequate information is provided about disputed sites.

Paragraph: 013 Reference ID: 68-013-20190722

Revision date: 22 July 2019

What information will annual position statements need to include?

Assessments need to be realistic and made publicly available in an accessible format as soon as they have been completed. Assessments will be expected to include:

- for sites with detailed planning permission, details of numbers of homes under construction and completed each year; and where delivery has either exceeded or not progressed as expected, a commentary indicating the reasons for acceleration or delays to commencement on site or effects on build out rates;
- for small sites, details of their current planning status and record of completions and homes under construction by site;
- for sites with outline consent or allocated in adopted plans (or with permission in principle identified on Part 2 of brownfield land registers, and where included in the 5 year housing land supply), information and clear evidence that there will be housing completions on site within 5 years, including current planning status, timescales and progress towards detailed permission;
- permissions granted for windfall development by year and how this compares with the windfall allowance;

- details of demolitions and planned demolitions which will have an impact on net completions;
- total net completions from the plan base date by year (broken down into types of development e.g. affordable housing); and
- the 5 year housing land supply calculation clearly indicating buffers and shortfalls and the number of years of supply.

Paragraph: 014 Reference ID: 68-014-20190722

Revision date: 22 July 2019

What engagement will an authority need to undertake to prepare an annual position statement?

Authorities will need to engage with stakeholders who have an impact on the delivery of sites. The aim is to provide robust challenge and ultimately seek as much agreement as possible, so that the authority can reach a reasoned conclusion on the potential deliverability of sites which may contribute to the 5 year housing land supply. Those authorities who are seeking to confirm a 5 year housing land supply through an annual position statement can produce an engagement statement and submit this to the Planning Inspectorate, including:

- an overview of the process of engagement with site owners / applicants, developers and other stakeholders and a schedule of site-based data resulting from this;
- specific identification of any disputed sites where consensus on likely delivery has not been reached, including sufficient evidence in support of and opposition to the disputed site(s) to allow a Planning Inspector to reach a reasoned conclusion; as well as an indication of the impact of any disputed sites on the number of years of supply;
- the conclusions which have been reached on each site by the local planning authority in the light of stakeholder engagement;
- the conclusions which have been reached about the overall 5 year housing land supply position.

Paragraph: 015 Reference ID: 68-015-20190722

Revision date: 22 July 2019

Who can the authority engage with?

Local planning authorities will need to engage with developers and others who have an impact on delivery. This will include:

- small and large developers;
- land promoters;
- private and public land owners;
- infrastructure providers (such as utility providers, highways, etc) and other public bodies (such as Homes England);
- upper tier authorities (county councils) in two-tier areas;

- neighbouring authorities with adjoining or cross-boundary sites; and
- any other bodies with an interest in particular sites identified.

Beyond this, it is for the local planning authority to decide which stakeholders to involve. This may include any general consultation bodies the authority considers are appropriate.

Local planning authorities may wish to set up an assessment and delivery group which could contribute towards [Housing and Economic Land Availability Assessments](#), annual 5 year housing land supply assessments and Housing Delivery Test action plans for the delivery of housing. Delivery groups can assist authorities to not only identify any delivery issues but also help to find solutions to address them. They may also set out policies in their Statement of Community Involvement setting out who will be consulted when applying to confirm their 5 year housing land supply.

The Planning Inspectorate will publish on their website a list of local authorities who have notified them of their intention to seek confirmation of their 5 year housing land supply. However, interested parties who wish to be involved in the process should contact the local planning authority directly.

Paragraph: 016 Reference ID: 68-016-20190722

Revision date: 22 July 2019

What happens where there is disagreement about sites?

Where agreement on delivery prospects for a particular site has not been reached through the engagement process, the Planning Inspectorate will consider the evidence provided by both the local authority and stakeholders and make recommendations about likely site delivery in relation to those sites in dispute.

Paragraph: 017 Reference ID: 68-017-20190722

Revision date: 22 July 2019

What can an authority do once the Planning Inspectorate has reached a conclusion and provided recommendations?

When considering an annual position statement, the Planning Inspectorate will assess whether the evidence provided by the local authority is sufficient to demonstrate that there is a 5 year housing land supply, including the [appropriate buffer](#). If this is the case, the Planning Inspectorate will then recommend that the authority can confirm that they have a 5 year housing land supply for one year. This will be a material consideration in the determination of planning applications and appeals.

The local planning authority will need to publish their annual position statement incorporating the recommendations of the Planning Inspectorate in order to confirm their 5 year housing land supply position for a one year period.

Paragraph: 018 Reference ID: 68-018-20190722

Revision date: 22 July 2019

Demonstrating a housing land supply beyond 5 years

Is it essential to identify specific developable sites or broad locations for housing growth, beyond 5 years?

As set out in the National Planning Policy Framework, local planning authorities should identify a supply of specific, developable sites or broad locations for growth for years 6-10 and, where possible, for years 11-15. Local plans and spatial development strategies may be able to satisfy the tests of soundness where they have not been able to identify specific sites or broad locations for growth in years 11-15. However, if longer-term sites are to be included, for example as part of a stepped requirement, then plan-makers will need to demonstrate that there is a reasonable prospect that they are likely to come forward within the timescale envisaged.

Paragraph: 019 Reference ID: 68-019-20190722

Revision date: 22 July 2019

How can plan-making authorities demonstrate there is a reasonable prospect that housing sites are 'developable'?

[Annex 2 of the National Planning Policy Framework](#) defines what constitutes a developable site. In demonstrating that there is a 'reasonable prospect' plan-makers can use evidence such as (but not exclusively):

- written commitment or agreement that relevant funding is likely to come forward within the timescale indicated, such as an award of grant funding;
- written evidence of agreement between the local planning authority and the site developer(s) which confirms the developers' delivery intentions and anticipated start and build-out rates;
- likely buildout rates based on sites with similar characteristics; and
- current planning status - for example, a larger scale site with only outline permission where there is supporting evidence that the site is [suitable and available](#), may indicate development could be completed within the next 6-10 years.

A pragmatic approach is appropriate when demonstrating the intended phasing of sites. For example, for sites which are considered developable within 6-10 years, the authority may need to provide a greater degree of certainty than those in years 11-15 or beyond. When producing annual updates of the housing land supply trajectory, authorities can use these to provide greater certainty about the delivery of sites initially considered to be developable, and those identified over a longer time span.

Further guidance is provided in the [plan-making chapter](#) about how authorities can demonstrate that strategic matters can be delivered within a particular timescale. Plan-

makers can use the [Housing and Economic Land Availability Assessment](#) in demonstrating the developability of sites.

Paragraph: 020 Reference ID: 68-020-20190722

Revision date: 22 July 2019

When is a stepped housing requirement appropriate for plan-making?

A stepped housing requirement may be appropriate where there is to be a significant change in the level of housing requirement between emerging and previous policies and / or where strategic sites will have a phased delivery or are likely to be delivered later in the plan period. Strategic policy-makers will need to identify the stepped requirement in strategic housing policy, and to set out evidence to support this approach, and not seek to unnecessarily delay meeting identified development needs. Stepped requirements will need to ensure that planned housing requirements are met fully within the plan period. In reviewing and revising policies, strategic policy-makers should ensure there is not continued delay in meeting identified development needs.

Where there is evidence to support a prioritisation of sites, local authorities may wish to identify priority sites which can be delivered earlier in the plan period, such as those on brownfield land and where there is supporting infrastructure in place e.g. transport hubs. These sites will provide additional flexibility and more certainty that authorities will be able to demonstrate a sufficient supply of [deliverable](#) sites against the housing requirement.

Paragraph: 021 Reference ID: 68-021-20190722

Revision date: 22 July 2019

Calculating 5 year housing land supply

How should buffers be added to the 5 year housing land supply requirement?

To ensure that there is a realistic prospect of achieving the planned level of housing supply, the local planning authority should always add an appropriate buffer, applied to the [requirement](#) in the first 5 years (including any shortfall), bringing forward additional sites from later in the plan period. This will result in a requirement over and above the level indicated by the strategic policy requirement or the local housing need figure.

Buffers are not cumulative, meaning that an authority should add one of the following, depending on circumstances:

- 5% - the minimum buffer for all authorities, necessary to ensure choice and competition in the market, where they are not seeking to demonstrate a 5 year housing land supply;
- 10% - the buffer for authorities seeking to [confirm](#) 5 year housing land supply for a year, through a recently adopted plan or subsequent annual position statement (as set out

- in [paragraph 74 of the National Planning Policy Framework](#)), unless they have to apply a 20% buffer (as below); and
- 20% - the buffer for authorities where delivery of housing taken as a whole over the previous 3 years, has fallen below 85% of the requirement, as set out in the last published Housing Delivery Test results.

Paragraph: 022 Reference ID: 68-022-20190722

Revision date: 22 July 2019

How is 5 year housing land supply calculated in National Parks and the Broads Authority?

Within National Parks and the Broads Authority, and those local planning authorities where local authority boundaries overlap with these areas, housing requirements identified in strategic policies that are less than 5 years old are used. Where plans are more than 5 years old (unless those policies have been reviewed and found not to require updating), a [locally derived](#) housing requirement figure may be used.

Paragraph: 023 Reference ID: 68-023-20190722

Revision date: 22 July 2019

How is 5 year housing land supply calculated in Development Corporation areas?

In areas covered by Development Corporations with plan-making powers, housing requirements identified in strategic policies that are less than 5 years old, or older and found not to require updating will be used (this can be in local plan(s) or a spatial development strategy). For Development Corporations which do not have, or do not exercise, plan-making powers the requirement will be set in the relevant strategic policies and monitored by the strategic policy-making authority.

Paragraph: 024 Reference ID: 68-024-20190722

Revision date: 22 July 2019

How is 5 year housing land supply calculated in new local planning authorities which result from a local government reorganisation?

Planning policies adopted by predecessor authorities will remain part of the development plan for their area upon reorganisation, until they are replaced by adopted successor authority policies or until the fifth anniversary of reorganisation.

Where a newly formed local planning authority is covered by strategic housing requirement policies adopted by predecessor authorities, these policies can continue to be used as the housing requirement for calculating the 5 year housing land supply in the areas they apply

where these are less than 5 years old, or they are older but have been reviewed within the last 5 years and found not to need updating.

Where strategic housing requirement policies, covering the predecessor authority area, are older than 5 years and require updating, local housing need should be used, where this is available. Where the data required to calculate local housing need is not available [an alternative approach](#) will have to be used.

Paragraph: 025 Reference ID: 68-025-20190722

Revision date: 22 July 2019

How is 5 year housing land supply measured where authorities have stepped rather than annual average requirements?

Five year land supply is measured across the plan period against the specific stepped requirements for the particular 5 year period.

Paragraph: 026 Reference ID: 68-026-20190722

Revision date: 22 July 2019

How is 5 year housing land supply measured where authorities set out their housing requirements as a range?

Where strategic policy-makers have successfully argued through plan-making and examination for a requirement set out as a range, the 5 year land supply will be measured against the lower end of the range.

Paragraph: 027 Reference ID: 68-027-20190722

Revision date: 22 July 2019

How will areas with joint plans be monitored for the purposes of a 5 year land supply?

Areas which have a joint plan have the option to monitor their 5 year housing land supply and have the Housing Delivery Test applied over the whole of the joint planning area or on a single authority basis. The approach to using individual or combined housing requirement figures will be established through the plan-making process and will need to be set out in the strategic policies.

Where the 5 year housing land supply is to be measured on a single authority basis, annual housing requirement figures for the joint planning area will need to be apportioned to each area in the plan. If the area is monitored jointly, any policy consequences of under-delivery or lack of 5 year housing land supply will also apply jointly.

Paragraph: 028 Reference ID: 68-028-20190722

Revision date: 22 July 2019

Counting completions when calculating 5 year housing land supply

What counts as a completion?

For the purposes of calculating 5 year land supply, housing completions include new build dwellings, conversions, changes of use and demolitions and redevelopments. Completions should be [net figures](#), so should offset any demolitions.

Paragraph: 029 Reference ID: 68-029-20190722

Revision date: 22 July 2019

How should authorities count bringing empty homes back into use?

To be included as a contribution to completions it would be for the authority to ensure that empty homes had not already been counted as part of the existing stock of dwellings to avoid double counting.

Paragraph: 030 Reference ID: 68-030-20190722

Revision date: 22 July 2019

How can past shortfalls in housing completions against planned requirements be addressed?

Where shortfalls in housing completions have been identified against planned requirements, strategic policy-making authorities may consider what factors might have led to this and whether there are any measures that the authority can take, either alone or jointly with other authorities, which may counter the trend. Where the standard method for assessing local housing need is used as the starting point in forming the planned requirement for housing, Step 2 of the standard method factors in past under-delivery as part of the affordability ratio, so there is no requirement to specifically address under-delivery separately when establishing the minimum annual local housing need figure. Under-delivery may need to be considered where the plan being prepared is part way through its proposed plan period, and delivery falls below the housing requirement level set out in the emerging relevant strategic policies for housing.

Where relevant, strategic policy-makers will need to consider the recommendations from the local authority's action plan prepared as a result of past under-delivery, as confirmed by the Housing Delivery Test.

The level of deficit or shortfall will need to be calculated from the base date of the adopted plan and should be added to the plan requirements for the next 5 year period (the Sedgefield approach), then the appropriate buffer should be applied. If a strategic policy-making authority wishes to deal with past under delivery over a longer period, then a case may be made as part of the plan-making and examination process rather than on a case by case basis on appeal.

Where strategic policy-making authorities are unable to address past shortfalls over a 5 year period due to their scale, they may need to reconsider their approach to bringing land forward and the assumptions which they make. For example, by considering developers' past performance on delivery; reducing the length of time a permission is valid; re-prioritising reserve sites which are 'ready to go'; delivering development directly or through arms' length organisations; or sub-dividing major sites where appropriate, and where it can be demonstrated that this would not be detrimental to the quality or deliverability of a scheme.

Paragraph: 031 Reference ID: 68-031-20190722

Revision date: 22 July 2019

How can past over-supply of housing completions against planned requirements be addressed?

Where areas deliver more completions than required, the additional supply can be used to offset any shortfalls against requirements from previous years.

Paragraph: 032 Reference ID: 68-032-20190722

Revision date: 22 July 2019

Does the 5 year housing land supply calculation affect a Housing Delivery Test result?

No. The 5 year housing land supply calculation is not used to determine future Housing Delivery Test results. Adopted strategic housing policies or local housing need calculated using the standard method are used, subject to the rules set out in the [Housing Delivery Test rule book](#).

Paragraph: 033 Reference ID: 68-033-20190722

Revision date: 22 July 2019

Counting other forms of accommodation

How can authorities count student housing in the housing land supply?

All student accommodation, whether it consists of communal halls of residence or self-contained dwellings, and whether or not it is on campus, can in principle count towards contributing to an authority's housing land supply based on:

- the amount of accommodation that new student housing releases in the wider housing market (by allowing existing properties to return to general residential use); and / or
- the extent to which it allows general market housing to remain in such use, rather than being converted for use as student accommodation.

This will need to be applied to both communal establishments and to multi bedroom self-contained student flats. Several units of purpose-built student accommodation may be needed to replace a house which may have accommodated several students.

Authorities will need to base their calculations on the average number of students living in student only accommodation, using the published [census data](#), and take steps to avoid double-counting. The exception to this approach is studio flats designed for students, graduates or young professionals, which can be counted on a one for one basis. A studio flat is a one-room apartment with kitchen facilities and a separate bathroom that fully functions as an independent dwelling.

Paragraph: 034 Reference ID: 68-034-20190722

Revision date: 22 July 2019

How can authorities count older people's housing in the housing land supply?

Local planning authorities will need to count housing provided for older people, including residential institutions in Use Class C2, as part of their housing land supply. This contribution is based on the amount of accommodation released in the housing market. Further guidance is set out in [Housing for Older and Disabled People](#).

Paragraph: 035 Reference ID: 68-035-20190722

Revision date: 22 July 2019

Housing Delivery Test

How is the Housing Delivery Test calculated?

The method for calculating the Housing Delivery Test measurement is set out in the [Housing Delivery Test measurement rule book](#).

The rule book needs to be read in conjunction with this guidance on the Housing Delivery Test.

Paragraph: 036 Reference ID: 68-036-20190722

Revision date: 22 July 2019

Which organisations does the Housing Delivery Test apply to?

It applies to local planning authorities in a plan-making authority area: non-metropolitan districts, development corporations with plan-making and decision-making powers, metropolitan boroughs and London boroughs. The Housing Delivery Test does not apply to National Park Authorities, the Broads Authority and development corporations without (or not exercising) both plan-making and decision-making functions.

Paragraph: 037 Reference ID: 68-037-20190722

Revision date: 22 July 2019

Which delivery years does the Housing Delivery Test apply to?

The Housing Delivery Test, published in the November of any given year, provides a measure based on the preceding 3 financial years.

Paragraph: 038 Reference ID: 68-038-20190722

Revision date: 22 July 2019

What happens in areas with stepped requirements?

Where the adopted housing requirement is stepped, these stepped requirements will be used in the Housing Delivery Test in place of annual average requirement figures. A stepped requirement allows authorities to reflect step changes in the level of housing expected to be delivered across the plan period. The [buffer applied](#) to the 5 year housing land supply does not constitute a stepped requirement.

Paragraph: 039 Reference ID: 68-039-20190722

Revision date: 22 July 2019

What happens in areas with requirements set out as a range?

Where plan makers have successfully argued through plan-making and examination for a requirement set out as a range, the Housing Delivery Test will measure authorities against the lower end of the range.

Paragraph: 040 Reference ID: 68-040-20190722

Revision date: 22 July 2019

How does the Housing Delivery Test account for delivering communal accommodation?

Communal accommodation, including student accommodation and other communal accommodation, can count towards the Housing Delivery Test. Self-contained dwellings are

included in the National Statistic for net additional dwellings. Communal accommodation will be accounted for in the Housing Delivery Test by applying adjustments in the form of two nationally set ratios. These are based on England Census data. The ratios for both net student and net other communal accommodation are found in the [Housing Delivery Test measurement rule book](#).

Paragraph: 041 Reference ID: 68-041-20190722

Revision date: 22 July 2019

What happens if the identified housing requirement is not delivered?

From the day following publication of the Housing Delivery Test measurement, where delivery of housing has fallen below the housing requirement, certain policies set out in the National Planning Policy Framework will apply. Depending on the level of delivery, these are:

- the authority should publish an action plan if housing delivery falls below 95%;
- a 20% buffer on the local planning authority's 5 year land supply if housing delivery falls below 85%; and
- application of the presumption in favour of sustainable development if housing delivery falls below 75%, subject to the transitional arrangements set out in [paragraph 215 of the Framework](#).

These consequences apply concurrently, for example those who fall below 85% should produce an action plan as well as the 20% buffer. The consequences will continue to apply until the subsequent Housing Delivery Test measurement is published. The relevant consequence for any under-delivery will then be applied. Should delivery meet or exceed 95%, no consequences will apply.

Where a new housing requirement is adopted after the publication of the measurement, the Housing Delivery Test calculation will be re-run using the new requirement as set out in paragraphs 17 to 18 of the [Housing Delivery Test rule book](#). Any consequences for under-delivery will be applied from the day after the publication of the re-run measurement.

Paragraph: 042 Reference ID: 68-042-20190722

Revision date: 22 July 2019

How will areas with joint plans be monitored for the purposes of the Housing Delivery Test?

For the purposes of the Housing Delivery Test, joint plans are joint local development documents as defined under [Section 28 of the Planning and Compulsory Purchase Act 2004](#).

Areas which have adopted joint plans will have the option to monitor their Housing Delivery Test over the whole of the joint planning area or on a single authority basis. This will be established through the plan-making process.

Where an adopted joint plan has a joint housing requirement and trajectory that is not demarcated by local planning authority boundaries, the authorities will be treated as one authority for the purposes of the Housing Delivery Test, with the consequences of their result applied to both authorities.

Where an adopted joint plan has a housing requirement and trajectory that is demarcated by local planning authorities, they will be treated separately for the purposes of the Housing Delivery Test, according to the apportionment outlined in the adopted plan. The consequences for each authority will be separate, according to their demarcated Housing Delivery Test results.

Paragraph: 043 Reference ID: 68-043-20190722

Revision date: 22 July 2019

How will Housing Delivery Test consequences apply to areas with a joint plan?

Housing Delivery Test consequences will apply to all local planning authorities with a joint plan collectively if the housing figure used to measure against the delivery test is the joint housing requirement. The consequences will apply individually if the housing figure used is the apportioned one.

Paragraph: 044 Reference ID: 68-044-20190722

Revision date: 22 July 2019

How do Housing Delivery Test consequences apply to areas covered by a Spatial Development Strategy (SDS)?

Local planning authorities covered by a Spatial Development Strategy will be monitored against their requirement as set out in the individual borough or district plan for the purposes of the Housing Delivery Test, where this requirement is less than 5 years old (or is older and a review has found this does not require updating). Housing Delivery Test consequences will therefore apply to local planning authorities covered by a spatial development strategy individually. The [Housing Delivery Test measurement rule book](#) sets out the circumstances for the calculation where the requirement is over 5 years old, or there is no individual borough or district plan.

Paragraph: 045 Reference ID: 68-045-20190722

Revision date: 22 July 2019

How is the Housing Delivery Test calculated in new local planning authorities formed as a result of recent reorganisation?

For those authorities who have recently undergone re-organisation, their Housing Delivery Test result, and any relevant consequences, will be based on predecessor authority boundaries in the first year following reorganisation.

Paragraph: 046 Reference ID: 68-046-20190722

Revision date: 22 July 2019

Housing Delivery Test – Action Plans

What is the Housing Delivery Test action plan?

The action plan is produced by the local planning authority where delivery is below 95% of their housing requirement. It will identify the reasons for under-delivery, explore ways to reduce the risk of further under-delivery and set out measures the authority intends to take to improve levels of delivery.

Paragraph: 047 Reference ID: 68-047-20190722

Revision date: 22 July 2019

Who can produce an action plan?

Local planning authorities, in collaboration with key stakeholders, are expected to produce the action plan. This will apply for each year of under-delivery where the Housing Delivery Test score is below 95%.

Apart from where an action plan is required as a consequence of the Housing Delivery Test, any authority may produce an action plan as a matter of good practice to identify ways to support delivery. In areas not measured by the Housing Delivery Test, such as National Park Authorities, the Broads Authority and development corporations without (or which do not exercise) both plan-making and decision-making functions, the use of an action plan is encouraged where appropriate to help identify any causes of under-delivery and actions to address these.

Paragraph: 048 Reference ID: 68-048-20190722

Revision date: 22 July 2019

Who can be involved in the creation of the action plan?

The local planning authority is responsible for producing the action plan, involving relevant stakeholders in the process. It is for the local planning authority to decide which stakeholders to involve, although representatives of those with an impact on the rate of delivery should be included, such as:

- small and large developers;
- land promoters;
- private and public land owners;

- infrastructure providers (such as utility providers, highways, etc) and other public bodies (such as Homes England);
- upper tier authorities (county councils) in two-tier areas;
- neighbouring authorities with adjoining or cross-boundary sites.

Paragraph: 049 Reference ID: 68-049-20190722

Revision date: 22 July 2019

What could local planning authorities review as part of the action plan?

The local planning authority may wish to include an analysis of under-delivery considering:

- barriers to early commencement after planning permission is granted and whether such sites are delivered within permitted timescales;
- barriers to delivery on sites identified as part of the 5 year land supply (such as land banking, scheme viability, affordable housing requirements, pre-commencement conditions, lengthy section 106 negotiations, infrastructure and utilities provision, involvement of statutory consultees etc.);
- whether sufficient planning permissions are being granted and whether they are determined within statutory time limits;
- whether the mix of sites identified is proving effective in delivering at the anticipated rate.
- whether proactive pre-planning application discussions are taking place to speed up determination periods;
- the level of ongoing engagement with key stakeholders (for example, landowners, developers, utility providers and statutory consultees), to identify more land and encourage an increased pace of delivery;
- whether particular issues, such as infrastructure or transport, could be addressed at a strategic level - within the authority, but also with neighbouring and upper tier authorities where applicable.

Paragraph: 050 Reference ID: 68-050-20190722

Revision date: 22 July 2019

What actions could local planning authorities consider as part of the action plan?

Actions to boost delivery could include:

- revisiting the Strategic Housing Land Availability Assessment (SHLAA) / [Housing and Economic Land Availability Assessment \(HELAA\)](#) to identify sites potentially suitable and available for housing development that could increase delivery rates, including public sector land and brownfield land;
- working with developers on the phasing of sites, including whether sites can be subdivided;
- offering more pre-application discussions to ensure issues are addressed early;

- considering the use of Planning Performance Agreements;
- carrying out a new Call for Sites, as part of plan revision, to help identify deliverable sites;
- revising site allocation policies in the development plan, where they may act as a barrier to delivery, setting out new policies aimed at increasing delivery, or accelerating production of an emerging plan incorporating such policies;
- reviewing the impact of any existing Article 4 directions for change of use from non-residential uses to residential use;
- engaging regularly with key stakeholders to obtain up-to-date information on build out of current sites, identify any barriers, and discuss how these can be addressed;
- establishing whether certain applications can be prioritised, conditions simplified or their discharge phased on approved sites, and standardised conditions reviewed;
- ensuring evidence on a particular site is informed by an understanding of viability;
- considering compulsory purchase powers to unlock suitable housing sites;
- using Brownfield Registers to grant permission in principle to previously developed land; and
- encouraging the development of small and medium-sized sites.

Paragraph: 051 Reference ID: 68-051-20190722

Revision date: 22 July 2019

When can the action plan be published?

To ensure the document is as useful as possible, local planning authorities will need to publish an action plan within 6 months of publication of the Housing Delivery Test measurement.

Paragraph: 052 Reference ID: 68-052-20190722

Revision date: 22 July 2019

Will an action plan require formal public consultation?

The action plan will work best as a transparent, publicly accessible document. The decision about whether to consult on an action plan is for the local planning authority. Local planning authorities should be mindful of the need to both produce and implement the document's proposals in a timely fashion.

Paragraph: 053 Reference ID: 68-053-20190722

Revision date: 22 July 2019

How could the action plan be monitored?

A1.43

Responsibility for creating the action plan lies with the local planning authority, as does monitoring of the action plan. However, the action plan is a collaborative process between various stakeholders, and all stakeholders have a responsibility to deliver the action plan.

Paragraph: 054 Reference ID: 68-054-20190722

Revision date: 22 July 2019

APPENDIX 2

FIVE YEAR HOUSING LAND SUPPLY POSITION, APRIL 2019

FAREHAM

BOROUGH COUNCIL

Report to Planning Committee

Date **24 April 2019**

Report of: **Director of Planning and Regeneration**

Subject: **FIVE YEAR HOUSING LAND SUPPLY POSITION**

SUMMARY

The following report provides the latest update on the Council's Five Year Housing Land Supply position, and supersedes the update previously provided to the Planning Committee on 12th December 2018.

RECOMMENDATION

That the Committee note: -

- (i) the content of the report and the current 5-Year Housing Land Supply position;
- (ii) that the 5-Year Housing Land Supply Position set out in the attached report (which will be updated regularly as appropriate) is a material consideration in the determination of planning applications for residential development.

INTRODUCTION

1. The following 5YHLS position updates and supersedes those previously provided to the Planning Committee. It will continue to be regularly updated as appropriate and will represent a material consideration in the determination of planning applications. It should be noted that the Council's housing land supply position can go down as well as up depending on the circumstances relevant at any given time.

NATIONAL PLANNING POSITION ON HOUSING NEED

2. The requirement of the National Planning Policy Framework is for housing need to be calculated by a standard method, as set out in the Planning Practice Guidance.
3. The standard method uses household growth projections and house-price to earnings affordability data (produced by the Office for National Statistics) to calculate the Local Housing Need figure for a Local Planning Authority.
4. In February 2019, the Government confirmed that the 2014 based household growth projections should be used within the standard method to calculate the annual housing need figure. In late March 2019 the latest house price to earnings affordability data was published by the Office for National Statistics.
5. The Housing Delivery Test results were published by the Ministry of Housing, Communities and Local Government (MHCLG) in February 2019. These results require this Council to apply a buffer of 5% to its annual requirement.
6. The housing need figure for Fareham, using the standard method, is 520 dwellings per annum. Calculation of the Council's 5-Year Housing Land Supply Position based on an annual dwelling requirement of 520 and a 5% buffer gives a projected position of 4.66 years.

RISK ASSESSMENT

7. There are no significant risk considerations in relation to this report.

CONCLUSION

8. That the Committee note the content of the report and the updated 5YHLS position.
9. That the 5YHLS position set out in the attached report (which will continue to be updated regularly as appropriate) is a material consideration in the determination of planning application for residential development.

Enquiries:

For further information on this report please contact Lee Smith. (Ext 4427).

Fareham Borough Council
Five-Year Housing Land Supply Position

April 2019

1.0 INTRODUCTION

- 1.1 The National Planning Policy Framework (NPPF) requires Local Planning Authorities to identify and update annually a supply of specific deliverable sites to provide five years supply of housing against their housing requirements. The NPPF also requires an additional buffer of 5% (or 20% in the case of persistent under-delivery) to ensure choice and competition in the market for land.
- 1.2 This document has been prepared to provide the latest position on the 5 Year Housing Land Supply (5YHLS) in Fareham Borough. It will be updated at regular intervals to ensure the most accurate and up-to-date position is available. Updates will be provided to the Planning Committee when relevant and will also be advised on the Council's website.
- 1.3 This document is iterative/live and will only provide the most accurate position of 5YHLS at the time of publication. It is possible that sites will be omitted from the 5YHLS and then subsequently, when circumstances change, may feature again in a future iteration of the 5YHLS position (and vice versa). Likewise, delivery rates for included sites are not fixed and are subject to revision following correspondence with site promoters/ developers.

2.0 HOUSING NEED

- 2.1 The requirement through the revised NPPF is for housing need to be calculated through a standard method. The standard method is based on household growth projections and house-price to earnings affordability data published by the Office for National Statistics (ONS).
- 2.2 Since the last 5YHLS report was presented to the Planning Committee in December 2018, the Government has published changes to the household growth projections which are to be used to calculate the Local Housing Need figure. In addition to this, updated house-price to earnings affordability data has been published by the ONS.
- 2.3 In October last year the Government consulted on using older 2014-based ONS household projections, rather than the more up-to-date lower 2016 projections, to calculate local housing need. Following the consultation, the Government confirmed in February this year that the 2014-based ONS household projections should be used in the standard method calculation.
- 2.4 Use of the 2014-based household growth projections along with the updated house-price to earnings affordability data within the standard method results in the Council having a Local Housing Need figure of 520 dwellings per annum.
- 2.5 There remains a requirement in the revised NPPF to include at least a 5% buffer on top of the 5-year housing requirement, "to ensure choice and competition in the market for land".
- 2.6 The level of the buffer (5% or 20%) is now determined through the Housing Delivery Test, which has been introduced as part of the revised NPPF. The NPPF advised that each Council's Housing Delivery Test result will be calculated and published by MHCLG in November of each year, with the first result due in November 2018.
- 2.7 The results for the 2018 Housing Delivery Test (HDT) were finally published by the MHCLG on 19th February 2019. The results for Fareham were better than anticipated, with the Council achieving 137% in terms of the number of homes delivered.
- 2.8 Fareham's HDT results were considerably higher than the pass rate of 95%, which means that the Council can apply a 5% buffer to its five-year housing land supply position.

Fareham passed the test because the Government measurement appears to be against the Council's Adopted Local Plan rather than, as expected, against household projections. The 5% buffer increases the dwellings per annum requirement to 546.

3.0 HOUSING SUPPLY

3.1 The revised National Planning Policy Framework requires Local Planning Authorities to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their local housing need. As such, this section sets out the different sources which make-up the Council's projected five-year housing supply.

Planning Permissions

3.2 A comprehensive list of all sites with outstanding planning permission at the start of each monitoring year is provided annually to the Council by Hampshire County Council. However, to ensure that this 5YHLS position provides the most accurate and up-to-date position, all new planning permissions up until the 31st March 2019 are also taken account of. Sites with planning permission are only included within the projected supply where there is clear evidence that the site is being delivered or will be delivered within the 5-year period. As such, where there is some indication that a planning permission will not be implemented then the site has been omitted from the 5YHLS on a precautionary basis. However, this may change if subsequent information comes to light to suggest the development will take place in the five-year period.

3.3 The monitoring of new permissions and the delivery projections of existing sites with planning permission will continue to be kept regularly up-to-date by Fareham Borough Council Officers, through regular correspondence with site developers.

3.4 Dwellings completed between 1st April 2018 and the 31st March 2019 have been removed from the 'Details of Projected Housing Supply for the 5-Year Period (1ST APRIL 2019 – 31ST MARCH 2024)' set out at Section 5 of this report. The level of completions is estimated at present based upon site visits undertaken by Officers and Council Tax information. The number of completions during the last financial year will be updated when the five-year housing land supply position report is next presented to the Planning Committee

Resolutions to Grant Planning Permission

3.5 Housing delivery from sites with a resolution to grant planning permission form a significant component of the projected supply. These consist of sites which have been approved by the Council's Planning Committee, but the formal grant of planning permission remains subject to matters such as the completion of a legal agreement (i.e. Section 106).

3.6 Based on information provided by applicants, these sites are expected to contribute fully to the Council's 5YHLS, however projections will be kept under review by the Council. It has been assessed that the 'up to' figures in the resolutions to grant permission are reasonable and achievable, however, should the subsequent reserved matters applications revise the development quantum then this may need to be reflected in future updates on the 5YHLS position, should those quantum be acceptable.

Adopted Local Plan Housing Allocations and Emerging Brownfield Sites

3.7 Officers have undertaken a review of the residual allocations and policy compliant sites from the adopted Local Plan to inform the 5YHLS position. This has been based on correspondence with the site promoter and Planning Officer judgement.

3.8 Members will be aware that in mid-December 2018, a substantial amount of supporting/

A2.6

revised information was provided in connection with the current planning application for Welborne. The submitted information includes projected housing completions at Welborne within the next 5 years. The applicant, Buckland Development Ltd, have advised that they anticipate 30 dwellings would be delivered in 2020-21, 180 in 2021-22, 240 in 2022-23 and 240 in 2023-24. This would total some 690 dwellings in the five-year period.

- 3.9 In instances where Officers have gathered information on the timing and delivery rates from site landowners or developers, the Council have in some instances taken a more precautionary approach to delivery than may have been proposed by the site developer. This could be, for example, if they failed to allow sufficient time for planning permissions to be secured, or if the delivery rates were considered too optimistic. It is important that the Council has a robust basis for its 5YHLS calculations, as adopting a set of unrealistic assumptions may result in a 5YHLS figure that may not be accepted by an appeal Inspector.
- 3.10 This process of liaison with site promoters and developers will remain ongoing to ensure a robust and evidenced position on 5YHLS can be demonstrated.

Windfall Allowance

- 3.11 Paragraph 70 of the revised NPPF allows for an allowance to be made for housing delivery from windfall sites, providing that there is compelling evidence that they will provide a reliable source of supply having regard to historic windfall delivery rates and expected future trends. An allowance for windfall housing from small sites (1-4 units) has been included within the projected 5-year supply, but avoids any small-site windfall development in years 1-3 of that projection and any large-site windfall from the entire 5-year projection.
- 3.12 The windfall rates used in the 5YHLS projection are set out in the Council's Housing Windfall Projections Background Paper (2017)¹.

Calculating the 5YHLS

- 3.13 In summary, the 5YHLS position in this paper is based on the following: -
- Local Housing Need figure of 520 dwellings per annum.
 - Application of a 5% buffer on the Local Housing Need figure.
 - Outstanding planning permission data provided by Hampshire County Council up until 31st March 2018 and Fareham Borough Council records from 1st April 2018 until 31st March 2019.
 - Sites with a resolution to grant planning permission, allocated within the adopted Local Plan and emerging brownfield sites which are expected to deliver housing over the 5-year period 1st April 2019 to 31st March 2024.
 - Expected windfall development from small sites (1-4 units) in years 4 and 5 (i.e. 1st April 2022 – 31st March 2024).
 - Delivery projections and rates which are derived from detailed liaison with site developers (particularly for larger development sites).

¹ Available at: http://www.fareham.gov.uk/PDF/planning/local_plan/DraftLocalPlanEvidenceBase/EV24-BackgroundPaperHousingWindfallProjections.pdf

4.0 FIVE-YEAR HOUSING LAND SUPPLY POSITION

4.1 The following table provides a summary of the Council's current 5YHLS position as per the date of this paper.

HOUSING REQUIREMENT		
A	Local Housing Need: Dwellings per annum 2019-36	520
B	Local Housing Need: Total requirement for 1 st April 2019 to 31 st March 2024 (A x 5)	2,600
C	5% buffer to ensure choice and competition in the market for land (B x 5%)	130
D	Total housing requirement for period from 1st April 2019 to 31st March 2024 (B+C)	2,730
E	Annual requirement for period from 1 st April 2019 to 31 st March 2024 (d/5)	546
HOUSING SUPPLY		
F	Net outstanding planning permissions for small sites (1-4 units) expected to be built by 31 st March 2024 (discounted by 10% for lapses)	93
G	Net outstanding planning permissions for large sites (5 or more units) expected to be built by 31 st March 2024	644
H	Dwellings with a Resolution to Grant Planning Permission that are expected to be built by 31 st March 2024	831
I	Dwellings allocated in Adopted Local Plan (LP2 & LP3) that are expected to be built by 31 st March 2024	757
J	Dwellings from emerging brownfield sites (Adopted Local Plan - LP1 & LP2) that are expected to be built by 31 st March 2024	145
K	Small site windfall allowance (years 4 – 5) (37 dwellings x 2 years)	74
L	Expected housing supply for the period from 1st April 2019 to 31st March 2024 (F+G+H+I+J+K)	2,544
M	Housing Land Supply Position over period from 1st April 2019 to 31st March 2024 (L – D)	-186
N	Housing Supply in Years (L / E)	4.66 years

4.2 The above table shows the Council to currently have 4.66 years of housing supply against the 5YHLS requirement.

4.3 The full detail behind the projected five-year supply of 2,544 dwellings is provided in Section 5.

5.0 DETAILS OF PROJECTED HOUSING SUPPLY FOR THE 5-YEAR PERIOD (1ST APRIL 2019 – 31ST MARCH 2024)

PROJECTED SUPPLY	2019/20	2020/21	2021/22	2022/23	2023/24	Totals	Notes for 5Y Position
OUTSTANDING PLANNING PERMISSIONS - SMALL (1-4 dwellings) (10% discount)	31	31	31			93	10% reduction rate applied to account for likely lapses in permission.
OUTSTANDING PLANNING PERMISSIONS - LARGE (5 dwellings+)						644	
16 Botley Road, Park Gate (03/1439/FP)	6					6	Site under construction. 12 units completed 18/19.
3-33 West Street, Portchester (07/0042/FP)	16					16	Site under construction.
New Park Garage, Station Road, Park Gate (09/0672/FP)	14					14	Site under construction.
Land off Cartwright Drive, Titchfield (14/0741/FP)	40	46				86	Site under construction. Delivery projections as informed by HCC (2018).
100 Wickham Road, Fareham (14/1252/FP)		13				13	Details Pursuant to conditions now in P/14/1252/DP/A. Nothing to indicate that the site won't be developed in the 5-year period at this stage (April19)
Swanwick Marina, Bridge Road (15/0424/VC)		20	30			50	The site is still considered to be developed in the 5-year period at this stage.
123 Bridge Road, Sarisbury Green (15/0391/FP)	5					5	Site owned by FBC. Detailed planning in place and delivery expected to start in Spring 2019.
4-14 Botley Road, Park Gate (16/0295/FP)	46					46	Site under construction.
Land to rear of 405 & 409 Hunts Pond Road (P/16/1251/FP)	4					4	Site under construction. 6 units completed 18/19.

A2.9

PROJECTED SUPPLY	2019/20	2020/21	2021/22	2022/23	2023/24	Totals	Notes for 5Y Position
189-199 West Street, Fareham (P17/0293/PC)	8					8	Development commenced. Nothing to indicate that the site won't be developed in the 5-year period at this stage.
Auto & Marine, 132 Highlands Road, Fareham (P/17/0366/FP)	5					5	Site under construction.
Land to rear of 184 Bridge Road (P/17/0697/FP)	8					8	Site under construction.
1 Station Industrial Park, Duncan Road, Park Gate (P/17/1219/PC)		15				15	No construction on site - remains offices. Expected to deliver in the 5-year period.
10 East Street, Fareham (P/17/1060/FP)			5			5	No construction on site at present but site is expected to deliver in the 5-year period.
Willows End, 312 Old Swanwick Lane (P17/1390/FP)			6			6	Details pursuant application approved April 18 to enable development to commence - expected to deliver in the 5-year period
Cranleigh Road, Portchester (Appeal allowed, Reserved Matters Application P/17/1170/RM)	40	40	24			104	Site under construction. 16 units completed in 2018/19.
Wykeham House School (P/17/0147/FP)	10	5				15	Site under construction.
Land east of Brook Lane, Warsash - Taylor Wimpey (P/16/1049/OA)		10	45	30		85	Permission granted by Planning Inspector following planning appeal (APP/A1720/W/17/31774/35). Reserved matters in

A2.10

PROJECTED SUPPLY	2019/20	2020/21	2021/22	2022/23	2023/24	Totals	Notes for 5Y Position
Hampshire Rose, Highlands Road, Fareham (P/17/0956/FP)	18					18	Site owned by FBC. Detailed planning in place and development expected to start in Spring 2019.
Former Scout Hut Coldeast Way Sarisbury Green (P/17/1420/OA)			7			7	Outline planning approved in May 2018. Land expected to be transferred from HCA to FBC in Autumn 2018.
18-23 Wykeham Place (Former School Sports Hall), East Street, Fareham (P/18/0589/FP)	6					6	Site under construction.
Land North of Funtley Road, Funtley (P/17/1135/OA)		27				27	Full planning approved November 2018. Recent permission expected to deliver in 5 year period.
Southampton Road (Land at Segensworth Roundabout) (P/18/0897/FP)				41		41	Full planning approved December 2018 for 75 bed care home (housing delivery test ratio applied).
123 Barnes Lane, Sarisbury Green (P/18/0690/FP)				41		41	Full planning approved December 2018 for 75 bed care home (housing delivery test ratio applied).
Land to East of Bye Road (self/custom build) (P/17/1317/OA)		4	3			7	Full planning approved January 2019. Recent permission expected to deliver in 5 year period.
Land to south of Rookery Avenue, Swanwick (P/18/0235/FP)	6					6	Full planning approved October 2018. Recent permission expected to deliver in 5 year period.
RESOLUTION TO GRANT PLANNING PERMISSION – LARGE (5 dwellings+)						831	

A2.11

PROJECTED SUPPLY	2019/20	2020/21	2021/22	2022/23	2023/24	Totals	Notes for 5Y Position
Land at Brook Lane, Warsash - Foreman Homes (P/17/0845/OA)		40	70	70		180	Resolution to grant outline planning permission at January 2018 Planning Committee for up to 180 dwellings, subject to a Section 106 agreement.
Land East of Brook Lane, Warsash – Bargate Homes (P/17/0752/OA)		20	40	40	40	140	Resolution to grant outline planning permission at January 2018 Planning Committee for up to 140 dwellings, subject to a Section 106 agreement.
Land South of Greenaway Lane, Warsash - Land & Partners (P/17/0998/OA)		25	60	60	12	157	Resolution to grant outline planning permission at May 2018 Planning Committee for up to 157 dwellings, subject to a Section 106 agreement. Projections pushed back one year compared with site promoter's submission.
Heath Road, Locks Heath – Hampshire County Council (LP2 H11) (P/17/1366/OA)		30	40			70	Resolution to grant outline planning permission at February 2018 Planning Committee for up to 70 dwellings, subject to a Section 106 agreement.
East & West of 79 Greenaway Lane, Warsash (P/18/0107/OA)		20	10			30	Resolution to grant outline planning permission at June 2018 Planning Committee for 30 dwellings, subject to a Section 106 agreement.

A2.12

PROJECTED SUPPLY	2019/20	2020/21	2021/22	2022/23	2023/24	Totals	Notes for 5Y Position
Land South of Funtley Road, Funtley (P/18/0067/OA)		15	30	10		55	Resolution to grant outline planning permission at July 2018 Planning Committee for 55 dwellings, subject to a Section 106 agreement.
Land South West of Sovereign Crescent, Locks Heath (P/18/0484/FP)		8	30			38	Resolution to grant full planning permission at September 2018 Planning Committee for 38 dwellings, subject to a Section 106 agreement.
Moraunt Drive, Portchester (P/18/0654/FP)		16	32			48	Resolution to grant full planning permission December 2018.
Southampton Road (Reside) (P/18/0068/OA)		35	50	20		105	Resolution to grant outline planning permission December 2018.
Egmont Nurseries, Brook Avenue (P/18/0592/OA)			8			8	Resolution to grant outline planning permission December 2018.
ADOPTED LOCAL PLAN HOUSING ALLOCATIONS						757	
Wynton Way, Fareham (LP2 H3)				18		18	Site currently owned by HCC. Acquisition of site from HCC is agreed in principle but subject to negotiation. Pre-app has taken place and constraints plans complete to inform layout plan and yield. Expected to realistically delivery toward the latter part of 5-year period.

A2.13

PROJECTED SUPPLY	2019/20	2020/21	2021/22	2022/23	2023/24	Totals	Notes for 5Y Position
335-337 Gosport Road, Fareham (LP2 H4)					12	12	Site currently owned by HCC. Pre-app has taken place and constraints plans complete to inform layout plan and yield.
Stubbington Lane, Hill Head (LP2 H12)			12			12	Site owned by FBC. Expected to deliver affordable homes in the short term. Pre-app has taken place and a concept design has been agreed in principle. Site is expected to deliver in the 5-year period.
Sea Lane, Hill Head (LP2 H13)			8			8	Site owned by FBC. Expected to deliver affordable homes in the short term.
Corner of Station Road, Portchester (LP2 H20)				17		17	Site recently purchased by FBC. Has existing resolution for 17 aged-persons apartments (P/16/0142/FP) subject to a Section 106 agreement. Expected to deliver in the short term.
Welborne (LP3)		30	180	240	240	690	Based on phasing information submitted as part of revised planning application.
EMERGING BROWNFIELD SITES						145	
Fareham Magistrates Court		45				45	Application received (P/18/1261/OA).

A2.14

PROJECTED SUPPLY	2019/20	2020/21	2021/22	2022/23	2023/24	Totals	Notes for 5Y Position
Warsash Maritime Academy			50	50		100	Request for screening opinion (EIA) submitted February 2019 for the development of up to 100 dwellings, a care home of up to 66 beds and employment space. Projected delivery rates and timing remain subject to revision.
WINDFALL ALLOWANCE						74	
Small (1-4 units)				37	37	74	As per the rate set out in the Council's Windfall Background Paper (2017).
TOTAL PROJECTED HOUSING SUPPLY from 1st April 2019 – 31st March 2024	263	495	788	669	329	2,544	

APPENDIX 3

LAND WEST OF OLD STREET, STUBBINGTON APPEAL DECISION



Appeal Decision

Inquiry Held on 11-14 December 2018

Site visit made on 14 December 2018

by Christina Downes BSc DipTP MRTPI

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

Decision date: 22 January 2019

Appeal Ref: APP/A1720/W/18/3200409

Land west of Old Street, Stubbington, Hampshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Bargate Homes against the decision of Fareham Borough Council.
 - The application Ref P/17/1451/OA, dated 1 December 2017, was refused by notice dated 23 March 2018.
 - The development proposed is the construction of up to 160 residential dwellings, access from Old Street, landscaping, open space and associated works.
-

Decision

1. For the reasons given below, the appeal is dismissed.

Procedural Issues

2. The application was submitted in outline with all matters save for access reserved for consideration at a later stage. It was accompanied by an illustrative masterplan and I have taken this into account insofar as it demonstrates how the site could be developed if the maximum number of dwellings were to be built. There is no evidence to support justification for any lower number and, in such circumstances, it is reasonable to assume that if planning permission were to be granted the maximum number could be built.
3. Before the Council made its decision, the number of dwellings was reduced to up to 150. This was to take account of Great Crabthorn, which is a 17th century Grade II listed building. Its original setting would have included the surrounding rural landscape although this has now been compromised by modern development on the eastern side of Old Street. Nevertheless, the open fields to the west, including the northern part of the appeal site, make a contribution in terms of setting. The aforementioned revision would allow this area to be kept free of built development. The setting of Great Crabthorn would thus be preserved.
4. The inquiry was closed on 14 December 2018. However, I allowed further time to complete the Planning Obligation by Unilateral Undertaking (UU), following its discussion at the inquiry. The Deed includes covenants that provide for open space, an ecological buffer, affordable housing, a travel plan, primary education and highways works, including improvements to encourage sustainable travel modes. These provisions were discussed at the inquiry and I

am satisfied that together with a planning condition on sustainable drainage, the covenants in the UU would be capable of addressing reasons for refusal c)–h) and j)–m).

5. The UU also includes mitigation in respect of the impact on the Solent and Southampton Water Special Protection Area, Ramsar site and Site of Special Scientific Interest. There is no dispute that if I were minded to allow the appeal I would need to re-consult with Natural England and undertake an Appropriate Assessment under the Habitats Regulations. The proposal includes a number of mitigation measures, including an ecological buffer on the western side of the site and cat protective fencing. However the *People over Wind* judgement¹ makes clear that the Appropriate Assessment must precede a consideration of the effectiveness of these measures in terms of protecting habitat integrity. The process cannot be pre-judged and so reason for refusal i) remains outstanding.
6. Reason for refusal b) relates to design. Following discussions during the course of the inquiry the Council is satisfied that this objection could be addressed through the use of planning conditions and I agree with that judgement.
7. Bearing all of the above points in mind, the main issues on which this appeal turns concern the effect on the Meon Valley landscape, whether there would be harm to a valued landscape and the effect on the strategic gap. Before considering these matters I address the planning policy context.

Reasons

Planning policy and approach to decision making

8. The relevant parts of the development plan comprise the *Local Plan Part 1: Fareham Borough Core Strategy* (LPP1) (2011) and the *Local Plan Part 2: Development Sites and Policies* (LPP2) (2015). The appeal site is outside the settlement boundary of Stubbington and within the strategic gap. It lies within the countryside for planning policy purposes. Policy CS14 in LPP1 and policy DSP6 in LPP2 apply strict controls to new development in such areas. There is no dispute that the appeal proposal would conflict with these policies. Policy CS22 concerns development in strategic gaps and the parties do not agree whether it would be offended.
9. The Council is unable to demonstrate a five year supply of deliverable housing sites. This is on the basis of a requirement taken from Office for National Statistics (ONS) housing projections on account of the requirement in the adopted development plan being out-of-date. The best case on the Council's assessment is a supply of some 3.8 years, which is derived from the 2016 ONS projections. The Appellant considers the situation is considerably worse at around 2.5 years on the basis of the 2014 ONS projections². Whichever is correct the shortfall is substantial and this is agreed by both main parties.
10. In view of the deficit the Council's housing supply policies are out-of-date. This is a material consideration of some importance when considering the weight to be given to the location of the appeal site outside of the settlement boundary and within the strategic gap. However, that does not mean that the protection

¹ Court of Justice of the European Union *People over Wind, Peter Sweetman v Coillte Teoranta* C-323/17.

² Both positions are based on an assessment at 31 March 2018.

of landscape character and the separation of settlements is a matter to be set aside. The National Planning Policy Framework (the Framework) recognises the intrinsic character and beauty of the countryside and seeks the protection and enhancement of valued landscapes. Whilst strategic gaps are not specifically referred to, it endorses the creation of high quality places, which would include respecting the pattern and spatial separation of settlements.

11. Policy DSP40 in LPP2 is specifically designed to address the situation where there is a five-year housing supply shortfall as is the case here. It allows housing to come forward outside of settlements and within strategic gaps, subject to a number of provisions. It seems to me that this policy seeks to complement the aforementioned policies in situations where some development in the countryside is inevitable in order to satisfy an up-to-date assessment of housing need. It assists the decision maker in determining the weight to be attributed to the conflict with restrictive policies such as CS14, CS22 and DSP6 and provides a mechanism for the controlled release of land through a plan-led approach. Policy DSP40 is in accordance with Framework policy and reflects that the LPP2 post-dates the publication of the Framework in 2012. Conflict with it would be a matter of the greatest weight.
12. There is no dispute that the only criterion in policy DSP40 that the proposal may offend relates to the effect on the landscape and strategic gap. If it does not conflict with the provisions of this policy, it seems reasonable to conclude that the proposal would be in accordance with the development plan as a whole.
13. Paragraph 11 of the Framework establishes the presumption in favour of sustainable development by applying a "tilted balance" to cases where housing supply policies are out-of-date. However, the presumption does not apply if the proposal conflicts with protective policies and this includes where development requires Appropriate Assessment. At the present time paragraph 177 makes clear that this is regardless of whether or not the assessment results in a favourable outcome. The benefits and harms will therefore be weighed against each other in this case and the "tilted balance" is not engaged.

The effect on the Meon Valley landscape

14. The appeal site comprises some 10.5 hectares of land on the western side of Old Street, which is bordered by a screen of hedges and trees. It is divided into two parcels separated by a hedged track known as Marsh Lane. The northern field is used for the grazing of horses. The southern field is overgrown with rank vegetation, although the evidence indicates that it has been cultivated in the past. The southern boundary runs along a dry valley that cuts into the site. Houses in Knights Bank Road occupy the southern slope of this small valley and the boundary is relatively open at this point. Immediately to the west is the Titchfield Haven National Nature Reserve (NNR), which occupies the flat valley floor of the River Meon close to its confluence with the Solent. This provides feeding grounds and overwintering habitat for internationally protected waders and waterfowl and is within the Solent and Southampton Water Ramsar Site and Special Protection Area.
15. The Meon Valley is a major landscape feature that runs through the Borough and slices through the coastal plain. The *Hampshire Integrated Character Assessment 2012* is a county-wide study that recognises the Meon Valley landscape character area as a major river valley with the two main landscape

- types being the flat valley floor and the coastal plain. It identifies a strong sense of seclusion and an intimate rural landscape character. At the local level, the 1996 *Fareham Borough Landscape Assessment* (the 1996 LCA) was adopted as supplementary guidance and provided the evidence base for the now superseded Fareham Local Plan Review (2000). This was updated and expanded in the 2017 *Fareham Landscape Assessment* (the 2017 LCA), which forms part of the evidence base for Fareham's emerging Local Plan. It is appreciated that this is as yet only at the very early stages and has not been subject to scrutiny through the examination process. However, from my reading the basic analysis in the 2017 LCA is very similar to its predecessor.
16. In all three assessments the Meon Valley landscape character area has similar boundaries but it seems to me that the two Borough assessments provide a finer grain analysis. In the 2017 assessment the Meon Valley is divided into two local landscape character areas. The appeal site is within the Lower Meon Valley, which includes the section south of Titchfield. Whilst such division did not occur in the 1996 LCA it did identify clear differences between parts of the valley. The Appellant complains that the 2017 assessment does not identify existing detractors to landscape character such as the intrusion of urban development and fringe farmland. However, the 1996 assessment regards the smaller enclosed pastures bordering the valley south of Titchfield as functioning to buffer such intrusion and this is a point picked up in the later work. In the 1996 assessment the reference to detractors in the central section of the Meon Valley seems to me to refer to the part further to the north.
 17. The Lower Meon Valley is characterised by its distinctive valley floor with open floodplain pasture and wetland communities at Titchfield Haven. Here the natural qualities of the valley and the sense of tranquillity and remoteness are most strongly evident. The valley sides are relatively shallow and it is clear from the topographical map and on the ground that they have a distinctive concave profile. The steeper well vegetated slopes at the bottom become gentler further up the valley sides. This means that the valley floor is not always visible from the upper slopes but there are clear views from one side to the other providing a strong sense of cohesiveness to the landscape unit.
 18. The eastern valley sides include a mosaic of small-scale pasture land bounded by strong field hedges and tree lines. The 2017 LCA subdivides the local landscape character area into three sections comprising the flat valley floor and the landscape either side. These form a gentle transition from valley side into the landscape of the wider coastal plain, although from observation this is more evident in some places than in others.
 19. The appeal site seems to me to include many of the characteristics of the valley side landscape type described above. There are two well-contained fields with relatively strong hedge and tree boundaries along Marsh Lane, Old Street and parts of the northern, western and southern boundaries. In visual terms the flat valley floor can be viewed from many parts of the site, including from within the areas proposed for development. The opposite valley sides are also clearly seen from most places. These features provide a perception that the site is part of the valley landscape compartment. Whilst the slope is gentle in the eastern part of the site it continues to rise beyond the Old Street boundary and reflects the concave profile that is typical of the valley side in this part of the valley.

20. It is acknowledged that the site suffers from some detracting influences. The proximity of residential development along Old Street and Knights Bank Road inevitably has a negative effect, although this is ameliorated to a considerable degree along Old Street by virtue of the hedge line and trees. The most exposed part of the site is in the south where the houses built on the southern slopes of the dry valley are quite prominent. There is also a background hum of traffic noise close to the eastern boundary. However, from my site observations these detractors are localised and do not extend across much of the proposed development area. The sense of tranquillity and remoteness so typical of the lower parts of the valley is not particularly evident. However, I observed a strong sense of being in the countryside in general and the valley in particular from most parts of the site.
21. I acknowledge that the boundaries between one landscape type and another are often indistinctive, especially at the edges. However, in this case for all of the reasons given above I did not detect visual or topographical differences that would signal a change from valley side to coastal plain landscape type across the appeal site. In my judgement it is all reflective of the valley side landscape type and forms an integral part of the Lower Meon Valley landscape.
22. Generally development does not extend down the sides of the Lower Meon Valley but the threat of such urban expansion is mentioned in both the *Hampshire Integrated Character Assessment* and the 2017 LCA. The settlement of Stubbington itself is mainly situated above the 10 metre AOD contour. The main exception to this prevailing development pattern is the residential area of Hill Head immediately to the south of the appeal site, which includes the housing along Knights Bank Road. Here dwellings extend down the slope to the valley floor. There is tree screening along the residential boundaries but nevertheless the effect of this incursion is not a positive one in landscape terms.
23. In order to assess the effect of the proposed development, the Appellant has submitted a Landscape and Visual Assessment (LVA). Both landscape experts agreed that the sensitivity of the Lower Meon Valley landscape receptor is moderate-high. The magnitude of change from development in the short term was agreed to be medium. On completion the effect would be moderate adverse on the evidence of the Appellant and moderate-major adverse on that of the Council. I am more inclined towards the Council's judgement in this respect but whichever is preferred it seems to me that the overall effect would be significant and harmful.
24. There was also no agreement about the longer term effect on the landscape and whether the proposed mitigation would result in a reduction in effect to minor adverse as contended by the Appellant. Changes would mainly result from additional tree planting around the western edge of the proposed housing area, which is intended to reach a height of 15-20 metres. This would eventually soften the effect of development in visual terms. However, it would remain the case that there would be a permanent change to a substantial part of the site from valley side to a housing estate. Not only would the open fields be lost to built development but also there would be the noise, activity and lighting that such uses would entail. In the circumstances of this case I would agree with the Council that there is unlikely to be much diminution in landscape effect as a result of mitigation.

25. As views into the valley from outside of it are relatively limited the visual effects of the proposed changes to the landscape would be experienced mainly from viewpoints on the opposite side of the valley, although overall there would be the benefit of considerable distance. From these places the existing properties along Old Street and Knights Bank Road can be clearly seen on the skyline. Even though they stand within a treed setting there is particular prominence in places due to the presence of light coloured facing materials.
26. Existing trees and vegetation, especially on the lower valley sides, means that from many public viewpoints only partial views of the appeal site are evident. Parts of public Footpath No 51 is bordered by an unmanaged hedge along its eastern side, which restricts relevant views from many points. Most of those who use this route are likely to value the sense of remoteness and thus to have a high sensitivity to change. However, the magnitude of change would be relatively small in most views as the new housing would be seen within the context of a wide panorama. The proposed planting would further reduce the adverse effect once established. Some observers would be more sensitive to change than others but overall I consider that the effect would be of minor significance, especially in the longer term.
27. Entry to the NNR is not free so views are not strictly speaking publicly available. On the other hand the entry fee is relatively modest and from what I heard at the inquiry the facility attracts a considerable number of visitors who enjoy use of the bird hides and the pathways. I consider that these people are likely to have a heightened appreciation of the natural environment and a greater awareness of changes to their surroundings. Furthermore, many will observe wildlife through binoculars thus bringing more distant views into sharper focus.
28. From various points in the NNR, including the Spurgin and Pumfrett hides, which I visited, the eastern valley sides are clearly evident above the band of trees and vegetation on the lower slopes. I noted that at the southern end the residential area of Hill Head, which extends close to the valley floor, is particularly apparent. However, walking north the surroundings become more rural, existing development is less obvious and by the time I reached the Spurgin Hide much of the appeal site had come into view. The viewing window of the hide faces in an easterly direction and the proposed development would be evident on the gently sloping valley side and at depth. Notwithstanding the existing housing on the skyline, I consider that it would be viewed as an unwelcome intrusion in the rural landscape to these highly sensitive viewers. Whilst I appreciate that the mitigation planting would eventually reduce the impact, the upper parts of the new buildings would still be clearly apparent. I therefore consider that the visual effect has been underestimated in the LVA. In my judgement there would be a moderate adverse effect that would reduce to a moderate-minor adverse effect once mitigation planting had matured in around 15 years.
29. For all of the above reasons I conclude that there would be unacceptable harm to the attractive landscape of the Lower Meon Valley. Overall this would be a long term, permanent and adverse change in terms of the resource itself. For many of those who use and enjoy the landscape the effects would be relatively small, especially in the longer term. Nevertheless highly sensitive viewers in the NNR would experience a greater degree of detriment and this adds to the harm that would arise from the proposed development.

Whether the proposal would harm a valued landscape

30. Paragraph 170 of the Framework indicates that valued landscapes should be protected and enhanced in a manner commensurate with their statutory status or identified quality in the development plan. Parts of the Lower Meon Valley are protected for their ecological importance but the landscape is not specifically recognised for its quality in the current development plan. This is because local landscape designations fell from favour in national planning policy. Previously the Lower Meon Valley had been identified as an Area of Special Landscape Character in the now superseded *Fareham Borough Local Plan Review 2000* supported by the 1996 LCA.
31. In view of the policy in paragraph 170 the matter of landscape value will no doubt be considered through the emerging Local Plan process. That is the proper forum for any designation to be made. However, until that time it is difficult to understand why there would be a change in terms of intrinsic value. Case law and appeal decisions indicate that a valued landscape is more than ordinary countryside and should have physical attributes beyond popularity. Furthermore, that it is not necessarily the site itself that is important in that judgement but rather the wider landscape of which the site is an integral part. It was agreed that the criteria in the 1996 LCA that led to the identification of the Area of Special Landscape Character were similar to those in Box 5.1 of the Landscape Institute's *Guidelines for Landscape and Visual Impact Assessment* (2013). Both landscape experts used Box 5.1 in their evaluation.
32. Having considered all of the evidence and the assessments against the Box 5.1 criteria, I have no doubt that the Lower Meon Valley is a valued landscape. The Appellant's landscape expert judged it to have high value and did not seem to dispute that the western part of the appeal site is part of the valley side landscape type and could be considered as part of a valued landscape. The dispute related to the eastern part of the site on which the development is proposed to be built. For the reasons I have already given I do not agree that there is a distinction in terms of landscape type or character within the site. On the contrary I consider that the appeal site overall possesses sufficient physical attributes to be deemed as an integral part of the Lower Meon Valley and contributes to its valued landscape.

The effect on the strategic gap

33. The Meon Gap lies between Fareham/ Stubbington and the Western Wards/Whiteley. Policy CS22 requires the integrity of the gap to be maintained and the physical and visual separation of settlements to be respected. In terms of separation of settlements there is no dispute that there would be no diminution either in physical or visual terms if the development were to go ahead. The policy indicates that the gap boundaries will be reviewed to ensure that no more land than necessary is included in order to maintain gap function.
34. When considering the effect on integrity it is important to note that the policy does not embargo development altogether but rather requires that it should not cause significant harm. Protecting integrity will therefore be case specific. Harm to gaps arises from a diminution of spatial function and so it is difficult to understand how integrity could be significantly affected in the event that this is maintained. In this case it seems to me that the settlement pattern would be protected whether or not the proposed development went ahead.

35. It should be remembered that gap policy is a spatial tool. The Council referred to the role of the gap in maintaining the character or setting of Stubbington. This is considered in the 2017 LCA where the strategic gap designation is reviewed. However, the document makes clear that its purpose is to consider what role the landscape plays within the strategic gaps. It is not intended to examine the designation criteria or the broad areas identified. This is important to note because it is landscape rather than spatial considerations that are key to settlement character and setting. The character and setting of Stubbington is not pertinent to gap designation or function in policy CS22.
36. I appreciate that a review of gap boundaries was undertaken in 2012 and that no changes were recommended in relation to the land immediately adjacent to Stubbington. However, for the reasons I have given I do not consider that the proposed development of the appeal site would adversely affect the integrity of the Meon Gap. The proposal would thus accord with policy CS22 in LPP1.
37. A recent appeal decision related to development at Meon View Farm, which is to the north of the appeal site but in the same part of the Lower Meon Valley. In her decision the Inspector dismissed the appeal on the grounds of harm to the countryside and strategic gap. I do not know what evidence was before my colleague but her conclusion that the integrity of the gap would be undermined referred to the erosion of its function of physically and visually separating settlements. In the case of the present appeal the Council has agreed that such coalescence would not occur.

Overall Conclusions and Planning Balance

38. The appeal site is an integral part of the Meon Valley landscape character area and in particular the lower section south of Titchfield. This landscape is valued for its quality, even though there is no designation in the current development plan. The proposed development would be unacceptably harmful to the character of the Lower Meon Valley and would fail to protect this valued landscape. The proposal would therefore conflict with policies CS14 in LPP1 and policy DSP6 in LPP2 and be contrary to Framework policy relating to the countryside and landscape.
39. However, due to the housing land supply situation in Fareham Borough the conflict with those policies has reduced weight and policy DSP40 is engaged. In cases such as this development outside the urban area is permitted subject to five provisions, all of which must be met. For the reasons given above, the location of the site in the strategic gap would not be an impediment. However, the proposal would fail to minimise any adverse impact on the countryside. In the circumstances there would be conflict with this policy and the development plan as a whole.
40. The proposal would deliver up to 150 new dwellings in an accessible location that would be likely to be available for occupation within the next five years. It would therefore make an important contribution to addressing the Council's housing shortfall, which on any basis is substantial. Furthermore, 40% of the dwellings would be affordable housing with a tenure mix that would meet the Borough's housing needs. There is a very considerable affordable housing deficit and this is getting worse year on year. 5% of the dwellings would also be self and custom build, which is encouraged as a source of supply by the Government and for which there is an unmet demand in the Borough.

41. The proposal would have a range of economic benefits. It would, for example, provide new jobs during the construction period and thereafter. There would be a contribution to economic growth and the generation of household expenditure would help support the local economy and provide local jobs.
42. The proposal would deliver additional green space in the Stubbington ward where there is a deficit. The buffer zone between the housing area and the NNR would be managed to enhance its ecological value and therefore there would be a net gain to biodiversity in accordance with the provisions of the Framework. These social, economic and environmental benefits of the scheme can be afforded substantial weight in the planning balance.
43. There was a great deal of concern from local people about the effect of the development on the NNR. I have taken account of the visual implications in my conclusions on landscape. However, subject to the various safeguards proposed through planning conditions and the UU I consider that the proposed development could be designed so that significant harm would not be caused to this ecological resource. It is not therefore a matter that counts against the scheme. In this case it is unnecessary for me to undertake an Appropriate Assessment. However, if I had done so and a positive outcome had ensued it would not have affected the planning balance or my conclusions on this appeal.
44. Notwithstanding the substantial benefits that would flow from the proposed development there would also be very substantial harms. In this case the conflict with the development plan and the environmental harm that would ensue to the countryside within the valued landscape of the Lower Meon Valley is of compelling importance and outweighs the many advantages of the scheme. I have considered all other matters raised but have found nothing to change my conclusion that this would not be a sustainable form of development and that the appeal should not succeed.

Christina Downes

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Paul Stinchcombe Of Queen's Counsel, instructed by the Senior Solicitor at Southampton and Fareham Legal Services Partnership

He called:

Mr P Brashaw BSc(Hons) Associate at LDA Design
BLD CMLI
Mr A Blaxland BA(Hons) Director of Adams Hendry Consulting Ltd
DipTP DipMgt MRTPI
*Mr R Wright BSc MSc Fareham Borough Council
MRTPI
*Ms H Hudson Solicitor at Fareham Borough Council
*Ms R Lyons BA(Hons) Affordable Housing Strategic Lead, Fareham
MSc MRTPI Borough Council

FOR THE APPELLANT:

Mr Christopher Boyle Of Queen's Counsel, instructed by

He called:

Mr L Morris BSc(Hons) Director of WYG
PGDipLA MA PIEMA
CMLI
Mr M Hawthorne Director of WYG
BSc(Hons) MRTPI
Mr D West Associate at WYG
MenvSci(Hons) CEnv
MCIEEM
Mr S Brown BSc(Hons) Principal at Woolf Bond Planning
DipTP MRTPI
*Mr T Alder LLB Solicitor at Bargate Homes
*Mr T Moody BA(Hons) Associate Planner with WYG
MRTPI

INTERESTED PERSONS:

Commander A Norris RN Local resident
Mr M Jackson Local resident
Mr B Duffin Past employee and current volunteer at the Titchfield Haven National Nature Reserve
Mr B Hutchison Chair of the Hill Head Residents' Association
Ms P Charlwood Local resident also representing 35 other local households
Mr J Moss Local resident
Mr M Rose Local resident
*Ms T Cuff BSc Countryside Planning Officer at Hampshire County Council

* Took part in the Planning Obligations/ Conditions sessions only

DOCUMENTS

- 1 Statement delivered orally to the inquiry by Commander Norris
- 2 Statement delivered orally to the inquiry by Mr Jackson
- 3 Additional housing land supply position statement agreed by the Council and the Appellant
- 4 Further additional housing land supply position statement agreed by the Council and the Appellant
- 5 Statement delivered orally to the inquiry by Mr Hutchison
- 6 Press release regarding the emerging Local Plan and plans of developable and discounted housing sites, submitted by Mr Hutchinson
- 7 Statement delivered orally to the inquiry by Mr Duffin, including various attachments
- 8 Statement delivered orally to the inquiry by Ms Charlwood, including photographic attachments
- 9 Community Infrastructure Levy compliance schedule, submitted by Mr Stinchcombe
- 10 Note on the New Homes Bonus, submitted by Mr Boyle
- 11 Proposed conditions schedule submitted by the main parties
- 12 Appellant's written agreement to pre-commencement conditions, submitted by Mr Boyle
- 13 Copy of Technical Note 05 (also included as Core Document A2.4), setting out the proposed highway improvements, submitted by Mr Boyle
- 14 Illustration of a design for the proposed fence to deter cats
- 15 Addendum to the shadow Habitat Regulations Assessment in Appendix B to Mr West's proof of evidence. Submitted by Mr Boyle
- 16 Planning Obligation by Unilateral Undertaking dated 20 December 2018. Submitted following the close of the inquiry with the agreement of the Inspector

PLANS

- A Application plans
- B Plans booklet
- C Plan including the proposed open spaces, buffer zones, vista and landscape screen
- D Map of the Stubbington area

APPENDIX 4
CORRESPONDENCE WITH MHCLG

Neil Tiley

From: Neil Tiley
Sent: 01 October 2020 14:38
To: Planning Policy
Subject: RE: Housing Delivery Test results in Fareham

Dear Sir/Madam,

Thank you for the clarification with regards to the how the current housing delivery test results have been calculated for Fareham.

As identified in your response, it appears that Fareham Borough Council has submitted a Delta return which indicates that the Council has incorrectly identified that the adopted housing requirement is that contained in the Development Sites and Policies Plan and the Welborne Plan both of which were adopted on 8th June 2015.

The Core Strategy was adopted on 4th August 2011 and contains the adopted housing requirement. The Council has since adopted both the Development Sites and Policies Plan and the Welborne Plan which were examined at the same time by the same Inspector, but these do not review the housing requirement of the Core Strategy.

As confirmed in paragraph 37 of the High Court Judgment of *Gallagher Estates Ltd and Lioncourt Homes Limited vs Solihull Metropolitan Borough Council [2014] EWHC 1283 (Admin)*, a housing requirement must reflect not only the assessed need for housing but also any policy considerations.

As explicitly identified by the examining Inspector of the Development Sites and Policies Plan in paragraph 44 of their Final Report:

"...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)."

This is also confirmed in paragraph 10 of the appeal decision at Land north of Cranleigh Road and west of Wicor Primary School, Portchester (APP/A1720/W/16/3156344) which states:

"Although LPs 2 and 3 [The Development Sites and Policies Plan and the Welborne Plan] post-date the Framework, neither plan undertakes the identification of an OAN."

In the absence of a review of the housing need, the Development Sites and Policies Plan and the Welborne Plan cannot have reviewed the housing requirement as defined by the courts.

This position has long been accepted by Fareham Borough Council, namely that the current housing requirement remains that in the Core Strategy adopted in August 2011. As you will be aware, paragraph 73 of national policy requires that the five-year land supply is assessed against and adopted housing requirement where this is less than five-years old but in all other cases against the local housing need as calculated using the standard method.

Following the publication of the NPPF in July 2018, every five-year land supply assessment of the Council has assessed the position against the standard method including those published in September 2018, October 2018, December 2018, January 2019, and April 2019, all of which were published within five-years of the adoption of the Development Sites and Policies Plan and the Welborne Plan. It therefore follows that the Council must agree that the Development Sites and Policies Plan and the Welborne Plan does not review the adopted housing requirement of the Core Strategy.

This position is also set out in paragraph 9 of the appeal decision at Land west of Old Street, Stubbington (APP/A1720/W/18/3200409) which states:

"The Council is unable to demonstrate a five year supply of deliverable housing sites. This is on the basis of a requirement taken from Office for National Statistics (ONS) housing projections on account of the requirement of the adopted development plan being out-of-date."

The fact that the HDT results have incorrectly been calculated on the basis of the housing requirement rather than the household projections and the standard method as required by the Housing Delivery Test Measurement Rule Book also came as a surprise to the Council in the April 2019 Five Year Housing Land Supply Position statement which states:

“Fareham’s HDT results were considerably higher than the pass rate of 95%, which means that the Council can apply a 5% buffer to its five-year housing land supply position. Fareham passed the test because the Government measurement appears to be against the Council’s Adopted Local Plan rather than, as expected, against household projections.”

The current HDT results have therefore clearly been calculated on the basis of a mistaken and erroneous Delta return by the Council. I trust that this error can be quickly rectified as it is and will continue to be material to the determination of applications and appeals.

Even if contrary to the findings of the examining Inspector, the interpretation of the courts and the longstanding position of the Council, it is considered that the Development Sites and Policies Plan and the Welborne Plan did review the housing requirement, the only figures that could be used in the stead of a housing requirement are:

- the figures identified on page 126 of the Development Sites and Policies Plan (135pa in 2016/17 and 2017/18 and 134pa in 2018/19) notwithstanding that these do not take account of the need for housing and so which do not provide a housing requirement;
- the need for Gypsy and Traveller pitches identified in paragraph 5.196 of the Development Sites and Policies Plan (2.5pa in 2016/17 and 0.2pa thereafter); and
- the capacity figure identified in Policy WEL3 of the Welborne Plan (6,000 homes over 21 years or 285.7pa).

These provide for a total of 423.2 in 2016/17, 420.9 in 2017/18 and 419.9 in 2018/19. The Council’s response however relies upon the “Housing Trajectory” of the Welborne Plan as a housing requirement, notwithstanding the fact that this does not take account of housing need or policy considerations and it is self-evidently a delivery trajectory rather than a housing requirement.

Therefore, even if contrary to the interpretation of the courts, it was considered that these plans did review the housing requirement, the Housing Delivery Test would still have been miscalculated.

Kind regards

Neil Tiley

Director

Pegasus Group

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From: Planning Policy <PlanningPolicy@communities.gov.uk>
Sent: 29 September 2020 16:43
To: Neil Tiley <neil.tiley@pegasusgroup.co.uk>
Subject: FW: Housing Delivery Test results in Fareham

Dear Neil,

Thank you for your recent enquiry to the Ministry of Housing, Communities and Local Government about your Housing Delivery Test result and apologies for the delayed response.

Please find attached the information that sets out how the HDT result for Fareham Borough Council was calculated. In short, it is our understanding that subsequent plans updated the housing requirement in LP1, and therefore is used to set the housing requirement within the Housing Delivery Test upon adoption.

If you still dispute these figures then we will contact the local authority involved to seek further clarification.

Please get in touch if you require any further clarification.

Yours sincerely,

Planning Policy

SE Quarter, Third Floor, Fry Building, 2 Marsham Street, London SW1P 4DF
planningpolicy@communities.gov.uk



Ministry of Housing, Communities & Local Government

From: Neil Tiley <neil.tiley@pegasusgroup.co.uk>
Sent: 24 September 2020 08:07
To: Housing Data <housingdata@communities.gov.uk>
Subject: RE: Housing Delivery Test results in Fareham

Dear Sir/Madam,

I've not received any response or confirmation of receipt to the e-mail below. I was hopeful that you might be able to advise as to whether any progress is being made in this regard.

Kind regards

Neil Tiley
Director

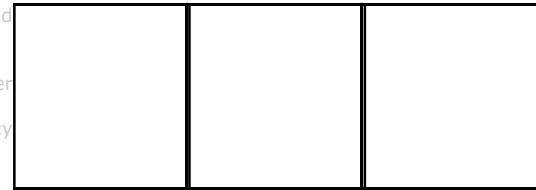
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From: Neil Tiley
Sent: 03 September 2020 14:01
To: housingdata@communities.gov.uk
Subject: Housing Delivery Test results in Fareham

Dear Sir/Madam,
I'm reviewing the Housing Delivery Test results for Fareham and these don't appear to have been calculated in accordance with the Housing Delivery Test Measurement Rule Book. I would appreciate any help you are able to offer in this regard.

The last time the housing requirement was adopted or reviewed in Fareham was in the Core Strategy adopted in August 2011. Since this time, the Local Plan Parts 2 and 3 were jointly examined by the same Inspector and adopted in June 2015 but neither of these reviewed the housing requirement. Indeed, the Inspectors report to Part 2 identified 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)."

It has also been accepted by Fareham Borough Council that the adopted housing requirement has been more than five-years old in every assessment of their five-year land supply since the publication of the NPPF in July 2018.

In paragraphs 12, 14 and 20 of the Measurement Rule Book, it is identified that where the Housing Delivery Test should be calculated differently depending upon whether the adopted housing requirement was adopted or reviewed in the previous five-years. Paragraph 20 explains that where the housing requirement became more than five-years old during the Housing Delivery Test period, the result should be calculated against the lower of the adopted housing requirement and the local housing need according until such time as the adopted housing requirement became five-years old and against the minimum local housing need thereafter. Paragraphs 12 and 13 identify that when using an adopted housing requirement, the stepped housing requirements should be used where available and that the lower end of any range should be used.

Thereafter, paragraph 14 states that the record of delivery will be assessed against the minimum annual local housing need figure which is to be calculated using the standard method. In paragraph 22, a transitional

arrangement is put in place such that for the years 2015-18, the record of delivery is to be calculated against the household growth in specified household projections.

The Core Strategy in Fareham became more than five-years old on 4th August 2016. Paragraph 1.10 sets a housing requirement for between 6,500 and 7,500 homes at the Strategic Development Area (SDA) and an additional housing requirement 3,729 homes across the remainder of the Borough. This provides for a minimum housing requirement for 10,229 homes or an average of 511.5 per annum across the plan period. In the Table following paragraph 4.16 of the Core Strategy a stepped housing requirement for the remainder of the Borough is set out although no stepped housing requirement is set out for the SDA. This requires the delivery of 94 homes in 2016/17 in addition to annual requirement for between 325 and 375 homes per annum at the SDA. In totality, the lower end of the range of the stepped requirement of the Core Strategy is therefore for 419 homes in 2016/17 (=94+325).

Based on this approach, the record of delivery should be calculated against:

- The lower of either the adopted housing requirement for 419 homes per annum or the average household growth identified in the 2012 projections for the period 2016-26 for the period 1st April 2016 until 4th August 2016 when the adopted housing requirement became five-years old = 143.5 (based on the adopted housing requirement) or 146.4 (based on the average household growth)
- The average household growth identified in the 2012 projections for the period 2016-26 for the remainder of the year 2016/17 = 281.2
- The average household growth identified in the 2014 projections for the period 2017-27 for the year 2017/18 = 401.5
- The standard method for 2018/19 = 543.6

This provides a total number of homes required of 1,369.8 rather than the 943.9 identified in the 2019 Housing Delivery Test results. Once the number of homes required according to the Measurement Rule Book is applied, there would be a Housing Delivery Test result of only 68% rather than the 99% currently identified. This result would clearly have an implication for the application of national policy as it would require the application of a 20% buffer when calculating the five-year housing land supply.

I trust that you are able to clarify this matter for me and if appropriate issue a correction to the published result.

Kind regards

Neil Tiley
Director

Pegasus Group

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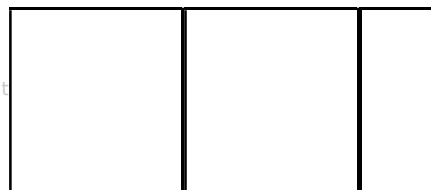
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ATTACHMENT TO E-MAIL OF 29TH SEPTEMBER 2020:

Fareham Borough Council – Housing Delivery Test 2019

Homes Required

Paragraphs 12 to 15 of the Housing Delivery Test Rule Book set out how the homes required is calculated. In summary, this is largely dependent on the age of the plan during any given monitoring period, household growth projections in years 2016/17 and 2017/18, and local housing need in 2018/19, details are set out below.

Plan Information

- Adoption date: 08/06/2015 Plan period: 01/04/2011 to 31/03/2026
- Source policy LP2: Development Sites and Policies - page 216 and LP3: The Welborne Plan - page 126.
- Housing requirement 01/04/2011 to 31/03/2016 147 per annum, 01/04/2016 to 31/03/2017 267 per annum, 01/04/2017 to 31/03/2018 327 per annum, 01/04/2018 to 31/03/2019 347 per annum, 01/04/2019 to 31/03/2020 467 per annum, 01/04/2020 to 31/03/2026 487 per annum.
- No unmet need given or taken
- Traveller requirement has been added, 2.5 in 2015/16, 0.2 in 2016/17, 0.2 in 2017/18.

Source: Delta return submitted to MHCLG, then verified by MHCLG checking plan data

Calculating Local Housing Need using the standard method

Local Housing Need is calculated using 3 steps. For more information on how Local Housing Need is calculated is available in Planning Practice guidance¹. The Housing Delivery Test Technical Note sets out how this applies to calculating HDT for 2018/19.

Step 1 sets a baseline using 2014 based national household growth projections. Projected average annual household growth over a 10 year period from 2018 to 2028. 2018 to 2028 is 49,494 to 53,471, an increase of 3,977. The projected average annual household growth is 397.7.

Step 2 adjusts the baseline calculated in step 1 based on the affordability of the area, 2017 based affordability ratio is 9.85. Using the standard methodology, the adjustment factor is $1.365625 \times 397.7 = 543.11$, this is the uncapped LHN figure.

Step 3 caps the level of any increase a local authority can face based on the status of the local plan.

¹ <https://www.gov.uk/guidance/housing-and-economic-development-needs-assessments>

As at 1st April 2018 the local plan was less than five years old so the cap is applied to the annual average plan requirement of 337.67.

40% above this figure results in a cap of 472.738. The cap is therefore below the number identified in Step 2.

This results in a local housing need figure of 472.738.

Calculating the requirement

As the plan was less than five years old for all years the plan is used (subject to the lower-of policy set out below). The requirement is set out in steps. Please note, numbers may not sum due to rounding.

Year	Plan number	Household growth/LHN	Lower of (including G&T requirement)
2016/17	267	427.6	269
2017/18	327	401.5	327
2018/19	347	472.74	347
Total			944

Trajectory 1 of the plan covers 01/04/2011 to 31/03/2016 with annual average 147. Trajectory 2 covers 01/04/2016 to 31/03/2017 with annual average of 267. Trajectory 3 covers 01/04/2017 to 31/03/2018 with annual average of 327. Trajectory 4 covers 01/04/2018 to 31/03/2019 with annual average of 347. Trajectory 5 covers 01/04/2019 to 31/03/2020 with annual average of 467. Trajectory 6 covers 01/04/2020 to 31/03/2026 with annual average of 487.

Plan number is lower than household growth/Local Housing Need for the all test year so this is used.

Homes Delivered

Paragraphs 6 to 11 of the Housing Delivery Test Rule Book the homes delivered is calculated. In summary, this uses Housing supply: net additional dwellings statistics² and an adjustment for student and other communal accommodation. Please note, numbers may not sum due to rounding.

² www.gov.uk/government/collections/net-supply-of-housing

A4.8

The relevant figures for your authority are shown below:

Year	Net Additional Dwellings	Student accommodation adjustment	Other communal accommodation adjustment	Adjusted net additions
2016/17	349	0	6.67	355.67
2017/18	291	0	0	291
2018/19	290	0	0	290
Total				936.67

12 net other communal bedspaces divided by 1.8 national average = 6.67 dwellings freed up

Final HDT result = 99%

Total delivery	Total requirement	HDT result
936.67	944	99%

APPENDIX 5

FIVE YEAR HOUSING LAND SUPPLY POSITION, SEPTEMBER 2018

FAREHAM

BOROUGH COUNCIL

Report to Planning Committee

Date **12 September 2018**

Report of: **Director of Planning and Regulation**

Subject: **FIVE YEAR HOUSING LAND SUPPLY POSITION**

SUMMARY

At their meeting on the 9th October 2017, the Executive resolved that Officers present a report to the Planning Committee on the Council's current 5-Year Housing Supply (5YHLS) position on a regular basis.

The following report provides the latest update, and supersedes the update previously provided to the Planning Committee on 20th June 2018.

RECOMMENDATION

That the Committee note: -

- (i) the content of the report and the current 5-Year Housing Land Supply position; and
- (ii) that the 5-Year Housing Land Supply Position set out in the attached report (which will be updated regularly as appropriate) is a material consideration in the determination of planning applications for residential development; and
- (iii) that the Government will be considering adjustments to the new standard method used to calculate Local Housing Need, following publication of the new household growth projections in September 2018.

INTRODUCTION

1. The following 5YHLS position updates and supersedes those previously provided to Planning Committee. It will continue to be regularly updated as appropriate and will represent a material consideration in the determination of planning applications. It should be noted that the Council's housing land supply position can go down as well as up depending on the circumstances relevant at any given time.

NATIONAL PLANNING CHANGES

2. Since publication of the last 5YHLS position at the June Planning Committee meeting, the Government has published the revised National Planning Policy Framework (NPPF) and updated Planning Practice Guidance (PPG).
3. The revised requirements set out in the NPPF and PPG change how Local Planning Authorities must calculate their housing need figure. Previously, housing need was calculated through a process called Objectively Assessed Need (OAN). The requirement of the revised NPPF is for housing need to now be calculated by the new standard method which is set out in the PPG.
4. The standard method uses household growth projections and house-price to earnings affordability data (produced by the Office for National Statistics) to calculate the Local Housing Need figure for a Local Planning Authority.
5. Use of the standard method applies from the date of publication of the new Framework and Guidance (24 July 2018), and as such the Council must now determine its 5YHLS position using the Local housing need figure calculated using the new standard method. In short, this increases annual housing need from 420 dwellings to 544 dwellings. The detailed calculations as to how the new Local Housing Need figure is calculated are set out in the accompanying 5YHLS report.
6. The Ministry of Housing, Communities and Local Government (MHCLG) has indicated that it will consider adjusting the standard method calculation following the publication of new household growth projections in September 2018. Any proposed adjustment to the method would be subject to consultation by MHCLG.

RISK ASSESSMENT

7. There are no significant risk considerations in relation to this report.

CONCLUSION

8. That the Committee note the content of the report and the updated 5YHLS position.
9. That the 5YHLS position set out in the attached report (which will continue to be updated regularly as appropriate) is a material consideration in the determination of planning application for residential development.

Enquiries:

For further information on this report please contact Lee Smith. (Ext 4427)

Fareham Borough Council
Five-Year Housing Land Supply Position

September 2018

1.0 INTRODUCTION

- 1.1 The National Planning Policy Framework (NPPF) requires Local Planning Authorities to identify and update annually a supply of specific deliverable sites to provide five years supply of housing against their housing requirements. The NPPF also requires an additional buffer of 5% (or 20% in the case of persistent under-delivery) to ensure choice and competition in the market for land.
- 1.2 This document has been prepared to provide the latest position on the 5 Year Housing Land Supply (5YHLS) in Fareham Borough. It will be updated at regular intervals to ensure the most accurate and up-to-date position is available. Updates will be provided to the Planning Committee when relevant and will also be advised on the Council's website.
- 1.3 This document is iterative/live and will only provide the most accurate position of 5YHLS at the time of publication. It is possible that sites will be omitted from the 5YHLS and then subsequently when circumstances change may feature again in a future iteration of the 5YHLS position (and vice versa). Likewise, delivery rates for included sites are not fixed and are subject to revision following correspondence with site promoters/ developers.

2.0 HOUSING NEED

- 2.1 Since publication of the last 5YHLS position at the June Planning Committee meeting, the Government has published the revised National Planning Policy Framework (NPPF) and updated Planning Practice Guidance (PPG).
- 2.2 The revised requirements set out in the NPPF and PPG change how Local Planning Authorities must calculate their housing need figure. Previously, housing need was calculated through a process called Objectively Assessed Need (OAN), which set the Council's figure at 420 dwellings per annum - 2100 dwellings over the 5-year period. Following the Planning Committee meeting in July, this Council had approximately a 5YHLS against its objectively assessed need.
- 2.3 The new requirement introduced through the revised NPPF and PPG applies from the date of publication of the new Framework and Guidance (24 July 2018) and requires housing need to be calculated through the Government's new standard method (as set out in the PPG). The standard method is based on household growth projection and house-price to earnings affordability data produced by the Office for National Statistics.
- 2.4 Calculation of the Council's local housing need figure, using the standard method set out in Planning Practice Guidance, is 544 dwellings per annum, equating to 2720 dwellings over the 5-year period.
- 2.5 There remains a requirement in the revised NPPF to include at least a 5% buffer on top of the 5-year housing requirement, "to ensure choice and competition in the market for land". The 5% buffer increases the dwellings per annum requirement to 571. However, the level of the buffer (5% or 20%) will now be determined through the Housing Delivery Test, which has been introduced as part of the revised NPPF. Each Council's Housing Delivery Test result will be calculated and published by MHCLG in November of each year, with the first result due in November 2018.
- 2.6 In the case of this authority, draft Planning Practice Guidance indicates that past shortfalls in housing delivery need only be calculated against the Local Housing Need figure from the introduction of the standard method. Since the standard method has only been introduced in the current monitoring year (i.e. 2018/19), the Council does not therefore have a shortfall

to make-up. This approach will need to be reviewed and revised accordingly following publication of the final Planning Practice Guidance.

2.7 Planning Practice Guidance states that calculation of the Local Housing Need figure through the standard method must be based on the most up to date household projection and affordability data from the ONS. Therefore, the data used to calculate the Local Housing Need figure used in the 5YHLS calculation will need to be reviewed in subsequent updates to ensure that it reflects the most up-to-date information available from the ONS. For information, household projections are revised by the ONS every two-years, with the next data due for publication in September 2018, whilst affordability information is reviewed annually by the ONS, with the next data due for publication due in March 2019.

2.8 Notwithstanding the release of further household projection data in September, the Ministry of Housing, Communities and Local Government (MHCLG) has also indicated that it will be considering adjusting the standard method calculation following the publication of this data and as such, the local housing need figure will need to be regularly reviewed to ensure that subsequent updates to the Planning Committee remain accurate and robust.

3.0 HOUSING SUPPLY

3.1 The revised National Planning Policy Framework requires Local Planning Authorities to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their local housing need. As such, this section sets out the different sources which make-up the Council's projected five-year housing supply.

Planning Permissions

3.2 A comprehensive list of all sites with outstanding planning permission at the start of each monitoring year (1 April 2018) is provided annually to the Council by Hampshire County Council. However, to ensure that this 5YHLS position provides the most accurate and up-to-date position, all new planning permissions up until 26th August 2018 are also taken account of. Sites with planning permission are only included within the projected supply where there is clear evidence that the site is being delivered, or will be delivered within the 5-year period. As such, where there is some indication that a planning permission will not be implemented then the site has been omitted from the 5YHLS on a precautionary basis. However, this may change if subsequent information comes to light to suggest the development will take place in the five-year period.

3.3 The monitoring of new permissions and the delivery projections of existing sites with planning permission will continue to be kept regularly up-to-date by Fareham Borough Council Officers, through regular correspondence with site developers.

Resolutions to Grant Planning Permission

3.4 Housing delivery from sites with a resolution to grant planning permission form a significant component of the projected supply. These consist of sites which have been approved by the Council's Planning Committee, but the formal grant of planning permission remains subject to the agreement of a legal agreement (i.e. Section 106).

3.5 Since the previous 5YHLS position was advised at the June Planning Committee there have been three further planning applications (5+ dwellings) that have been approved by the Planning Committee and received a resolution to permit. These are listed below:

- East & West of 79 Greenaway Lane, Warsash (P/18/0107/OA) – 30 dwellings
- Land North of Funtley Road, Funtley (P/17/1135/OA) – 27 dwellings

- Land South of Funtley Road, Funtley (P/18/0067/OA) – 55 dwellings

3.6 Based on information provided by the owners/developers giving the projected timetable for the delivery of these new sites, they are both expected to contribute fully to the Council's 5YHLS position, however projections from these sites will be kept under review by the Council. It has been assessed that the 'up to' figures in the resolutions to grant permission are reasonable and achievable, however, should the subsequent reserved matters applications revise the development quantum then this may need to be reflected in future updates on the 5YHLS position, should those quantum be acceptable.

Adopted Local Plan Housing Allocations and Emerging Brownfield Sites

3.7 Officers have undertaken a review of the residual allocations and policy compliant sites from the adopted Local Plan to inform the 5YHLS position. This has been based on correspondence with the site promoter and Planning Officer judgement.

3.8 In instances where Officers have gathered information on the timing and delivery rates from site landowners or developers, the Council have in some instances taken a more precautionary approach to delivery than may have been proposed by the site developer. This could be, for example, if they failed to allow sufficient time for planning permissions to be secured, or if the delivery rates were considered too optimistic. It is important that the Council has a robust basis for its 5YHLS calculations, as adopting a set of unrealistic assumptions may result in a 5YHLS figure that may not be accepted by an appeal Inspector.

3.9 This process of liaison with site promoters and developers will remain ongoing to ensure a robust and evidenced position on 5YHLS can be demonstrated.

Windfall Allowance

3.10 Paragraph 70 of the revised NPPF allows for an allowance to be made for housing delivery from windfall sites, providing that there is compelling evidence that they will provide a reliable source of supply....having regard to historic windfall delivery rates and expected future trends. An allowance for windfall housing from small sites (1-4 units) has been included within the projected 5-year supply, but avoids any small-site windfall development in years 1-3 of that projection and any large-site windfall from the entire 5-year projection.

3.11 The windfall rates used in the 5YHLS projection are set out in the Council's Housing Windfall Projections Background Paper (2017)¹.

Calculating the 5YHLS

3.12 In summary, the 5YHLS position in this paper is based on the following: -

- Local Housing Need figure of 544 dwellings per annum.
- Application of a 5% buffer on the Local Housing Need figure.
- Outstanding planning permission data provided by Hampshire County Council up until 31st March 2018 and Fareham Borough Council records from 1st April 2018 until 26th August 2018.
- Sites with a resolution to grant planning permission, allocated within the adopted Local Plan and emerging brownfield sites which are expected to deliver housing over the 5-year period 1st April 2018 to 31st March 2023.

¹ Available at: http://www.fareham.gov.uk/PDF/planning/local_plan/DraftLocalPlanEvidenceBase/EV24-BackgroundPaperHousingWindfallProjections.pdf

- Expected windfall development from small sites (1-4 units) in years 4 and 5 (i.e. 1st April 2021 – 31st March 2023).
- Delivery projections and rates which are derived from detailed liaison with site developers (particularly for larger development sites).

4.0 FIVE-YEAR HOUSING LAND SUPPLY POSITION

4.1 The following table provides a summary of the Council's current 5YHLS position as per the date of this paper.

	HOUSING REQUIREMENT	
A	Local Housing Need: Dwellings per annum 2018-36	544
B	Local Housing Need: Total requirement for 1 st April 2018 to 31 st March 2023 (A x 5)	2720
C	5% buffer to ensure choice and competition in the market for land (B x 5%)	136
D	Total housing requirement for period from 1st April 2018 to 31st March 2023 (B+C)	2856
E	Annual requirement for period from 1 st April 2018 to 31 st March 2023 (d/5)	571
	HOUSING SUPPLY	
F	Net outstanding planning permissions for small sites (1-4 units) expected to be built by 31 st March 2023 (discounted by 10% for lapses)	135
G	Net outstanding planning permissions for large sites (5 or more units) expected to be built by 31 st March 2023	767
H	Dwellings with a Resolution to Grant Planning Permission that are expected to be built by 31 st March 2023	672
I	Dwellings allocated in Adopted Local Plan (LP2 & LP3) that are expected to be built by 31 st March 2023	657
J	Dwellings from emerging brownfield sites (Adopted Local Plan - LP1 & LP2) that are expected to be built by 31 st March 2023	145
K	Small site windfall allowance (years 4 – 5) (37 dwellings x 2 years)	74
L	Expected housing supply for the period from 1st April 2018 to 31st March 2023 (F+G+H+I+J+K)	2420
M	Housing Land Supply Position over period from 1st April 2018 to 31st March 2023 (L – D)	- 406
N	Housing Supply in Years (L / E)	4.29 years

4.2 The above table shows the Council to currently have 4.29 years of housing supply against the 5YHLS requirement. In numerical terms, the housing supply shortfall is 406 dwellings.

4.3 The full detail behind the projected five-year supply of 2,450 dwellings is provided in Section 5.

5.0 DETAILS OF PROJECTED HOUSING SUPPLY FOR THE 5-YEAR PERIOD (1ST APRIL 2018 – 31ST MARCH 2023)

PROJECTED SUPPLY	2018/ 19	2019/ 20	2020/ 21	2021/ 22	2022/ 23	Totals	Notes for 5Y Position
OUTSTANDING PLANNING PERMISSIONS - SMALL (1-4 dwellings) (10% discount)	50	50	35			135	10% reduction rate applied to account for likely lapses in permission. Final permission figures provided by HCC - August 2018.
OUTSTANDING PLANNING PERMISSIONS - LARGE (5 dwellings+)						767	
Cold East Hospital, Cold East Way, Sarisbury Green (03/1867/RM)	2					2	Site under construction and almost complete (HCC 2017/18 completions data).
16 Botley Road, Park Gate (03/1439/FP)	12	8				18	Development of 11 units commenced in 2017/18 (HCC 2017/18 completions data).
122 Leydene Nursery, Segensworth Road (06/0907/RM)		3				3	Nothing to indicate that the site will not be developed in the 5-year period at this stage.
70 Trinity Street, Fareham (07/0848/FP)	19	4				23	Development of 19 units commenced in 2017/18 (HCC 2017/18 completions data).
3-33 West Street, Portchester (07/0042/FP)		16				16	Planning permission has been commenced. Staircases to serve flats in place, but no flats built (May 18). Nothing however to indicate that the site will not be developed in the 5-year period at this stage.
New Park Garage, Station Road, Park Gate (09/0672/FP)		14				14	Development of all 14 units commenced in 2017/18 (HCC 2017/18 completions data).
Land off Cartwright Drive, Titchfield (14/0741/FP)	39	47				86	Site is under construction and development of all units commenced in 2017/18 (HCC 2017/18 completions data).
100 Wickham Road, Fareham (14/1252/FP)	13					13	Details Pursuant to conditions now in P/14/1252/DP/A. Nothing to indicate that the site won't be developed in the 5-year period at this stage (May 18)
Land at Windmill Grove, Portchester (14/0033/FP)	24					24	Site is under construction and understood to almost be complete (HCC 2017/18 completions data).
Swanwick Marina, Bridge Road (15/0424/VC)		25	25			50	There is an outstanding permission for 50 dwellings at this site. The site is still considered to be developed in the 5-year period at this stage.
Fareham College, Bishopsfield Road (15/0690/RM)	48					48	Site under construction. Development of outstanding units commenced in 2017/18 (HCC 2017/18 completions data).

PROJECTED SUPPLY	2018/ 19	2019/ 20	2020/ 21	2021/ 22	2022/ 23	Totals	Notes for 5Y Position
The Meadows, Hamilton Road, Sarisbury Green (15/0626/FP)	20	51				71	Site is under construction and development of all units commenced in 2017/18 (HCC 2017/18 completions data)
123 Bridge Road, Sarisbury Green (15/0391/FP)		5				5	Site owned by FBC. Detailed planning in place and start with minor works on site. Ecology translocation underway (summer 2018) and development expected to start in 2019.
Land adj. The Navigator, Swanwick (16/0398/RM)	3					3	Site under construction and almost complete (HCC 2017/18 completions data).
10-20 Land to rear of Tewkesbury Avenue (16/1333/FP)	6					6	The development is currently under construction (May 18)
4-14 Botley Road, Park Gate (16/0295/FP)	46					46	Site commenced construction in 2017/18 (HCC 2017/18 completions data)
Former Catholic Church of our Lady of Walsingham, Portchester (16/0905/FP)	8					8	Site is under construction and almost complete (HCC 2017/18 completions data).
Land to rear of 94.96,98,100 and 102 Southampton Road (16/1147/FP)	6					6	Site is under construction and understood to almost be complete (May 18).
Land to rear of 405 & 409 Hunts Pond Road (P/16/1251/FP)		10				10	Development is under way (May 18).
Hope Lodge, 84 Fareham Park Road (P/16/1178/FP and/or P/17/1385/FP)		6				6	Site is understood to be under new ownership. Development is under way (May 18).
189-199 West Street, Fareham (P17/0293/PC)	7					7	Commencement of development considered imminent. Nothing to indicate that the site won't be developed in the 5-year period at this stage. (May 18)
Auto & Marine, 132 Highlands Road, Fareham (P/17/0366/FP)		5				5	One discharge of condition application has been submitted, but there remain further outstanding ones. Expected to be developed in 5-year period. (May 18)
Fareham Ambulance Station, Highlands Road (P/17/0213/FP)	10					10	Development commenced in 2017/18 (HCC 2017/18 completions data).
Land to rear of 184 Bridge Road (P/17/0697/FP)	8					8	It is understood that adjacent land has been secured to provide material storage during construction. Development commenced in 2017/18 (HCC 2017/18 completions data).
1 Station Industrial Park, Duncan Road, Park Gate (P/17/1219/PC)			15			15	No construction on site - remains offices. Expected to deliver in the 5-year period. (May 18)

PROJECTED SUPPLY	2018/ 19	2019/ 20	2020/ 21	2021/ 22	2022/ 23	Totals	Notes for 5Y Position
10 East Street, Fareham (P/17/1060/FP)				5		5	No construction on site at present but this is a recent permission that is expected to deliver in the 5-year period. (May 18)
Willows End, 312 Old Swanwick Lane (P17/1390/FP)				6		6	Demolition of existing dwelling appears imminent. Details pursuant application recently approved to enable development to commence - expected to deliver in the 5-year period (May 18).
Cranleigh Road, Portchester (Appeal allowed, Reserved Matters Application P/17/1170/RM)	55	65				120	Construction on-site has commenced. Delivery projections as informed by the site promoter (2017).
Wykeham House School (P/17/0147/FP)		15				15	Development of site has commenced (May 18).
Land east of Brook Lane, Warsash - Taylor Wimpey (P/16/1049/OA)		10	45	30		85	Permission granted by Planning Inspector following planning appeal (APP/A1720/W/17/3177435). Projections pushed back one year compared with site promoter's submission.
Hampshire Rose, Highlands Road, Fareham (P/17/0956/FP)			18			18	Site owned by FBC. Detailed planning in place. Ecology translocation underway (summer 2018) and development expected to start in 2019. May deliver slightly earlier than projected.
Former Scout Hut Coldeast Way Sarisbury Green (P/17/1420/OA)			7			7	Outline planning approved in May 2018. Land expected to be transferred from HCA to FBC in Autumn 2018.
18-23 Wykeham Place (Former School Sports Hall), East Street, Fareham (P/18/0589/FP)		6				6	Full planning approved in August 2018. Anticipated start on site in 2019.
RESOLUTION TO GRANT PLANNING PERMISSION – LARGE (5 dwellings+)						672	
Land at Brook Lane, Warsash - Foreman Homes (P/17/0845/OA)		40	70	70		180	Resolution to grant outline planning permission at January 2018 Planning Committee for up to 180 dwellings, subject to agreement of a Section 106 agreement. Projections pushed back one year compared with site promoter's submission.
Land East of Brook Lane, Warsash – Bargate Homes (P/17/0752/OA)		20	40	40	40	140	Resolution to grant outline planning permission at January 2018 Planning Committee for up to 140 dwellings, subject to agreement of a Section 106 agreement. Projections pushed back one year compared with site promoter's submission.

A5.11

PROJECTED SUPPLY	2018/ 19	2019/ 20	2020/ 21	2021/ 22	2022/ 23	Totals	Notes for 5Y Position
Heath Road, Locks Heath – Hampshire County Council (LP2 H11) (P/17/1366/OA)		20	20	30		70	Resolution to grant outline planning permission at February 2018 Planning Committee for up to 70 dwellings, subject to agreement of a Section 106 agreement.
Land to East of Bye Road (self/custom build) (P/17/1317/OA)		4	3			7	Resolution to grant outline planning permission at March 2018 Planning Committee for up to 7 dwellings (self and custom build), subject to agreement of a Section 106 agreement.
Land South of Greenaway Lane, Warsash - Land & Partners (P/17/0998/OA)		25	60	60	12	157	Resolution to grant outline planning permission at May 2018 Planning Committee for up to 157 dwellings, subject to agreement of a Section 106 agreement. Projections pushed back one year compared with site promoter's submission.
Land to south of Rookery Avenue, Swanwick (P/18/0235/FP)		6				6	Resolution to grant full planning permission at May 2018 Planning Committee for up to 6 dwellings, subject to agreement of a Section 106 agreement.
East & West of 79 Greenaway Lane, Warsash (P/18/0107/OA)		20	10			30	Resolution to grant outline planning permission at June 2018 Planning Committee for 30 dwellings, subject to agreement of a Section 106 agreement.
Land North of Funtley Road, Funtley (P/17/1135/OA)		27				27	Resolution to grant outline planning permission at July 2018 Planning Committee for 27 dwellings, subject to agreement of a Section 106 agreement.
Land South of Funtley Road, Funtley (P/18/0067/OA)		15	30	10		55	Resolution to grant outline planning permission at July 2018 Planning Committee for 55 dwellings, subject to agreement of a Section 106 agreement.
ADOPTED LOCAL PLAN HOUSING ALLOCATIONS						657	
Wynton Way, Fareham (LP2 H3)				18		18	Site currently owned by HCC. Acquisition of site from HCC is agreed in principle but subject to negotiation. Pre-app has taken place and constraints plans complete to inform layout plan and yield. Expected to realistically delivery toward the latter part of 5-year period.
335-337 Gosport Road, Fareham (LP2 H4)					12	12	Site currently owned by HCC. Pre-app has taken place and constraints plans complete to inform layout plan and yield.

A5.12

PROJECTED SUPPLY	2018/ 19	2019/ 20	2020/ 21	2021/ 22	2022/ 23	Totals	Notes for 5Y Position
Stubington Lane, Hill Head (LP2 H12)				12		12	Site owned by FBC. Expected to deliver affordable homes in the short term. Pre-app has taken place and a concept design has been agreed in principle. Site is expected to deliver in the 5-year period.
Sea Lane, Hill Head (LP2 H13)				8		8	Site owned by FBC. Expected to deliver affordable homes in the short term.
Corner of Station Road, Portchester (LP2 H20)				17		17	Site recently purchased by FBC. Has existing resolution for 17 aged-persons apartments (P/16/0142/FP) subject to s106. Expected to deliver in the short term.
Welborne (LP3)			140	200	250	590	Based on published evidence to support the Draft Local Plan (2017).
EMERGING BROWNFIELD SITES						145	
Fareham Magistrates Court			45			45	Outline application from site owner (Homes England) expected in autumn 2018. Site is in single ownership.
Warsash Maritime Academy				50	50	100	Southampton Solent University (site owner) is currently preparing a disposal strategy for the site. Projected delivery rates and timing remain subject to revision.
WINDFALL ALLOWANCE						74	
Small (1-4 units)				37	37	74	As per the rate set out in the Council's Windfall Background Paper (2017).
TOTAL PROJECTED HOUSING SUPPLY from 1st April 2018 – 31st March 2023	391	502	563	546	401	2450	

APPENDIX 6

EXTRACT OF REPORT TO PLANNING COMMITTEE, 24TH JUNE 2020

FAREHAM
BOROUGH COUNCIL

AGENDA
PLANNING COMMITTEE

Date: Wednesday, 24 June 2020

Time: 1.00 pm

Venue: Teams Virtual Meeting

Members:

Councillor N J Walker (Chairman)

Councillor I Bastable (Vice-Chairman)

Councillors F Birkett
T M Cartwright, MBE
P J Davies
K D Evans
M J Ford, JP
Mrs K Mandry
R H Price, JP

Deputies: S Dugan
J S Forrest
Mrs C L A Hockley
Mrs K K Trott



Fareham Borough Council
Five-Year Housing Land Supply Position
JUNE 2020

Introduction

1. The National Planning Policy Framework (NPPF) requires Local Planning Authorities to identify and update annually a supply of specific deliverable sites to provide five years supply of housing against their housing requirements. The NPPF also requires an additional buffer of 5% (or 20% in the case of persistent under-delivery) to ensure choice and competition in the market for land.
2. This document has been prepared to provide the latest position on the 5 Year Housing Land Supply (5YHLS) in Fareham Borough. It will be updated at regular intervals to ensure the most accurate and up-to-date position is available. Updates will be provided to the Planning Committee when relevant and will also be advised on the Council's website.
3. This document is iterative/live and will only provide the most accurate position of 5YHLS at the time of publication. It is possible that sites will be omitted from the 5YHLS and then subsequently, when circumstances change, may feature again in a future iteration of the 5YHLS position (and vice versa). Likewise, delivery rates for included sites are not fixed and are subject to revision following correspondence with site promoters/ developers.

Housing Need

4. The requirement through the NPPF is for housing need to be calculated through a standard method. The standard method is based on household growth projections and house-price to earnings affordability data published by the Office for National Statistics (ONS).
5. Since the last 5YHLS report was presented to the Planning Committee in April 2019, updated house-price to earnings affordability data has been published by the ONS. Use of the 2014-based household growth projections along with the updated house-price to earnings affordability data within the standard method results in the Council having a Local Housing Need figure of 514 dwellings per annum.
6. There remains a requirement in the NPPF to include at least a 5% buffer on top of the 5-year housing requirement, "to ensure choice and competition in the market for land".
7. The level of the buffer (5% or 20%) is determined through the Housing Delivery Test, which has been introduced as part of the NPPF. The NPPF advised that each Council's Housing Delivery Test result will be calculated and published by MHCLG in November of each year.
8. The results for the 2019 Housing Delivery Test (HDT) were published by the MHCLG on 13th February 2020. The results for Fareham showed that the Council achieved 99% in terms of the number of homes delivered.
9. Fareham's HDT results mean that the Council can apply a 5% buffer to its five-year housing land supply position.

Housing Supply

10. The National Planning Policy Framework requires Local Planning Authorities to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their local housing need. As such, this section sets out the different sources which make-up the Council's projected five-year housing supply.

Planning permissions

11. A comprehensive list of all sites with outstanding planning permission at the start of each monitoring year is provided annually to the Council by Hampshire County Council. However, to ensure that this 5YHLS position provides the most accurate and up-to-date position, all new planning permissions as of 1st April 2020 are also taken account of. Sites with planning permission are only included within the projected supply where they meet the definition of 'deliverable'. What constitutes 'deliverable' is set out within Annex 2 of the National Planning Policy Framework:

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

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

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

13. Where there is some indication that a planning permission will not be implemented then the site has been omitted from the 5YHLS on a precautionary basis. However, this may change if subsequent information comes to light to suggest the development will take place in the five-year period.

14. The monitoring of new permissions and the delivery projections of existing sites with planning permission will continue to be kept regularly up-to-date by Fareham Borough Council Officers, through regular correspondence with site developers.

15. Dwellings completed between 1st April 2019 and the 31st March 2020 have been removed from the 'Details of Projected Housing Supply for the 5-Year Period (1ST APRIL 2020 – 31ST MARCH 2025)' set out at the end of this report.

Resolutions to Grant Planning Permission

16. Housing supply based on sites with a resolution to grant planning permission has previously formed a significant component of this Council's projected supply. These consist of sites which have been approved by the Council's Planning Committee, but the formal grant of planning permission remains subject to matters such as the completion of a legal agreement (i.e. Section 106).

17. As highlighted earlier in this report, the National Planning Policy Framework requires Local Planning Authorities to identify and update annually a supply of specific deliverable sites.
18. 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.
19. Members will be aware that there are a large number of planning applications which have been previously considered by the Planning Committee and Members have resolved to grant planning permissions. These planning applications comprise somewhere in the order of 761 dwellings.
20. Following these resolutions to grant planning permission, Natural England changed its advice to Councils in the light of a decision made by the European Court of Justice (known as the 'Dutch case'). The 'Dutch Case' has implications for the approach which must be taken when assessing the impact of new development upon European Protected Sites. A number of European Protected sites which would be covered by the ruling, are located in and around The Solent.
21. The case reinforced the precautionary principle which must be adopted when assessing the impact upon protected sites. Furthermore, the case also clarified the requirement that where mitigation is needed, it should be identified at the time of carrying out an Appropriate Assessment and appropriately secured before permission is granted. This is in order for the competent authority to conclude with certainty that any mitigation proposed and secured would sufficiently mitigate any adverse effects arising from the development in question.
22. The primary concerns raised by Natural England in respect of development in this Borough, relate to the impacts of increased nitrates entering the European Sites and the impact of exhaust emissions from increased vehicles upon European Sites. Based on the existing condition of The Solent water bodies and taking into account the implications of the more recent Dutch case ruling, Natural England's advice to this Council has been that any new development which would result in an increase in 'overnight' stays, should achieve nitrate neutrality in order to not have any likely significant effects.
23. Work was undertaken by Ricardo on behalf of this Council in respect of the impact of exhaust emissions upon European Sites. This work was completed in December last year and the full report has been published on the Council's website. The report concluded that "Development in Fareham can take place over the period up to 2023 as set out in this report, with no threat due to emissions to air to the ability of any European site to achieve their conservation objectives or maintain their integrity (either alone or in combination)."
24. Since receipt of the Natural England advice considerable work has been undertaken between this authority and a number of statutory bodies including Natural England and the Environment Agency, work has been undertaken by the Partnership for South Hampshire and a number of third parties have brought forward nitrate mitigation schemes.

25. 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.
26. A number of third party nitrate mitigation schemes are now well advanced. There is clear evidence that many of the schemes with resolutions to grant may well use these mitigation schemes to ensure that they do not have a likely significant effect upon the European sites. Where an Appropriate Assessment is undertaken by this Authority which concludes that no likely significant effect would occur subject to the mitigation provided through these sites, it is likely that this Authority will be in a position to formally grant planning permissions for a number of schemes in the near future. When this occurs, it may well be appropriate for an updated 5 Year Housing Land Supply to be reported to Members later this year.

Adopted Local Plan Housing Allocations and Emerging Brownfield Sites

27. Officers have undertaken a review of the residual allocations and policy compliant sites from the adopted Local Plan to inform the 5YHLS position. This has been based on correspondence with site promoters and Planning Officer judgement.
28. In October 2019, this Council resolved to grant planning permission for the development at Welborne subject to the completion of a legal agreement pursuant to Section 106 of the Town and Country Planning Act 1990. Considerable progress has been made on the Section 106 legal agreement and it is hoped that it will be signed, enabling the formal planning permission to be issued, in the near future.
29. Officers have recently approached the site promoter Buckland Development Limited and sought clarification from them as to what housing completions they anticipate at Welborne and when. In light of the current market conditions, the site promoter has advised the Council that it now anticipates commencements/completions at Welborne to occur approximately two years later than that set out within the information supporting the planning application. The site promoter has advised that they anticipate 30 dwellings would be delivered in 2022-23, 180 in 2023-24, and 240 in 2024-25. This would total some 450 dwellings in the five-year period.
30. In other instances where Officers have gathered information on the timing and delivery rates from site landowners or developers, the Council have in some instances taken a more precautionary approach to delivery than may have been proposed by the site developer. This could be, for example, if they failed to allow sufficient time for planning permissions to be secured, or if the delivery rates were considered too optimistic. It is important that the Council has a robust basis for its 5YHLS calculations, as adopting a set of unrealistic assumptions may result in a 5YHLS figure that may not be accepted by an appeal Inspector.
31. This process of liaison with site promoters and developers will remain ongoing to ensure a robust and evidenced position on 5YHLS can be demonstrated.

Windfall allowance

A6.7

32. Paragraph 70 of the revised NPPF enables an allowance to be made for housing delivery from windfall sites, providing that there is compelling evidence that they will provide a reliable source of supply having regard to historic windfall delivery rates and expected future trends. An allowance for windfall housing from small sites (1-4 units) has been included within the projected 5-year supply but avoids any small-site windfall development in years 1-3 of that projection and any large-site windfall from the entire 5-year projection.
33. The windfall rates used in the 5YHLS projection are set out in the Council's Housing Windfall Projections Background Paper (2017). The contribution from windfall provision within the 5 year period is modest, being 74 dwellings.

Calculating the 5YHLS

34. In summary, the 5YHLS position in this paper is based on the following: -

- Local Housing Need figure of 514 dwellings per annum.
- Application of a 5% buffer on the Local Housing Need figure.
- Outstanding planning permission data provided by Hampshire County Council as of 1 April 2020
- Sites allocated within the adopted Local Plan and emerging brownfield sites which are expected to deliver housing over the 5-year period 1st April 2020 to 31st March 2025.
- Expected windfall development from small sites (1-4 units) in years 4 and 5 (i.e. 1st April 2023 – 31st March 2025).
- Delivery projections and rates which are derived from detailed liaison with site developers (particularly for larger development sites).

FIVE-YEAR HOUSING LAND SUPPLY POSITION

The following table provides a summary of the Council's current 5YHLS position as per the date of this paper.

HOUSING REQUIREMENT		
A	Local Housing Need: Dwellings per annum 2019-36	514
B	Local Housing Need: Total requirement for 1 st April 2020 to 30 th March 2025 (A x 5)	2,570
C	5% buffer to ensure choice and competition in the market for land (B x 5%)	129
D	Total housing requirement for period from 1st April 2020 to 30th March 2025 (B+C)	2,699
E	Annual requirement for period from 1st April 2020 to 30th March 2025 (D/5)	540
HOUSING SUPPLY		
F	Net outstanding planning permissions for small sites (1-4 units) expected to be built by 30th March 2025 (discounted by 10% for lapses)	155
G	Net outstanding full planning permissions for large sites (5 or more units) expected to be built by 30th March 2025	371
H	Net outstanding outline planning permissions for large sites (5 or more units) expected to be built by 30th March 2025	99
I	Dwellings with a Resolution to Grant Planning Permission that are expected to be built by 30th March 2025	0
J	Dwellings allocated in Adopted Local Plan (LP2) that are expected to be built by 30th March 2025	624
K	Dwellings from emerging brownfield sites (Adopted Local Plan - LP1 & LP2) that are expected to be built by 30th March 2025	145
L	Small site windfall allowance (years 4 – 5) (37 dwellings x 2 years)	74
M	Expected housing supply for the period from 1st April 2020 to 30th March 2025 (F+G+H+I+J+K+L)	1,468
N	Housing Land Supply Position over period from 1st April 2020 to 30th March 2025 (M – D)	-1,231
O	Housing Supply in Years (M / E)	2.72



DETAILS OF PROJECTED HOUSING SUPPLY FOR THE 5-YEAR PERIOD (1ST APRIL 2020 – 31ST MARCH 2025)

Site Address	2020/21	2021/22	2022/23	2023/24	2024/25	Totals
Outstanding Planning Permissions - Small (1-4 dwellings) (10% discount)						
Total across Borough	50	50	55			155
Outstanding Full Planning Permissions - Large (5+ dwellings)						
3-33 West Street, Portchester (07/0042/FP)		16				
New Park Garage, Station Road, Park Gate (09/0672/FP)	14					
100 Wickham Road, Fareham (14/1252/FP)			13			
Swanwick Marina, Bridge Road (15/0424/VC)			25	25		
4-14 Botley Road, Park Gate (16/0295/FP)	23					
Land to rear of 184 Bridge Road (P/17/0697/FP)	3					
1 Station Industrial Park, Duncan Road, Park Gate (P/17/1219/PC)			15			
Willows End, 312 Old Swanwick Lane (P17/1390/FP)		6				
Cranleigh Road, Portchester (Appeal allowed, reserved matters application P/17/1170/RM)		37				
Wykeham House School (P/17/0147/FP)	15					
Hampshire Rose, Highlands Road, Fareham (P/17/0956/FP)	17					
HA3 Southampton Road (Land at Segensworth Roundabout) (P/18/0897/FP)		41				
123 Barnes Lane, Sarisbury Green (P/18/0690/FP)				41		
Land to south of Rookery Avenue, Swanwick (P/18/0235/FP)			6			
94 Botley Road, Park Gate (19/0321/PC)			8			
24 West Street, Fareham (19/0654/PC)			7			
Land North of Funtley Road, Funtley (P/17/1135/OA) (P/19/0864/RM)	10	17				
42 Botley Road (P/19/1275/PC) Prior Approval Granted		5				
Stubbington Lane, Hill Head (LP2 H12)		11				
Corner of Station Road, Portchester (LP2 H20)		16				
Sub-total						371
Outstanding Outline Planning Permissions - Large (5+ dwellings)						
Land to the East of Brook Lane & South of Brookside Drive, Warsash - Taylor Wimpey (P/16/1049/OA)		50	35			
Former Scout Hut Coldeast Way Sarisbury Green (P/17/1420/OA)			7			
Land to East of Bye Road (self/custom build) (P/17/1317/OA)			4	3		
Sub-total						99

Local Plan Policy Compliant Brownfield Sites						
Warsash Maritime Academy				50	50	
Fareham Magistrates Court				45		
Sub-total						145
Local Plan Adopted Housing Allocations						
Wynton Way, Fareham (LP2 H3)			10			
335-337 Gosport Road, Fareham (LP2 H4)				8		
East of Raley Road, Locks Heath (north) (LP2 H6)				20	30	
33 Lodge Road, Locks Heath (LP2 H10)					10	
Land off Church Road				26		
Heath Road, Locks Heath – Hampshire County Council (LP2 H11) (P/17/1366/OA)				35	35	
Welborne (LP3)			30	180	240	
Sub-total						624
Windfall						
Small (1-4 dwellings)				37	37	
Sub-total						74
Total						1468

APPENDIX 7

UPDATE REPORT TO PLANNING COMMITTEE, 24TH JUNE 2020

**SUPPLEMENTARY AGENDA
PLANNING COMMITTEE**

Date: Wednesday, 24 June 2020

Time: 1.00 pm

Venue: Teams Virtual Meeting

7. Planning applications and Miscellaneous Matters including an update on Planning Appeals

To consider a report by the Director of Planning and Regeneration on development control matters, including information regarding new planning appeals and decisions.

(8) UPDATE REPORT (Pages 1 - 14)



P GRIMWOOD
Chief Executive Officer
Civic Offices
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23 June 2020

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UPDATES**for Committee Meeting to be held on 24th June 2020****Five Year Housing Land Supply**

Following the publication of this report, Officers have been made aware of a recent legal case involving East Northamptonshire Council (ENC), the Secretary of State for Housing, Communities and Local Government (SOS) and Lourett Developments Ltd.

ENC commenced legal action against the SOS for allowing a planning appeal at Thrapston in Northamptonshire. The case related to the Planning Inspector's decision to treat the definition of 'deliverable' within the Glossary of the NPPF as a 'closed list'.

The SOS conceded that he erred in his interpretation of the definition of deliverable within the glossary of the National Planning Policy Framework ("NPPF") as a 'closed list'. The proper interpretation of the definition is that any site which can be shown to 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' will meet the definition; and that the examples given in categories (a) and (b) are not exhaustive of all the categories of site which are capable of meeting that definition. Whether a site does or does not meet the definition is a matter of planning judgment on the evidence available. The SOS considered that it was appropriate for the Court to make an Order quashing the decisions and remitting the appeal to be determined anew. The Court duly issued an order to this effect.

In light of the position taken by the SOS, it is reasonable to assume that Planning Inspectors will now follow the approach advocated in this case. In turn, it is appropriate for the 5 Year Housing Land Supply Report to be updated to reflect the most recent position of the SOS in respect of the definition of 'deliverable'.

The following changes are therefore made to the published report:

Introduction

Paragraph 5 should be deleted in its entirety.

Paragraph 6 should be substituted with the following:

Calculation of the Council's 5-Year Housing Land Supply Position based on an annual dwelling requirement of 514 and a 5% buffer gives a projected position of 4.03 years.

Paragraph 25 as currently written, should be deleted from the report and replaced with the following:

As highlighted at Paragraph 18, 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

A7.3

definitions at a) or b), set out within paragraph 12 of this report, it should not be included within the Council's 5 Year Housing Land Supply. In the recent case of East Northamptonshire Council, the Secretary of State for Housing, Communities and Local Government (SOS) and Lourett Developments Ltd, the SOS conceded that he erred in his interpretation of the definition of deliverable within the glossary of the National Planning Policy Framework ("NPPF") as a 'closed list'. The proper interpretation of the definition is that any site which can be shown to 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' will meet the definition; and that the examples given in categories (a) and (b) are not exhaustive of all the categories of site which are capable of meeting that definition. Whether a site does or does not meet the definition is a matter of planning judgment on the evidence available. On this basis planning applications with a resolution to grant planning permission are included within the Council's 5 year housing land supply. In light of the current market conditions, Officers have applied a precautionary approach to the commencement of development in respect of those sites with a resolution to grant. For detailed planning permissions this means that Officers have put the commencement of development as falling within 2021/22, and outline planning permissions being implemented during 2022/23.

In paragraph 34, insert a further bullet point:

- Dwellings with a Resolution to Grant Planning Permission that are expected to be built by 30th March 2025

FIVE-YEAR HOUSING LAND SUPPLY POSITION

The table within the current report should be deleted and replaced with the following:

The following table provides a summary of the Council's current 5YHLS position as per the date of this paper.

HOUSING REQUIREMENT		
A	Local Housing Need: Dwellings per annum 2019-36	514
B	Local Housing Need: Total requirement for 1 st April 2020 to 30 th March 2025 (A x 5)	2,570
C	5% buffer to ensure choice and competition in the market for land (B x 5%)	129
D	Total housing requirement for period from 1st April 2020 to 30th March 2025 (B+C)	2,699
E	Annual requirement for period from 1st April 2020 to 30th March 2025 (D/5)	540
HOUSING SUPPLY		
F	Net outstanding planning permissions for small sites (1-4 units) expected to be built by 30th March 2025 (discounted by 10% for lapses)	155
G	Net outstanding full planning permissions for large sites (5 or more units) expected to be built by 30th March 2025	371
H	Net outstanding outline planning permissions for large sites (5 or more units) expected to be built by 30th March 2025	99
I	Dwellings with a Resolution to Grant Planning Permission that are expected to be built by 30th March 2025	709
J	Dwellings allocated in Adopted Local Plan (LP2) that are expected to be built by 30th March 2025	624
K	Dwellings from emerging brownfield sites (Adopted Local Plan - LP1 & LP2) that are expected to be built by 30th March 2025	145
L	Small site windfall allowance (years 4 – 5) (37 dwellings x 2 years)	74
M	Expected housing supply for the period from 1st April 2020 to 30th March 2025 (F+G+H+I+J+K+L)	2,177
N	Housing Land Supply Position over period from 1st April 2020 to 30th March 2025 (M – D)	-522
O	Housing Supply in Years (M / E)	4.03

DETAILS OF PROJECTED HOUSING SUPPLY FOR THE 5-YEAR PERIOD (1ST APRIL 2020 – 31ST MARCH 2025)

The table within the current report should be deleted and replaced with the following:

Site Address	2020/21	2021/22	2022/23	2023/24	2024/25	Totals
Outstanding Planning Permissions - Small (1-4 dwellings) (10% discount)						
Total across Borough	50	50	55			
						155
Outstanding Full Planning Permissions - Large (5+ dwellings)						
3-33 West Street, Portchester (07/0042/FP)		16				
New Park Garage, Station Road, Park Gate (09/0672/FP)	14					
100 Wickham Road, Fareham (14/1252/FP)			13			
Swanwick Marina, Bridge Road (15/0424/VC)			25	25		
4-14 Botley Road, Park Gate (16/0295/FP)	23					
Land to rear of 184 Bridge Road (P/17/0697/FP)	3					
1 Station Industrial Park, Duncan Road, Park Gate (P/17/1219/PC)			15			
Willows End, 312 Old Swanwick Lane (P17/1390/FP)		6				
Cranleigh Road, Portchester (Appeal allowed, reserved matters application P/17/1170/RM)		37				
Wykeham House School (P/17/0147/FP)	15					
Hampshire Rose, Highlands Road, Fareham (P/17/0956/FP)	17					

HA3 Southampton Road (Land at Segensworth Roundabout) (P/18/0897/FP)		41				
123 Barnes Lane, Sarisbury Green (P/18/0690/FP)				41		
Land to south of Rookery Avenue, Swanwick (P/18/0235/FP)			6			
94 Botley Road, Park Gate (19/0321/PC)			8			
24 West Street, Fareham (19/0654/PC)			7			
Land North of Funtley Road, Funtley (P/17/1135/OA) (P/19/0864/RM)	10	17				
42 Botley Road (P/19/1275/PC) Prior Approval Granted		5				
Stubbington Lane, Hill Head (LP2 H12)		11				
Corner of Station Road, Portchester (LP2 H20)		16				
Sub-total						371
Outstanding Outline Planning Permissions - Large (5+ dwellings)						
Land to the East of Brook Lane & South of Brookside Drive, Warsash - Taylor Wimpey (P/16/1049/OA)		50	35			
Former Scout Hut Coldeast Way Sarisbury Green (P/17/1420/OA)			7			
Land to East of Bye Road (self/custom build) (P/17/1317/OA)			4	3		
Sub-total						99
Resolution to Grant Planning Permission - Large (5+ dwellings)						
Land at Brook Lane, Warsash - Foreman Homes (P/17/0845/OA)			40	70	70	
Land East of Brook Lane (South), Warsash – Bargate Homes (P/17/0752/OA)			20	40	40	
Land South of Greenaway Lane, Warsash - Land & Partners (P/17/0998/OA)			25	60	60	

East & West of 79 Greenaway Lane, Warsash (P/18/0107/OA)			15	9		
East & West of 79 Greenaway Lane, Warsash (P/18/0884/FP)		6				
Land South of Funtley Road, Funtley (P/18/0067/OA)			15	30	10	
Land South West of Sovereign Crescent, Locks Heath (P/18/0484/FP)		24	14			
Moraunt Drive, Portchester (P/18/0654/FP)		16	32			
Southampton Road (Reside) (P/18/0068/OA)			35	50	20	
Egmont Nurseries, Brook Avenue (P/18/0592/OA)			8			
Sub-total						709
Local Plan Policy Compliant Brownfield Sites						
Warsash Maritime Academy				50	50	
Fareham Magistrates Court				45		
Sub-total						145
Local Plan Adopted Housing Allocations						
Wynton Way, Fareham (LP2 H3)			10			
335-337 Gosport Road, Fareham (LP2 H4)				8		
East of Raley Road, Locks Heath (north) (LP2 H6)				20	30	
33 Lodge Road, Locks Heath (LP2 H10)					10	
Land off Church Road				26		
Heath Road, Locks Heath – Hampshire County Council (LP2 H11) (P/17/1366/OA)				35	35	
Welborne (LP3)			30	180	240	

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Sub-total						624
Windfall						
Small (1-4 dwellings)				37	37	
Sub-total						74
Total						2,177

for Committee Meeting to be held on 24th June 2020

ALL ZONES

(1) P/18/1118/OA - STUBBINGTON

Land at Newgate Lane (North), Fareham

The update to the Five Year Housing Land Supply report is included above. As a result of that update, Members are advised that references in the Officer report in relation to Land at Newgate Lane North to the current 5YHLS being 2.72 years should be replaced with the figure of 4.03 years.

The recommendation at section 9 of the report is revised as follows to include policies omitted from the original recommendation, revised wording in relation to reason for refusal j) and an additional reason for refusal related to the lack of affordable housing provision (now reason for refusal n).

REFUSE PERMISSION for the following reasons:

The development is contrary to Policies CS2, CS4, CS5, CS6, CS14, CS15, CS16, CS17, CS18, CS20, CS21 and CS22 of the Adopted Fareham Borough Core Strategy 2011 and Policies DSP6, DSP13, DSP14, DSP15 & DSP40 of the Adopted Local Plan Part 2: Development Site and Policies Plan, paragraphs 103, 109, 110 and 175 of the NPPF and is unacceptable in that:

- a) The provision of residential development in this location would be contrary to adopted Local Plan policies which seek to prevent additional residential development in the countryside;*
- b) The proposed development fails to respond positively to and be respectful of the key characteristics of the area and would be harmful to the character and appearance of the countryside;*
- c) The provision of development in this location would significantly affect the integrity of the strategic gap and the physical and visual separation of settlements;*
- d) The application site is not sustainably located adjacent to, well related to or well-integrated with the existing urban settlement boundaries;*
- e) The proposal would result in the loss of best and most versatile agricultural land;*

- f) *Insufficient information has been submitted to adequately assess the highways impacts arising from the proposed development;*
- g) *The proposed access is inadequate to accommodate the development safely;*
- h) *The proposed development would have an unacceptable impact on the junction of old Newgate Lane / Newgate Lane East resulting in a severe impact on the road safety and operation of the local transport network;*
- i) *The proposed development provides insufficient support for sustainable transport options;*
- j) *In the absence of appropriate mitigation for the loss of a low use Brent geese and wader site and in the absence of a legal agreement to appropriately secure such mitigation, the proposal would have a likely adverse effect on the integrity of European Protected Sites;*
- k) *In the absence of a legal agreement to secure such, the proposal fails to appropriately secure mitigation of the likely adverse effects on the integrity of European Protected Sites which, in combination with other developments, would arise due to the impacts of recreational disturbance.*
- l) *In the absence of a legal agreement to secure contributions to open space and facilities and their associated management and maintenance, the recreational needs of residents of the proposed development would not be met;*
- m) *In the absence of a legal agreement to secure contributions to education, the needs of residents of the proposed development would not be met;*
- n) *In the absence of a legal agreement to secure the on-site provision of affordable housing, the housing needs of the local population would not be met;*
- o) *In the absence of a legal agreement to secure the submission and implementation of a full Travel Plan, payment of the Travel Plan approval and monitoring fees and the provision of a surety mechanism to ensure implementation of the Travel Plan, the proposed development would not make the necessary provision to ensure measures are in place to assist in reducing the dependency on the use of the private motorcar;*

Note for information:

Had it not been for the overriding reasons for refusal to the proposal, the Local Planning Authority would have sought to address points k - o) above by inviting the applicant to enter into a legal agreement with Fareham Borough Council under Section 106 of the Town & Country Planning Act 1990.

(2) P/19/0460/OA - STUBBINGTON

Land at Newgate Lane (South), Fareham

The update to the Five Year Housing Land Supply report is included above. As a result of that update, Members are advised that references in the Officer report in relation to Land at Newgate Lane South to the current 5YHLS being 2.72 years should be replaced with the figure of 4.03 years.

The recommendation at section 9 of the report is revised as follows to include policies omitted from the original recommendation, revised wording in relation to reason for refusal j) and an additional reason for refusal related to the lack of affordable housing provision (now reason for refusal n).

REFUSE PLANNING PERMISSION, for the following reasons:

The development is contrary to Policies CS2, CS4, CS5, CS6, CS14, CS15, CS17, CS18, CS20, CS21 and CS22 of the Adopted Fareham Borough Core Strategy 2011 and Policies DSP6, DSP13, DSP14, DSP15 & DSP40 of the Adopted Local Plan Part 2: Development Site and Policies Plan, paragraphs 103, 109, 110 and 175 of the NPPF and is unacceptable in that:

- a) The provision of residential development in this location would be contrary to adopted Local Plan policies which seek to prevent additional residential development in the countryside;*
- b) The proposed development fails to respond positively to and be respectful of the key characteristics of the area and would be harmful to the character and appearance of the countryside;*
- c) The provision of development in this location would significantly affect the integrity of the strategic gap and the physical and visual separation of settlements;*
- d) The application site is not sustainably located adjacent to, well related to or well-integrated with the existing urban settlement boundaries;*
- e) Insufficient information has been submitted to adequately assess the highways impacts arising from the proposed development;*
- f) The proposed access is inadequate to accommodate the*

development safely;

- g) The proposed development would have an unacceptable impact on the junction of old Newgate Lane / Newgate Lane East resulting in a severe impact on the road safety and operation of the local transport network;*
- h) The proposed development provides insufficient support for sustainable transport options;*
- i) The proposal provides insufficient information to protect and enhance the biodiversity interests of the site which includes a substantial population of Chamomile;*
- j) In the absence of appropriate mitigation for the loss of a low use Brent geese and wader site and in the absence of a legal agreement to appropriately secure such mitigation, the proposal would have a likely adverse effect on the integrity of European Protected Sites;*
- k) In the absence of a legal agreement to secure such, the proposal fails to appropriately secure mitigation of the likely adverse effects on the integrity of European Protected Sites which, in combination with other developments, would arise due to the impacts of recreational disturbance;*
- l) In the absence of a legal agreement to secure contributions to open space and facilities and their associated management and maintenance, the recreational needs of residents of the proposed development would not be met;*
- m) In the absence of a legal agreement to secure contributions to education, the needs of residents of the proposed development would not be met;*
- n) In the absence of a legal agreement to secure the on-site provision of affordable housing, the housing needs of the local population would not be met;*
- o) In the absence of a legal agreement to secure the submission and implementation of a full Travel Plan, payment of the Travel Plan approval and monitoring fees and the provision of a surety mechanism to ensure implementation of the Travel Plan, the proposed development would not make the necessary provision to ensure measures are in place to assist in reducing the dependency on the use of the private motorcar.*

Note for information:

Had it not been for the overriding reasons for refusal to the proposal, the Local Planning Authority would have sought to address points k) - o) above by inviting the applicant to enter into a legal agreement with Fareham Borough Council under Section 106 of the Town & Country Planning Act 1990

(4) P/19/1193/OA - TITCHFIELD

Land east of Posbrook Lane, Titchfield

The update to the Five Year Housing Land Supply report is included above. As a result of that update, Members are advised that references in the Officer report in relation to East of Posbrook Lane to the current 5YHLS being 2.72 years should be replaced with the figure of 4.03 years.

Since the publication of the committee agenda the Council has been notified that a non-determination appeal has been lodged with the Planning Inspectorate. That being the case, Members of the Planning Committee are no longer able to determine the application. Instead, Members are asked to confirm that had they had the opportunity to determine the application they would have REFUSED it for the reasons set out at section 9 of the Officer report.

(5) P/18/0884/FP - Warsash

Land Adj. 79 Greenaway Lane

5 Year housing land supply

Paragraph 8.4 The 5-year housing land supply has been updated to 4.03 years

Measures to be secured by legal agreement within the recommendation

Point g: 'unforeseen circumstances' amended to 'misconnections'

Further Comments from Natural England

Following consultation with Natural England regarding the Appropriate Assessment, Natural England advised that additional details needed to be secured regarding the long-term monitoring and management of the wetlands in order to conclude that there would be no likely significant effect on the European Protected Sites. The additional details (included at the end of the committee report) were subsequently agreed with the applicant and will be secured by legal agreement.

Officers updated the Appropriate Assessment to include details of the long-term monitoring and management of the reedbed wetland and consulted with Natural

England. Natural England have confirmed that they endorse the Local Planning Authority's Appropriate Assessment:

"Your appropriate assessment concludes that your authority is able to ascertain that the proposal will not result in adverse effects on the integrity of any of the sites in question. Having considered the assessment, and the measures proposed to mitigate for all identified adverse effects that could potentially occur as a result of the proposal, Natural England advises that we concur with the assessment conclusions, providing that all mitigation measures are appropriately secured in any planning permission given."

Additional representations have been received since the committee report was published.

The representations raise the following issues:

- The evidence submitted does not prove that all the land has been used for grazing or that it has been used consistently for grazing during the last 10 years.

- Documents relating to the application were not previously made available to the public online. These include the applicant's evidence used to establish the existing land use, the Local Planning Authority's most recent Appropriate Assessment and the Local Planning Authority's calculation of the site's nitrogen budget.

Comment:

Natural England's guidance (4.51) states: *"It is important that farm type classification is appropriately precautionary. It is recommended that evidence is provided of the farm type for the last 10 years and professional judgement is used as to what the land would revert to in the absence of a planning application. In many cases, the local planning authority, as competent authority, will have appropriate knowledge of existing land uses to help inform this process."*

The representations submitted state that because only part of the land has been used for grazing during the last 10 years, the land use should be categorised as open space which has a lower nitrogen level of 5 kg/ha.

The evidence submitted demonstrates that some of the land has been used for grazing and that the remainder has been used for producing hay during the past 10 years. In the absence of a planning application Officers are satisfied that the land could continue to be used for grazing or for growing hay in light of past use, road frontage and enclosed boundaries.

The most recent land use (or the levels that would be produced at the site if planning permission is not granted) informs the levels of nitrogen produced by the site. Natural England's guidance advises that lowland grazing has an average nitrate-nitrogen loss level of 13 (kg/ha) and 25.4 kg/ha for general cropping (growing hay.)

As explained in the report, in order to be nutrient-neutral the proposed development must produce no more nitrogen than the current land use.

Given that the site has been used for grazing horses and growing hay, the Local Planning Authority has taken a precautionary approach to establishing the existing land use in line with Natural England's guidance and has calculated the levels of nitrogen based on if the site was used solely for grazing. This approach is precautionary because it results in a lower level of nitrogen than if the site was used for growing hay. The proposed development (which will produce increased levels of nitrogen) must provide more mitigation to be nutrient neutral than if the higher level associated with growing hay was used to inform the calculation.

Officers have liaised with Natural England regarding the evidence the applicant has provided and are satisfied that the categorisation of the land as lowland grazing rather than general cropping is a suitably precautionary approach in line with Natural England's guidance.

APPENDIX 8
THRAPSTON CONSENT ORDER

IN THE HIGH COURT OF JUSTICE

Claim No. CO/917/2020

QUEEN’S BENCH DIVISION

PLANNING COURT

B E T W E E N

EAST NORTHAMPTONSHIRE COUNCIL

Claimant

-and-

SECRETARY OF STATE FOR HOUSING COMMUNITIES AND LOCAL GOVERNMENT

Defendant

- and -

LOURETT DEVELOPMENTS LTD

Interested Party

=====

CONSENT ORDER

=====

UPON the parties agreeing to the terms hereof

BY CONSENT IT IS ORDERED THAT:

1. Permission is granted and the decisions of the Defendant, dated 24 January 2020 and carrying reference number APP/G2815/W/193232099, to allow the Interested Party’s appeal under s.78

of the Town and Country Planning Act 1990, and to make a partial award of costs in favour of the Interested Party, are quashed pursuant to s.288 of the same Act.

2. The appeal is remitted to be determined de novo.

3. The Defendant pay the Claimant's costs in the amount of £8616.66

Dated: This 7th Day of May 2020

PARTICULARS

- A. These proceedings concern an application brought under section 288 of the 1990 Act by the Claimant against (1) the decision of the Defendant to allow the Interested Party's appeal against the decision of the Claimant to refuse planning permission for residential development at land to the west of numbers 7-12 The Willows, Thrapston, NN14 4LY and (2) the decision to make a partial award of costs against the Claimant in respect of that appeal.

- B. The Defendant has carefully considered the Inspector's decision and the Claimant's Statement of Facts and Grounds and Reply, and the evidence served in support. He concedes that he erred in his interpretation of the definition of deliverable within the glossary of the National Planning Policy Framework ("NPPF") as a 'closed list'. It is not. The proper interpretation of the definition is that any site which can be shown to 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' will meet the definition; and that the examples given in categories (a) and (b) are not exhaustive of all the categories of site which are capable of meeting that definition. Whether a site does or does not meet the definition is a matter of planning judgment on the evidence available.

- C. The Defendant therefore considers that it is appropriate for the Court to make an Order quashing the decisions and remitting the appeal to be determined de novo.

- D. The Interested Party agrees that the decisions should be quashed and the appeal remitted to be determined de novo.



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APPENDIX 9

LAND OFF AUDLEM ROAD/BROAD LANE, STAPELEY RECOVERED APPEAL DECISION



Ministry of Housing,
Communities &
Local Government

Patrick Downes
Harris Lamb Ltd
75-76 Francis Road
Birmingham
B16 8SP

Our ref: APP/R0660/A/13/2197532
APP/R0660/A/13/2197529

15 July 2020

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY MULLER PROPERTY GROUP
LAND OFF AUDLEM ROAD/BROAD LANE, STAPELEY, NANTWICH AND LAND OFF
PETER DE STAPELEIGH WAY, NANTWICH
APPLICATION REFS: 12/3747N AND 12/3746N**

1. I am directed by the Secretary of State to say that consideration has been given to the report of David L Morgan BA MA (T&CP) MA (Bld Con IoAAS) MRTPI IHBC, who held a public local inquiry on 20-24 February 2018 into your client's appeal against the decision of Cheshire East Council to refuse your client's application for outline planning permission for Appeal A: Proposed residential development for up to a maximum of 189 dwellings; local centre (Class A1 to A5 inclusive and D1) with a maximum floor area of 1,800 sq.m Gross Internal Area (GIA); employment development (B1b, B1c, B2 and B8) with a maximum floor area of 3,700 sq. m GIA; primary school site; public open space including new village green, children's play area and allotments, green infrastructure including ecological area; access via adjoining site B (see below) and new pedestrian access and associated works; and against the failure of Cheshire East Council to determine your client's application for Appeal B: Proposed new highway access road, including footways and cycleways and associated works, in accordance with applications 12/3747N and 12/3746N.
2. The Secretary of State issued his decisions in respect of the above appeals by way of his letters dated 17 March 2015 and 11 August 2016. Those decisions were challenged by way of an application to the High Court and were subsequently quashed by orders of the

Court dated 3 July 2015 and 14 March 2017. The appeals have therefore been redetermined by the Secretary of State following a new inquiry into this matter. Details of the original inquiry are set out in the 17 March 2015 and 11 August 2016 decision letters.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeals be allowed and planning permission should be granted.
4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated, and agrees with his recommendation. He has decided to allow the appeals and grant planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Procedural matters

5. The Secretary of State notes that, prior to the opening of the Inquiry the appellant submitted a revised layout of the proposals which omitted the proposed access off Audlem Road and that this has necessitated an amendment to the description of development to reflect the changes (IR7). The Secretary of State also notes that the Inspector subsequently received comments on the revisions following consultation by the appellant. For the reasons given in IR7-8, the Secretary of State agrees with the Inspector that the proposed revisions should be taken into account in the determination of this case and he is satisfied that no interests have thereby been prejudiced.
6. The Secretary of State has noted that a reference to policy RG6 of the Cheshire East Local Plan Strategy (CELPS) in IR424 should refer to policy PG6.

Matters arising since the close of the inquiry

7. On 21 February 2019, the Secretary of State wrote to the main parties to afford them an opportunity to comment on:
 - The Written Ministerial Statement on housing and planning, issued on 19 February 2019.
 - The publication, on 19 February 2019, of the 2018 Housing Delivery Test (HDT) measurement by local planning authorities and a technical note on the process used in its calculation.
 - The Government's response to the technical consultation on updates to national planning policy and guidance, published 19 February 2019.
 - The revised National Planning Policy Framework, published on 19 February 2019.
 - Updated guidance for councils on how to assess their housing needs.

The representations that were received in response were circulated to the main parties on 11 March 2019. Further representations were subsequently received, including an assessment of the 5-year housing land supply submitted on 23 April 2019 by Harris Lamb on behalf of the appellant and the Cheshire East Annual Housing Monitoring Update Report (HMU) (Base Date March 2018) received on 24 April 2019 submitted by Cheshire East Council. Further representations were received in response to the HMU 2018.

Subsequently the Cheshire East Annual Housing Monitoring Update Report (Base Date March 2019) was submitted by Cheshire East Council on 8 November 2019. Representations received were circulated with the final correspondence received on 12 February 2020. All representations are listed at Annex A. Copies of these letters may be obtained on written request to the address at the foot of the first page of this letter.

8. The 2019 Housing Delivery Test results were published on 13 February 2020. The Council's score was assessed as 230%, requiring no further action. The Secretary of State is satisfied that this does not affect his decision and does not warrant further investigation or a referral back to parties.

Policy and statutory considerations

9. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
10. In this case the development plan consists of the Cheshire East Local Plan Strategy 2010 – 2030, adopted July 2017 (CELPS), the Stapeley and Batherton Neighbourhood Plan, made in 2018 (S&BNP) and the saved policies from Crewe and Nantwich Replacement Local Plan (February 2005) (CNLP). The Secretary of State considers that relevant development plan policies include those set out in paragraph 5.1 of the Planning Statement of Common Ground (IR26).
11. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'), as well as those listed in IR28-29. The revised National Planning Policy Framework was published on 24 July 2018 and further revised in February 2019. Unless otherwise specified, any references to the Framework in this letter are to the 2019 Framework.

Main issues

12. The Secretary of State agrees with the Inspector that the main considerations are those set out at IR380-381.

Character and appearance

13. For the reasons given in IR382-387 and IR418 the Secretary of State agrees with the Inspector at IR388 that the proposals are in conflict with the letter and principles of Policies PG6, SD1 and SD2 of the CELPS, Policy RES5 of the CNLP and Policy GS1, H1 and H5 of the S&BNP. However, he also agrees that the appeal sites are now effectively bordered on three sides by existing and emerging development. The Secretary of State also agrees with the Inspector that the rural hinterland, anticipated by the plan vision has, in the circumstances of these cases, been extensively eroded. The Secretary of State agrees with the Inspector that the degrees of harm to visual amenity here, because of the very specific urbanised context of the site and the contribution green space makes to the scheme, would, in actuality, be limited in extent (IR418). Overall the Secretary of State affords the harm to character and appearance, and visual amenity, limited weight in the planning balance.

BMV Agricultural land

14. As set out in IR389-390 and IR419 the Secretary of State agrees with the Inspector that the proposed development would result in the loss of best and most versatile agricultural land and is contrary to Policy SE2 of the CELPS. The Secretary of State further agrees that the area of land is modest and predominantly at lower grade, and that its loss cannot be judged significant. He agrees it merits only modest weight against in the planning balance.
15. The Secretary of State notes that no other substantive harms have been identified and agrees with the Inspector that the other effects of the development can be effectively mitigated through the provisions of the section 106 obligations, thus rendering them neutral in the planning balance (IR419).

Highway safety

16. The Secretary of State acknowledges that there was a significant degree of apprehension amongst local residents over any increase in traffic numbers in the locality as a result of the development proposed. For the reasons given in IR391–392 and IR416 the Secretary of State agrees with the Inspector that such concerns must be afforded no more than very limited weight.

Housing land supply

17. The Secretary of State has considered the Inspector's assessment of housing land supply at IR393-409 and has also taken into account the revised Framework, Housing Delivery Test (HDT) and material put forward by parties as part of the reference back processes set out in paragraph 7 of this letter. As part of this, the Council submitted their Annual Housing Monitoring Update Report (HMU) (base date March 2019) which concludes that the Council can demonstrate 7.5 years of housing land supply, assessed from 2019-2024. The appellant disagrees with this figure and concludes that the Council can demonstrate 4.72 years of housing land supply.
18. For the reasons given in IR393 the Secretary of State agrees that the basic housing requirement for Cheshire East Council is 1800 dwellings per annum (9000 over 5 years) and notes that this was agreed in a statement of common ground between the parties and was also set out in the CELPS. The shortfall to be addressed is now 3582 dwellings, which is set out in the Council's HMU 2019 and also referred to in the appellant's correspondence of 4 December 2019. The Secretary of State, therefore, uses this figure of 3582 dwellings as the shortfall rather than 5635 dwellings set out in IR393. For the reasons given in IR397-398, the Secretary of State agrees with the Inspector that any backlog should be made up within the first 8 years of the plan period as determined by the CELPS and the Examining Inspector, and that this 8-year period should not be rolled forward. As the 8-year period began on 1 April 2016, and concludes on 31 March 2024, the shortfall of 3582 should therefore be made up in the 5-year period on which the current HMU is based, with the housing requirement at this stage of the calculation being 12,582.
19. The Secretary of State notes that since the closure of the Inquiry the revised Framework and updated HDT 2019 figures have been published. The HDT figures mean that the Council is only required to add a 5% buffer in line with paragraph 73 of the Framework rather than the 20% buffer that was required at the time of the Inquiry. Including this buffer, the housing requirement is 13,211.

20. The Secretary of State considers that the Inspector's assessment of housing supply at IR400-409 is now out of date given the new information that has been submitted by parties since the end of the Inquiry.
21. The Secretary of State has reviewed the information submitted by the parties, in particular the sites where deliverability is in dispute between the appellant and the Council. The Secretary of State agrees with the appellant that some of the sites identified by the Council, at the time the evidence was submitted, may not meet the definition of deliverability within the Framework. He considers that, on the basis of the evidence before him, the following should be removed from the supply: sites with outline planning permission which had no reserved matters applications and no evidence of a written agreement; a site where there is no application and the written agreement indicates an application submission date of August 2019 which has not been forthcoming, with no other evidence of progress; and a site where the agent in control of the site disputes deliverability. He has therefore deducted 301 dwellings from the supply of housing figures.
22. The Secretary of State also considers that there are further sites where the evidence on deliverability is marginal but justifies their inclusion within a range of the housing supply figures. This group includes sites where the Council has a written agreement with an agent or developer and this indicates progress is being made, or where there is outline planning permission or the site is on a brownfield register and the Secretary of State is satisfied that there is additional information that indicates a realistic prospect that housing will be delivered on the site within 5 years. The Secretary of State considers that in total the number of dwellings within this category is 2,234.
23. Applying these deductions to the Council's claimed deliverable supply figure of 17,733, the Secretary of State is satisfied therefore, on the basis of the information before him, that the Council has a 5 year deliverable supply of between 15,198 dwellings and 17,432 dwellings. As the Secretary of State also considers that the Council has a total 5 year requirement of 13,211 dwellings, he is satisfied that the Council is able to demonstrate a supply of housing sites within the range of 5.7 years to 6.6 years. The Secretary of State has considered the Inspector's comments in IR423-425, and considers that in the light of his conclusion that there is a 5 year housing land supply, the presumption in favour of sustainable development does not apply in this case.

Need for a mixed use development

24. The Secretary of State agrees with the Inspector at IR410 that the right approach is to consider the proposal as a whole, as to do otherwise would be to invite independent evaluation of the constituent elements across the board.

Distortion of the Council's spatial strategy

25. For the reasons given in IR411, the Secretary of State agrees with the Inspector that the development proposed here cannot be considered of such a magnitude as to distort the spatial vision. He therefore agrees with the Inspector that there is no breach of policies PG2 and PG7 of the CELPS.

The benefits of the scheme

26. For the reasons given in IR412 and IR421, the Secretary of State agrees with the Inspector that the proposal would bring economic benefits, in terms of direct and indirect

employment during its construction and expenditure into the local economy. The Secretary of State also agrees with the Inspector that the site is in a sustainable location and notes that Nantwich is one of the preferred locations for development in the CELPS. He agrees that these benefits should be afforded medium weight.

27. For the reasons given in IR413 and IR421, the Secretary of State agrees with the Inspector that there will be a number of social benefits including extensive areas of public open space embracing a new village green and an enlarged Landscape and Nature Conservation Area, the scope for the development of a further primary school and improvements to sustainable transport connectivity. He agrees that these would represent significant additional social benefits, not just to new occupiers of the development, but to those in the locality as well. He also agrees with the Inspector that these benefits should be afforded medium weight.
28. For the reasons given in IR414 and IR420 the Secretary of State agrees with the Inspector that the delivery of significant numbers of market housing in a sustainable location is a significant benefit. Whilst the Secretary of State has concluded that the Council can demonstrate a 5 YHLS, he has taken into account that nationally it is a government policy imperative to boost the supply of housing, as set out at paragraph 59 of the Framework, and he considers that this benefit should be afforded significant weight.
29. The Secretary of State also agrees with the Inspector at IR415 and IR420 that the scheme will include 30% affordable homes which will help meet the need in Cheshire East. The Secretary of State agrees that this is a tangible benefit and merits significant weight.

Planning conditions

30. The Secretary of State has given consideration to the Inspector's analysis at IR368-372, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 55 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 55 of the Framework and that the conditions set out at Annex B should form part of his decision.
31. Having had regard to the Inspector's analysis at IR373-378, the planning obligation dated 2 March 2018, paragraph 56 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR374-378 that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 56 of the Framework.

Planning balance and overall conclusion

32. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with PG6, SD1, SD2, SE2 of the CELPS, Policy RES5 of the CNLP and Policies G5, H1 and H5 of the S&BNP and is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

33. Weighing against the proposal, the harm to character and appearance, and visual amenity, is afforded limited weight and the loss of BMV agricultural land is afforded modest weight. Any concerns due to increase in traffic are afforded only very limited weight. No other substantive harms have been identified.
34. Weighing in favour of the proposal, the provision of market housing in a sustainable location is afforded significant weight. The provision of affordable housing to help meet a need in Cheshire East is also given significant weight. The economic benefits in terms of direct and indirect employment during its construction and expenditure into the local economy of the proposal are given medium weight. The social benefits, including extensive areas of public open space, the scope for the development of a further primary school and improvements to sustainable transport connectivity are given medium weight.
35. The Secretary of State has found that the Council can now demonstrate a 5 year housing land supply. However, having carefully taken into account the factors weighing for and against this scheme, he considers that the overall balance of material considerations in this case indicates a decision which is not in line with the development plan – i.e. a grant of permission for both proposals.
36. The Secretary of State therefore concludes that the appeals should be allowed and planning permission should be granted.

Formal decision

37. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeals and grants planning permission subject to the conditions set out in Annex B of this decision letter for Appeal A: Proposed residential development for up to a maximum of 189 dwellings; local centre (Class A1 to A5 inclusive and D1) with a maximum floor area of 1,800 sq.m Gross Internal Area (GIA); employment development (B1b, B1c, B2 and B8) with a maximum floor area of 3,700 sq. m GIA; primary school site; public open space including new village green, children's play area and allotments, green infrastructure including ecological area; access via adjoining site B (see below) and new pedestrian access and associated works; and Appeal B: Proposed new highway access road, including footways and cycleways and associated works, in accordance with applications 12/3747N and 12/3746N.
38. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

Right to challenge the decision

39. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
40. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.

41. A copy of this letter has been sent to Cheshire East Council, Stapeley and District Parish Council and Nantwich Town Council.

Yours faithfully

Jean Nowak

Jean Nowak

Authorised by the Secretary of State to sign in that behalf

Annex A – List of representations

Annex B – List of Conditions

Annex A**Representations received in response to the Secretary of State's Rule 19 letters of 12 April 2017 and 10 May 2017**

Party	Date
Cheshire East Council	5 May 2017
Patrick Cullen	5 May 2017
John Davenport	8 May 2017
Stapeley & District Parish Council	9 May 2017
Hill Dickinson (on behalf of Muller Property Group)	19 May 2017
Patrick Cullen	7 June 2017
Muller Property Group	9 June 2017

Secretary of State's letter: 21 February 2019

Party	Date
Cheshire East Council	5 March 2019
Knights plc (on behalf of Muller Property Group)	6 March 2019

Circulation of responses of 11 March 2019

Harris Lamb (on behalf of Muller Property Group)	15 March 2019
Cheshire East Council	18 March 2019

Letter from Planning Casework Unit: 19 March 2019

Hill Dickinson	22 March 2019
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Letter from Planning Casework Unit: 27 March 2019

Harris Lamb	23 April 2019
Cheshire East Council	24 April 2019
Nantwich Town Council	23 April 2019

Circulation of responses: 30 April 2019

Cheshire East Council	1 May 2019
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Variation of timetable: 2 May 2019

Harris Lamb	29 May 2019
Cheshire East Council	29 May 2019

Circulation of responses: 4 June 2019

Hill Dickinson	6 June 2019
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Letter from Planning Casework Unit: 12 June 2019

Hill Dickinson	25 June 2019
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Circulation of Hill Dickinson letter: 26 June 2019

Cheshire East Council	4 July 2019
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Response to Cheshire East Council and circulation: 9 July 2019

Harris Lamb	11 July 2019
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Cheshire East Council	8 November 2019
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Circulation of documents received from Cheshire East Council 13 November 2019

Harris Lamb	4 December 2019
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Circulation of Hill Dickinson response: 9 December 2019

Cheshire East Council request for extension	10 December 2019
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Cheshire East Council	13 January 2020
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Circulation of Cheshire East Council response: 14 January 2020

Hill Dickinson	31 January 2020
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Circulation Hill Dickinson response: 4 February 2020

Hill Dickinson	7 February 2020
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Cheshire East Council	12 February 2020
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Note: Entries in bold indicate letters/circulation of information by the Secretary of State

Annex B

Schedule of Conditions

Appeal A

1. Details of appearance, access landscaping, layout and scale (hereinafter called “the reserved matters”) shall be submitted to and approved in writing by the local planning authority (LPA) before any development begins, and the development shall be carried out as approved.
2. Application for approval of all the reserved matters shall be made to the LPA not later than three years from the date of this permission. The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.

3. This permission shall refer to the following drawing numbers unless any other condition attached to the permission indicates otherwise:

Mixed Use and Access Applications Diagram – dwg SK15 Rev C
(11 November 2017)

Mixed Use and Access Applications Diagram – dwg SK16 Rev C
(11 November 2017)

Mixed Use and Access Applications Diagram – dwg SK17 Rev C
(11 November 2017)

Mixed Use and Access Applications Diagram – dwg SK19 Rev D
(11 November 2017)

4. No development shall commence until details of a scheme for the disposal of foul and surface water from the development has been submitted to and approved in writing by the LPA. The scheme shall make provision, inter alia for the following:
 - a. this site to be drained on a totally separate system with all surface water flows ultimately discharging in to the nearby watercourse
 - b. a scheme to limit the surface water run-off generated by the proposed development
 - c. a scheme for the management of overland flow
 - d. the discharge of surface water from the proposed development to mimic that which discharges from the existing site.
 - e. if a single rate of discharge is proposed, this is to be the mean annual run-off (Qbar) from the existing undeveloped greenfield site. For discharges above the allowable rate, attenuation for up to the 1% annual probability event, including allowances for climate change.
 - f. the discharge of surface water, wherever practicable, by Sustainable Drainage Systems (SuDS).
 - g. Surface water from car parking areas less than 0.5 hectares and roads to discharge to watercourse via deep sealed trapped gullies.

- h. Surface water from car parking areas greater than 0.5 hectares in area, to have oil interceptor facilities such that at least 6 minutes retention is provided for a storm of 12.5mm rainfall per hour.

The development shall not be occupied until the approved scheme of foul and/or surface water disposal has been implemented to the satisfaction of the LPA.

5. No development shall commence until a scheme for the provision and management of an 8 metre wide buffer zone alongside the watercourse on the northern boundary measured from the bank top (defined as the point at which the bank meets the level of the surrounding land) has been submitted to and approved in writing by the LPA. The scheme shall include:

- plans showing the extent and layout of the buffer zone
- details of any proposed planting scheme (for example, native species)
- details demonstrating how the buffer zone will be protected during development and managed/maintained over the longer term including adequate financial provision and named body responsible for management plus production of detailed management plan.

This buffer zone shall be free from built development other than the proposed access road. Thereafter the development shall be carried out in accordance with the approved scheme and any subsequent amendments shall be agreed in writing with the LPA.

6. No development shall commence within the application site until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved by the LPA.

7. No development shall take place until a Construction Method Statement (CMS) has been submitted to and approved in writing by the LPA. The approved CMS shall be adhered to throughout the construction period. The CMS shall provide for:

- a. the hours of construction work and deliveries
- b. the parking of vehicles of site operatives and visitors
- c. loading and unloading of plant and materials
- d. storage of plant and materials used in constructing the development
- e. wheel washing facilities
- f. measures to control the emission of dust and dirt during construction.
- g. details of any piling operations including details of hours of piling operations, the method of piling, duration of the pile driving operations (expected starting date and completion date), and prior notification to the occupiers of potentially affected properties

- h. details of the responsible person (e.g. site manager / office) who could be contacted in the event of complaint
 - i. control of noise and disturbance during the construction phase, vibration and noise limits, monitoring methodology, screening, a detailed specification of plant and equipment to be used and construction traffic routes
 - j. waste management: there shall be no burning of materials on site during demolition/construction.
8. No development shall take place on the commercial and retail element until a detailed noise mitigation scheme to protect the proposed dwellings from noise, taking into account the conclusions and recommendations of the Noise Report submitted with the application, shall be submitted to and agreed in writing by the LPA. The approved mitigation measures shall be implemented before the first occupation of the dwelling to which it relates.
9. Prior to the commencement of development:
- a. A contaminated land Phase 2 investigation shall be carried out and the results submitted to, and approved in writing by the LPA.
 - b. If the Phase 2 investigations indicate that remediation is necessary, a Remediation Statement including details of the timescale for the work to be undertaken shall be submitted to, and approved in writing by, the LPA. The remedial scheme in the approved Remediation Statement shall then be carried out in accordance with the submitted details.
 - c. Should remediation be required, a Site Completion Report detailing the conclusions and actions taken at each stage of the works including validation works shall be submitted to, and approved in writing by, the LPA prior to the first use or occupation of any part of the development hereby approved.
10. No development shall commence until a scheme of destination signage to local facilities, including schools, the town centre and railway station, to be provided at junctions of the cycleway/footway and highway facilities shall be submitted to and agreed in writing by the LPA. The approved scheme shall be provided in parallel with the cycleway/footway and highway facilities.
11. No development shall commence until schemes for the provision of MOVA traffic signal control systems to be installed at the site access from Peter Destapleigh Way and at the Audlem Road/Peter Destapleigh Way traffic signal junctions, has been submitted to and approved in writing by the LPA . Such MOVA systems shall be installed in accordance with approved details prior to the first occupation of the development hereby permitted.
12. The Reserved Matters application shall include details of parking provision for each of the buildings proposed. No building hereby permitted shall be occupied until the parking and vehicle turning areas for that building have been

constructed in accordance with the details shown on the approved plan. These areas shall be reserved exclusively thereafter for the parking and turning of vehicles and shall not be obstructed in any way.

13. Prior to the first occupation of the development hereby permitted a Travel Plan shall be submitted to and approved in writing by the LPA. The Travel Plan shall include, inter alia, a timetable for implementation and provision for monitoring and review. None of the building hereby permitted shall be occupied until those parts of the approved Travel Plan that are identified as being capable of implementation after or before occupation have been carried out. All other measures contained within the approved Travel Plan shall be implemented in accordance with the timetable contained therein and shall continue to be implemented, in accordance with the approved scheme of monitoring and review, as long as any part of the development is occupied.
14. No development shall take place until a scheme (including a timetable for implementation) to secure at least 10% of the energy supply of the development from decentralised and renewable or low carbon energy sources shall be submitted to and approved in writing by the LPA. The approved scheme shall be implemented and retained as operational thereafter.
15. Prior to first occupation of each unit, Electric Vehicle Infrastructure shall be provided to the following specification, in accordance with a scheme, submitted to and approved in writing by the LPA which shall including the location of each unit:
 - A single Mode 2 compliant Electric Vehicle Charging Point per property with off road parking. The charging point shall be independently wired to a 30A spur to enable minimum 7kV charging.
 - 5% staff parking on the office units with 7KV Rapid EVP with cabling provided for a further 5% (to enable the easy installation of additional units).

The EV infrastructure shall be installed in accordance with the approved details and thereafter be retained.

16. Prior to any commencement of works between 1st March and 31st August in any year, a detailed survey shall be carried out by a suitably qualified person to check for nesting birds and the results submitted to the LPA. Where nests are found in any hedgerow, tree or scrub to be removed (or converted or demolished in the case of buildings), a 4m exclusion zone shall be left around the nest until breeding is complete. Completion of nesting shall be confirmed by a suitably qualified person and a further report submitted to LPA before any further works within the exclusion zone take place.
17. Prior to the commencement of development detailed proposals for the incorporation of features into the scheme suitable for use by breeding birds shall be submitted to and approved in writing by the LPA. The approved features shall

be permanently installed prior to the first occupation of the development hereby permitted and thereafter retained, unless otherwise agreed in writing by the LPA.

18. The reserved matters application shall be accompanied by a detailed Ecological Mitigation strategy including a great crested newt mitigation strategy informed by the recommendations of the submitted Protected Species Impact Assessment and Mitigation Strategy dated 2013 prepared by CES Ecology (CES:969/03-13/JG-FD). The development shall be implemented in accordance with the measures of the approved ecological mitigation strategy.
19. Prior to the commencement of each phase of development details of the proposed lighting scheme should be submitted to and approved in writing by the Local Planning Authority.
 - a) The details shall include the location, height, design and luminance and ensure the lighting is designed to minimise the potential loss of amenity caused by light spillage onto adjoining properties. The lighting shall thereafter be installed and operated in accordance with the approved details.
 - b) The scheme should include dark areas and avoid light spill upon bat roost features, boundary hedgerows and trees. The scheme should also include details of: Number and location of proposed luminaires; Luminaire light distribution type; Lamp type, lamp wattage and spectral distribution; Mounting height; Orientation direction; Beam angle; Type of control gear; Proposed lighting regime; and Projected light distribution maps of each lamp. The lighting scheme shall be installed in accordance with the approved details.
20. All trees with bat roost potential as identified by the Peter Destapleigh Way Ecological Addendum Report 857368 (RSK September 2017) shall be retained, unless otherwise agreed in writing by the Local Planning Authority
21. The first reserved matters applications shall include a Design Code for the site and all reserved matters application shall comply with provisions of the Masterplan submitted with the application and the approved Design Code.
22. Prior to the commencement of each phase of development a scheme for landscaping shall be submitted to the Local Planning Authority and approved in writing. The approved landscaping scheme shall include details of any trees and hedgerows to be retained and/or removed, details of the type and location of Tree and Hedge Protection Measures, planting plans of additional planting, written specifications (including cultivation and other operations associated with tree, shrub, hedge or grass establishment), schedules of plants noting species, plant sizes and proposed numbers/densities and an implementation programme.

The landscaping scheme shall be completed in accordance with the following:-

- a) All hard and soft landscaping works shall be completed in full accordance with the approved scheme, within the first planting season following completion of

the development hereby approved, or in accordance with a programme agreed with the Local Planning Authority.

- b) All trees, shrubs and hedge plants supplied shall comply with the requirements of British Standard 3936, Specification for Nursery Stock. All pre-planting site preparation, planting and post-planting maintenance works shall be carried out in accordance with the requirements of British Standard 4428 (1989) Code of Practice for General Landscape Operations (excluding hard surfaces).
 - c) All new tree plantings shall be positioned in accordance with the requirements of Table 3 of British Standard BSD5837: 2005 Trees in Relation to Construction: Recommendations.
 - d) Any trees, shrubs or hedges planted in accordance with this condition which are removed, die, become severely damaged or become seriously diseased within five years of planting shall be replaced within the next planting season by trees, shrubs or hedging plants of similar size and species to those originally required to be planted.
23. An Arboricultural Impact Assessment, Tree Protection Plan and Arboricultural Method Statement in accordance with BS5837:2012 Trees in Relation to Design, Demolition and Construction – Recommendations shall be submitted in support of any reserved matters application which shall evaluate the direct and indirect impact of the development on trees and provide measures for their protection.
 24. No phase of development shall commence until details of the positions, design, materials and type of boundary treatment to be erected have been submitted to and approved in writing by the LPA. No building hereby permitted shall be occupied until the boundary treatment pertaining to that property has been implemented in accordance with the approved details.
 25. The Reserved Matters application for each phase of development shall include details of bin storage or recycling for the properties within that phase. The approved bin storage facilities shall be provided prior to the first occupation of any building.
 26. Notwithstanding the details shown on plan reference no. BIR.3790.09D (September 2012) access to the development herein permitted shall be exclusively from Peter Destapeleigh Way as shown on plan reference no. dwg SK16 Rev C (11 November 2017)
 27. Unless otherwise agreed in writing, none of the dwellings hereby permitted shall be first occupied until access to broadband services has been provided in accordance with an action plan that has previously been submitted to and approved in writing by the LPA.

Appeal B

1. The development hereby approved shall commence within three years of the date of this permission.

2. This permission shall refer to the following drawing numbers unless any other condition attached to the permission indicates otherwise:
 - a. Site Location Plan reference no. BIR.3790_13
 - b. Site Access General Arrangement Plan reference no. SCP/10141/D03/Rev D (May 2015).
3. No development shall commence until there has been submitted to and approved by the LPA a scheme of landscaping and replacement planting for the site indicating inter alia the positions of all existing trees and hedgerows within and around the site, indications of those to be retained, also the number, species, heights on planting and positions of all additional trees, shrubs and bushes to be planted.
4. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the completion of the development whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the landscaping scheme die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species unless the LPA gives written consent to any variation.
5. Prior to the commencement of development or other operations being undertaken on site a scheme for the protection of the retained trees produced in accordance with BS5837:2012 Trees in Relation to Design, Demolition and Construction : Recommendations, which provides for the retention and protection of trees, shrubs and hedges growing on or adjacent to the site, including trees which are the subject of a Tree Preservation Order currently in force, shall be submitted to and approved in writing by the Local Planning Authority.
 - (a) No development or other operations shall take place except in complete accordance with the approved protection scheme.
 - (b) No operations shall be undertaken on site in connection with the development hereby approved (including any tree felling, tree pruning, demolition works, soil moving, temporary access construction and / or widening or any operations involving the use of motorised vehicles or construction machinery) until the protection works required by the approved protection scheme are in place.
 - (c) No excavations for services, storage of materials or machinery, parking of vehicles, deposit or excavation of soil or rubble, lighting of fires or disposal of liquids shall take place within any area designated as being fenced off or otherwise protected in the approved protection scheme.
 - (d) Protective fencing shall be retained intact for the full duration of the development hereby approved and shall not be removed or repositioned without the prior written approval of the Local Planning Authority.
6. No excavations for services, storage of materials or machinery, parking of vehicles, deposit or excavation of soil or rubble, lighting of fires or disposal of liquids shall take place within any area designated as being fenced off or otherwise protected in the approved protection scheme.

7. Prior to development commencing, a detailed Ecological Mitigation strategy including a great crested newt mitigation strategy informed by the recommendations of the submitted Protected Species Impact Assessment and Mitigation Strategy dated MARCH 2013 REVISION) prepared by CES Ecology (CES:969/03-13/JG-FD) shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the measures of the approved ecological mitigation strategy.
8. Prior to any commencement of works between 1st March and 31st August in any year, a detailed survey shall be carried out by a suitably qualified person to check for nesting birds and the results submitted to the LPA. Where nests are found in any building, hedgerow, tree or scrub to be removed (or converted or demolished in the case of buildings), a 4m exclusion zone shall be left around the nest until breeding is complete. Completion of nesting shall be confirmed by a suitably qualified person and a further report submitted to LPA before any further works within the exclusion zone take place.
9. Prior to the commencement of development details of the proposed lighting scheme should be submitted to and approved in writing by the Local Planning Authority. The scheme should include dark areas and avoid light spill upon bat roost features, boundary hedgerows and trees. The scheme should also include details of: Number and location of proposed luminaires; Luminaire light distribution type; Lamp type, lamp wattage and spectral distribution; Mounting height; Orientation direction; Beam angle; Type of control gear; Proposed lighting regime; and Projected light distribution maps of each lamp. The lighting scheme shall be installed in accordance with the approved details.
10. Prior to the commencement of development, and to minimise the impact of the access road on potential wildlife habitat provided by the existing ditch located adjacent to the southern site boundary, the detailed design of the ditch crossing shall be submitted to and approved in writing by the LPA. The access road shall be constructed in full accordance with the approved details.
11. No development shall commence on site unless and until a Deed of variation under s106A TCPA 1990 (as amended) has been entered into in relation to the S106 Agreement dated 20 March 2000 between Jennings Holdings Ltd (1), Ernest Henry Edwards, Rosemarie Lilian Corfield, James Frederick Moss, Irene Moss, John Williams and Jill Barbara Williams (2), Crewe and Nantwich BC (3) and Cheshire County Council (4) to ensure that the Local Nature Conservation Area is delivered, maintained and managed under this permission.



Report to the Secretary of State for Housing, Communities and Local Government

by David L Morgan BA MA (T&CP) MA (Bld Con IoAAS) MRTPI IHBC
an Inspector appointed by the Secretary of State

Date: 14 January 2019

Town and Country Planning Act 1990

Appeals by Muller Property Group

Cheshire East Council

Contents

List of Abbreviations	2
Procedural matters	4
Site and surroundings	6
Planning Policy	7
Planning History	8
The Proposals	10
Other Matters Agreed Between the Parties	12
The Case for the Muller Property Group	13
Appellant's supplementary Comments on the rFramework	26
The Case for the Council	42
Council's supplementary Comments on the rFramework	72
Case for the Interested Parties	81
Written Representations	82
Conditions	83
Planning Obligations	84
Inspector's Conclusions	85
Planning Balance	95
Recommendation	97
Schedule of Conditions	98
Appearances	106
Inquiry Documents	107
Documents Received after the Adjournment of the Inquiry	107
Core Documents	108

List of Abbreviations

5YS	5 year housing land supply
appx	Appendix
AF	Adrian Fisher – 5YS witness for CEC
BMV	Best and most versatile agricultural land
b/p	bullet point
CEC	Cheshire East Council
Cllr	Councillor
CNRLP	Crewe and Nantwich Revised Local Plan 2006
DPD	Development Plan Document
FN	Footnote
FOI	Freedom of Information
GLVIA	Guidelines for Landscape and Visual Assessment (3rd edition)
HMU	Housing Monitoring Update 2017, published Aug 2017 with a base date of assessment at 31/3/17
JB	Jon Berry – landscape architect for Appellants
LCA	landscape character area
LCT	landscape character type
LDS	Local Development Scheme
LHA	Local Highway Authority
LP	Local Plan
LPA	Local Planning Authority
LPI	Local Plan Inspector – Stephen Pratt
LPS	Local Plan Strategy
LPpt2	Emerging Local Plan Part 2 – containing allocations and development management policy synonymous with the SADPPD
LVIA	Landscape and Visual Impact Assessment
MW	Matt Wedderburn – 5YS witness for the Appellant
NP	Neighbourhood Plan
NPPG	National Planning Practice Guidance
OAN	Objectively Assessed Needs (usually housing)
OPP	Outline Planning Permission
PD	Pat Downes – planning witness for Appellant
PoE	Proof of evidence
PP	Planning Permission
PTQC	Paul G Tucker QC – counsel for the Applicants
PPG	Planning Policy Guidance
ReX	re-examination
RfR	reason for refusal
rNPPF	revised National Planning Policy Framework
RJ	Reasoned Justification of the Development Plan
RM	reserved matters
RTQC	Reuben Taylor QC – counsel for LPA
RT	Richard Taylor – planning witness for the LPA
SADPD	the Site Allocations and Development Plan D (aka LP pt2)
SHLAA	strategic housing land availability assessment
SOCG	statement of common ground
SoS	the Secretary of State for the Ministry of Housing Communities and Local Government
SPB	Spatial Planning Board – CEC’s planning committee

SPD Supplementary Planning Document

TA Transportation Assessment – here undertaken by SCP

XC examination in chief

XX cross examination

XX'd cross examined

WB William Booker – the Appellant's highway consultant

WMS Written Ministerial Statement

**Appeal A: File Ref: APP/R0660/A/13/2197532
Land off Audlem Road/Broad Lane, Stapeley, Nantwich,
Cheshire CW5 7DS**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant [outline] planning permission.
- The appeal is made by Mr Carl Davey, Muller Property Group against the decision of Cheshire East Council.
- The application Ref 12/3747N, dated 28 September 2012, was refused by notice dated 16 April 2013.
- The development proposed is Proposed residential development for up to a maximum of 189 dwellings; local centre (Class A1 to A5 inclusive and D1) with a maximum floor area of 1,800 sq.m Gross Internal Area (GIA); employment development (B1b, B1c, B2 and B8) with a maximum floor area of 3,700 sq. m GIA; primary school site; public open space including new village green, children's play area and allotments, green infrastructure including ecological area; access via adjoining site B (see below) and new pedestrian access and associated works.

Summary of Recommendation: that the appeal should be allowed and planning permission should be granted subject to conditions.

**Appeal B: File Ref: APP/R0660/A/13/2197529
Land off Peter de Stapeleigh Way, Nantwich, Cheshire CW5 7HQ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Mr Carl Davey, Muller Property Group against Cheshire East Council.
- The application Ref 12/3746N is dated 28 September 2012.
- The development proposed is Proposed new highway access road, including footways and cycleways and associated works.

Summary of Recommendation: that the appeal should be allowed and planning permission should be granted subject to conditions.

Procedural matters

1. The application to which Appeal A relates was submitted in outline form with all matters reserved except for access. The extent of development is set out in the Design and Access Statement (DAS). An agreed Schedule of Drawings is listed in the Statement of Common Ground (SoCG) appendix X. Appeal B was not determined but Council members resolved that it would have been refused because it would be unsustainable and result in a loss of habitat for protected species and part of an area allocated for tree planting, landscaping and subsequent management, contrary to various policies.
2. Section 106 Agreements were submitted under section 106 of the Town and Country Planning Act 1990 (s106) in respect of both applications. As agreed, signed and dated versions were submitted after the Inquiry closed. All parties had the opportunity to comment on an unsigned though otherwise identical

agreement during the Inquiry. I deal with the contents of the Agreement below.

3. The Inquiry sat for 4 days. I held an accompanied site visit held on 24 February. Evidence regarding housing land supply (HLS) was heard as a round table discussion on Thursday 22 February 2018.
4. This is a redetermination following the quashing of the previous decision of the Secretary of State in the HC.
5. Since the last determination of the appeals the Cheshire East Local Plan Strategy (CELPS) has been formally adopted (20 September 2017).
6. Also since the last determination of the Appeals the Stapley & Batherton Neighbourhood Plan (S&BNP) has also been made following Referendum in February 2018 and now forms part of the Development Plan.
7. Prior To the opening of the Inquiry the appellant submitted a revised layout of the proposals which omitted the proposed access off Audlem Road; this has necessitated an amendment to the description of development to reflect the changes. Whilst such amendments have been considered and accepted by the Council, acknowledged in the SoCG, they had not been the subject of formal consultation in accordance with standing regulations. After the close of the Inquiry this consultation was undertaken by the Appellant, comments collated and submitted to the Planning Inspectorate to an agreed timetable.
8. I have taken the subsequently received comments on the revisions into account whilst writing my report. Having considered the proposed revisions and the commentary on them I conclude that as they represent a diminution in the scope of the proposals and indeed address a number of previously expressed concerns on this aspect of the proposals, it would be appropriate for them to be taken into account in the determination of the appeals. I therefore recommend the Secretary of State duly take them into account in the determination of this case.
9. The revised National Planning Policy Framework (hereafter referred to as the rFramework) was published on the 24 July 2018. In light of the revisions contained therein parties were invited to comment on them insofar as relevant to both appeals. Their responses have been taken into account below.
10. There appear to be different ways of spelling Destapeleigh. I have adopted that used on the application form.
11. Although concerns over highway safety do not form part of the Council's case, given the degree of concern expressed on this matter by other parties at the Inquiry this issue is included in the main issues and is addressed in the reasoning that follows.
12. In accordance with the Town and Country Planning (Pre-commencement Conditions) Regulations 2018 the Appellant was consulted on all the pre-commencement conditions provisionally considered at the Inquiry. They

confirmed in writing that they were content with the terms of each of such conditions and these are therefore included in the report.

The Site and its Surroundings

13. The site is 12.06 hectares of flat agricultural land located to the south of the main built up area of Nantwich. It principally comprises of two fields bounded by native hedgerows with some tree cover within them. There is a field ditch along the northern boundary. The land is currently in agricultural use, primarily arable and some grazing. It is bounded to the north by Peter Destapleigh Way (A5301) and the ecology mitigation/woodland landscape area for the Cronkinson Farm development although the obligations associated with the extant consent and s106 agreement have yet to be met.
14. To the west it is bound by residential properties accessed off Audlem Road, including an approved residential development for 11 dwellings and to the east by the recently constructed residential development. The upper floors and roofs of some of the new properties may be seen from the Appeal Site. The principal length of the southern boundary runs to the south of an existing hedgerow. Part of the site runs further south, adjoining existing residential development to the west.
15. To the north of Peter Destapleigh Way is the Cronkinson Farm residential development. This includes a small parade of five shops including a Co-Operative convenience store and a public house. Pear Tree Primary School and a community hall are also situated within this residential development. To the north of the Cronkinson Farm development is the railway line connecting Nantwich / Crewe / Chester and beyond, with the town centre to the north west.
16. Existing residential development in ribbon form is situated along Audlem Road. It comprises of a mix of properties from different eras. Within this housing is The Globe public house. Bordering the south west of the application site (and accessed off Audlem Road) is Bishops Wood housing development constructed in the 1970's. Audlem Road turns into Broad Lane south of the Bishops Wood cul-de-sac and has ribbon residential development along it as well as Stapeley Broad Lane Primary School further to the south.
17. London Road, an arterial route into Nantwich, is located to the east of the former Stapeley Water Gardens site and there is residential ribbon development to the south of that site. The land between the London Road and the Appeal Site has been infilled by residential development and open space. Further to the south along London Road are more dwellings together with Stapeley Technology Park, a small employment site with a mix of office uses based around the former Stapeley House.
18. There are a number of bus stops in close proximity to the site located off Audlem Road. These bus stops are served by the No. 73 and 51 bus service. These bus services provide direct connections to Nantwich bus station and rail station continuing on to Whitchurch.

19. Nantwich train station is approximately 1.4 km to the north of the site, accessed via Audlem Way and Wellington Road. Nantwich Town Centre is approximately 1.3 km to the north-east of the site, to the north of Nantwich train station. Nantwich Town Centre provides a range of services, facilities and job opportunities. The site is, therefore, well served by a range of services, facilities and public transport opportunities, and comprises a location which is accessible to modes of transport other than the private car.
20. The Appeal B site is approximately 1.71 hectares in size and comprises part of a single field which adjoins Peter Destaplegh Way to the north. The site comprises of a mixture of unmanaged semi-improved grassland, bramble / scrub and a drainage ditch. There are two existing ponds within the site and to the west and south east of the site are areas set aside for Great Crested Newt mitigation. This relates to the Cronkinson Farm development and to the Stapeley Water Gardens scheme.
21. The western and southern boundaries of the site comprise hedgerows interspersed in places with trees. The eastern boundary of the site runs through the centre of the field and will follow the edge of the proposed new highway.
22. Further to the east of the site is recently constructed residential development. To the north of the site beyond Peter Destaplegh Way is a predominantly residential area. To the west of the site are two fields, the built up edge of Nantwich and the A529 Audlem Road which is flanked by development on either side. To the south of the site is the site of the proposed mixed use led development subject to planning appeal APP/R0660/A/13/2197532.
23. The site will connect to the Peter Destaplegh / Pear Tree Field signalised junction in the form of a fourth arm to the signalised junction. The spur for the fourth arm is already in place with signals, street lighting and tactile paving. It is agreed by the parties that this planning permission is, therefore, extant.
24. Planning permission was granted on the 4th January 2001 for the "construction of new access road into Stapeley Water Gardens" (planning application reference: P00/0829). This permission allowed the construction of a carriageway on a north-south alignment similar to that now proposed in this planning application with a connection to the Peter Destaplegh Way / Pear Tree Field highway junction via a fourth arm.

Planning Policy

25. The revised National Planning Policy Framework (the rFramework) was published on the 24 July 2018. Paragraphs 7-14 and 59-76 of the rFramework, together with their attendant footnotes (as paragraph 3 affirms), are particularly relevant to HLS. The rFramework also sets out the position with regard to weight and conformity of existing development plan policies. The PPG confirms that any shortfall in HLS should be made up over the next 5 years.

26. The Development Plan for Cheshire East comprises for the purpose of the appeals the recently adopted Cheshire East Local Plan Strategy 2010 - 2030, and the saved policies from Crewe and Nantwich Replacement Local Plan (February 2005). The relevant policies from each of the plans considered relevant are set out in the Planning SoCG¹.
27. As a result of a Referendum held on the 15 February 2018 the Stapley & Batherton Neighbourhood Plan was approved and consequently is now considered 'made', and thus now forms part of the Development Plan.
28. The Planning SoCG also identifies the following as material planning policy considerations: Interim Planning Statement: Affordable Housing (Feb 2011), Strategic Market Housing Assessment (SHMA), Strategic Market Land Availability Assessment (SHLAA), Article 12 (1) of the EC Habitats Directive and the Conservation of Habitats and Species Regulations 2010.
29. High Court cases referred to include Suffolk Coastal Appeal Court Judgement², Suffolk Coastal Supreme Court³, St Modwen Appeal Court Judgment⁴, and the Shavington High Court Judgement⁵.

Planning history

30. The planning application for Appeal A scheme was submitted to the Council in September 2012 and it was registered on 9th October 2012. It was assigned planning application reference number 12/3747N. The application was determined at Committee on 3rd April 2013 and was refused planning permission by Members in accordance with the planning officer's recommendation⁶.
31. The original appeal was considered at a public local inquiry between 18th and 21st of February 2014 in association with Appeal B. Both appeals were recovered by the Secretary of State following the close of the public inquiry. The inquiry Inspector recommended in his report dated 18th June 2014 that planning permission be granted for both appeals but in his decision letter dated 17th March 2015, the Secretary of State rejected this Inspector's recommendation and refused both appeals. (The '**Original Decision**') The Original Decision of the Secretary of State was subject to an application to the High Court and was subsequently quashed by order of the court dated 3rd July 2015. The appeals were, accordingly, re-determined by the Secretary of State and he issued a new decision on 11th August 2016. (The '**Second Decision**').
32. In the Second Decision the Secretary of State refused planning permission Appeal A on two grounds, the first being that, '*the proposals would cause*

¹ Paragraph 5.1 ID2.

² CDQ1.

³ CD C12.

⁴ CDQ2

⁵ [2018] EWC 2906 (Admin) Case Number: CO/1032/2018.

⁶ CD K2

harm to the character and appearance of the open countryside, for the reasons at Paragraph 27 to 28 above. This harm will be in conflict with Paragraph 7 and the fifth and seventh bullet points of Paragraph 17 of the Framework. Having given careful consideration to the evidence to the inquiry, the Inspector's conclusions and the parties' subsequent representations, the Secretary of State considers that the harm to the character and appearance of the open countryside should carry considerable weight against the proposals in this case. He further considers that the loss of BMV land is in conflict with Paragraph 112 of the Framework and carries moderate weight against the proposals for the reasons given at Paragraphs 31 to 34 above.

33. *The Secretary of State concludes that the environmental dimension of sustainable development is not met due to the identified harm, especially to the character and appearance of the countryside. He concludes that the development does not deliver all three dimensions of sustainable development jointly and simultaneously, and is therefore not sustainable development overall.*
34. *For the reasons given above, the Secretary of State concludes that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies and the Framework taken as a whole.'*
35. The Second Decision was challenged by the Appellant and in a Consent Order issued by the High Court on 14th March 2017 the Second Decision was also quashed. In the letter of 12th April 2017 from DCLG confirming that the Second Decision had been quashed, the Secretary of State invited further representations in respect of the following matters:
 - a) Progress of the Emerging Cheshire East Local Plan Strategy;
 - b) The current position regarding the five year supply of deliverable housing sites in the Council's area;
 - c) Any material change in circumstances, fact or policy, that may have arisen since the decision of 11th August 2016 was issued and which the parties consider to be material to the Secretary of State's further consideration of this application.
36. Having requested that written representations be submitted in respect of these matters, the Secretary of State determined that, in the light of representations received the inquiry should be re-opened, by way of correspondence dated 3rd August 2017.
37. The purpose of the planning application for the Appeal B scheme was to provide access to the adjoining mixed use proposal that is subject to Appeal A. Originally, Appeal A had a separate access arrangement but it is now agreed between the parties that the Appeal Site A should be accessed solely from Appeal Site B and the original access arrangements suggested for Appeal Site A (via Audlem Road / Broad Lane) are no longer pursued. Thus, Appeal Site A falls to be determined on the basis that access will be achieved through Appeal Site B alone. The process by which this is to be achieved is explained in Section 3 below.

38. The planning application for the Appeal B scheme was submitted to Cheshire East Council in September 2012. It was registered by the authority on 5th October 2012. The target date for the determination was 30th November 2012 but the application was not determined prior to the appeal being lodged.
39. The process by which the Appeal B scheme was determined by the Secretary of State is the same as for Appeal A above. The appeal will be heard alongside Appeal A. It is agreed that the merits of the two appeals stand or fall together.

The proposals

40. The details are confirmed in the Planning SoCG. The concept for Appeal A is also set out in the Design and Access Statement (DAS)⁷. Most of the houses would be on the western side of the site. On the eastern side, linking in with the new highway access road in Appeal B, would be land for employment, public open space including a new village green with an equipped play area, a local centre and a primary school. Allotments would back onto the existing houses to the west. The DAS confirms the amount of development as 189 dwellings at an average density of just over 30 dwellings per hectare with up to 57 affordable dwellings in a series of clusters.
41. These would comprise five elements as follows:
 - Parcel 1 is on the northwest side of the site and could contain up to 51 dwellings.
 - Parcel 2 is located to its south and could have up to 62 dwellings.
 - Parcel 3 is to the south of the employment area could deliver 15 dwellings.
 - Parcel 4 is along the main southern boundary and could contain up to 36 dwellings.
 - Parcel 5 is on the eastern side of application site and could provide up to 25 dwellings.
42. The application proposals will be a mix of 2, 3, 4 and 5 bedroom dwellings. The affordable housing mix would be based on 2 and 3 bedroom homes, split between 35% intermediate tenure for sale and 65% social rented. The total affordable housing provision represents 30% of the total number of units. Parcel 5 forms part of a new village centre. Located around a village square and adjoining the village green, the residential element forms the eastern side of the village centre with the new primary school site and local centre forming the western side. The village green will have both general open space (with appropriate pathways and street furniture sited on the edges) and a children's equipped play area in the form of a LEAP. The primary school site will be reserved for future education expansion.
43. The local centre comprises of up to 1,800 sq m (19,375 sq ft) and would accommodate a range of uses. It is envisaged that the local centre will

⁷ CD H12.

A9.31

comprise of 8 – 10 separate units with a single A1 unit of 1,000 sq m (10,764 sq ft) and the remaining floorspace split between units ranging from 50 sq m to 150 sq m (538 sq ft to 1,615 sq ft). The employment accommodation is situated adjacent to the local centre. Comprising of 3,700 sq m (39,826 sq ft) in total, it is envisaged this will be divided into units based on 100 sq m (1,076 sq ft). 2.7 Located on the south western side of the application site is an allotment area of 0.5 hectares. The allotments will be available to both new and existing residents. The provision of open space will be controlled by planning conditions.

44. In addition to the public open space there are two principal interlinked areas of green infrastructure. The first is along the northern boundary in the vicinity of the new village centre and the employment area. This will include the planting of a new hedgerow. At its western end, it connects to the second principal green infrastructure area which runs on a north-south axis to the east of residential parcels 1 and 2. This reflects an existing mature hedgerow.
45. The development would include a pedestrian/cycle network which, taken with its close proximity to the established community, would be intended to provide safe, direct, convenient and interesting routes through the site. The single vehicular access now proposed utilises the putative infrastructure already established on Peter Destapeleigh Way. This is now supported with linkages to the new realigned access road giving access to the greater site. This in effect comprises Appeal B, which differ from the extant and part implemented scheme previously granted planning permission⁸.
46. Appeal B proposes an access onto Peter Destapeleigh Way at its junction with the Pear Tree Field signalised junction in the form of a fourth arm to the signalised junction. The application subject to Appeal B is similar in nature to the approved scheme (P00/0829) for access on this site, albeit with some amendments. The spur of the fourth arm is already in place with signals, street lighting and tactile paving.
47. Planning permission was granted on the 4th January 2001 for the “construction of a new access road into Stapeley Water Gardens” (planning application reference P00/0829). This permission allowed the construction of a carriageway on a north – south alignment, similar to that now proposed as part of Appeal B. The spur of the fourth arm junction has been constructed so that the permission has been implemented. A copy of the correspondence from CEC which confirms this position is in the Core Document List (CD E2).
48. Appeal B is similar in nature to the extant scheme, albeit with some minor amendments. Appeal B realigns the road further east in order to create a direct route into the land to the south, subject to Appeal A. The position of the roundabout has also been relocated further south. A plan showing the road layout for the extant scheme, Appeal B and a composite plan showing Appeal B overlaid on the approved scheme is included in the appeal documents.

⁸ Planning application ref. P00/0829

Other matters agreed between the Parties

49. The parties have also agreed a Sustainability Analysis⁹ in relation to key facilities and services in the context of the site, which include:
- Primary Schools – Pear Tree Primary School, St Annes Catholic Primary School and Stapeley Primary School;
 - Secondary Schools – Brine Leas Secondary School;
 - Health Facilities – Kiltearn Medical Centre, a pharmacy and numerous dentists;
 - Retail – Morrisons Supermarket, Coop Convenience Store and numerous non-food retail units located to the south of Nantwich; and Public Transport Facilities – Nantwich Railway Station and numerous bus stops
50. The site has been assessed against the North West Sustainability Toolkit. Whilst some of the distances vary slightly between the Appellant's assessment, the Council concluded in the committee report to the original application that *'on the basis of the above assessment the proposal does appear to be generally sustainable in purely locational terms'*. The Council has reaffirmed this position in the report to committee of 22nd November 2017.
51. In terms of connectivity to higher order centres, Crewe lies 6.4 km (4 miles) to the north east of Nantwich and Newcastle-under-Lyme is 21 km (13 miles) to the east. These settlements have employment, advanced educational facilities, retail, leisure and entertainment venues. These settlements can be accessed via a variety of routes, which avoid the town centre. These include Broad Lane, London Road and Newcastle road.
52. In addition to the topics set out above further additional matters are agreed between the parties;
- The original planning permission in respect of appeal B is acknowledged as extant by CEC (P00/0829). It, therefore, represents a fall-back position.
 - Access to Appeal Site A will only be achieved through Appeal Site B if Appeal A is allowed.
 - Since it is no longer necessary to access the site via Audlem Road / Broad Lane, the masterplan and the red line area for Appeal A can be amended. This reduces the extent of Appeal Site A. The parties agree that updated plans L9 should now form part of the Appeal Scheme A if planning permission is granted.
 - It is agreed that 25% of the aggregated sites constitute best and most versatile land 6% of the site is grade 2 and 19% of the site is grade 3a.
 - It is agreed that there is no reason to resist the scheme in terms of ecology and that a suitable mitigation package can be provided as part of the proposed planning obligation under s.106.

⁹ 4.13 Planning SoCG ID2.

- It is agreed that there are no technical reasons to resist a development in terms of highways, drainage, residential amenity and environmental health matters.
 - The Council's Landscape Officer does not consider that the proposals will have a significantly adverse landscape impact.
53. The Housing Land Supply SoCG also covers other significant areas of agreement. This advises that: the LPA's current position on 5 year HLS is set out in the Housing Monitoring Update published August 2017, base date 31st March 2017; the Housing Monitoring Update takes the housing requirement of 1,800 dwellings per annum set out in the Cheshire East Local Plan Strategy (LPS) as the relevant housing target for the calculation of 5 year HLS; The Housing Monitoring Update has a base date of 31st March 2017. The relevant five year period in HMU is therefore 1st April 2017 to 31st March 2022; that the backlog should be calculated over the plan period to date (1 April 2010 – 31 March 2017) and amounts to 5,365 dwellings and that in accordance with paragraph 47 of the first published version of the NPPF it is agreed that it is necessary to apply a 20% buffer, reflecting persistent under-delivery against the housing requirement.
54. Paragraph 73 of the rFramework revises the format of applying the buffer to the requirement, indicating a range of percentages to be applied in different scenarios. This matter is addressed in detail through each party's submissions in relation to the rFramework NPPF below.

The Case for the Muller Property Group

55. At the time that these proposals were submitted almost 5.5 years ago, there was no Local Plan Strategy in place, and CEC at the time undoubtedly couldn't demonstrate a 5YS. As matters stand now, whilst the LPS is now in place, the next part of the Local Plan, which considers the merits of non-strategic allocations and which will review settlement boundaries, is still a long way from adoption. Of more concern is that CEC are still lack a sense of urgency about the need to bring forward additional housing in sustainable locations now, despite two recent appeals which have concluded that a 5YS cannot be demonstrated. And despite the fact that even on its best case that CEC has only a marginally above 5 years supply. In fact for the reasons articulated in evidence by the appellant, CEC has significantly less than 5YS of deliverable housing, and this site is needed now.
56. Thus, residential development on this site was originally recommended for refusal but was refused by members at a time when there was no plan and no 5YS. Then, after appeal it was recommend for grant by an Inspector when there was no plan and no 5YS. It was refused by the SOS whose decision was then quashed, re-determined only to be quashed in the High Court again both when there was no plan and no 5YS. In the same month that the LPS was adopted instead of re-determining the appeal the SOS decided to reopen this inquiry. That was a disappointment to the Appellant, however ironically it has provided the opportunity for the SOS to determine the appeal based upon a properly robust scrutiny of CEC's housing supply. Back in July 2017 CEC were robustly contending that their assessment of 5YS had been

endorsed by the LPI who had concluded that CEC should have a 5YS on adoption, however his conclusions were caveated with the following warning:

"Much will depend on whether the committed and proposed housing sites come forward in line with the anticipated timescale and amended housing trajectory."

57. The essential reason why two Inspectors concluded that there was not a robust 5YS after two inquiries in 2017 was that the 2017 HMU, published at the end of August 2017 demonstrated that the anticipated delivery rates for last year (ie 2016/17) were significantly below those being put to the LPI, demonstrating a failure in the first year after the period being assessed by the LPI. Predictive exercises tend to become less accurate the further one looks into the future. Here the prediction being put forward by a combination of private sector evidence being put to the examination and the application of the LPA's standard methodology on lead in times and build rates has gone wrong immediately. Moreover there is strong evidence to conclude that has gone wrong in relation to 2017/18 as well.
58. It is notable that the LPI concluded that CEC should be able to demonstrate a 5YS on adoption. Had he known about the substantial under-delivery when compared to the trajectory he endorsed in the LP, then he would plainly have been far more circumspect. As was put in cross examination, based on what we now know to have been the actual delivery in 2016/17, then the supply position before the LPI was that CEC couldn't demonstrate a 5YS based on their own trajectory. It was for that reason that CEC sought to downplay the importance of the trajectory as predictive tool for assessing the overall realism of CEC's claimed supply (past and future). The problem with that is not only that it was based upon an erroneous understanding of the St Modwen case (see below), and that it is at odds with the role of a housing trajectory in national guidance and policy, but most importantly, it ignores the fact that the housing trajectory in CEC was the yardstick that the LPI uses to gauge whether or not the supply position in CEC is realistic.
59. Properly understood CEC cannot demonstrate a robust 5YS and their anticipated delivery rates claimed before the LPI are untenable. Yet instead of reacting to the recent appeals with an immediate reassessment of its standard methodology on build rates and lead in times and an immediate sense check of likely delivery from its various components of supply CEC has instead done a further trawl of agents/developers to try to make good its evidential deficit, it has sought to down play quite how wrong its LP trajectory was, and how implausible its HMU trajectory is. It now contends that the Park Road Inspector got the supply figure wrong by well over 1000 units.
60. This mixed use scheme brings benefits which are diverse and considerable – ie not simply the provision of much needed homes, but deliverable commercial development which will provide opportunities for local businesses and for the local population, which will result in a sustainable pattern of development, as well as a small local centre which will meet the needs of both the proposed housing and employment but also recently consented housing which is being constructed nearby. The reality of the position is that

the appeal proposals are a sustainable form of development and that the only objection to them is the in principle one that the proposals are an unjustified incursion into the countryside beyond the settlement boundary. Contrary to that position the development is plainly needed now, the tilted balance is engaged and there are no adverse effects which significantly and demonstrably outweigh the benefits.

5 year land supply

61. For the reasons explained in evidence the issue of 5YS is not a determinative one in relation to the outcome of this appeal. Even if the LPA were to be able to just demonstrate a 5YS then it is firmly submitted that the appeals should still be allowed, since on the LPA's best case the position is a marginal one given its substantial under-delivery compared to the position endorsed by the LPI.
62. However on the evidence, it is clear that CEC cannot demonstrate a robust 5YS and therefore paragraph 11 (by means of footnote 7) is triggered. Prior to the exchange of evidence the Appellant invited CEC to agree to this appeal being determined on the same basis as the Park Road Inspector ie that there is a range which is just above or just below 5 years but the LPA can't demonstrate a robust 5YS therefore the presumption is triggered. This was thought to be a proportionate course of action, mindful that consistency in decision making is a material consideration of considerable importance. CEC declined this invitation.

Planning Policy Guidance context

63. Before turning to the detail of the current land supply position in Cheshire East, it is worth setting out the correct approach to guidance covering the subject; the provisions in the PPG supplement the NPPF and, do not have the same status as NPPF policy. Of most relevance to this appeal are 3-031 and 3-03311. From those paragraphs the following points arise:
 - a. Deliverable sites include those with permissions in the LP, unless there is clear evidence that the site won't be implemented within 5 years. From this:
 - i. Once a site is included as deliverable then there remains a requirement to assess the likely yield from sites with permission or an allocation. It is simply wrong to say, as the Council does in closing at paragraphs 31 and 32, that an assessment of yield is not required. PPG 3-031 is clear the "robust, up to date evidence" is required on the deliverability – i.e. the yield. It is difficult to see how an assessment of supply can be undertaken if that an assessment of yield is not undertaken. On AF's approach the decision maker would be obliged to accept the LPA's judgments when assessing delivery from sites with an allocation or permission, absent contrary evidence. However this is no more than an approach to assessing yield which –without policy support– presumes that the Council is always right. Not only is that not supported in policy it belies the repeatedly experience of this particular LPA's predictive ability over many years.

- ii. This means that sites with PP are presumed to be deliverable unless there is evidence to the contrary. It does not mean that if a site has planning permission, then there is a rebuttable presumption that its yield is whatever the Council says it will be.
 - iii. This approach does not include allocated sites with the presumption that they are to be treated as deliverable, but the PPG does. There may be an interesting question at some future point in time as to whether that makes any difference, but in this case there is almost no dispute as to which sites are the ones which are considered to be deliverable – the dispute revolves around the likely yield from those sites.
- b. When assessing whether a site should be included in the 5YS and the yield from that site, the decision maker must consider the time it will take to commence development (lead in time) and the build out rate.
- c. The PPG makes clear (3-033, paragraph 2) that the yield of sites as well as the deliverability of sites forms part of the annual assessment of the 5YS that the LPA is required to conduct. It self-evidently points out to an authority that deliverability and then likely yield are two separate exercises.
- d. If an LPA does the following, then it will be able to demonstrate a 5YS (from PPG 3-033):
- i. A robust annual assessment;
 - ii. A timely annual assessment;
 - iii. Using up to date and sound evidence;
 - iv. Considering the proposed and actual trajectory of sites in the supply;
 - v. Considering the risks to a proposed yield;
 - vi. Include an assessment of the local delivery record;
 - vii. All of the above assessments must be realistic; and,
 - viii. The approach must be thorough.
64. Drawing all of this together, it is not right to suggest that Inspectors in the Park Road and White Moss cases were wrong and that there is no requirement on the Council that their assessment of the 5YS is robust. The questions seemed to be put on the basis that the word “robust” is not included in the NPPF. This cannot possibly be correct. The language of the PPG (as above) clearly indicates that the LPA must demonstrate a 5YS – within that the evidence must be sound and it must stand up to scrutiny. If the Council’s approach was right (which no Inspector has to our knowledge endorsed) then Appellants up and down the country have been wasting time and money arguing contrary land supply positions; provided the Council can show some sort of evidence that would suffice.
65. CEC advanced an argument that when trying to assess the yield from a site, that the correct test was the capability of the site to deliver the expected numbers, and not the probability. His basis for this argument was paragraph 38 of *St Modwen*. This is, simply put, wrong and counter to common sense.

66. CEC fell into the trap that Lindblom LJ was warning decision makers of in paragraph 39 of the same judgment:

One must keep in mind here the different considerations that apply to development control decision-making on the one hand and plan-making and monitoring on the other. The production of the "housing trajectory" referred to in the fourth bullet point of paragraph 47 is an exercise required in the course of the preparation of a local plan, and will assist the local planning authority in monitoring the delivery of housing against the plan strategy; it is described as "a housing trajectory for the plan period " (my emphasis). Likewise, the "housing implementation strategy" referred to in the same bullet point, whose purpose is to describe how the local planning authority "will maintain delivery of a five-year supply of housing land to meet their housing target" is a strategy that will inform the preparation of a plan. The policy in paragraph 49 is a development control policy. It guides the decision-maker in the handling of local plan policies when determining an application for planning permission, warning of the potential consequences under paragraph 14 of the NPPF if relevant policies of the development plan are out-of-date. And it does so against the requirement that the local planning authority must be able to "demonstrate a five-year supply of deliverable housing sites", not against the requirement that the authority must "illustrate the expected rate of housing delivery through a housing trajectory for the plan period".

67. CEC were unable to say whether or not they were identifying the "likely yield", the "possible yield" or the "almost certain yield" from the sites assessed. This from an apprehension not to give up the interpretation of the St Modwen case in which they failed to understand that the case revolved around the meaning of the term "deliverable"— a point which just doesn't arise in this case. This inability to explain the yield from sites within 5 years fundamentally undermines the utility of his exercise and means that it is not comparable to the appellant's approach to "probable yield". If CEC's position is merely what the site is "capable of delivering" then it is bound to be higher than what is probable and therefore betrays a fundamental error on the part of CEC which may explain why the LPA's predictive ability has proven to be wrong.

68. On the application of the above analysis, the following points are agreed:

- It is agreed that the requirement is 1800 dpa.
- The agreed five year period runs from 31 March 2017 (the base date of HMU) to 31 March 2022.
- The agreed backlog in delivery between 2010 and 2017 amounts to 5635 dwellings, which equates to 3 years of the overall requirement for the first 7 years of the plan.
- It is agreed that a 20% buffer applies in relation to paragraph 47 of the Framework and that 10% applies in relation to paragraph 73 of the rFramework, if appropriate.

69. From the examination of the sites claimed to be within the supply the following is clear:
- i. The appellant's assessment of the sites the Council seeks to include in the supply are identified in evidence. A number are drawn-out to illustrate the key arguments against the sites being included in the supply to the extent claimed by the Council:
 - ii. LPS 1 and the Crewe opportunity area is not a "*specific deliverable site*" in NPPF§47 terms and should not be included within the supply.
 - iii. The Appellant's assessment of lead in times to construction in Cheshire East (Appendix MW 6) the following should be applied – 1 year from submission to the grant of outline permission; 1 year to a reserved matters application; 6 months to determine the reserved matters application; and, one year to the completion of the first dwelling. This is a total lead in time of 3.5 years. This is vital to deciding what is in the supply as it allows for an assessment of yield. Unlike CEC's standard methodology for lead in times and build rates, MW's evidence is transparently evidenced and is palpably more reliable than CEC's "black box" approach. Thus, whilst MW accepts these conclusions on average lead in times can be rebutted by specific evidence, it requires sound, realistic and up to date evidence (see para 2.5(d) above and PPG 3-033). No such evidence was forthcoming from the Council. Instead the Council offered a partial assessment of lead in times from a self-serving data set in Mr Fisher's rebuttal proof of evidence (Appendix 2). Mr Fisher's assessment is partial as it completely fails to take into account sites started before the adoption of the LPS and the lead in times between application and between construction starting and the first unit emerging from the ground (conceded by Mr Fisher XX).
 - iv. Despite the policy requirements in the Framework/rFramework and PPG (see paragraph 2.4 and 2.5 above), Mr Fisher thought it appropriate for the Council to make assumptions about sites being delivered by multiple builders without any supporting evidence. Whilst that may be a correct statement that doesn't mean it comprises evidence! The Secretary of State cannot as a matter of law (given the clear interpretation of policy and guidance above) adopt this approach when evidence not an aphorism is needed. If the Council cannot produce evidence to support their assumptions on build rates, yield or commencement timelines then the Secretary of State must prefer the reasoned and evidenced approach put forward by the Appellant, which precisely mirrors the concerns of the last 2 inspectors to consider this topic in detail. Indeed Mr Fisher continued to make unsubstantiated assertions – "*we increasingly see single builders doing 50+ units a year on a site*". The Council's own assessment of build out rates in the 2017 HMU (Appendix MW17) does not support Mr Fisher's statement. Statements such as this cannot be given any weight when the Council's only evidence does not support them.

- v. The 'sense check' for the use of the LPA's standard methodology as to lead in times and build rates is what it has predicted will be delivered and what has actually been delivered. As noted below the prediction for 2016/17 in the LP trajectory of 2955 (presumably based on the optimism of those making representations to the hearing) has proven to be groundless, and this year looks set to be similarly wrong compared to the LP and the HMU trajectory.
- vi. MW and the Inspectors in the WMQ¹⁰ and Willaston¹¹ inquiries are in agreement on the yield from many of the sites. Mindful of the materiality of consistency of decision making, the SOS should be slow to deviate from those conclusions without the clearest possible evidence for so doing (the sites are noted in Appendix MW4), with respect AF asserting that he thinks that the Inspector's got it wrong is not a such a reason.
- vii. AF at one point made the bold point that both Mr Inspector Rose in the White Moss Quarry ("WMQ") inquiry¹² and Mr Inspector Hayden in the Willaston inquiry¹³ both fell into serious error by concluding that a 5YS could not be demonstrated having concluded that the supply was either just above or just below 5 years. Whilst the language used was that of 'precaution', in fact both Inspectors reached an orthodox conclusion with regard to paragraph 47¹⁴, having determined that the supply was within that range. Thus, the conclusion reached by those senior Inspectors was that they were unable to determine with confidence that the Council had a 5YS. That means no more than that they could not be satisfied that the LPA could demonstrate that it had a deliverable 5YS. Therefore they approached the evidence on the assumption that Framework paragraphs 49 and 14 were engaged – deciding those appeals using the tilted balance. Both Inspectors' reasons were impeccable.

It was notable by its absence in relation to the sites where MW allies himself with the conclusions of those previous Inspectors' that time and again the Council failed to bring forward evidence to rebut the Inspectors' conclusions, reached after an exhaustive analysis of the evidence before them, in those inquiries from 8 November 2017.¹⁵

Even if the Council is correct on their least attractive argument that they are not required by policy to rely upon "robust" evidence to demonstrate a 5YS, they nonetheless are forced to accept that these appeal decisions are material considerations. Furthermore they accepted in XX the fundamental importance of the consistency of

¹⁰ C.D29 Appendix MW1.

¹¹ CD D29 Appendix MW2 at [103].

¹² Ibid.

¹³ Ibid.

¹⁴ Subsequently paragraph 11 incorporating footnote 7.

¹⁵ CD29 / Appendix MW1 at [28] – [59] and Willaston - CD D29 / Appendix MW2 at [58]– [89]).

decision taking, and that the Secretary of State in this appeal would need to give reasons (and therefore have supporting evidence) for deviating from those decisions. Whilst this is trite law, it makes it all the more baffling that having accepted those principles, they failed to produce any evidence to properly rebut conclusions of the WMQ and Willaston Inspectors.

The Council has comprehensively failed on both counts – they have failed to produce robust evidence to demonstrate a 5YS; and, they have not produced any evidence to rebut the Inspectors' conclusions in the early appeals, either evidence arriving post those decisions or to explain why those Inspectors got it wrong. Instead they continue to rely upon the approach in the LPS, the same arguments that failed in the WMQ and Willaston inquiries.

- viii. What is interesting is to consider the predictive confidence with which sites were said to be on the verge of progressing in the HMU in August 2017 and then again at inquiries in late 2017, but where there has been yet further slippage. Time and again sites where applications were on the verge of being made haven't resulted in applications (e.g. the promise in the Park Road inquiry made by AF that the Handforth Growth Village application would be lodged in January, when there is still not even a masterplan in the public domain in March let alone an application), and for sites where applications were on the verge of determination then they remain on the verge of determination (e.g. the reserved matters application on White Moss phase 1).
- ix. The Council has adopted a hybrid "Sedgepool 8" approach to addressing its backlog. Mr Fisher sought to explain the approach as meaning that the 8 year period rolled forward throughout the plan period. This approach runs counter to the specific conclusions on the matter by the Local Plan Inspector¹⁶. The LP Inspector concludes at paragraph 72:

*"CEC therefore proposes to fully meet the past under-delivery of housing **within the next 8 years** of the Plan period ("Sedgepool 8"). This would require some 2,940 dw/yr (including buffer) over the next 5 years, which would be ambitious but realistic and deliverable, as well as boosting housing supply without needing further site allocations."*

It is plain from this part of the LP Inspector's report that he envisioned the Council meeting its under-delivery in the first 8 years of the Plan – i.e. by April 2024. As Mr Wedderburn made clear, Sedgepool 8 is not Sedgefield, it is unique to Cheshire East. In the absence of an accepted approach that everyone understands, Sedgefield or Liverpool, the words of the LP Inspector carry a great deal of significance as the only direction for how this unique

A9.41

methodology should be applied. Had the Inspector wanted the 8 year period in Sedgpool 8 to have rolled forward, he would have explicitly said so. Not to do so in effect means that the backlog keeps getting rolled ever forward, at least on the Liverpool method the backlog has to be addressed within the LP period. Thus if Sedgpool 8 means rolling the shortfall forward over a perpetually rolling 8 year period then it will be a longer period than the Liverpool methodology, if it means doing so until the 8 years hits the end of the plan period then it is the Liverpool methodology by stealth – either way it is a distortion of the grace afforded by the LPI to deal with the shortfall within the next 8 years. It is of course recognised that the Park Road Inspector didn't agree with this argument – but his argument was based upon giving the Council some leeway in the early years after adoption of the plan. With respect that is not grappling with the issue properly, and the SOS is therefore respectfully invited to do so.

- x. Instead of the high delivery rates that were contended for as being realistic before the LPI (evidenced by the LP trajectory and noted by the LPI at paragraph 72 of his report) delivery rates thus far are well below those needed by CEC to plausibly claim a robust 5YS. To use a different metaphor, wheels have come off the Cheshire East Local Plan Strategy (“CELPS”) in the first year after that assessed by the LPI. As at the base date of 1/4/17, it has under-delivered by 5365 units (equating to a deficit of 3 years of the requirement in the first 7 years of the plan), already.
- xi. The LP trajectory identifies that to secure a 5YS the LPA needs to deliver 2466dpa each year from 1/4/17. That figure is comparable under the HMU because the rolling Sedgfield 8 lets the LPA off the hook from not reducing a single unit from its shortfall last year (1796 – essentially equating the requirement but not eroding the shortfall at all – which is still then spread over the next 8 years). AF projects in his evidence that this year there will be delivery of 2000 units based on current information – which means delivery way below the ~2500 figure needed each year for the next 5 and pushing back meeting the shortfall by yet another year. In the real world this is woeful under-delivery and yet AF sought to argue it as if things were on-track.

Mr Fisher accepted that the LP Inspector put weight on the anticipated delivery described in the LP trajectory¹⁷. However, he somewhat inexplicably sought to argue against the 2955 figure being CEC's realistic prediction on the basis that there was no adopted plan during the first 3 years of the plan period – something the LP Inspector would have been well aware.

The only sensible conclusion is that the LP Inspector saw Sedgpool 8 as meeting the undersupply by 2024, and therefore having rolled the base date forward by one year the shortfall should be met within the

¹⁷ CD A40 paragraph 68.

A9.42

next 7 years resulting in an annual requirement (including shortfall) of 2955. On this basis alone CEC cannot demonstrate a 5YS.

70. The yardstick of the LPA's judgment is of course its own predictive ability, and in this case it has been found wanting in the starkest possible terms within the first year of the period considered by Inspector Pratt. The figures could not be more telling, contrasting the case being put last year before Inspector Pratt and that being put this year at this inquiry. Thus comparing the trajectory at the end of the 2016 Housing Topic Paper, which might usefully be considered to be its 2016 HMU against the trajectory at the back of the HMU, the following obvious points can be made:
- (i) in the 2016 HMU, the LP predicted that its delivery for 2016/17 would be 2955, in fact it was 1762 (ie 40% less than it predicted and told Mr Inspector Pratt). Even if the target was 246617 as AF now maintains, that is still 27% below the level it should have been;
 - (ii) both AF and MW provide evidence which triangulates upon around 2000 units as the likely delivery in 2017/18, against a requirement of 2466 on AF's case or 2955, which is either 19% or 32% below where it should be. That is also 2 years out of the 5 years considered by Inspector Pratt where the prediction of the LPA has failed – one wonders at what point the LPA go back to re-read the serious caution that Inspector Pratt issued in paragraph 68 of his final report?
 - (iii) in the 2017 HMU it predicts that delivery in 2017/18 will be 3373, which is double that actually achieved in 2016/17 (1762), and is way above any trendline of delivery. It is also 33% higher than CEC were predicting would be delivered in 2017/18 in its 2016 HMU (which predicted 2549 being delivered). In fact it is likely to be around 2000 units. That difference alone should lead anyone to seriously question whether its predictive methodology is flawed;
 - (iv) other figures for the 5 year period under consideration at this inquiry (ie 5 years from 1/4/17) also vary wildly from the 2016 HMU to the 2017 HMU; for example in 2016 it was predicted that 2019/20 would deliver 3,501 but in 2017 it is predicted that it will be only 3032;
 - (v) both trajectories (the LP and the HMU 2017) reveal that in no year has the LPA ever achieved its requirement (1800 pa) in the seven years since the plan started (2010), which means that year on year the backlog has been increasing until it is now the equivalent of 3 years supply. Had delivery taken place as planned in 2016/17 the backlog would have reduced by 1155 units, as it is, it has increased and is not now proposed to be removed for a further 8 years despite it relating to need arising now;
 - (vi) to be blunt, both trajectories have an air of unreality to them since both are predicated on an immediate and dramatic upturn in delivery – ie they assume imminent delivery way in excess of past delivery rates for a decade after which delivery rates will once again fall back

A9.43

to pre-2017 rates. The LPA's case was tough before the LPI but is now implausible. In order to achieve a 5YS now it needs to take a far more positive attitude to the release of deliverable sites without land use constraints in sustainable locations, and not to assume an ever more ostrich-like approach to what has actually taken place compared to its predictions since Inspector Pratt's assessment based on a base-date of April 2016.

(vii) Importantly, the failure of the LPA's predictive ability has been in the first year of delivery – if a plan fails that badly, this early the need for intervention is acute. There is no warrant to give the plan a bit more time to play out – the need for action is an immediate one and is overwhelming on the evidence. It is depressing that having been told that implicitly by two Inspectors that CEC are trying ever harder to man the bilge pumps on their own private Titanic that is their claimed 5YS.

71. The supply of housing land is not a ceiling and given the current state of affairs in this LPA, they should be actively searching out new sites with manageable planning harms to come forward. The Council's closing submissions (paragraphs 63 – 67) argues that permitting this site would reduce the allocations going forward to meet more local needs. This argument is wafer thin, and completely unsupported by any evidence provided at the inquiry. The figures contained in a local plan (including CELPS where this point is recognised at 8.73) are a floor and not a ceiling, and there is no support in policy or evidence to support this argument. Given there are no technical objections to this appeal site, its locationally sustainable and its intrinsic merits have already been endorsed by one Inspector (in the context of there being an immediate need), it is an obvious candidate to come forward now to help this Council meet its needs and to help to address its already significant under supply.
72. The Council's closing go on to say that if the SoS concludes that the LPA has failed to demonstrate a 5YS, then settlement boundaries will need to flex, but it contends that it should not be at this site (paragraph 153). This approach shies away from meeting an immediate problem. This approach has no founding in policy; it suggests that some sort of sequential test should be applied when a 5 year housing land supply problem arises. The appropriate approach is to consider whether or not the development being put forward to rectify the 5 year housing land supply problem is acceptable in planning terms and constitutes sustainable development. If it is, then it should be permitted. Sustainable sites should not be precluded from being developed when there is an immediate need on the basis that the Council thinks that there might be better sites to meet the need that it has denied, and based on evidence it has not presented! This is an abrogation of proper decision making.
73. The Council sought to argue that lapse rates shouldn't be applied, when it accepts that permissions do in fact lapse at a rate which is presently unknown. It's reasons for rejecting MW's approach in this regard is that it is said to duplicate the buffer – which it plainly doesn't – one relates to appraising supply, whereas the other relates to establishing the requirement.

A9.44

CEC bases its argument on a fundamental misunderstanding of *Wokingham BC v SOSCLG* [2017] EWHC 1863 (Admin). When that case is examined correctly, the issue was whether the Inspector was right in law to apply a lapse rate despite no party raising it during the inquiry (at paragraph 55). When the judge went on to consider whether lapse rates could be law *per se*, he concluded (paragraph 69):

It is for the decision-maker to determine in the first instance whether or not the application of a "lapse rate" to the estimated five-year supply of deliverable housing to reflect the Council's "record of tending to over-predict delivery" involves an unwarranted adjustment, given an increase in the housing requirement by 20% "where there has been a record of persistent under delivery of housing", in each case in order "to provide a realistic prospect of achieving the planned supply.

Therefore, provided the issue is fully ventilated before the Inspector, as it was at this inquiry, then the conclusion can be made to add a lapse rate onto the requirement. Given this Council's history of under delivery and continuing over estimation of future performance, a lapse rate of 5% as proposed by the Applicant is entirely appropriate. Indeed, it will be a vital tool to pushing this Council to meeting its need to provide homes.

74. In conclusion, on both methodology and content, the evidence before this Inspector confirms the Appellant's case that the LPA can demonstrate at most 4.25 YS. If the Council's approach to Sedgemoor 8 is applied, the land supply position on the LPAs approach to yield goes to 4.42 years. It follows from such an outcome on the land supply position that paragraph 49 of NPPF is engaged (subsequently paragraph 11 if the rFramework through footnote 7) and the decision necessarily should be taken based upon the tilted balance therein. The SOS will undoubtedly be told by CEC that the recently adopted local plan can, and is, delivering the houses to meet the identified need. However, it is not that straightforward. One cannot say that simply because there is a recently adopted LP, that the land supply position is safe. The following points are of note:

- a. The Appellant is not seeking to "go behind" the conclusions of the LPS Inspector which were based upon an analysis of Housing Supply position as at April 2016. Rather this inquiry is charged with critiquing the 2017 HMU which has rolled the position forward by one year;
- b. AF at one point in his evidence seemed to run an argument that has repeatedly failed at inquiry – that the task of an inquiry is to review the position as it was known at the base date and then close one's mind to knowledge of what has come to light in relation to the various components of supply since the base date. With respect that position is wrong:
 - i. It is not the approach of the LPA in its 2017 HMU which relies on information which has come to its attention after the base date;
 - ii. It is not the approach of AF who also relied upon information which has come to his attention after the base date, and indeed he has

sought to gather more evidence after the LPA lost the 5YS argument at 2 previous appeals;

- iii. It is not the approach of Inspectors in countless appeals across the Country;
- iv. It is contrary to the approach required as a matter of law in the *Stratford on Avon DC v SOSCLG* [2013] EWHC 2074 (Admin);
- v. It literally makes no sense – a decision maker is required to form a view on what the 5YS is on the evidence before him/her a s.78 appeal is not a form of quasi-judicial review to review the LPA's assessment at a point in time.

75. Inspectors in the White Moss and Willaston decisions¹⁸ both concluded that a precautionary approach should be taken to the 5YS issue and that the tilted balance should be engaged. It is just wrong to contend (as AF now seeks to) that the LPA was constrained in how it wished to put its case, or that there was a misunderstanding of the implications of the St Modwen case. To the contrary in both appeals there was no constraint on the information that the LPA was able to bring forward, noting that it had failed to provide much of the base information on which the 2017 HMU was predicated AND submissions on the St Modwen case were made by leading counsel for CEC in the latter case which followed the reporting of the decision of the Court of Appeal.
76. As noted above the St Modwen case is in any event something of a red herring. It deals with what should be the components of supply and essentially concludes that the footnote to the then paragraph 47 means what it says; but it says nothing about how to approach what is the expected yield that should be assessed from those components of supply, where the PPG requires robust evidence to be provided where PP is not in place.
77. The Inspector's decision in Shavington is being challenged, as the Council is eager to point out. The basis of challenge seeks, through the Shavington decision, to impugn the rational and unimpeachable approach to calculating 5YLS in the WMQ and Willaston decisions. This challenge is being robustly defended, by both the Secretary of State and the Land Owners. Until the claim is heard, those decisions stand and the approach to 5YLS they adopt should be followed – not just in the interests of consistency in decision making, but because it is the correct approach in law and a failure to do so would be unlawful. The presumption of legality applies, and the Inspector is invited to give precisely no weight to the fact of the challenge (just as was the case in relation to the local plan challenge which was live at the time of the White Moss Quarry and Park Road appeals). Moreover, insofar as some of the arguments raised in that challenge mirror the fallacious arguments being raised by CEC in this case then the Secretary of State is respectfully invited to have regard to the rejection of those self-same arguments being raised on his behalf by the Government Lawyers. It is apprehended that the challenge will

¹⁸ Ibid.

have long failed by the time that this decision is ultimately made by the Secretary of State in any event. It has of course not been welcome news to the LPA that it cannot demonstrate a robust 5YS, and as a professional one can have a degree of sympathy for the LPA which has gone through a very long process to secure adoption of the LPS only to discover that houses aren't being delivered sufficiently quickly to ensure a 5YS. However, what is startling is that rather than taking steps to remedy the position (e.g. advancing the pt2LP, and releasing more deliverable sites) the LPA has chosen instead to deploy its resources into defending the obviously indefensible. Based on a robust and objective assessment AF is wrong and the LPA cannot demonstrate a 5YS, and the deficit can only be made good in the short-term by the release of additional sustainable and deliverable sites without technical constraints such as this one.

Appellant's supplementary comments on revisions to the National Planning Policy Framework

78. Paragraph 73 of the revised Framework states:

"Local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than five years old".

79. The requirement to assess the housing supply as set out previously in NPPF para 47 therefore remains. In the case of Cheshire East the housing requirement is established in the Cheshire East Local Plan Strategy ("the LPS"). Policy PG 1 sets a housing requirement of 1,800 dwellings per annum. This plan was adopted on 27 July 2017 and is therefore less than 5 years old. In accordance with paragraph 73, this housing requirement should therefore form the basis of the assessment. The housing requirement set out in the LPS was used in the appellant's evidence heard at the Inquiry in February 2018 and indeed it was common ground at the Inquiry that this housing target should be applied. The appellant's approach is therefore considered appropriate with regard to the revised NPPF.

Identifying the Base Date and Five Year Period

80. The rFramework does not comment on the base date or the 5 year period to apply to the assessment. The appellant's evidence on 5 year HLS applied a base date of 31st March 2017 and a five year period of 1st April 2017 to 31st March 2022, which aligned with the Local Planning Authority's Housing Monitoring Update (published August 2017, base date 31st March 2017). This based date of 31st March 2017 was therefore agreed, and is contained within the Statement of Common Ground (SoCG). This approach is considered appropriate with regard to the rFramework.

The Appropriate Buffer

81. Paragraph 73 of the rFramework states:

"The supply of specific deliverable sites should in addition include a buffer (moved forward from later in the plan period) of:

- *5% to ensure choice and competition in the market for land; or*
- *10% where the local planning authority wishes to demonstrate a five year supply of deliverable sites through an annual position statement or recently adopted plan, to account for any fluctuations in the market during that year; or*
- *20% where there has been significant under delivery of housing over the previous three years, to improve the prospect of achieving the planned supply."*

82. Footnote 39 of the rFramework explains that from November 2018 "significant under delivery" of housing will be measured against the Housing Delivery Test, where this indicates that delivery was below 85% of the housing requirement. At the time of writing, the relevant section of the PPG which may provide further guidance on this matter has not been updated to reflect the revised NPPF.

83. As above, footnote 39 is clear that the Housing Delivery Test will not be used to measure significant under delivery until November 2018 or thereafter. Paragraph 215 of the rFramework also explains that the Housing Delivery Test will apply from the day following the publication of the Housing Delivery Test results in November 2018.

84. Paragraph 73(b) advises that a 10% buffer can be applied by a LPA where it wishes to demonstrate a five year land supply of deliverable sites through an annual position statement or recently adopted plan, to account for any fluctuations in the market that year. The reader is then directed to footnote 38 which states:

"For the purposes of paragraph 73B and 74 a plan adopted between 1st May and 31st October will be considered recently adopted until the 31st October of the following year; and a plan adopted between the 1st November and the 30th April will be considered recently adopted until 31st October in the same year".

85. As set out in evidence at the inquiry, in the first seven years of the LPS plan period, net housing completions in Cheshire East had been on average 1,034 dwellings per annum, and did not reach the 1,800 target at any point. It was therefore common ground at the inquiry earlier this year that a 20% buffer be applied, reflecting persistent under delivery as identified in the Framework.

86. In respect of the implications of the rFramework, the Local Plan Strategy was adopted by Cheshire East on 27 July 2017. As such it qualifies as "recently

adopted” until 31 October 2018. Whilst the PPG has not been updated to provide detailed guidance upon this matter, the rFramework indicates that a 10% buffer to housing land supply is appropriate in any decision taken up to 31 October 2019.

87. From 1 November 2018, whether there has been a significant under delivery of housing will then be a matter for the decision maker to determine. Therefore the appellant maintains that a 20% buffer should apply from 1 November 2018 given the previous under delivery throughout the plan period.
88. It is also noted however that the Housing Delivery Test will then be used to measure significant under delivery from the day following its publication in November 2018. It is expected to use the national statistics for net additional dwellings, which have typically been published in mid-November over the last few years. Consequently, it seems likely to be later in November or thereafter before the Housing Delivery Test is in place.
89. The Framework is clear that the measurement of what amounts to “significant” under-delivery will be based upon the publication of the Housing Delivery Test that will be November 2018. In this case, the 10% buffer should apply as a minimum as the LPA have a recently adopted local plan in accordance with footnote 38 of the Framework. rFramework paragraph 73 gives flexibility to allow the decision maker to apply judgement as to whether or not criteria a) b) and c) applies based upon the evidence before them.
90. Whilst footnote 39 may not apply until November 2018, and because the Framework is silent on how one should determine what is “significant in the interim, it is considered that the 20% buffer should apply as until this time, the application of a 20% buffer is a matter for the decision maker to determine.
91. “Significant” under-delivery is defined as being below 85% of the annual housing requirement. It should be noted here that the transitional arrangement identified at paragraph 215 of Annex 1 only applies to the application of footnote 7 in terms of triggering the tilted balance of paragraph 11d of the Framework. It does not affect the determination of whether or not the 20% buffer applies. The appellant’s 5 year HLS calculation is therefore resupplied below showing both a 20% and also a 10% buffer to cover NPPF para 73b.

Addressing the under-provision

92. The rFramework does not specifically state how the backlog should be addressed, however it does set out the Government’s objective of “*significantly boosting the supply of homes*” (paragraph 59). Addressing the backlog as soon as possible would be consistent with this paragraph. The supporting Planning Practice Guidance (PPG) has not been updated at the time of writing. Paragraph 3-035 of the PPG: “*How should local planning authorities deal with past under-supply?*” provides the guidance that was set out in the evidence for the appeal. It states:

"Local planning authorities should aim to deal with any undersupply within the first 5 years of the plan period where possible. Where this cannot be met in the first 5 years, local planning authorities will need to work with neighbouring authorities under the 'Duty to Cooperate'."

93. Consequently, the PPG is clear that Local Planning authorities should aim to deal with the backlog within five years. Whilst the PPG does appear to recognise that there may be circumstances in which this is not possible, it does not suggest that the backlog should be addressed over any other period in those circumstances. Instead it states that local planning authorities will need to work with neighbouring authorities under the 'Duty to Co-operate', presumably with adjacent authorities looking to help to address the backlog by making immediate provision.
94. A draft HLS section of the PPG was made available in association with the consultation on the draft rFramework. The draft PPG proposes to remove the reference to the Duty to Co-operate and replace it with reference to the plan making and examination process. It states (on page 14):

"Local planning authorities should deal with deficits or shortfalls against planned requirements within the first five years of the plan period. If an area wishes to deal with past under delivery over a longer period, then this should be established as part of the plan making and examination process rather than on a case by case basis on appeal".

95. This draft guidance is consistent with the appellant's position given in evidence and maintained at the inquiry. The appellant's position was to acknowledge that the matter of undersupply of housing delivery had been considered at the Local Plan examination and that the first year of the 'Sedgepool 8' period had elapsed. The appellant's position is that the LPA's "rolling" 'Sedgepool 8' approach would result in the shortfall continuing to be moved backwards and not actually be addressed at all, rather than being addressed within the 8 years as the LPS Inspector intended. The appellant's approach to addressing the under-provision therefore is considered appropriate with regard to the rFramework.

Assessing the Deliverable Supply

96. Paragraph 67(a) of the rFramework is particularly relevant to the appellant's 5 yr HLS case in this appeal. At the Inquiry, there were a number of sites contested at inquiry between the Council and the appellant over whether they should be expected to deliver housing within five years. The assessment of the parties and the supporting evidence was provided within the context of footnote 11 of paragraph 47 of the previous version of the NPPF where 'deliverable' was defined. That footnote was the subject of a number of Court Judgements, in particular the *St Modwen* judgement, which was discussed at the Inquiry. In the rFramework, the definition of "Deliverable" is set out in the Glossary at Annex 2, and this states:

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

years. Sites that are not major development, and sites with detailed planning permission, should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years (e.g. they are no longer viable, there is no longer a demand for the type of units or sites have long term phasing plans). Sites with outline planning permission, permission in principle, allocated in the development plan or identified on a brownfield register should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years."

97. The definition of deliverable has now been clarified and sets out the expectations for both local planning authorities and others in assessing the supply of housing land. This change is significant in that it sets out separate tests for two categories of sites as follows:
- Category A - Sites that are not major development (i.e. 9 dwellings or less¹⁹) and sites with detailed planning permission: these should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years (some examples are given as to what constitutes clear evidence).
 - Category B - Sites with outline planning permission, permission in principle, allocated in the Development Plan or identified on a Brownfield Register: these should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years.
98. In summary, sites under Category A are to be considered deliverable unless the appellant, in challenging the LPA's 5 year HLS, provides clear evidence that those sites are not deliverable. Conversely sites in Category B should not be included in the five year housing land supply by the LPA unless there is clear evidence that housing completions will begin on these sites within five years. This is a significant change as the test has now been reversed for sites with outline permission or development plan allocations. Previously under footnote 11 sites were deemed to be deliverable unless there is clear evidence that they were not. Therefore, national policy now stipulates that these should no longer be included unless there is specific evidence that they are deliverable.
99. The appellant considers that this change in approach to considering whether a site is deliverable gives overall support to the appellant's position and undermines the Council's approach to the supply in the evidence before this appeal.
100. In general, it does not alter the appellant's position on the sites that were challenged in the appellant's evidence in this appeal. Without seeking to introduce new evidence or reopen the detailed consideration of sites undertaken at the inquiry, the appellant's approach at the inquiry was

¹⁹ As per the definition of "major development" within Annex 2 of the rFramework.

A9.51

generally not to challenge whether sites should be considered deliverable, but to challenge whether sites had a realistic prospect of delivering of the number of units indicated by the Council within 5 years. The change in approach in the rFramework would add weight to our concerns for Category B sites, that the Council has not demonstrated (to quote the rFramework) with "*clear evidence that housing completions will begin on site within five years*" (and without seeking reopen the detailed consideration of sites undertaken at the inquiry it may also provide a reason to challenge further sites in the supply).

101. The appellant provided evidence disputing 41 sites and the majority of these were sites within category B. Of these sites, 34 were sites without planning permission, sites with outline planning permission or sites with outline permission subject to S106. In the case of these sites, the onus would now be on the Council to demonstrate in evidence why it should be considered that housing completions will begin on site within five years. A summary of the sites falling within Category A and Category B are set out in the table below.

Site Name/ Reference	Category A	Category B
LPS1 Central Crewe		✓
LPS2 Basford East Crewe (Phase 1)		✓
LPS4 Leighton West (part a)		✓
LPS5 Leighton		✓
LPS6 Crewe Green		✓
LPS8 South Cheshire Growth Village		✓
LPS10 East Shavington	✓	
LPS11 Broughton Road, Crewe		✓
LPS13 South Macclesfield Development Area		✓
LPS14 Kings School, Fence Avenue		✓
LPS15 Land at Congleton Road		✓
LPS16 Land south of Chelford Road, Macclesfield		✓
LPS17 Gaw End Lane, Macclesfield		✓
LPS18 Land between Chelford Road and Whirley Road		✓

A9.52

LPS20 White Moss Quarry, Alsager		✓
LPS27 Congleton Business Park		✓
LPS29 Giantswood Lane to Manchester Road		✓
LPS33 North Cheshire Growth Village		✓
LPS36 Land north of Northwich Road and land west of Manchester Road, Knutsford		✓
LPS37 Parkgate Industrial Estate, Knutsford		✓
LPS38 Land south of Longridge, Knutsford		✓
LPS42 Glebe Farm, Middlewich		✓
LPS43 Brooks Lane, Middlewich		✓
LPS46 Kingsley Fields	✓	
LPS48 Land adjacent to Hazelbridge Road, Poynton		✓
LPS57 Heathfield Farm, Wilmslow		✓
LPS61 Alderley Park	✓	
1934 Land off Dunwoody Way, Crewe	✓	
2991 Land adjacent to 97 Broughton Road, Crewe	✓	
3535 Santune House, Rope Lane, Shavington	✓	
3574 Land west of Broughton Road, Crewe	✓	
3612 Land south of Old Mill Road, Sandbach		✓
2896 Land to the north of Moorfields, Willaston		✓
4302 Kings School, Macclesfield		✓
4752 Land off East Avenue, Weston		✓
4725 Abbey Road, Sandbach		✓
5672 Land off Church Lane Wistaston		✓
5709 Land off London Road, Holmes Chapel		✓
406 Victoria Mills		✓
3175 Chelford Cattle Marker and Car Park		✓

102. The change in approach to considering whether a site is deliverable does however run very much counter to the LPA's approach in this appeal with regard to assessing the deliverable supply. The Council's evidence to the appeal set out a number of observations on the *St Modwen* judgement and the consideration of whether a site is deliverable. The Council essentially suggested that the *St Modwen* Court of Appeal Judgement is a 'game changer' in that the threshold for calculating 5 year HLS had been lowered in some significant respect and contending that, given the strategic sites are allocated and these sites are 'capable' of having homes built on them, *St Modwen* obviated the need for the LPA to evidence that their yields in the 5 year period are 'realistic'. Clearly the rFramework now makes absolutely clear that Category B sites should no longer be included in the supply unless there is specific evidence that they are deliverable. It is therefore it is clear that robust evidence on delivery is needed, as was argued by the appellant.
103. In summary, the supply of deliverable sites must be determined within the context of the rFramework which is a material change from that in the superseded Framework. It is for this reason, and the test in paragraph 67A (and associated definition of what comprises a deliverable site provided within Annex 2) that means that the Appellant's housing land supply position should be favoured over the Councils.

Housing land supply calculation

104. The above comments in respect of the approach to 5 year HLS in the rFramework refer to each of the key stages of assessment. The final stage is to undertake the calculation itself. The appellant's calculation was set out in the Appellant's 5 year HLS Proof of Evidence in Table 16 entitled "Conclusions on 5 year land supply CEC / Appellant". At the end of the Inquiry on 23 February 2018 a revised version of this table was submitted at the Inspector's request, updated to reflect the concessions on supply made by both parties in the 5 year HLS Statement of Common Ground (SoCG).
105. It is considered that, given the reference to a 10% buffer in rFramework para 73(b), it may be of assistance to now provide a table showing the appellant's position updated to reflect the concessions on supply made by both parties in the SoCG with a 10% buffer applied.

A9.54

Updated version of Table 16 of the Appellant's Proof of Evidence "Conclusions on 5 year land supply CEC / Appellant" to reflect the concessions on supply made by both parties in the 5 year HLS Statement of Common Ground in this appeal and also showing the calculation applying a 10% buffer

		Appellant's position when the 20% buffer is applied (supply addressed in 7 years) (updated to reflect SoCG on sites)	Appellant's position when the 10% buffer is applied (supply addressed in 7 years) (updated to reflect SoCG on sites)
A	Net annual requirement (2010 to 2030)	1,800	1,800
B	Housing requirement 1 April 2017 – 31 March (A x 5)	9,000	9,000
C	Shortfall 1 April 2010 - 31 March 2017	5,365	5,365
D	Shortfall to be addressed in 5 years	3,832	3,832
E	Requirement + shortfall (B+D)	12,832	12,832
F	Buffer (20% of E)	2,566	n/a
	Buffer (10% of E)	n/a	1,283.2
G	Requirement + buffer (E+F) = supply required	15,398	14,115.2
H	Assessment of Supply (updated)	13,101	13,101
I	Supply demonstrated (H/G x 5) in years	4.25 years	4.64 years

106. The table above sets out that, where the appellant's approach to supply is preferred, even if a 10% rather than 20% buffer is applied the Council's 5 year HLS figure remains below the requirement.
107. The appellant's position in the light of the rFramework therefore remains that the LPA cannot demonstrate a deliverable five year housing land supply, as was set out in evidence to this appeal and at the inquiry. Therefore, in accordance with paragraph 73 of the rFramework it remains the position of the appellant that the Council are unable to robustly demonstrate a 5 year supply of deliverable housing sites. Therefore, the tilted balancing exercise required by paragraph 11d of the rFramework is engaged as per footnote 7. The conclusions reached by the appellant in the evidence heard before the inquiry therefore remain valid in the context of policies contained within the revised Framework.

Landscape

108. The application site carries no designation, nor is anyone arguing that it is a valued landscape in rFramework terms. In local landscape policy terms

(SE4), the scheme is compliant for the reasons explained by Mr Berry. Moreover, it is clear from the proposed Landscape Strategy principles that the development will respond to the existing landscape with good legibility and a strong sense of place. Any marginal criticisms that have been raised over the course of the last 4 years have been fully taken on board in the latest revisions to the illustrative masterplan. In JB's view the appeal site is an unremarkable and ordinary parcel of land with no particular features that would set it out of the ordinary. Its relationship to the urban area, especially following recent planning permissions granted to the east and west and illustrated on JB's appendix 1, drawing SK19, underscore the site's obvious capacity to accommodate the proposed development. Importantly, that capacity has only increased since the application was first refused (contrary to officer's recommendations) as a result of the adjacent development (especially the DWH land to the east which will have been evident on site); and also as a result of the scheme no longer proposing its own dedicated access to the south, but through an access from the north of the site, the junction with Peter Destapeleigh Way already having been completed.

109. Given that CEC have never refused this application on landscape grounds and have never raised a freestanding landscape impact case against the proposals either at this inquiry or its precursor, one might legitimately ask why the Appellant has sought to present a fully articulated landscape case. Indeed, Mr Gomulski CEC's landscape architect who is habitually called at housing appeals in this borough reiterated his advice back in November 2017 that there would be no significant adverse landscape and visual impacts (after mitigation) and that a landscape reason for refusal could not be substantiated.

Local Plan considerations

110. The Council's case is in essence that there is no need for additional housing and that there are breaches of the recently adopted Local Plan Strategy ('CECLP') whose policies should be treated as not out of date and therefore the application must be refused. To put it mildly, that is an oversimplification of the situation of the task that is before this Inquiry, and takes a myopic view of the actual position that CEC finds itself. Unarguably, in accordance with s.38(6) of the 2004 Act the SOS must determine this appeal in accordance with the development plan unless material considerations indicate otherwise. As PD pointed out in his evidence, whether the policies of the development plan remain relevant and up to date is a material consideration that must be taken into account. Further, the question of whether or not the appeal proposal is in accordance with the relevant policies of the development plan is not simply a yes or no question the answer to which determines the outcome of this appeal. The degree of conflict is plainly relevant and an essential question to consider. Similarly, the actual land use consequence of a policy breach has to be interrogated.
111. That is particularly important here when the alleged harm is the principle of development beyond settlement boundaries, and not any particular significant land use harm, such as landscape, ecology, drainage etc, other than the loss of an area of BMV agricultural land (which is agreed not to be a determinant issue in any event). However the loss of BMV is not significant

and the site is not currently farmed. As recorded in the note submitted to the Inquiry by the Appellant, and not disputed by the Council, only 17% of the appeal site A is BMV (sub-grade 3a). As set out in appendix 2 to PD's POE (the POE of M J Reeve on BMV for the original inquiry at para 6.1), the site "would primarily use one of the few areas dominated by poorer non-flooding land on the margins of Nantwich, so meets the requirements of the NPPF to use poorer quality land in preference to that of a higher quality. The LP at policy SE.2 requires that BMV is "safeguarded". It is agreed that the site will result in the loss of BMV it is a small amount (2.6ha in total across Appeals A and B) and that this loss is not determinative (see SoCG). Taking these points together, in the context of a county where most of the land is of similar grade (see RT PoE at 6.33), the poor quality of the other land in site A and that the parties agree that the loss of BMV is not determinative, the loss of BMV must accord no more than limited weight (as PD concludes in his POE at page 60). Furthermore, if the SoS concludes that the Council cannot demonstrate a 5YHLS, then greenfield sites will need to be delivered and he should reach the same conclusion as the original inspector at paragraph 12.1626 that in those circumstances the release of the BMV on this site to development causes no harm.

112. The starting point for considering whether the relevant policies are up-to date and the weight to be afforded to any breaches of them is a consideration of the basis upon which the plan was adopted. It is agreed by both of the main parties planning witnesses that the settlement boundaries used in the CECLP are those from the previous Crewe and Nantwich local plan. PD explained that the LP settlement boundaries that were set in 2006 were only ever intended to last until 2011, by which time there would have been expectation that they would have been reviewed.
113. The only modifications that were made to these boundaries during the recent LPS process was to incorporate the strategic allocations into them. This did not constitute a review of the boundaries and it is agreed by both planning witnesses that there is therefore a need for the boundaries to be reviewed as part of the next stage of plan preparation SADPPD/LPpt2, which will also consider allocating additional sites so as to meet CEC's needs, for a plan whose plan period started back in 2010. This was acknowledged by the LPI in his report at paragraph 111 and is expressly acknowledged in Policy PG 6 itself along with its supporting text²⁷.
114. As a matter of sensible planning, as a matter of logic and as a matter of mere common sense the geographical extent of these settlement boundaries are therefore obviously "out of date", even if the text of the policies themselves correspond to the approach of the rFramework – a distinction which goes unremarked in the LPA's evidence. This is further evidenced, by the number of dwellings that have been granted planning permission by the Council and at Appeal over the last 5 years and in the overall approach adopted in the LPS itself that involves very significant development outside of settlement boundaries of the saved Local Plan – thereby underscoring its out of datedness. In a situation where it is acknowledged that development will be required outside of adopted boundaries to meet identified development needs it is nonsensical of the Council to argue that those boundaries are up to date.

115. One final point is that the position is not altered by the making of the NP. That is because Inspector Jonathan King in emasculating the draft NP rewrote the housing chapter of the NP to mirror the settlement boundary in the saved LP and the NP expressly notes that the boundaries will be reviewed as part of the Ppt2. It follows that policies RES-5 and Policies PG-6 are out of date in their geographical extent and this must reduce the weight to be attached to them and the weight to be attached to any breaches of them. This is precisely the approach of the Park Road Inspector who at paragraph 16 observed:

"Whilst, for the time being, the settlement boundaries and extent of the Open Countryside in the CNRLP as amended continue to carry weight as part of the development plan, there is clearly an acceptance in Footnote 34 and the CELPS Inspector's report that they will be subject to further change. This may be to accommodate non-strategic sites allocated for development as part of the SADPPDP or where planning permissions have been granted for development beyond existing boundaries or in the light of other criteria yet to be defined. To this extent the current boundaries cannot be considered to be fully up to date."

Thus, it is accepted by the Appellant that these policies are breached but as the Appellant correctly contends the extent of that breach has to be assessed to determine what weight to be attached to the breach. The appeal site lies in the defined open countryside but is in no way an isolated or irregular intrusion into the open countryside. It is an obvious extension to the settlement of Nantwich with development on three sides. Importantly, other than the fact of the breach, the Council does not identify any land use harm arising from the breaches of policies RES-5 and PG-6. That there is no land use harm that arises from the breach of these policies must reduce still further the weight to be attached to these policy breaches.

116. There is an allegation within the RfR as well as RT and AF's proof that to allow the appeal proposals would somehow place the Spatial Vision of the LPS 'out of whack'. That is founded upon the proposition that Nantwich has already delivered the amount of housing that was anticipated as part of the LPS spatial distribution. The point is however nonsensical and belied by the words of the LPS itself, since policy PG7 sets out figures for each settlement that are expressly said to be "neither a ceiling nor a target". And yet RT purports to interpret PG7 in precisely that way, at one point even alleging that there was a conflict with the policy (despite it not being cited in the RfR). Moreover, the table following paragraph 8.77 in the LPS is expressed to be an 'indicative distribution'. Thus whilst it may be that CEC could contend that it would be a powerful material consideration against a scheme which was grossly out of kilter with the overall distribution of the LPS, it is an abuse of the express language of the plan to contend that there is a breach of policy PG7 as RT alleges.

117. However, to arrive at that point one has to come to the view that the proposals would indeed be sufficiently at variance with the indicative distribution to be said to result in a land use distribution contrary to the objectives of the LPS. In White Moss Quarry, Inspector Rose seems to have

arrived at the conclusion albeit for a much bigger proposal close to a much smaller settlement. However, merely being a little above the indicative figure of 2050 when that figure is not a ceiling nor a target does not lead to the inexorable conclusion of an offence against the distribution contended for by RT.

118. Moreover, RT was unable to answer the “so what?” point – i.e. even if there is development in excess of the notional distribution, if there is an immediate need for more housing in CEC there are no land use consequences identified which arise as a result why is there a consequence which even weighs into the ‘harmful’ side of the scales. In XC it was argued that the position is directly analogous to the White Moss Quarry appeal – however that decision bears close reading, since the Inspector there was dealing with an argument that the proposals (which were much bigger than those proposed here close to a much smaller settlement) would give rise to harmful out-commuting– whereas here no such allegation is made.
119. As RT was at pains to emphasise in his proof, PG-7 does not identify maximum limits on housing numbers in any location, nor does it identify targets. For a breach of PG-7 to arise it cannot simply occur as a result of a numbers game, there has to be a consequence of that number of housing units coming forward in the location in question. Here there has been no attempt at all to identify any such harm. Thus there was no alleged (unmitigated) infrastructure harm to Alsager and there was no harm to social cohesion, further there is therefore no technical justification for withholding consent.
120. It is all well and good to allege that a proposal is contrary to the spatial strategy of the development plan but in order for such an allegation to be credible the proposal in question must actually be contrary to the spatial strategy and even if it is there must be some consequence of that. Here, the appeal proposal is not contrary to the spatial strategy because the numbers identified in PG-7 are not maxima, and harm has not been shown if panning permission is granted.
121. The appeal proposal should be decided in accordance with the development plan unless material considerations indicate otherwise. When looking at the development one looks at whether the proposal is in overall accordance with the development plan. The appellant accepts there are some breaches of development plan policies, but these are limited³⁰, where the breaches arise as a result of settlement boundaries the geographical extent of these policies are out of date and when harm is considered, there is none. This proposal does not give rise to harm to the spatial strategy, gives rise to not meaningful land use harm and comprises sustainable development. Consequently, regardless of the 5yrHLS situation the appeal proposal should be approved.

Other considerations

Deliverability

122. In something of an unexpected turn of events CEC ran a surprising and misguided case against the appeal proposals, namely that even if panning permission was granted that the proposals would not deliver very much within the plan period in any event.
123. The first attack was both an attack “ad hominem”, or in modern parlance, the LPA sought to play the man and not the ball. AF presented 3 examples of where consents had been granted to the Appellant but where delivery had not come forward as expected. However, in XX he readily accepted that he had presented a deeply partial picture and had identified only those sites which had under-delivered and that he had said nothing at all about sites where the Appellant had brought forward sites which had readily delivered units. That of itself should have compromised AF’s credibility. However, he also failed to point out that the third of the sites that he cited (Old Mill Sandbach) hadn’t delivered because of a land dispute with the Council, where the latter (as landowner) were essentially holding-out for ransom value for land which had been compulsory purchased as part of a highway scheme but was never needed. The picture painted was a disingenuous and partial one.
124. The argument was then put that based upon MW’s delivery rates, and assuming that the SOS wouldn’t issue his decision quickly that the delivery rates for the site would be low. AF’s picture painted in his proof of a dilatory land-banking strategic land company is with respect ludicrous;
- (v) agents have been appointed as PD explained in XC and the likely purchaser for part of the residential component will be DWH, who are building homes rapidly next door – this will be a continuation of that site, resulting in obvious benefits in terms of lead in time as well as evidencing a clear local market;
 - (vi) there is clear evidence of a demand for the employment units – see letter from RWR Walker Surveyors - 15 March 2018.
125. There is no basis for the pessimism expressed by AF (which may be contrasted with gross over-optimism elsewhere), there is compelling evidence that this site will deliver within the 5 year period.

Neutral outcomes and Benefits

126. The Transport Assessment concludes without challenge from the highway authority that the existing road network has the capacity to readily accommodate the traffic anticipated from the scheme. There would therefore be neither severe adverse effects nor deleterious impacts on the safety of other road users. This matter therefore, despite the recognised apprehension of local people, would be rendered neutral in the planning balance. If permitted this scheme will bring forward much needed market and affordable homes. The delivery of these homes will provide employment opportunities.

The employment site will provide employment opportunities and strengthen the local economy generally. The services such a site will be a benefit in terms of those services and by reducing trips.

127. The provision of a site for a primary school represents a potential long term benefit of the proposal which could be provided as and when future development requirements for Cheshire East are assessed.

128. The scheme includes extensive areas of open space and landscaping (see CD L9), including habitats with biodiversity benefits. 7.3.4 The section 106 agreement provides, in addition to the affordable housing, for an education contribution and a highways contribution to improve public transport facilities.

Overall Conclusions

129. It is the Appellant's case that the LPA can demonstrate at most 4.25 YS (with a 20% buffer. If a 10% buffer is applied the land supply is 4.64 years. If a more critical view on delivery post-rFramework is factored-in the supply drops further²⁰. On any of the outcomes above, the Council cannot demonstrate a 5YS as required by rFramework paragraph 11 (footnote 7). Therefore the consequences flow from this and the tilted balance in NPPF in paragraph 11.

130. Even if it was concluded that the LPA's optimism was well founded and that it could (just) demonstrate a 5YS, then that does not mean that the appeal should necessarily be dismissed:

- a. on its best case, at 5.45 years the LPA is only just able to demonstrate a 5YS, and even that based upon heroic assumptions about future delivery;
- b. the settlement boundaries were established in the C&NLP over ten years ago and have not been reviewed, save for account being taken of strategic allocations since then;
- c. the settlement boundaries will need to be reviewed and updated as part of the CELPpt2 which is still not even at the earliest stage of preparation;
- d. there is no technical objection to the appeal proposals, including any allegation that there is no capacity to meet infrastructure requirements; and,
- e. the existence of a 5YS is not a ceiling nor is it a proper basis to withhold consent for otherwise sustainable development, especially

²⁰ These account for the revised figures submitted after the revisions to the Framework have been accounted and differ from the Appellant's assessment in closings after the Inquiry.

A9.61

when as at 1/4/17 there has been an under-delivery of over 5300 homes or more than 3 years of the adopted LP requirement. Indeed even the figures in the CELPS are firmly expressed as not being maxima, and it would be perverse to treat them as such in the manner implicitly asserted by CEC.

131. The scheme complies with the settlement hierarchy by locating in a Key Service Centre. Furthermore, the scheme complies with the terms of the Neighbourhood Plan as it provides important residential development next to the existing boundary of Nantwich, as the plan envisions (despite the revisionist approach now being taken to interpretation). The Council's arguments in closing (paragraph 156) that this scheme, if permitted, would skew the strategy for Nantwich simply ignores that the CELPS directs residential and employment development to Nantwich as a Key Service Centre. Therefore if the Council has failed to demonstrate a 5YS, then Nantwich would be a prime candidate for flexing settlement boundaries to deliver the homes that are being held up by this Council.
132. Furthermore, the Council's claim that permitting this site would lead to housing provision of 18% above the level identified as appropriate in terms of spatial distribution in the CELPS is misleading. The 18% is presumably (the Council conveniently don't show their working) arrived at by taking the 2246 allocated plus the 189 on this site, giving 2434. This equals 18.7% more than the 2050 in policy PG7. What the Council fails to mention is that as 2246 has already been allocated, CEC has shown they are happy to go over the 2050 and are already over it by 12%. Therefore the percentage increase on the allocated sites (2246) of this proposed scheme (189) is 8.4%. So the Council is not only misleading in paragraphs 61 – 65, but they have also got their arithmetic wrong.
133. The Scheme also provides significant employment, housing and social benefits set out in Mr Downes' evidence. Despite the Council's protestations in closing, there is no policy requirement that weight should not be given to economic proposals if they are not accompanied by a clear indication of the occupier, that would stifle development across the UK were the proposition to have any force. The Appellant has made a planning application and there is no reason to suggest that development will not be forthcoming, indeed it is understand that correspondence has been provided by the landowner in response to the latest consultation exercise from a local commercial agent which demonstrates exactly this point. There is therefore no reason not to place significant weight to the benefit of the economic aspect of the scheme.
134. A section 106 agreement has been concluded providing for affordable housing education, public open space and transportation.
135. Given there are no identified harms that could significantly and demonstrably outweigh the benefits of this scheme, the Inspector is respectfully invited to recommend to the Secretary to (finally) allow the appeal and to grant permission to these applications which propose a sustainable form of development in the context of clear evidence of need.

The case for the Council

The Starting Point

136. The starting point for any decision in the present case is, of course, section 38(6) of the 2004 Act. This requires assessment of whether the proposed development accords with the Development Plan.
137. The Development Plan consists of:
- a. Saved Policies of the Crewe and Nantwich Plan 2011;
 - b. The Stapeley and Batherton Neighbourhood Plan adopted in February 2018; and
 - c. The Cheshire East Local Plan Strategy 2017 ("the CELPS").
138. The CELPS was, of course, only adopted in July 2017 and sets out the strategy to meet the needs of this area including housing needs. The Examination Inspector concluded:
- "I consider the Overall Development Strategy for Cheshire East, including the provision for housing and employment land, is soundly based, effective, deliverable, appropriate, locally distinctive and justified by robust, proportionate and credible evidence, and is positively prepared and consistent with national policy." (Examination Inspector's Report p21 para 78)
139. In reaching that conclusion the Examination Inspector considered a wide range of objections including a number presented by housing developers and their advisors. They raised wide-ranging concerns including those relating to:
- a. Lead-in times; and
 - b. Deliverability of sites.
140. After a lengthy and detailed consideration of those concerns and after considering the views of all stakeholders in the Local Plan process, the Examination Inspector rejected them. He concluded that:
- "CEC has undertaken much detailed work in establishing the timescales and delivery of these sites, including setting out the methodology for assessing build rates and lead-in times, using developers' information where available and responding to specific concerns [PS/B037]. Although there may be some slippage or advancement in some cases, I am satisfied that, in overall terms, there are no fundamental constraints which would delay, defer or prevent the implementation of the overall housing strategy...
- I am satisfied that CEC has undertaken a robust, comprehensive and proportionate assessment of the delivery of its housing land supply, which confirms a future 5-year supply of around 5.3 years." (Examination Inspector's Report p19 para 69)

Subsequent appeal decisions

141. Since then matters have moved on. The Council has been party to a number of planning appeals not least those relating to Sites at White Moss and at Willaston. The Inspector's in those appeals reviewed the evidence presented to them and concluded that there was a range of realistic views. That range, they said, straddled the five-year housing land boundary.
142. They then both adopted what they described as a precautionary approach. We submit that there is no policy guidance which supports this. There is nothing in the NPPF or the NPPG that indicates that where the realistic range of deliverable sites falls either side of the five-year supply line the decision maker should assume that there is no five-year housing land supply.
143. The Inspectors in these decisions both dismissed the appeals and refused to grant planning permission. As a result, the Council was not a person aggrieved and could not challenge the lawfulness of the approach adopted to five year housing land supply issues.

A Precautionary Approach is Unlawful

144. In the Claim relating to the Shavington Appeal, the Council contends that the adoption of a precautionary approach is unlawful. The reasons why are set out in the Statement of Facts and Grounds but are summarised below.
145. Paragraph 14 of the NPPF explains that the presumption in favour of sustainable development means for decision taking:

“where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:

- any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
- specific policies in this Framework indicate development should be restricted.”

146. Thus, in order to apply the tilted balance, a decision maker must conclude that the development plan is absent, silent or relevant policies are out of date.
147. As Lord Carnwath explained in ***Hopkins Homes v Secretary of State for Communities and Local Government*** [2017] 1 W.L.R. 1865 at paragraph 59:

“The important question is not how to define individual policies, but whether the result is a five-year supply in accordance with the objectives set by paragraph 47. If there is a failure in that respect, it matters not whether the failure is because of the inadequacies of the policies specifically concerned with housing provision, or because of the over-restrictive nature of other non-housing policies. The shortfall is enough to trigger the operation of the second part of paragraph 14. As the Court of

Appeal recognised, it is that paragraph, not paragraph 49, which provides the substantive advice by reference to which the development plan policies and other material considerations relevant to the application are expected to be assessed”.

148. It is submitted that, as a result of the words of paragraph 14 and **Hopkins Homes**, in order to apply the tilted balance, the decision maker has to determine that relevant policies in the development plan are out of date. In order to do that by reference to five-year housing land supply considerations, a decision maker must conclude that there is currently no five-year housing land supply of specific deliverable sites.

Determining Deliverability

149. The decision in ***St Modwen Developments Ltd. v Secretary of State for Communities and Local Government*** [2017] EWCA Civ 1643 was delivered by the Court of Appeal on the 20th October 2017. It provides significant clarification as to the approach to adopt to the consideration of what is meant by a deliverable site within the NPPF.
150. Paragraph 47 of the NPPF provides that local planning authorities are to “identify and update annually a supply of specific deliverable sites sufficient to provide five-years’ worth of housing against their housing requirements...”
151. Footnote 11 of the NPPF then explains what a “specific deliverable site” is as follows:

“To be considered deliverable, sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years and in particular that development of the site is viable. Sites with planning permission should be considered deliverable until permission expires, **unless there is clear evidence that schemes will not be implemented within five years**, for example they will not be viable, there is no longer a demand for the type of units or sites have long term phasing plans.”

152. Further guidance is provided in the National Planning Practice Guidance:

“What constitutes a ‘deliverable site’ in the context of housing policy?

Deliverable sites for housing could include those that are allocated for housing in the development plan and sites with planning permission (outline or full that have not been implemented) unless there is clear evidence that schemes will not be implemented within 5 years.

However, planning permission or allocation in a development plan is not a prerequisite for a site being deliverable in terms of the 5-year supply.

Local planning authorities will need to provide robust, up to date evidence to support the deliverability of sites, ensuring that their judgements on deliverability are clearly and transparently set out.

If there are no significant constraints (eg infrastructure) to overcome such as infrastructure sites not allocated within a development plan or without planning permission can be considered capable of being delivered within a 5-year timeframe”.

153. The size of sites will also be an important factor in identifying whether a housing site is deliverable within the first 5 years. **Plan makers will need to consider the time it will take to commence development on site and build out rates to ensure a robust 5-year housing supply.**” (emphasis added)

154. In **St Modwen**, Lindblom LJ explained at paragraph 38:

“The first part of the definition in footnote 11 – amplified in paragraphs 3-029, 3-031 and 3-033 of the PPG – contains four elements: first, that the sites in question should be "available now"; second, that they should "offer a suitable location for development now"; third, that they should be "achievable with a realistic prospect that housing will be delivered on the site within five years"; and fourth, that "development of the site is viable" (my emphasis). Each of these considerations goes to a site's capability of being delivered within five years: not to the certainty, or – as Mr Young submitted – the probability, that it actually will be. The second part of the definition refers to "[sites] with planning permission". This clearly implies that, to be considered deliverable and included within the five-year supply, a site does not necessarily have to have planning permission already granted for housing development on it. The use of the words "realistic prospect" in the footnote 11 definition mirrors the use of the same words in the second bullet point in paragraph 47 in connection with the requirement for a 20% buffer to be added where there has been "a record of persistent under delivery of housing". Sites may be included in the five-year supply if the likelihood of housing being delivered on them within the five-year period is no greater than a "realistic prospect" – the third element of the definition in footnote 11 (my emphasis). This does not mean that for a site properly to be regarded as "deliverable" it must necessarily be certain or probable that housing will in fact be delivered upon it, or delivered to the fullest extent possible, within five years.”

155. Thus, to be included in the supply side of the five-year housing land assessment, a site needs to be one where there is a realistic prospect of housing coming forward within the 5 year period. Lindblom LJ then went on to contrast that approach with the approach required in produce a housing trajectory “of the expected rate of delivery”:

“One must keep in mind here the different considerations that apply to development control decision-making on the one hand and plan-making and monitoring on the other. The production of the "housing trajectory" referred to in the fourth bullet point of paragraph 47 is an exercise required in the course of the preparation of a local plan, and will assist the local planning authority in monitoring the delivery of housing against the plan strategy; it is described as "a housing trajectory for the plan period" (my emphasis). Likewise, the "housing implementation strategy" referred to in the same bullet point, whose purpose is to describe how the local

planning authority "will maintain delivery of a five-year supply of housing land to meet their housing target" is a strategy that will inform the preparation of a plan. The policy in paragraph 49 is a development control policy. It guides the decision-maker in the handling of local plan policies when determining an application for planning permission, warning of the potential consequences under paragraph 14 of the NPPF if relevant policies of the development plan are out-of-date. And it does so against the requirement that the local planning authority must be able to "demonstrate a five-year supply of deliverable housing sites", not against the requirement that the authority must "illustrate the expected rate of housing delivery through a housing trajectory for the plan period".

156. Thus, a housing trajectory is undertaking a different task from the exercise that must be undertaken when looking at deliverable sites for purposes of a 5 year housing land supply assessment.

157. **St Modwen** has been applied in an important Inspector's decision in the East Riding of Yorkshire. In that decision an Inspector, in the light of St Modwen explained:

"the decision maker has to have clear evidence to show that there is not simply doubt or improbability but rather no realistic prospect that the sites could come forward within the 5-year period."²¹

158. **Accordingly, St Modwen** clarifies that the test to be applied to sites with planning permission or which are allocated is whether there is clear evidence to show that there is no realistic prospect that a site would come forward (see footnote 11 and the NPPG guidance set out above).

159. **Assuming** that both the Inspectors in the White Moss and Willaston appeals applied to the correct approach to identifying the realistic number of units that sites are capable of delivering over 5 years, there appears to be no basis for asserting that sites are incapable of delivering at the top of the range. i.e. the top of the range must be realistic since it is included in a range which sought to identify what sites were capable of delivering on that basis. It follows necessarily that the White Moss and Willaston Inspectors both reached a conclusion which must mean that a five-year housing land supply of specific deliverable sites was demonstrated.

160. **The Framework** does not state anywhere that a precautionary approach to the identification of a 5 year housing land supply is to be applied. Such a proposition cannot be inferred from the indication that the policy intention is to significantly boost supply since that intention is fulfilled by the inclusion of a 20% buffer in the housing requirement.

161. It is submitted that the application of a precautionary approach was thus unwarranted on the basis of the policy set out in the Framework and unjustified on the evidence. It is submitted that to adopt the same approach

²¹ Appeal Ref: APP/E2001/W/16/3165930 Land north and east of Mayfields, The Balk, Pocklington, East Riding of Yorkshire YO42 1UJ paragraph 12)

as the Inspectors in the White Moss, Willaston and Shavington decisions would be to err in law.

162. Instead, what must be undertaken is an appraisal of the sites at issue on the basis identified in St Modwen. Where the site has planning permission or is allocated then the approach that the Council has adopted (which was accepted by the Examination Inspector) should be accepted unless the Appellant has proven that there is no realistic prospect that the site would come forward.

Robust Evidence

163. The Inspector in the Willaston appeal also made another material error and this too was adopted by the Shavington Inspector. He adopted the position that the local planning authority had to present "robust and up to date" evidence as to the likely contribution that a particular site would make to five-year housing land supply. This was based upon a misreading of the NPPG and a failure to apply the words in the Framework.
164. Footnote 11 and the NPPG make it clear that sites which have planning permission or are allocated are to be included in the 5 year supply unless there is clear evidence that there is no realistic prospect that they be implemented within 5 years. The emphasis is on realism. Thus, a different approach to that adopted by a local planning authority can be adopted when there is clear evidence that the Council's approach to sites with planning permission or with an allocation is unrealistic (see the East Riding of Yorkshire case).
165. The part of the NPPG that the Willaston Inspector relied upon as the foundation of his test for "robust and up to date evidence" is not dealing with sites with planning permission or with an allocation as Mr Weddernburn properly accepted in XX – if it were it would contradict the approach set out in the previous earlier paragraph in the NPPG and also footnote 11 of the Framework. Accordingly, the Willaston Inspector approached the sites on the basis that the Council had to adduce robust and up to date evidence to justify its approach to sites with planning permission and/or which were allocated when this was not the case.
166. The Appellants would have you reject all of the above in favour of an approach that there is some two tiered test:
- Whether a Site is specifically deliverable – the Appellant appears to content that the test of whether a Site would realistically contribute to the 5 year housing land supply position is to be applied here simply to identify the pool of sites examined in the second test.
 - If so, the Appellant contends that the second test is what is the likely number of units a site will contribute to housing land supply within the five-year period.

You and the SofS would err in law if you were to accept this position since it is found upon a grievous misinterpretation of National Planning Policy.

167. Mr Wedderburn in his evidence described the second-tier test as “the more central issue” in housing land supply cases (see Wedderburn p26 footnote 19). He adopted the position that the evidence to support the yield produced by a local planning authority has to be robust and up date.
168. The first point to note is that Mr Wedderburn was totally unable to identify where his second-tier test was addressed in National Planning Policy. If the approach really were “the more central issue” and really did form part of National Planning Policy in such an important area it is submitted that it would be set out in the Framework; it is not and Mr Wedderburn accepted that it is not. It must be remembered that the guidance in the NPPG is just that; the NPPG does not contain planning policy and must not be applied as if it does.
169. The second point is that the Appellant’s approach is totally logically inconsistent.
170. It applies the same test to sites with planning permission and with an allocation as those without either. This conflicts with the Framework which makes it plain that the evidential burden in relation to sites with planning permission and which are allocated is reversed – they are included unless there is no realistic prospect of them coming forward.
171. It is not logical to include a site with planning permission/allocation if there is not clear evidence that it will not be implemented only to then apply a test which requires robust and up-to-date evidence to prove it will actually yield any development.
172. If that were the intent of Policy, there would only be a need for a single test namely, is there robust and up-to-date evidence that a site will yield housing within the 5 year period. However this is not what the Framework actually says.
173. Indeed, as can be seen from the analysis above, to apply the Appellant’s approach thus subverts the intent of the Framework and footnote 11 – it renders the presumption specifically contemplated by Policy in respect of deliverability of housing from sites with planning permission/allocation wholly otiose.
174. The third point is to have in mind why the Framework would include such a presumption in the first place. The answer is obvious. It is included in order to reduce the scope for debate in determining five-year housing land supply in relation to Sites with planning permission/allocation. The adoption of the Appellant’s approach would have precisely the opposite consequence. It would mean that the yield from every single site (whether one with planning permission/allocation or not) would have to prove in every single case. The administrative burden that this would create for local planning authorities

and the Inspectorate cannot be underestimated and cannot have been the intention behind the Framework.

175. The only approach to sites with planning permission/allocation which is consistent with the words of the NPPF, St Modwen and the NPPG is that presented by the Council in this Appeal, namely is there clear evidence that there is no reasonable prospect of the yield identified by the local planning authority being delivered.
176. Mr Wedderburn's assessment of the likely contribution of sites is thus flawed since he applied an incorrect test based upon a fundamental misunderstanding of National Planning Policy. His site appraisal conclusion must therefore be rejected; at the very least his appraisal of individual sites must be approached with great caution lest one draws conclusions similarly contaminated by an error of law.

Additional Evidence

177. A further difference in the present appeal to previous appeals has been the fact that Mr Fisher has produced evidence which was not available to the previous Inspectors. In particular the material produced to the CELPS Inspector has been produced and further and updated evidence has been given in relation to specific sites.
178. It is submitted that, as a result of all of the matters above, the Secretary of State is entirely free to reach a different conclusion of five-year housing land supply to that reached by his Inspectors in recent months. Indeed, the Council submits that, if the appraisal of sites undertaken by the White Moss and/or Willaston Inspectors were accepted given that the top end of the range must be taken to be a realistic figure, the only conclusion, once their error regarding a precautionary approach is jettisoned, must be that they should have concluded that there is a five-year supply of housing sites.

THE CONFLICT WITH THE DEVELOPMENT PLAN

Policy PG6 of the CELPS

Policy RES5 of the CNLP and Policy PG6 both seek to restrict housing in the "open countryside".

179. Policy PG6 defines the Open Countryside as the area outside of any settlement with a defined settlement boundary. The Appeal scheme lies outside of the settlement boundary and is within the Open Countryside.
180. Policy PG6 provides that within the Open Countryside only development that is essential for the purposes of agriculture, forestry, outdoor recreation, public infrastructure, essential works undertaken by public service authorities or statutory undertakers, or for other uses appropriate to a rural area will be permitted. The appeal scheme does not fall within this paragraph.

181. PG6 also goes on to reference to a number of exceptions that might enable development in the open countryside to proceed. None apply to the proposed development. The Appeal scheme is thus contrary to Policy PG6.

182. In considering Policy PG6 (Although it was then referred to as Policy PG5), the Examination Inspector explained:

“Policy PG5 seeks to provide for development required for local needs in the open countryside to help promote a strong rural economy, balanced with the need for sustainable patterns of development and recognising that most development will be focused on the main urban areas. The “open countryside” is defined as the area outside any settlement with a defined settlement boundary; a footnote confirms that such boundaries will be defined in the SADDPDP, but until then, settlement boundaries defined in the existing local plans will be used, as now listed in Table 8.2a. Issues about the detailed extent of specific settlement boundaries can be addressed in the SADDPDP. This is an appropriate and effective approach, given the strategic nature of the CELPS. ” (Examination Inspector’s Report p28 para 111)

He concluded:

“Consequently, with the recommended modifications, the approach to the Green Belt, Safeguarded Land, Strategic Green Gaps and the Open Countryside is appropriate, effective, positively prepared, justified, soundly based and consistent with national policy.” (Examination Inspector’s Report p29 para 113)

Policy RES.5 of the CNLP

183. Policy RES.5 of the CNLP is the sister policy to PG6. It provides:

“Outside settlement boundaries all land will be treated as Open countryside. New dwellings will be restricted to those that:

- A) meet the criteria for infilling contained in policy NE.2; or
- B) are required for a person engaged full time in Agriculture or forestry, in which case permission will not be given unless...”

The Policy then lists a series of exceptions.

184. The proposed development is located in the “open countryside” as defined for this policy also. It does not fall within Part A (i.e. it is not infilling as referred to in Policy NE.2) and it does not fall within Part B. the proposed development is then contrary to Policy RES.5 of the CNLP.

185. Although not considered by the Examination Inspector, the policy approach set out in RES.5 is wholly consistent with the approach in PG6 that he found to be “appropriate, effective, positively prepared, justified, soundly based and consistent with national policy”

Policies PG2 of CELPS

186. Policy PG2 defines the settlement hierarchy of the newly adopted CELPS. It creates four tiers. Nantwich lies within the Key Service Centres tier in respect of which Policy PG2 states:

“In the Key Service Centres, development of a scale, location and nature that recognises and reinforces the distinctiveness of each individual town will be supported to maintain their vitality and viability.”

187. The Examination Inspector explained at paragraph 79:

“This settlement hierarchy recognises the size, scale and function of the various towns, as well as their future role in the development strategy. In my earlier Interim Views (Appendix 1), I considered the proposed settlement hierarchy is appropriate, justified and soundly based, and no new evidence has been put forward since then to justify any further changes to the settlement hierarchy as set out in Policy PG2.”

188. At paragraph 82 of his report the Examination Inspector concluded:

“the Settlement Hierarchy and Visions for each town and settlement are appropriate, effective, locally distinctive, justified and soundly based, and are positively prepared and consistent with national policy.”

Policy PG7 of CELPS

189. Policy PG2 needs to be read alongside Policy PG7 of the CELPS which defines the spatial distribution anticipated by the CELPS. Whilst the nature of settlements in Cheshire East is diverse, each with different needs and constraints, Policy PG7 sets indicative levels of development by settlement. These figures are intended as a guide and are expressly neither a ceiling nor a target. The explanatory text explains that provision will be made to allocate sufficient new sites in each area to facilitate the levels of development set out in the policy.

190. The explanatory text to Policy PG7 (paragraph 8.75) makes clear that the distribution of development between the various towns of the borough is informed by the Spatial Distribution Update Report. This has taken into account a large number of considerations including Settlement Hierarchy, various consultation stages including the Town Strategies, Development Strategy and Emerging Policy Principles, Green Belt designations, known development opportunities including the Strategic Housing Land Availability Assessment, Infrastructure capacity, Environmental constraints, Broad sustainable distribution of development requirements.

191. Indeed, the distribution also takes into account the core planning principles set out in the Framework, which states that planning should take account of the varied roles and character of different areas, and actively manage patterns of growth to make the fullest possible use of public transport,

walking and cycling and focus significant development in locations that are or can be made sustainable.

192. The Examination Inspector considered Policy PG7 (then known as Policy PG6) and explained that it is

“a key policy setting-out the spatial distribution and scale of proposed development at the Principal Towns, Key Service Centres, Local Service Centres and Other Settlements & Rural Areas. In my Further Interim Views (Appendix 2), **I considered that the revised spatial distribution of development represents a realistic, rational and soundly-based starting point for the spatial distribution of development; it is justified by a proportionate evidence base and takes account of the relevant factors, including the crucial importance of the Green Belt and the outcome of other studies undertaken during the suspension period. It is also based on sound technical and professional judgements and a balancing exercise, which reflects a comprehensive and coherent understanding of the characteristics, development needs, opportunities and constraints of each settlement.** Since that time, there is no fundamental or compelling new evidence which suggests that these conclusions should be reviewed.” (Examination Inspectors Report para 83 – Emphasis added)

193. The Examination Inspector’s overall conclusion in relation to the Spatial Distribution contained in the CELPS at paragraph 92 of his report was:

“Consequently, with the recommended modification, I conclude that the Spatial Distribution of Development and Growth to the various towns and settlements is **appropriate, effective, sustainable, justified with robust evidence and soundly based, and fully reflects the overall strategy of the Plan.** I deal with specific issues relating to particular settlements on a town-by-town basis, later in my report.” (emphasis added).

194. The text of Policy PG7 explains in respect of Nantwich this level would be in the order of 3 hectares of employment land and 2,050 new homes.

195. Appeal Site A was considered during the plan process as a potential site for meeting this requirement but was rejected. This decision was upheld by the Examination Inspector who concluded that (paragraph 252 Examination Inspector’s Report):

“Some participants argue that more housing development should be allocated to Nantwich, given the absence of other new sites and its close relationship to Crewe. However, Nantwich has seen significant new housing development in the recent past and, with existing commitments and future proposals, is well on the way to meeting its overall apportionment. Further development would almost inevitably involve additional greenfield sites, which could adversely affect the character and setting of the town and the adjoining Strategic Green Gap. The Plan

already provides some flexibility in housing provision (6.4%) and no further sites are needed to meet currently identified housing needs.”

196. The result of the adoption of the CELPS is that 2246 units have been allocated over the plan period. In addition, there is currently provision for 4.15 ha of employment land. It follows, as Mr Taylor explain in his evidence (paragraph 6.25), that there is then no requirement to allocate further sites to meet employment or housing needs through the SADPPD.
197. Thus, the Appeal Scheme would radically and significantly reduce the allocations going forward to meet more local needs elsewhere within the Council’s administrative area in the remaining plan period.
198. The Appeal scheme if permitted would add 189 units and 0.37 ha of employment space to the land already allocated/committed for housing an employment needs. In other words this would lead to housing provision of 18% above the level identified as appropriate in terms of spatial distribution in the CELPS and would add some 10% to the appropriate employment floorspace required resulting in employment provision some 50% above the appropriate requirement.
199. These are very significant levels of unplanned growth. It is so significant that it must necessarily undermine the careful balance between employment growth and housing that forms the basis of the strategy for Nantwich within the CELPS.
200. The only reasonable conclusion is that the proposed development would significantly undermine the settlement hierarchy and spatial distribution set out in the CELPS. It is contrary to Policies PG2 and PG7.

Best and Most Versatile Land

201. Paragraph 112 of the NPPF states:

“Local planning authorities should take into account the economic and other benefits of the best and most versatile agricultural land. Where significant development of agricultural land is demonstrated to be necessary, local planning authorities should seek to use areas of poorer quality land in preference to that of a higher quality.”

202. CELPS Policy SE2 provides that the loss of BMV should be minimised.

203. It is submitted that the policy approach requires consideration of:

- a. Whether there is a need for the development proposed?
- b. If so, has it been demonstrated that development of BMV is “necessary” i.e. that there is no area of poorer quality agricultural land to locate the development upon?

204. The Council submits that, since it has a five-year supply of specifically deliverable housing sites, it cannot be contended that the housing element of the proposed development is needed.
205. So far as the commercial element is concerned, some 0.37 ha of commercial floorspace is proposed. Mr Taylor has explained and was not challenged that 3ha of employment land was identified as required for Nantwich in the CELPS. 4.15 ha is already anticipated to come forward. The grant of Appeal Scheme would mean some 4.52 ha would come forward i.e. 50% provision over and above the CELPS expectation. Mr Downes in XX accepted that he was not contended that there was a local need for additional commercial floorspace in this location.
206. Remarkably, the Appellant is seeking planning permission for some 3600 sq m of commercial floorspace on a greenfield site which includes BMV in the open countryside without any justification whatsoever.
207. It follows that it has not been established that the proposed development is needed.
208. Even if this is rejected, however, the next stage in applying policy is to ask whether it has been established that the development could not be accommodated on poorer quality agricultural land.
209. The Appellant, as Mr Downes confirmed in XX, has presented no evidence on this point. There has been no study undertaken. No assessment has been made. In short, no attempt whatsoever to show that the development could not be accommodated elsewhere on poorer quality agricultural land.
210. This is particularly important in respect of the commercial element of the proposed development; there has been no attempt to examine whether that could be provided on poorer quality agricultural land within the Borough.
211. It is submitted that as a result of the above it has not been established that it is necessary to develop the BMV that would be permanently lost to the proposed development. Nor that development needs could not be met by utilising poorer quality agricultural land.
212. The proposed development is contrary to paragraph 112 of the NPPF and to Policy SE2 of the CELPS.

Neighbourhood Plan

213. The most recently adopted element of the statutory development plan is the Stapeley and Batherton Neighbourhood Plan adopted in February 2018.
214. Policy GS1 can only be sensibly construed as preventing development in the open countryside unless it falls within the exceptions delineated in paragraphs (a) to (i). The proposed development does not fall within any of those paragraphs as an exception. Accordingly, it is contrary to the Stapeley and Batherton Neighbourhood Plan.

215. In terms of housing, the Neighbourhood Plan sets out in policy H1 and H2 the kinds of housing that accords with the Plan. The proposed development does not fall within the scope of the development that is supported and is thus contrary to these policies.

216. There was an attempt to suggest that the proposed development accords with Policy H5. This policy provides:

“Subject to the provisions of other policies in the Neighbourhood Plan, the focus for development will be on sites within or immediately adjacent to the Nantwich Settlement Boundary, with the aim of enhancing its role as a sustainable settlement whilst protecting the surrounding countryside.

Outside the settlement boundary any development is subject to the Cheshire East Local Plan Strategy Countryside Policy PG 6 and other relevant policies of this Plan.”

217. The proposed development is outside the settlement boundary. As such as Policy H5 provides it is subject to Policy PG6 and “other relevant policies of this Plan”. Since there is conflict with Policies GS1, H1 and H2 of the Neighbourhood Plan then the proposed development cannot accord with Policy H5 either.

THE WEIGHT TO BE GIVEN TO THE CONFLICT WITH POLICY

218. Mr Downes properly accepted that the overall aims and objectives of these policies are broadly consistent with the aims and objectives of the Framework (Taylor p17 para 5.3). Indeed, given the conclusions of the Examination Inspector he could hardly do otherwise.

219. Nevertheless, it appears to be the Appellant’s case that, notwithstanding the adoption of the CELPS only last year and the Neighbourhood Plan only a few weeks ago, the policies addressed above should all be given “very limited weight” (see Downes XX and Taylor Proof p 18 para 5.6). This is a remarkably brave contention.

220. In summary, the Appellant contends that:

- a. the Council cannot demonstrate that it has a 5-year housing land supply of deliverable sites;
- b. the settlement boundary must flex in order to bring sites forward in order to provide a 5-year housing land supply of deliverable sites;
- c. the settlement hierarchy similarly must flex in order to enable sites to come forward to provide a 5-year housing land supply of deliverable sites;
- d. Accordingly, in order to meet 5-year housing land supply needs these policies must be given very little weight so that the appeal scheme

can come forward to assist in providing the 5-year housing land supply which is required.

A 5 Year Housing Land Supply

221. As already outline above, the Examination Inspector considered a wide range of evidence on housing land supply from numerous parties. This included points raised relating to the methodology used in relation to build out rates and lead in times.

222. Mr Fisher explained to the Inquiry the work undertaken to inform the Examination on these issues. The Council has looked at every application over a 10 year period, looking at thousands of sites. Further, in terms of delivery, the Council had contacted and obtained information from the land owners/developers of all of the strategic sites.

223. The Examination Inspector explained at paragraph 65:

“Housing land supply was not covered in my earlier Interim Views, since the latest figures and assessments were not available. This issue was discussed regularly throughout the examination hearings, with developers, housebuilders and local communities challenging the deliverability of specific sites, particularly the larger strategic sites. **By the end of the hearings, CEC had undertaken a considerable amount of work to establish the timescale and deliverability of its housing land, including those strategic sites proposed in the CELPS-PC.**” (emphasis added)

224. In this same vein, the Inspector continued at paragraph 69:

“**CEC has undertaken much detailed work in establishing the timescales and delivery of these sites, including setting out the methodology for assessing build rates and lead-in times, using developers’ information where available and responding to specific concerns [PS/B037]. Although there may be some slippage or advancement in some cases, I am satisfied that, in overall terms, there are no fundamental constraints which would delay, defer or prevent the implementation of the overall housing strategy.** The monitoring framework also includes specific indicators related to housing supply with triggers to indicate the need for review. I deal with site-specific issues later in my report on a town-by-town basis. On the basis of the evidence currently available, **I am satisfied that CEC has undertaken a robust, comprehensive and proportionate assessment of the delivery of its housing land supply, which confirms a future 5-year supply of around 5.3 years.**” (emphasis added)

225. It is very important to note that the Appellant in the present case has not contended that any of the triggers in the monitoring framework referred to by the Inspector are engaged.

226. At paragraph 76 the Examination Report, the Inspector concluded:

“On the basis of the evidence before me, I conclude that the CELPS-PC, as updated and amended, would provide a realistic, deliverable and effective supply of housing land, to fully meet the objectively assessed housing requirement, with enough flexibility to ensure that the housing strategy is successfully implemented. Similarly, CEC should be able to demonstrate that there is at least a 5-year supply of housing land when the CELPS is adopted.”

227. He concluded in terms that the provision for housing and employment land within the CELPS including the 5-year housing land supply position “is soundly based, effective, deliverable, appropriate, locally distinctive and justified by robust, proportionate and credible evidence, and is positively prepared and consistent with national policy.” (Examination Inspector’s Report p21 para 78)

The Inspector’s Decisions

228. The approach adopted in the White Moss, Willaston and Shavington decisions was wrong in law for reasons set out above. The approach set out in those decisions must not be followed in this one. The proper approach is:

- a. In respect of sites with planning permission/allocation is to ask whether there is clear evidence that there is no realistic prospect of the Site delivering housing as assessed by the Council;
- b. In respect of sites without planning permission/allocation is to ask whether there is robust and up to date evidence that there is a realistic prospect of the Site delivering housing as assessed by the Council.

229. It is also submitted that there is no policy requirement for the Council to demonstrate that it has a “robust” five-year housing land supply. Nor is there any policy requirement that a “precautionary approach” should be adopted to five-year housing land supply considerations.

The Housing Monitoring Update August 2017

230. The Council’s Housing Monitoring Update August 2017 sets out in detail a re-appraisal of the position. The Housing Monitoring Update which shifts the base date to 31 March 2017 utilises the same methodology employed in the CELPS Examination process. This methodology was described by the Examination Inspector as resulting in a “robust, comprehensive and proportionate assessment” housing delivery (Examination Inspector’s Report p19 para 69).

231. The HMU reveals that completions have increased to a level more than double that delivered in 2013/14 and for the fourth year in a row. In addition, there has been a net increase in commitments of some 3157 units compared to the position in March 2016 – a 19% increase on the position in March 2016. Indeed, the level of planning permissions granted/resolutions to approve in the last 12 months stands at 5269 units. Thus, not only have completions increased since March 2016 but also the pool of planning

permissions to enable additional housing to come forward has increased very substantially.

232. It is submitted that this demonstrates that the pool of deliverable sites has increased since March 2016 and not decreased as the Appellant contends.

The Appellant's Case on Housing Land Supply

233. The 'big picture issues' between the parties are as follows.

Backlog

234. Mr Wedderburn contended that the "Sedgpool 8" method of addressing backlog adopted by the Council and accepted by the Examination Inspector is to be applied so that the period it relates to shrinks year on year i.e. in the second year it is to be applied to a 7 year period in the third a six year period and so on until it shrinks to no period at all.
235. Mr Wedderburn has got this badly wrong. It is well established that the Sedgefield approach to backlog is a rolling approach and there is no reason not to apply this approach to the backlog in Cheshire East. He produced no appeal decision which supported the approach of a gradually shrinking period over which backlog should be applied.
236. Further and more significantly, Mr Wedderburn's point was taken and rejected in the Willaston appeal where the Inspector concluded (document D30 para 45):

"The Sedgpool 8 method was agreed by the examining Inspector for the CELPS on the basis that the backlog would be met within the next 8 years of the plan period from 1 April 2016. I note the appellant's concern that applying Sedgpool 8 from April 2017 effectively rolls the backlog forward another year. However, the CELPS Inspector agreed to vary the Sedgefield method because delivering the backlog over 5 years in Cheshire East would result in an unrealistic and undeliverable annual housing requirement. Dealing with a shortfall in housing delivery since the start of the plan period is a rolling requirement in the calculation of the 5 year housing requirement at any point in the plan period. The Council has factored the backlog for 2016-17 into the calculation of the current 5 year requirement. It would be unreasonable at such an early stage in the life of the new CELPS to depart from the Sedgpool 8 approach, given the basis for it in Cheshire East. To do so would in effect impose a further variant of the Sedgefield and Liverpool methods outside of the local plan examination process."

237. The Council submits that there has been no relevant change in circumstances since that decision. It continues to be unreasonable to adopt a different approach outside of the Plan process. The Appellant's case in this regard must be rejected.

Build Rates

238. Mr Wedderburn's position accepted the build rates on sites adopted by the Council (which reflected the approach accepted by the Examination inspector) other than on larger sites. On these larger sites he explained that he only accepted a 50 dpa yield where there is specific evidence to show that two builders would be on-site. In other words, he relies upon an absence of evidence to prove there would be two builders on site rather than any assessment of the realism of the assertion that two builders on site would not be realistic.
239. This is a perfect example of an approach at odds with the Policy position in the Framework. The policy compliant approach (as set out above) in relation to sites with planning permission/allocation is to ask whether there is clear evidence that there is no realistic prospect of two builders on site. Mr Wedderburn produced no evidence on this whatsoever.
240. Indeed, it is entirely unclear what evidence he would accept. For example, in relation to his approach to site LPS4 he explained that evidence from site promoters cannot be relied upon. If the evidence of the likely manner of build out of a site from those promoting a site cannot be relied upon, it is difficult to see how a local planning authority could evidence justify an assumption that two builders would actually come forward.
241. The evidence presented by Mr Fisher (rebuttal p13 table below paragraph 68), however, was that in practice the build rate is frequently significantly higher than the Council's methodology assumed in many cases by a factor of more than 100%. Even a small increase in the build rate over all of say 10% would produce an increase of supply of 1295. It cannot be said that there is no prospect of an increase in overall build rate of 10% or more than the Council has assumed.
242. It is submitted that Mr Wedderburn's evidence on this issue should be rejected. Only where there is specific evidence that there is no reasonable prospect of a large site being developed out by two builders should an assumption of anything less than 50 dpa be adopted.

Lead-In Times

243. Mr Wedderburn also attacked the Council's approach to examining sites by reference to a study of lead-in times he had undertaken. This examined some 70 sites through the planning process (see his appendix MW6). He then applied timings for various stages of the planning process to sites in the future i.e. he applied timings from the past and assumed they would be comparable in the future; his approach is flawed.
244. Firstly, 20 sites out of his 70 (29%) were sites which obtained planning permission on appeal. That was because prior to the adoption of the CELPS there were considerable issues relating to the principle of development on sites within Cheshire East. This gave rise to much argument, many appeals and many delays.

245. With the adoption of CELPS, the basis for these in principle arguments has been removed. The whole point of adopting a Local Plan is, after all, to provide a reliable basis for decision making which minimises scope of in principle disagreement. Indeed, Mr Wedderburn accepted in XX that he would not expect the same proportion of appeals going forward as had been experienced in his sample of sites.
246. As Mr Fisher explained in his rebuttal evidence (page 7 paragraph 35), the circumstances are very different now. Virtually all sites in the supply are either committed or are allocated. Accordingly, the number of appeals has also reduced – with no further residential inquiries programmed after the current one. Further, Local plan adoption not only resolves the principle of development (a major stumbling block previously – hence the number of appeals) – but it also assists in agreement on matters of detail (education, highways, landscaping etc) as all now relate to clear adopted policies. Added to this the Council has also adopted SPD on design guidance (May 2017), which again makes the position on detailed layouts clearer. In addition, the s106 process is assisted since the planning obligations are now linked to adopted policies (e.g affordable housing).
247. These are all reasons why the timing adopted in the past in relation to particular stages of the planning process are unlikely to be continued in the future. Thus, pointing to the past, as Mr Wedderburn has, does not establish that the approach adopted by the Council to lead in times is clearly unrealistic.
248. Indeed, they cannot be viewed as such given that the lead-in times utilised in the Council's evidence were accepted by the Examination Inspector as appropriate. That Inspector has the evidence now present in the present appeal and had the benefit of representations from all stakeholders, not just Mr Wedderburn. The lead-in times presented were the product of discussion with those stakeholders. In confirming that the lead-in times utilised were appropriate the Examination Inspector would have been aware of the points relating to the effect of adoption of CELPS and timings.
249. To reject the lead-in times adopted by the statutory plan process via the s78 appeal process is a radical step. It wholly undermines the basis on which the CELPS housing land supply was calculated and found sound. In other words, it undermines the strategic basis for the CELPS at its core. It would leave the man in street wondering how a Local Plan can be sound one month and then some 9 months later be found to have been adopted on a basis which can no longer be supported. What a colossal waste of public resources it would be to have promoted a Plan which is then effectively jettisoned less than a year later?
250. It is submitted that great care needs to be taken to ensure that such a significant step is not taken lightly or else it will bring national planning policy and the planning system as a whole into disrepute. It must only be a rare case indeed, when a methodology accepted at Examination a few months before is deemed inappropriate a few months later only on the basis of the sort of generalised evidence presented by Mr Wedderburn. The time for consideration of that generalised evidence was in pursuit of objection to the

CELPS at Examination when all stakeholders involved could have their views aired and considered and not subsequently in a s78 appeal where other stakeholders views are not provided.

251. But of course, unlike Mr Wedderburn, the Council's appraisal is not simply reliant upon the application of generic time periods from a study of 70 sites in the past.
252. Mr Fisher set out in his evidence an exercise which sought to look at the lessons to be learned from recent post adoption data. He analysed major applications that commenced between 1 April and 31 December 2017. He considered that he had obtained a decent but not comprehensive sample of what is currently taking place.
253. His evidence showed that for the 16 Major developments that have started by Q3 of 2017/18 the median timeline between the date of detailed consent and the start of construction is 0.43 years – or just over 5 months. A similar picture applies to both larger and smaller developments. For those applications that featured an outline the median timeline between the date of outline consent and the start of work is 1.47 years. Once again, the picture is similar for both larger and smaller applications. This data is set out in Appendix 2 to Mr Fisher's rebuttal.
254. The most up to date information reinforces the timelines employed in the standard methodology and demonstrates that sites can commence and deliver initial units within relatively short timescales. Whilst not every site may deliver in this way, those starting in 2017/18 follow this pattern.
255. The data also reveals that of the sites of 100 units or more, 44% of sites have started ahead of the timescales in the HMU. It is submitted that this illustrates the reasonableness of the Council's approach and that sites are not only capable of meeting the timescale in that approach but also of improving upon them. It is submitted that this provides a good indicator of what will happen in future. It demonstrates that sites are fully capable of delivering to the timescales anticipated by the Council and that those timescales are realistic.
256. A further and important point to note from Mr Fisher's analysis of this data is that full applications (as opposed to reserved matters) were made on more than 50% of the sites. This includes half of the sites over 100 units. This shows that on allocated sites, companies are willing to use the greater certainty that the development plan provides to proceed straight to a detailed application.
257. By contrast Mr Wedderburn confirmed in XX that he had assumed that all sites without planning permission would come forward as outline applications. The evidence that Mr Fisher has adduced demonstrates that this assumption is not realistic. As a result timescales are applied to sites on a basis that an outline planning permission will be obtained when the evidence shows that for a large proportion that will not be the case. The result is that Mr Wedderburn's approach is seriously unrealistic.

258. Further, the Council has relied upon site specific evidence and has specifically contacted site owners and promoters. Such site-specific evidence must constitute better evidence than the generalised approach of Mr Wedderburn.
259. In particular, there may be a number of site specific reasons why a site would come forward faster or slower. In looking at the position, it is submitted that site owners/promoters must be in the best position to advise on a number of factors including, the likely phasing and thus timing of reserved matters applications since phasing is often tied to funding issues. They have knowledge of timing issues arising out option agreements which no other party knows and which can include the need for certain stages to be met by certain dates. They also have access information relating to construction including implications for financing, and labour supply and materials.
260. These are all matters known by site owners/promoters and no-one else. Yet Mr Wedderburn's approach was to ignore this. He negated all of this by asserting that statements by promoters were not reliable. Admittedly caution has to be applied to statements made prior to the adoption of a Local Plan which allocates sites, since there may be a desire for some to present a rosier picture of deliverability of their site in order to secure allocation. Indeed, this point is crucial because it undermines any reliability in the exercise conducted by Mr Wedderburn (his rebuttal page 5 paragraph 4.7) looking at outturn against comments. The comments he examined were all made prior to the adoption of the CELPS and the allocation of the sites concerned.
261. It is the case, however, that after allocation that motivation is simply removed. Indeed, Mr Wedderburn struggled to identify why post allocation a site owner/promotor would make unreliable statements regarding the yield of units from their site in XX.
262. All of these matters point to a single conclusion; there is no basis for accepting that there is clear evidence that there is no realist prospect of the lead-in times adopted by the Council and accepted by the Examination Inspector coming about. The reality here is that there is ample evidence to establish that they are robust, up to date and realistic.
263. It is submitted that the approach advocated by the Appellant must be rejected and the approach that lies behind the recently adopted Local Plan and utilised by Mr Fisher in his appraisal must be accepted.

5% Discount

264. Mr Wedderburn adopted an approach in which he was entirely alone; no other planning consultant in any of the appeals post-adoption of CELPS has contended that a percentage discount to the total supply should be applied to take account of planning permissions which expire. He is a lone voice in this. The reason why is that it is a thoroughly bad point.
265. Firstly, his figures were miscalculated even if it were right to apply the discount. He had applied it to permissions that were already implemented;

once implemented a planning permission cannot expire. Mr Wedderburn agreed that his discount should not be applied to implemented permissions.

266. Secondly. Mr Wedderburn has identified his 5% figure by reference to data from the Council which contained an error. Mr Fisher explained in his rebuttal evidence that the consequences of that error meant that a figure of 5% expiry could not be supported from the data; rather a figure of 4% (Fisher rebuttal paragraph 45). But this is before an allowance is made for sites which obtain a new planning permission after expiry. Mr Wedderburn allowed 1% for this. That would get one to a 3% discount figure.
267. However, Mr Wedderburn had made no investigation of the extent to which the sites where consent had lapsed in the past had obtained planning permission post expiry. Mr Fisher explained that in practice many sites regain consent in short order and are subsequently developed. This illustrates that even if a site lapses it is capable of development. Further, the NPPG indicates that where there is robust evidence a site without planning consent can be included in the supply. Where planning consent has been given in the past and there are no significant physical impediments, it is in line with national guidance to include sites within the deliverable supply.
268. As Mr Fisher explained in his rebuttal at paragraph 47 the Council only employs 63% of commitments within its 5-year supply. It is very far from counting every last house from consent. There is plenty of scope for other commitments to deliver better than expected.
269. Even more significantly, however, Mr Wedderburn's approach if adopted would result in a double counting. The effect of applying a lapse rate to a housing requirement is that additional sites need to be found to make up the shortfall. However, the housing requirement in Cheshire East already includes a 20% buffer. Paragraph 47 explains that the purpose of the 20% buffer is to "to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land". Thus the 20% buffer rate is already applied in order to achieve the objective of Mr Wedderburn's discount. There is no reason to both increase the housing requirement and to decrease to pool of available sites for the same purpose. To do so results in double counting.
270. Mr Wedderburn was unable to identify any coherent reason why in the circumstances pertaining to Cheshire East both a 5% discount and a 20% buffer should be applied when he was questioned on the point in cross-examination.
271. The dangers of applying a discount for the decision maker can be seen in the case of **Wokingham Borough Council v Secretary of State** [2017] EWHC 1863 where the High Court quashed an Inspector's decision for failing to explain why in a 20% buffer context it was appropriate to apply a discount lapse rate. Indeed, in that case reference is made to a decision of the Secretary of State in respect of a proposed development in Malpas, Cheshire. In that case the Secretary of State agreed with the Inspector's reasoning on certain points including these. The Inspector considered the objective of the 20% "buffer" was to provide a realistic prospect of achieving the planned

supply and to ensure choice and competition in the market and that "the buffer figure thereby allows for some uncertainty and slippage in the delivery of some sites". He added:

"there is no evidence to support the arbitrary 6 month or 12 month slippage rate assumed by the Appellant across all developments. To apply such an assumption, or the alternative 10% discount (which is equally arbitrary), would result in double counting in that the 20% buffer would also allow significant slippage or non-implementation."

272. The same reasoning applies to the present case. For all these reasons Mr Wedderburn's suggested 5% lapse rate must be rejected.

Windfall

273. Mr Wedderburn has adopted an inconsistent approach to windfall. He included an allowance for windfall in areas not including Crewe. There was no rational reason for this and this needs to be taken into account when looking at the "allocation" for windfall for the Crewe area.

A Comparison between Trajectory and Actual Delivery

274. The Appellant has placed significant emphasis on a comparison between the actual delivery of housing and that which was anticipated in the housing trajectory. A number of annotated graphs were produced on behalf of the Appellant to illustrate the points being made. These points were put forward as a basis for suggesting that the Council's identification of housing land supply is suspect in some way. The comparison in fact does not such thing.

275. As the Court of appeal emphasised in *St Modwen*, paragraph 49 of the NPPF requires a local planning authority "demonstrate a five-year supply of deliverable housing sites". This is not the same things as comparing against the requirement that the authority must "illustrate the expected rate of housing delivery through a housing trajectory for the plan period" as part of Plan preparation. A housing trajectory is undertaking a different task from the exercise that must be undertaken when looking at deliverable sites for purposes of a 5 year housing land supply assessment. Accordingly, the comparative exercise undertaken is of only very limited utility in a decision taking context.

276. Further, it has to be remembered that the issue here relates to the delivery of houses over a five-year period. As the Examination Inspector recognised there will inevitably be slippage or advancement of some sites in reality compared with any forecast. However, over a five-year period this effect is, absent particular evidence relating to a particularly significant and large strategic site, likely to even out. For example, a site where delivery slips will simply deliver in the next year. Thus, overall delivery in the next year is likely to be higher than anticipated unless units in that next year have come forward in an earlier year in significant number. That is why the Council's trajectory in the HMU for next year increases; that is entirely logical and indeed an obvious consequence of slippage in the year to 1 April 2017.

Conclusion on Housing Land Supply

277. For the reasons set out above, the Appellant's case on housing land supply must be rejected. If the White Moss and Willaston Inspectors had applied the correct legal approach and not the unlawful "precautionary" one that they did, they would have concluded that the Council had a 5-year housing land supply. Mr Wedderburn's attempt to argue that the position is far worse than these Inspectors identified must be rejected.
278. The reality here is that the CELPS was only found sound because there was accepted to be a five-year housing land supply. To find the opposite but a few months later as a result of adopting a different approach to that accepted by the CELPS examination Inspector without any material change in circumstances is to fall into error and worse to undermine the public's faith in the plan led system; what is the point of communities accepting the loss of greenbelt land in order to produce a Plan if the basis of that Plan is undermined by s78 Appeal decisions but a few months later? It is submitted that the public's faith in the planning system will be wholly undermined if section 78 decisions conclude so lightly that a five year supply is lost so soon after plan adoption. It submitted that the conclusions of an Examination Inspector that a methodology is robust and that there is a five-year housing land supply must be treated as of significant weight. Those conclusions should only be undermined if there is strong evidence to demonstrate that there has been a fundamental change of circumstances in the intervening period. There is not such evidence and no such change of circumstances in the present case. The only reasonable conclusion in this appeal is that the Council has demonstrated that it has a five-year housing land supply of deliverable sites.

Flexing the Settlement Boundaries

279. Since the Council has a 5-year housing land supply of deliverable sites, there is no policy imperative to "flex" the settlement boundaries and the Appellant's contention in that regard must be rejected. Indeed, Mr Downes accepted in XX that if there is a five-year housing land supply the settlement boundaries must be up to date.
280. It is incorrect to assert, as the Appellant has done, that the settlement boundaries are out of date in any event since their review is foreseen in the CELPS itself. As Mr Taylor explained, the CELPS anticipates a review of boundaries in order to facilitate development later in the plan period; the settlement boundaries right now are up to date.
281. Indeed, the Examination Inspector himself necessarily considered the question of whether the settlement boundaries were up to date. He must have, since a number of policies depend upon them and could not be sound unless the boundaries were up to date. Further, he considered numerous objections including those of the Appellant in relation to the Appeal site that sought to change the settlement boundaries. Since he concluded that the Council had a 5 year supply of housing, he must have concluded that, with the adjustments proposed, the settlement boundary was up to date.

282. It is submitted that, if you conclude that the Council has demonstrated that it has a five-year supply of deliverable housing sites, you must conclude that the settlement boundary is up to date.
283. On the other hand, if you conclude that the Council has not demonstrated that it has a five-year supply of deliverable housing sites, then logically it must be the case that settlement boundaries must flex somewhere in order for further housing to come forward. In such circumstances, Policies PG6 and RES.5 must be given reduced weight; what has not been established, however, is that they must flex here in order to allow the Appeal scheme to come forward given its location and position in the settlement hierarchy.

Flexing the Settlement Hierarchy and Spatial Distribution

284. There is no evidence that the settlement hierarchy and spatial distribution anticipated in the CELPS has to flex in the absence of a five-year supply of deliverable housing sites. If you conclude that there is a five-year supply of deliverable housing sites then there can be no basis for such "flexing".
285. If there is a need for further sites to meet 5 year housing needs in the short term, it is obviously preferable that these are met at sites which do accord with the settlement and spatial distribution hierarchy; to accept otherwise is to subvert the newly adopted CELPS and the plan led system.
286. As set out above, the Appeal Scheme is contrary to Policies PG2 and PG7. The Appeal scheme if permitted lead to housing provision of 18% above the level identified for this part of the District as appropriate in terms of spatial distribution in the CELPS and would add some 10% to the appropriate employment floorspace required resulting in employment provision some 50% above the appropriate requirement. These are very significant levels of unplanned growth. It is so significant that it must necessarily undermine the careful balance between employment growth and housing that forms the basis of the strategy for Nantwich within the CELPS.
287. It is submitted that even if there is no 5-year housing land supply of deliverable sites, Policies PG2 and PG7 of the CELPS should be given significant weight.

The Planning Balance

288. In order to assist in undertaking the planning balance these submissions address the planning balance on two alternative bases:

If there is a five-year housing land supply; and

If there is no five-year housing land supply

There is a Five-Year Housing Land Supply

289. If there is a five-year housing land supply then the policies in the development plan are up to date. There is then no basis for applying the tilted balance. Instead paragraph 14 of the NPPF requires the development to

be assessed against the policies in the Development Plan. The significant conflict with the development plan has been identified in above. In a context where the development plan is up to date, the breaches of policy identified above must be given full weight.

290. Section 38(6) of the 2004 Act falls to be applied. This indicates that given the breach of development plan policy planning permission should be refused unless material considerations indicate otherwise.
291. The development would provide market and affordable housing. However, as set out above, the Council is in a position where a 5-year supply can be demonstrated and the Council is meeting its market housing needs and has made the necessary strategic provision for the future. Therefore only limited weight can be given to this benefit, particularly given that the CELPs have addressed Nantwich's housing needs, including through the strategic allocations at Kingsley fields and Snow Hill.
292. The provision of affordable housing is a benefit of the proposed development and would result in 57 affordable properties being provided based on a 189 house development. However, affordable housing is required to be delivered by all housing developments. As set out above, the appeal scheme is not needed in order to secure a five-year supply of housing, and the Examination Inspector concluded that the CELPS, by delivering its planned housing numbers, appropriately meets affordable housing needs. Nevertheless, given local housing need, it is accepted that the delivery of affordable housing in an accessible location is an important benefit of the scheme.
293. Overall the proposal would also provide social and economic benefits. These would include employment opportunities generated in construction, spending within the construction industry supply chain and indirectly as a result of future residents contributing to the local economy. There would also be a boost to the local economy through additional spending and support for existing facilities and services.
294. Although economic benefits from the construction of the site would be limited as these would cease upon completion of the development. Indeed, it has not been established that the economic benefits here would be additional to those which would arise in any event. For example, if the construction workers were not on this site, it is likely they would be employed elsewhere.
295. The appeal site (A) proposes a package of development in addition to the housing. This includes a local centre incorporating a convenience store with 7 other small shop units, a potential new primary school and the provision of employment units. However, there is no commitment to these actually being provided and no evidence that they would be. Accordingly, it is submitted that only limited weight should be attributed to the benefits arising from the proposed local centre.
296. So far as the new employment provision is concerned, the evidence has established that there is no commitment to delivering this aspect of the scheme. Further, there is already substantial overprovision of employment

land in Nantwich. The benefits associated with this element of the scheme are also to be given only limited weight.

297. Subject to a suitable Section 106 package, the proposed development would provide adequate public open space and highways improvements. However, these are not considered benefits of the development as they are required to make the development acceptable in planning terms. Therefore, whilst these factors do not weigh against the proposal they also do not weigh in favour.
298. In the light of the above, in a context where it is accepted that there is a 5-year supply of housing sites, the proposed development would lead to a very significant breach of the Development Plan. That breach must be given substantial weight against the grant of planning permission. Whilst there would be some benefits of granting planning permission these are of the kind that would arise from any housing scheme. There is nothing particular about the material considerations associated with the Appeal scheme which is of such particular benefit that it can be considered to outweigh the breach of the Development Plan.
299. As a result, the only reasonable conclusion is that, applying section 38(6), planning permission must be refused.

No Five Year Housing Land Supply

300. If, contrary to the Council's case it is concluded that there is no five-year housing land supply, then policies which are policies for the supply of housing are out of date and the tilted balance must be applied.
301. It is submitted that none of the policies identified above as being in breach by the proposed development are policies for the supply of housing in the narrow sense identified in Hopkins Homes. However, in Hopkins Homes it was recognised that the weight of policies that would operate to constrain development to meet housing needs could be affected by a conclusion that there is no five-year housing land supply; otherwise the policy objective of meeting housing needs might be frustrated.
302. It is then necessary to carry out an exercise of:
- Examining harm against benefits in order to apply the tilted balance; and
- Undertaking the exercise required by section 38(6) of the 2004 Act.
303. The appeal scheme will have material economic and social benefits as set out above. I also acknowledge that the actual delivery of housing to meet needs within 5 years in a context where there is no 5-year supply of housing is a factor to which weight should be given. How much weight depends upon the extent to which the proposed development is likely to deliver housing within this time-scale. In the present case there are a number of factors that are likely to mean that the actual contribution towards the current five-year supply will be very limited.

304. There is likely to be a substantial delay in the decision-making process given the time taken for decisions to be made previously in this case. Following the Public Inquiry held in February 2014 the appeals were not dismissed by the Secretary of State until 17th March. Subsequent to the quashing of this decision by the High Court on 3rd July 2015, the appeals were re-determined by the Secretary of State with the decision issued on 11 August 2016.
305. As set out by Adrian Fisher when applying the Council's assumed lead-in times, a site with outline planning permission of the size of the appeal proposal would start on site at 2 years with 15 dwellings being completed that year. A completion rate of 30 dwellings/year would be assumed for years 3, 4 and 5. With this in mind, if the Secretary of State was to allow this appeal, say, twelve months on from this Inquiry, the site would at best, on the Council's lead in times contribute 45 completions to the 5 year supply.
306. However, if Mr Wedderburn's approach to standardised lead-in times followed there would be even less of a contribution made to supply within five years. The additional year's delay that that approach would deliver would reduce the Appeal scheme's contribution to just 15 homes in the five-year period (see Taylor proof paragraph 6.58). Thus, whilst the development might make some contribution towards the five-year housing land supply it is likely to be small, and at best 45 dwellings but likely less.
307. It is on this point that the Appellant's evidence performs a remarkable volte face; instead of applying the standard approach to sites with outline planning permission that Mr Wedderburn applied to every other site, the Appellant adopts a bespoke timetable which results in a much faster rate of delivery. It is even more remarkable that the Appellant should do this in the face of Mr Wedderburn's evidence that decision makers should be wary of site owners/promoters overselling the rate of delivery from their sites. The Appellant's wholly inconsistent case must be rejected in this regard.
308. Whilst the Appeal scheme would deliver a limited number of homes to meet five-year housing land supply needs, it would remain housing that is not justified spatially. For reasons set out above, the conflict with the settlement hierarchy should still be given significant weight. In addition, the conflict with development plan policies seeking to protect the loss of BMV should also be given significant weight since it has not been established that needs could not be met on less valuable agricultural land.
309. In relation to affordable housing, the position here is the same as set out above. Against this it is necessary to weigh the benefits of the proposed development. The benefits associated with the provision of a local centre are to be given only limited weight for the reasons set out above. In addition, it is to be noted that no need for a local centre has been asserted or established by the Appellant. In relation to the employment, as set out above, there is no established need for the employment aspect of the proposed development. The benefits associated with it are to be given limited weight as already explained. As a consequence, the additional benefits compared to the situation where there is a five-year housing land supply only change by reference to the weight attributable to the actual contribution the

proposed development would make supply, which is likely to be limited for reasons set out above.

Impacts

310. It is acknowledged that in the absence of a five-year housing land supply the geographic extent of the settlement boundaries can be regarded as out of date, but nonetheless the proposals would harm the Policy objectives of recognising the intrinsic character and beauty of the open countryside for the reasons set out above.

311. The Secretary of State has considered the extent of that harm previously and there has been no material change in circumstances which means that a different conclusion should be reached. The decision letter of August 11th 2016 concludes:

“Weighing against the proposals, the Secretary of State considers that the proposals would cause harm to the character and appearance of the open countryside, for the reasons given at paragraphs 27-28 above. This harm would be in conflict with paragraphs 7 and the 5th and 7th bullet points of paragraph 17 of the Framework. Having given careful consideration to the evidence to the Inquiry, the Inspector’s conclusions and the parties’ subsequent representations, the Secretary of State considers that the harm to the character and appearance of the open countryside should carry considerable weight against the proposals in this case. He further considers that the loss of BMV land is in conflict with paragraph 112 of the Framework and carries moderate weight against the proposals, for the reasons given at paragraphs 31-34 above.” (para. 46).

312. It is important to remember that much of this harm is likely to be caused by housing that would not contribute to 5-year housing supply and thus would not contribute to any identified shortfall in that supply. In addition, no justification for the local centre or employment provisions has been proffered as Mr Downes accepted in XX. Thus, granting planning permission would result in adverse impact upon the open countryside from housing which is not required to meet any 5-year housing land supply needs and from other development which is not required to meet retail/employment floorspace needs. As a result, it is submitted that the weight to be given to such adverse impacts from unjustified development in the open countryside, on BMV and in a location which conflicts with the adopted settlement hierarchy is very substantial.

313. As explained above, the proposed development will result in the loss of BMV for a scheme which is not necessary since the greater part of it is not required to meet any identified need. Further, there has been no assessment which has established that the part of the scheme which may be needed (the small number of housing units that might come forward to meet five-year housing needs) cannot be accommodated on less valuable agricultural land.

314. Overall, it is submitted that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed

against the policies in the Framework taken as a whole. It is thus submitted that the proposed development is not sustainable development and is not supported by the NPPF.

315. So far as the section 38(6) exercise is concerned, it is submitted that the proposed development would give rise to significant breaches of the Development Plan. Where there is no five-year housing land supply however, it is necessary to identify the appropriate weight to give to those policies.
316. The Court of Appeal in the Suffolk Coastal case, in a passage which is not affected by the Supreme Court decision gave some guidance as to factors which are relevant to a decision makers consideration of the weight to give to policies in this context at paragraph 49:

“One may, of course, infer from paragraph 49 of the NPPF that in the Government’s view the weight to be given to out-of-date policies for the supply of housing will normally be less than the weight due to policies that provide fully for the requisite supply. The weight to be given to such policies is not dictated by government policy in the NPPF. Nor is it, nor could it be, fixed by the court. It will vary according to the circumstances, including, for example, the extent to which relevant policies fall short of providing for the five-year supply of housing land, the action being taken by the local planning authority to address it, or the particular purpose of a restrictive policy – such as the protection of a “green wedge” or of a gap between settlements. There will be many cases, no doubt, in which restrictive policies, whether general or specific in nature, are given sufficient weight to justify the refusal of planning permission despite their not being up-to-date under the policy in paragraph 49 in the absence of a five-year supply of housing land. Such an outcome is clearly contemplated by government policy in the NPPF. It will always be for the decision-maker to judge, in the particular circumstances of the case in hand, how much weight should be given to conflict with policies for the supply of housing that are out-of-date. This is not a matter of law; it is a matter of planning judgment (see paragraphs 70 to 75 of Lindblom J.’s judgment in *Crane*, paragraphs 71 and 74 of Lindblom J.’s judgment in *Phides*, and paragraphs 87, 105, 108 and 115 of Holgate J.’s judgment in *Woodcock Holdings Ltd. v Secretary of State for Communities and Local Government and Mid-Sussex District Council* [2015] EWHC 1173 (Admin)).”

317. It is then relevant to consider;

- The extent to the shortfall;
- The action being taken by the local planning authority to address that shortfall; and
- The particular purpose of a restrictive policy.

318. In this context, to the extent that a shortfall can be identified, it must be very small indeed. As Mr Fisher explained the next stage of the development plan is for the identification of additional housing sites. Any shortfall now is

likely to be addressed very shortly, and in all probability before the Appeal Scheme is likely to deliver any housing units.

319. So far as the particular purposes of the relevant restrictive policies are concerned, the protection of the open countryside and of the best and most versatile land are objectives wholly supported by the Framework. In addition, the sustainable distribution of development via appropriate settlement hierarchy is supported by the Framework.
320. Accordingly, in a context where there is no 5-year housing land supply, the relevant restrictive policies cannot be given full weight, however they can be given weight at a level just below that since any shortfall identified will be very small, is likely to be addressed very quickly indeed and before the Appeal Scheme could contribute units and seek to achieve objectives supported by the Framework.
321. Against this the benefits of the scheme must be weighed. These have been addressed above. In essence, the Appeal scheme would only deliver a very limited number of units to meet five-year housing land supply needs. The remaining housing units, the local centre and the employment use proposed would not meet any identified need and are wholly unjustified. In this context, the harm that they would cause and the breach of development plan policy they give rise to is not justified by reference to any public interest need for them.
322. As a result, it cannot be the case that there is a justification for the proposed development. The Council submits that even where there is not five-year housing land supply, the conflicts with the development plan identified above are not outweighed by any material considerations. Thus, it must be concluded that planning permission should be refused and the appeal dismissed.

Supplementary evidence submitted following the publication of the revised National Planning Policy Framework

STATUS OF THE DEVELOPMENT PLAN

323. The rFramework does not change the statutory status of the development plan as the starting point for decision making. Planning law requires that applications for planning permission be determined in accordance with the development plan. Where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted (paragraph 2, 12 and 47 of the rFramework). The adopted development plan for Cheshire East currently comprises of the following documents:

- The Cheshire East Local Plan Strategy (adopted 27 July 2017) (CELPS)
- The saved policies of the Borough of Crewe and Nantwich Replacement Local Plan (adopted 17 February 2005) (CNLP)

- The Stapeley and Batherton Neighbourhood Plan (made on the 15th February 2018).

324. These plans were adopted prior to the introduction of rFramework. Paragraph 213 confirms that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).

CONSISTENCY OF ADOPTED POLICIES WITH THE NPPF

Spatial Strategy

325. The CELPS sets out the overall vision and planning strategy for the Borough. It is an up-to-date plan that provides a positive vision for the future and provides a framework for addressing housing needs and other economic, social and environmental priorities in accordance with paragraph 15 of the rFramework. The plan clearly sets out an overall strategy for the pattern, scale and quality of development, and makes sufficient provision for housing to meet the objectively assessed needs of the area. Policy PG1 states that sufficient land will be provided for a minimum of 36,000 new homes over the 20 year plan period, in accordance with rFramework paragraph 20. It should be noted that this figure is significantly higher than that previously published by MHCLG in its indicative assessment of housing need of 1,142 dwellings per annum (22,840 over 20 years). The CELPS therefore seeks to significantly boost housing supply, having regard to paragraph 59, providing a clear strategy for bringing sufficient land forward, and at a sufficient rate, to address objectively assessed needs over the plan period, in line with the presumption in favour of sustainable development.

Settlement hierarchy

326. The CELPS establishes a settlement hierarchy for development. In essence, this ensures that the majority of development takes place close to the borough's Principal Towns and Key Service Centres to maximise use of existing infrastructure and resources and to allow homes, jobs and other facilities to be located close to one another. The plan therefore plays an active role in guiding development towards sustainable solutions having regard to paragraph 7 of the rFramework. As at the 31.3.2017, some 37,196 dwellings were committed, completed or allocated, leaving a small residual requirement to be addressed through the subsequent Site Allocations and Development Policies Document (SADPD) which will be published for consultation in September 2018. It should be noted that through existing allocations, completions and commitments, sufficient deliverable and developable land and sites to meet the housing requirement of 36,000 homes has already been provided. The additional allocations identified through the future SADPD will therefore serve to provide for local housing needs in particular settlements.

Open countryside

327. The Council's evidence demonstrates that the development will result in harm to the intrinsic character and beauty of the open countryside. This harm was acknowledged in the previous decision letter of the Secretary of State. The appeal proposal conflicts with Policy PG6 of the CELPS and Policy RES5 of the CNLP. These policies are considered to be consistent with Paragraph 170 of the rFramework which states that planning policies and decisions should contribute to and enhance the natural and local environment by:

'recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland'.

Best and Most Versatile Agricultural Land

328. CELPS Policy SE.2 encourages the re-use/ redevelopment of previously developed land and also seeks to safeguard natural resources, including high quality agricultural land. The supporting text advises that agricultural land is a finite resource which cannot be easily replicated once lost. Policy SD2 (v) also states that the permanent loss of areas of agricultural land quality 1,2 or 3a should be avoided unless the strategic need overrides these issues. These policies are considered to be consistent with the rFramework as they recognise the economic and other benefits that are derived from best and most versatile land. Furthermore, the Council has recognised through Policy SD2 that there may be occasions where a strategic need may override such loss.

329. These policies are considered to be consistent with the rFramework. Paragraph 170(b) of the rFramework states that planning policies and decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland. Best and Most Versatile Land is also relevant to plan making. Paragraph 171 states that plans should allocate land with the least environmental or amenity value, where consistent with other policies in the Framework. Footnote 53 advises that where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality.

Stapeley & Batherton Neighbourhood Plan

330. The Stapeley and Batherton Neighbourhood Plan forms part of the development plan. Where a planning application conflicts with a made neighbourhood plan, planning permission should not normally be granted in accordance with Paragraph 12 of the rFramework. At Paragraph 29, the rFramework states that neighbourhood planning gives communities the power to develop a shared vision for their area. Neighbourhood plans can shape, direct and help to deliver sustainable development, by influencing local planning decisions as part of the statutory development plan.

Neighbourhood plans can play an important role in identifying the special qualities of each area and explaining how this should be reflected in development (paragraph 125).

331. The Stapeley Neighbourhood Plan was made on 15th February 2018 and is a recently adopted plan that includes local policies which seek to ensure that the special qualities of the area are recognised in the planning system. The plan contains notable policies on the landscape and open countryside, housing and design that should influence planning decisions, ensuring that development is appropriate to the area. The Neighbourhood Plan does not preclude residential development but rather it sets out the circumstances in which development will be permitted in order to ensure that it is commensurate with the character of the Parish and avoids intrusion into the open countryside.
332. As submitted in evidence, the appeal proposal clearly conflicts with adopted policies GS1, Policies H1 and H2. These policies are considered to be consistent with paragraphs 77 – 79, 83, 125 and 170 of the rFramework and full weight should therefore be given to them.

THE WEIGHT TO BE GIVEN TO ANY CONFLICT WITH POLICY

333. The appellant's case is that the Council cannot demonstrate a 5 year supply of deliverable housing sites. In these circumstances, footnote 7 and paragraph 11 of the NPPF apply. The NPPF states that where the policies that are most important for determining the planning application are out of date, planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole. As submitted in evidence, the Council has demonstrated that a sufficient 5 year supply of housing sites to meet identified requirements can be demonstrated. Any implications from revised NPPF on matters of housing requirements, delivery and supply are identified below.

The Cheshire East Local Plan Strategy

334. Paragraph 74 of the rFramework states that a five year supply of deliverable housing sites, with the appropriate buffer, can be demonstrated where it has been established in a recently adopted plan which:
- a) has been produced through engagement with developers and others who have an impact on delivery, and been considered by the Secretary of State; and
 - b) incorporates the recommendation of the Secretary of State, where the position on specific sites could not be agreed during the engagement process.
335. As submitted in evidence, the CELPS was adopted on the 21 July 2017. Therefore it should be considered a recently adopted plan having regard to paragraphs 73 & 74 and footnote 38. The Cheshire East housing requirement and the five year supply of housing sites were subject to lengthy and thorough examination, involving engagement with those stakeholders that

have an impact upon the delivery of sites. The adopted plan incorporated the recommendations of the Secretary of State. Upon adoption, the Inspector concluded that the Local Plan would produce a five year supply of housing, stating that:

'I am satisfied that CEC has undertaken a robust, comprehensive and proportionate assessment of the delivery of its housing land supply, which confirms a future 5 year supply of around 5.3 years'.

336. Full weight should therefore be given to the CELPS as a recently adopted plan in accordance with paragraph 74. It should also be noted that the 5 year supply of specific deliverable sites considered by the Examining Inspector incorporated within it the maximum possible buffer – 20% (see Paragraph E.9, Appendix E of the CELPS). This buffer is double that now required to be applied to recently adopted plans having regard to paragraph 73(b) of the NPPF. If a 10% buffer had been applied to the Cheshire East 5 year housing supply requirement at the point of the adoption, this would have the effect of reducing the overall 5 year requirement by some 1,235 dwellings.

337. The intention of the rFramework guidance appears to be to try and limit endless debates over 5 year housing supply, most particularly where the Secretary of State has recently ruled on the matter. This can be done either through the new annual assessment process or through the adoption of a local plan. National Policy now weighs heavily against attempts in S78 planning appeals to re-examine housing supply where a definitive conclusion has been reached through the Local Plan process. The NPPF sets clear time limits on the currency of those conclusions. In the case of Cheshire East, it is evident that a 5 year supply can be demonstrated up to 31 October 2018 based on the recent Local Plan adoption.

338. The Council therefore respectfully requests that the Appeal Inspector and Secretary of State follows rFramework guidance in this regard and concludes that a 5 year supply can be demonstrated for the purpose of this appeal.

The housing requirement

339. Paragraph 60 of the rFramework states that strategic policies should be informed by a local housing need assessment, conducted using the standard method in national planning guidance – unless exceptional circumstances justify an alternative approach. As submitted in evidence, the adopted CELPS housing requirement for Cheshire East over the plan period is some 36,000 homes, equivalent to 1,800 per annum. This is significantly higher than that previously published by MHCLG in its indicative assessment of housing need of 1,142 dwellings per annum. By adopting a significantly higher figure, the Council has clearly not shirked its responsibilities to significantly boost housing delivery within the Borough.

340. The Council's 5 year housing land supply assessment is based on a very generous assessment of need compared to the standard approach. The purpose of having a specific 5 year deliverable supply of housing sites is to ensure that sufficient land is available to enable homes to be built to meet housing need. In using a significantly higher figure than that produced by

standard methodology, even if the calculated supply was exactly 5 years (or as in this case, that supply exceeds the 5 year requirement), it would fully achieve the objective of ensuring that there is sufficient land available to meet housing need.

Presumption in favour of sustainable development

341. Paragraph 11 and footnote 7 concerns the application of the presumption in favour of sustainable development to both plan making and decision taking. For decision-taking, the presumption in favour of sustainable development means:
- a) approving development proposals that accord with an up-to-date development plan without delay; or
 - b) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:
 - c) the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
 - d) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.
342. Footnote 7 explains that for the purposes of d) that out of date policies includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 73); or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years. Transitional arrangements for the Housing Delivery Test are set out in Annex 1.
343. As submitted in evidence, the appeal proposal does not accord with the adopted development plan. The CELPS is a recently adopted plan having regard to Paragraph 73 & 74 and footnote 38. Its adoption established a 5 year supply of specific deliverable housing sites with the maximum buffer. The Council has submitted detailed evidence to the Inquiry to demonstrate that a continued 5 year supply of deliverable housing sites can be demonstrated since the adoption of the CELPS.

The Housing Delivery Test

344. The Housing Delivery Test (HDT) will apply from the day following the publication of the Housing Delivery Test results in November 2018 (see paragraph 215 of the rFramework). The HDT result will have a number of implications for decision-taking, including the circumstances in which the presumption in favour of sustainable development applies as explained at footnote 7. Under transitional arrangements, delivery of housing considered to be 'substantially below' the housing requirement will equate to delivery below 25% of the housing required over the previous three years.

345. The accompanying Housing Delivery Test Measurement Rule Book provides the methodology for calculating the HDT result. The Housing Delivery Test is effectively a percentage measurement of the number of net homes delivered against the number of homes required, over a rolling three year period. The number of net homes delivered is taken from the National Statistic for net additional dwellings over a rolling three year period, with adjustments credited for net student and net other communal accommodation. The national statistics are published annually in November.
346. The number of net homes required, will be the **lower** of the latest adopted housing requirement (excluding any shortfall³) **or** the minimum annual local housing need figure. Under transitional arrangements, for the financial years 2015-16, 2016-17 and 2017-18, the calculation of the minimum annual local housing need figure is to be replaced by household projections only. This is shown below.

Year	Adopted annual CELPS Requirement	Household projections (annual average over 10 year period)⁴	Net additional dwellings
2015/16	1800	1,100	1573
2016/17	1800	1,100	1763
2017/18	1800	900	1509 dwellings
TOTAL	5400	3,100	4,8457

347. What is clearly evident from the above table is that net additional dwellings over the three year period already comfortably exceeds the housing requirement calculated using 2012 and 2014 household projections. When the housing delivery test is applied against the completions data set out in the Council's proof of evidence, it is evident that the test is met and exceeded by a significant margin (1,745 homes) even without the full year data for 2017/18.
348. While the Council has not yet published its annual housing monitoring update for 2017/18, as submitted in evidence, completions continue to show a positive direction of travel and it is likely that the final total of completions for the year ending 31 March 2018 will exceed that of previous years. However based simply on the evidence before the Inquiry, the November 2018 HDT result, using the formula in the published rule book, will show that housing delivery significantly exceeds the minimum number of net homes required.

The buffer

349. Paragraph 73 requires that Local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need

where the strategic policies are more than five years old. The supply of specific deliverable sites should in addition include a buffer (moved forward from later in the plan period) of:

- a) 5% to ensure choice and competition in the market for land; or
- b) 10% where the local planning authority wishes to demonstrate a five year supply of deliverable sites through an annual position statement or recently adopted plan, to account for any fluctuations in the market during that year; or
- c) 20% where there has been significant under delivery of housing over the previous three years, to improve the prospect of achieving the planned supply

350. Footnote 39 advises that from November 2018, the requirement to apply a 20% buffer will be measured against the Housing Delivery Test result, where this indicates that delivery was below 85% of the housing requirement.
351. As submitted in evidence, net completions over the past three years have continued to increase in Cheshire East. For the monitoring years 2015/16 and 2016/17, net completions have exceeded the household projections result by as considerable margin.

When the CELPS was adopted, it should be noted that the Council applied the maximum possible buffer to its calculation of the 5 year housing land supply requirement and with this buffer, the Examining Inspector confirmed that a 5 year supply could be demonstrated. The 20% buffer was also applied to the 5 year supply of deliverable sites identified in the subsequent Housing Monitoring Update (base date 31 March 2017). Evidence submitted to the Inquiry robustly demonstrates that a continued five year supply including the maximum buffer can be identified. It goes without saying, that if the buffer was to drop to 10 or 5 per cent, taking account of delivery over the past three years, the 5 year housing land supply requirement would also drop significantly.

Definition of deliverable

352. As per earlier guidance, the rFramework definition retains the previous requirement for sites to be available, suitable and achievable with a **realistic** prospect that housing will be delivered on the site within 5 years. As submitted in evidence, the relevant test is whether there is a realistic prospect of a site coming forward, i.e. is the site capable of being delivered within 5 years rather than it being absolute certainty that it will be delivered. The revised definition makes a distinction between sites that are small or have full planning permission and those that have outline planning permission or are allocated in a development plan or otherwise have planning permission in principle or identified through a brownfield land register. For small sites (less than 10 dwellings) and all sites with full planning permission should be considered deliverable until the permission expires, unless there is clear evidence that they will not come forward. For those sites with outline planning permission or planning permission in principle, allocated in the development

A9.100

plan or sites identified in the brownfield land register. These can be considered deliverable where there is clear evidence that housing completions will begin within five years.

353. The Council has submitted detailed evidence not only through the recent examination of the Local Plan Strategy, particularly in relation to strategic allocations but also to the Inquiry. A considerable body of evidence has been submitted on the deliverability of sites to respond to the very the detailed scrutiny of sites undertaken by the appellant. The Council's evidence has been fully revised and updated, looking afresh at the latest position on key sites and the housing sector generally and this included evidence on many sites including those with outline planning permission and allocated through the CELPS. The evidence submitted included an updated 5 year housing land supply assessment, taking into account a small number of concessions made following the Park Road, Willaston appeal decision. It should be noted that evidence was submitted both in relation to the current appeal and a second appeal, APP/R0660/W/17/3176449: Land to the West of New Road, Wrenbury, which has now reported and a copy of the Inspector's Decision Letter is appended. Based on the latest available evidence, the Inspector concluded that a deliverable 5 year supply was in place.

354. Therefore the Council remains of the view that in light of the revised NPPF, a deliverable supply of housing sites to meet the five year requirement can be demonstrated.

355. To conclude:

- Adopted development plan policies are up-to-date and consistent with the rFramework
- The appeal proposal conflicts with up-to-date policies and full weight should be given to the findings of the Inspector who confirmed that upon adoption, a five year supply could be demonstrated. In accordance with the rFramework, the CELPS should be considered recently adopted until 31 October 2018. In line with NPPF paragraph 74 this shows that a 5 year supply of can be demonstrated at the time of writing. The rFramework effectively settles the matter.
- In addition, to the above, a considerable body of updated evidence has been submitted to the Inspector on the specific supply of deliverable sites. The Council has demonstrated that a five year supply of housing sites can be demonstrated. This view is collaborated by the recent findings of the Inspector in 'Land to the West of New Road, Wrenbury'. The Inspector and Secretary of State therefore has all relevant information to enable the determination of the appeal.
- The five year housing requirement built in the maximum possible buffer. The rFramework indicates that a lower buffer of 10% should be used where the local planning authority wishes to demonstrate a five year supply of deliverable sites through a recently adopted plan.
- Housing completions over recent years have shown a continued positive direction of travel. Delivery over the last 3 years is likely to exceed by some margin, the local housing need requirement established through the Housing Delivery Test in November 2018.

A9.101

- The applicable buffer to be applied to the 5 year supply requirement will reflect the HDT result from November 2018 onwards. It is very unlikely that given past performance over the last 3 years, that a 20% buffer will be applied.
- Notwithstanding any changes that may take place in the future to the buffer, in submitting evidence to the Inquiry, the Council has robustly demonstrated that a five year supply of deliverable sites can be demonstrated with the maximum 20% buffer.
- Very detailed evidence has been submitted in relation to the supply of specific sites to support the conclusions reached about 5 year supply.
- Having regard to the rFramework and the matters outlined above, the Council remains firmly of the view that a 5 year supply of deliverable housing land can be demonstrated and as such paragraph 11d is not engaged.

Overall Conclusion

356. The Council submits that where there is a five-year housing land supply or not, the application of section 38(6) of the 2004 act results in the conclusion that planning permission for the proposed development must be refused and the appeal dismissed.

The Case for the Interested Parties

The material points are:

357. Councillor Mathew Theobold, Chairman of Stapeley & District Parish Council²², seeks to emphasise the newness of the Stapeley and Batherton Neighbourhood Plan, it having been Made on the 15 February 2018. After setting out the relevant policies of the plan, Councillor Theobold goes on to identify the key areas of conflict the proposals have with these policies. Whilst accepting that Policy H5 directs development to within or directly adjacent to the Nantwich Settlement Boundary (where the proposed development is proposed), such proposals also have to be considered 'subject to the provisions of other policies of the Plan'. When the proposals are considered against the provisions of Policy H1 that can be held to be in clear conflict with all criteria contained in the policy (criteria H1.1- H1.4)
358. Councillor Theobold goes on to identify further concerns over the provision of local facilities, specifically the absence of a formal mechanism to secure their delivery, and shortcomings in the Appellant's Air Quality Document and Acoustic Planning Report. The Council also made further submissions on the contents of the draft section 106 agreement. Concerns were expressed over the potential conflict of ecological provisions and community based aspirations for publicly accessible community orchards, an aspiration of the plan.

²² ID10 and ID32.

359. Mr Patrick Cullen²³, a local resident, also expressed concerns in relation to the section 106 agreement and the effect of cumulative local housing development on local infrastructure. Concerns relating to the 106 agreement covered the outstanding commitments on land within the appeal site (Appeal B) and the desire of the community to secure a Community Orchard on the land to reflect local preference. Evidence relating to local housing development draws attention to the number and scale of housing sites currently under construction and draws attention to the effect such will have on local infrastructure and services.
360. Mr Philip Staley also submitted evidence to the Inquiry in respect of levels of traffic in the locality and the effect of further housing development on these levels and on the extend of public transport provision adjacent to the appeal sites. He also presented a short video in addition to a written submission.²⁴ Mr Staley suggests that traffic congestion on Peter de Stapeleigh Way at peak times (0800-0900hrs and 1500-160hrs) is sever, and quotes an Inspector's conclusions in respect of this issue in relation to a dismissed appeal on Audlem Road²⁵. The cumulative effects of this and other proposals will cause harm to the local area and to local residents. Mr Staley also advised that sense the submission of the Appellant's evidence local bus services in the vicinity of the site had bed reduced, limiting the local service to only 4 journeys each way during normal shop hours. The provisions of the draft section 106 agreement to fund an increase in local bus services for a specified period would therefore have limited effect in mitigating the increased demand for such local services.
361. Ms Gilian Barry also made representations to the Inquiry supporting the statements in respect of the effects traffic generation by the proposed development²⁶. She also made objections on the grounds of adverse effect on air quality, the prospect of flooding on the site, loss of habitat, including trees and hedgerows, and the effects of the development on public safety.

Written Representations

362. There is a large body of correspondence in respect of the initial applications and the subsequent appeal, the body of which has been set out in the previous Reports to the Secretary of State.
363. Most correspondence came from objectors. They were particularly concerned with increased traffic, including the access, on adjoining road and at nearby level crossings, and the effects on the open countryside, the proposed loss of trees, recently felled trees, planned wildlife mitigation, lack of medical, dental and other facilities, shortage of school places, loss of privacy at the proposed roundabout, noise, air and light pollution, poor house design, and the potential for much more development.

²³ ID11.

²⁴ ID12.

²⁵ APPEAL ref: APP/R0660/W/15/319474.

²⁶ ID13.

364. There themes are repeated in the written responses to the current appeals, though they also refer to the adoption of the current local plan and the establishment of a five year land supply inherent in that and the advanced state of the Stapely and Batherton Neighbourhood Plan.
365. Further correspondence has been received in respect of the current appeals and, following the advertisement of amendments to the scheme during the Inquiry, further representations made in respect of these matters.
366. Mr Paul Tomlinson states the appeals are flawed due to 'flawed' traffic data as a result of being based on material over ten years old. Mr Andrew Hale states that the commercial units proposed in Appeal A would not contribute to the local economy or culture. He also states the proposals would fail to make use of the existing access to Peter de Stapeleigh Way. Mr David Wall refers to the site being within the Green Belt and expresses concerns over the ability of emergency services being able to access the site. Ms Jane Emery states there is a need for the development to mitigate the effects it will have on local infrastructure.
367. Mr D Roberts and Mrs H S Thompson Also raise objection on the basis that the traffic assessment is flawed and that the proposals represent a considerable risk to the safety of highway users²⁷.

Conditions

368. A discussion was held as to the suitable wording of, and reasons for, any conditions on 23 February with reference to the tests for conditions in the *Framework*. Following these discussions, with only a few exceptions which I set out below, in the event that the appeals are allowed, the conditions in the attached Schedule should be imposed, for the reasons set out below. Some conditions have been adjusted from those suggested in the interests of precision, enforceability or clarity.

Appeal A

369. As well as the standard conditions 1-3, control is required over matters in the other conditions for the following reasons:
- 4, 5 & 9: flood risk reduction, contamination mitigation and ecological enhancement, including concerns raised by the Parish Council
 - 6: protection of archaeological remains
 - 7, 8 & 10: residential and visual amenity and sustainability
 - 11, 12, 13 & 27: highway safety and sustainability
 - 14 & 15: sustainability
 - 16-20: protected and other species mitigation
 - 21-25: reserved matters clarification and implementation

²⁷ ID34.

370. For clarity and for the avoidance of doubt, condition 26 establishes the sole vehicular access to the site will be through the junction with Peter Destapeleigh Way.

Appeal B

371. As well as the standard conditions 1& 2, control is required over matters in the other conditions for the following reasons:

- 3-6: the visual amenity and landscape quality of the area
- 7-10: protected and other species mitigation and public amenity

372. Condition 11 is necessary in order that the Local Conservation Area is appropriately delivered, maintained and managed under the terms of this planning permission. This is all the more the case in view of Mr Cullen's concerns for its future management and the challenges to ensuring this identified in the previous report to the Secretary of State.

Planning Obligations

373. The draft s106 agreement was discussed at the Inquiry during the same sessions as the conditions. A final signed and dated versions were submitted, as agreed, after the Inquiry closed. The agreement makes provision for the revocation of previous obligations in respect of the previous applications and also, in conjunction with condition 11 in relation to Appeal B, makes a commitment to the submission of a scheme for the Local Nature Conservation Area (LNCA) should the appeals be granted. The Council, in support of their request for financial and physical contributions to local infrastructure, have presented a detailed Community Infrastructure Levy Regulations 2010 Compliance Statement which evidences their necessity in relation to the regulatory requirements and the expectations of the rFramework. The agreement submitted by the Appellant reflects these requirements.

374. Firstly the agreement confirms that 30% of the proposed homes will be affordable which is policy compliant. The agreement also sets out the mix of tenure types reflecting local need in the area. Such a contribution therefore fully accords with the regulations and expectations of the rFramework and may be taken into account.

375. A further obligation facilitates contributions to secondary special needs education in the area. Again this recognises that future families occupying the development will place demand on local education facilities that will require mitigation. This is also calibrated through established formulae and is thus proportionate, related to the development and necessary to make it acceptable in planning terms. It too therefore may be taken into account.

376. For related reasons there is also an obligation securing open space and children's play areas, justified on the basis of the increased numbers of people anticipating use of such facilities. These provisions are also justified against policy, calculated to agreed formulae and proximate to the site. This too may therefore be taken into account.

377. A key obligation securing an enlarged LNCA is also presented which also ow makes provision for its ongoing management. Not only, given the ecological interest of the site, is this provision necessary to make the development acceptable in planning terms, it addresses one of the key concerns of interested parties who have made representations in respect of both appeals. On all counts therefore it may properly be taken into account.
378. There are a further three obligations securing funding for an additional pedestrian crossing of Peter Destapleigh Way, two additional bus stops and a subsidy for the local bus service. The first enhances the safe pedestrian connectivity of the development, the second brings it within ready access to a sustainable transport service whilst the latter enhances that service for residents. All are necessary to make the development acceptable in planning terms, are proportionate and are directly related the site. They may also therefore be taken into account.

Inspector's Conclusions

379. I have reached the following conclusions based on all of the above considerations, the evidence and representations given at the Inquiry, and my inspection of the appeal sites and their surroundings. At the beginning of each topic for consideration the relevant paragraphs of the respective parties are identified to assist in an understanding of the reasoning set out therein.

Main considerations

380. In respect of Appeal A these are:

- a) The effect of the development on the character and appearance of the area with particular regard to the open countryside and policies PG6, SD1 and SD2 of the Cheshire East Local Plan Strategy (CELPS); policy RES.5 of the Borough of Crewe and Nantwich Replacement Local Plan (BCNRLP) and Policies GS1, H1 and H5 of the Stapeley & Batherton Neighbourhood Plan (S&BNP) and;
- b) the loss of BMV agricultural land and;
- c) the effect of the development on the safety of highway users and;
- d) whether or not the Council can demonstrate a 5 year HLS and the implications of this with regard to policy in the rFramework.

381. In respect of appeal B these are the effects of the proposals on:

Its effect on the character and appearance of the area with regard to policy PG6 of the above.

Character and appearance

The relevant preceding paragraphs for the Appellant are 108-109.
The relevant preceding paragraphs for the Council are 310-312 & 327-329.

A9.106

The relevant preceding paragraphs for the other parties are 357-359.

382. Policy PG6 explains that 'open countryside' is defined as the area outside of any settlement with a defined settlement boundary. It goes on to established that within such designations, development will be restricted to that essential for the purposes of agriculture, forestry, recreation and infrastructure, though with exceptions listed in 6 criteria. The supporting justification for the policy also confirms inter alia that ...'the intrinsic character and beauty of the countryside will be recognised'.
383. The proposals as presented in Appeal A, as a mixed use scheme, are both outwith the Nantwich settlement boundary as currently defined, and do not conform with any of the types of exceptional forms of development identified in the criteria. The proposals are therefore, as the Council maintain in conflict with policy PG6 of the CELPS and with sub- paragraph b) of paragraph 170 of the rFramework.
384. In common with the conclusions of the Secretary of State in his previous (now quashed) decision, set out in his letter of 17 March 2015, the Council also assert the proposals would result in harm to the intrinsic character and beauty of the open countryside. This view is supported, perhaps more in relation to natural habitat, by other representations made by local residents.
385. Although the degree to which the site as an element of countryside may be considered open, its character is nevertheless agrarian and naturalistic in character. The construction of the proposals, with its mix of uses (notwithstanding the areas of open space and areas of habitat) would certainly change this established agrarian character, transforming it into an urban enclave – an extension of the settlement. Insofar as this would result in the loss of an element of countryside of intrinsic character, this would cause a degree of harm to that character, compounding the technical breach of the policy.
386. Insofar as they would also fail to protect or enhance the natural environment, they would also conflict with criterion 14 of Policy SD1 and, the same reasons, it may be held to conflict with Policy SD2 (criteria ii and iii thereof) of the same. Policy RES.5 of the CNLP, as sister policy to PG6 also relates to the restriction of development in the open countryside. For the same reasons therefore the proposals presented in Appeal A may also be considered in conflict with it.
387. It is the case that Policy H5 of the S&BNP acknowledges that 'the focus for development will be on sites within or immediately adjacent to the Nantwich settlement boundary' and as a consequence of the proposed development being so adjacent garners some support from this element of the policy. However, this is a narrow reading of the policy, as its prefix makes clear that such an expectation will be subject to the provisions of other policies of the S&BNP. This clearly engages Policy H1, which, inter alia, anticipates (at H 1.1) development being 'limited infilling in villages or the infill of a small gap with one or two dwellings in an otherwise built up frontage'. Neither does the proposed development conform to the other exception criteria of the policy nor with Policy GS1, which only permits development in the countryside in

limited circumstances. Moreover, as the plan explains these policies follow 'a consistent theme around conserving and maintaining the character of the Neighbourhood Area'.

388. It may quickly be concluded that the proposals are in conflict with the letter and purpose of these Policies PG6, SD1 and SD2 of the CELPS, Policy RES5 of the CNLP and Policies GS, H1 and H5 of the S&BNP. However, the specific circumstances of the site and its context do need to be taken into account. The fact of the matter is that the appeal sites are now effectively bordered on three sides by existing and emerging development. Whilst the purpose of the policies is to maintain character it is evident that the rural hinterland anticipated by the plan vision has, in the circumstances of these cases, been extensively eroded. Such circumstances necessarily calibrate the actual harm to existing countryside character accordingly. Nevertheless, the proposals remain in breach of the policies and this needs to be accounted for in the final planning balance.

BMV agricultural land

The relevant preceding paragraphs for the Appellant are 111.

The relevant preceding paragraphs for the Council are 201-212, 312-314 & 328.

389. The proposed development would result in the loss of 2.6 hectares of the best and most versatile agricultural land (25% of the aggregated site is designated as such, 6% being Grade 2, 19% being 3a). Accordingly such a loss would render it contrary to Policy SE2 of the CELPS which expects development to safeguard high quality agricultural land. The rFramework, through paragraph 171, and specifically through footnote 53, makes clear that where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred.
390. Although technically in breach of policy SE2, the area of land is modest and predominantly at lower grade. Moreover, the engagement of the consideration of the rFramework is contingent on the loss of such designated land being significant. By any reasonable measure the loss identified here cannot be judged as such. Moreover, in the light of the conclusions below in relation to the supply of housing land, it is inevitable that the use of BMV will become a consideration in help correcting supply. Nevertheless the breach of policy and the loss of such land does represent a harm, though in light of the above, one meriting only modest weight in the planning balance.

Highway safety

The relevant preceding paragraphs for the Appellant are 126-128.

The relevant preceding paragraphs for the other parties are 359-361.

391. It was clear from the representations made at the Inquiry that there was a significant degree of apprehension amongst local residents over any increase in traffic numbers in the locality as a result of the development proposed. Both written and video evidence was presented at the Inquiry to support the notion

that any development on this site would exacerbate already challenging highway usage in the locality.

392. Video evidence of peak-time congestion in any given area is inevitably compelling; who has not experienced the frustration of not being where we want to be at any given time in a car? Be that as it may, the expression of such frustration does not equate to a robust argument or justification, as paragraph 109 of the rFramework requires, for the rejection of the proposals as they are presented. None of the detailed evidence of the appellant, nor the considered acceptance of it by the Council, is convincingly rebutted by the heartfelt, though non-empirical submissions of those opposing the scheme. In the absence of such substantial rebuttal, such concerns must inevitably be afforded no more than very limited weight. Moreover, the mitigation through transport infrastructure provision and the creation of enhanced pedestrian and cycle routes through the site for the use of residents, workers and others further increase the opportunities for non-car transport modes.

Housing Land Supply

The relevant preceding paragraphs for the Appellant are 55-107.

The relevant preceding paragraphs for the Council are 149-178, 218-278 & 333-355.

The Requirement

393. A statement of common ground (SoCG) on housing land supply (HLS) (thus HLSSoCG) was submitted by the appellant at the inquiry²⁸. It confirms as a starting point that the housing requirement for Cheshire East Council is 1800 dwellings per annum. Elsewhere it is common ground that the five year period runs from the 31 March 2017 to 31 March 2022. Such agreement extends also to the extent of the backlog in delivery between 2010 and 2017, which stands at 5635 dwellings, equating to three years of the overall requirement for the first seven years of the plan.
394. It is also agreed in the HLSSoCG that, reflecting a pattern of historic under delivery, a 20% buffer also applies to the aggregated numbers. This consensus reflects the position of parties in two key previous appeals referred to in evidence²⁹.
395. Paragraph 73 of the rFramework, replacing paragraph 47 of the previous addition, requires local planning authorities to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing supply. This number should include a buffer of either:
- a) 5% to ensure choice and competition in the market for land; or
 - b) 10% where the local planning authority wishes to demonstrate a five year supply of deliverable sites through an annual position statement or

²⁸ CD3.

²⁹ White Moss Quarry and Park Road, CD29 & CD30.

A9.109

recently adopted plan, to account for any fluctuations in the market during that year; or

- c) 20% where there has been significant under delivery of housing over the previous three years, to improve the prospect of achieving the planned supply.

396. The Council predicts in its submissions in relation to the revisions to the framework that after November 2018 and the initiation of the Housing delivery Test it is unlikely that a 20% buffer will be required as a result of increased housing delivery. Indeed, in their further representations they set out variations of the supply position referencing the 5% and 10% scenarios, each of which correspondingly indicate and increase in the supply: 6.11 years @5% and 5.38 years @10%. Even if the Council's expectations in relation to the Housing Delivery Tests were to be met, it remains apparent that in the first seven years of the LPS plan period housing completions within Cheshire East have averaged 1,034 dpa, considerably below the expected, 1800 target. Under the terms of the third bullet point of paragraph 73 of the revised Framework therefore, there would still be a compelling case to apply the 20% buffer. Be that as it may, that is in the future. For current purposes, both parties agree in the HLSSoCG that a 20% buffer should be applied. Notwithstanding this point, the appellant maintains, again in light of the evidence before the Inquiry, that even if the scenario b) of a 10% buffer were applied in this case, the Council would remain unable to demonstrate a five year supply of housing land, indicated as being 4.64 years.

397. Thus the net annual requirement, plus the shortfall (including that to be met in the first five years) in addition to the 20% buffer, in both the Council's and the Appellant's 'Sedgpool8' methodology agreed and applied by the CELPS Examining Inspector, both equate to a requirement of 14,842 over the supply period. The Appellant also goes on to model a scenario whereby the agreed eight year delivery period is not rolled forward (ie the supply period remains fixed and diminishes as time moves forward), the requirement increases. The net figure is increased by 574 dwellings, which in turn impacts on the final supply figure.

398. The Council interpret the 'pool' element of the calculation to facilitate the rolling forward of the backlog in the calculation, thus allowing the number of units to be made up over the greater part of the plan period. However, this runs counter to the current position set out in the rFramework and the PPG which anticipates that any backlog should be made up within the first five years of the plan period (or in this case the 8 year period as determined by the CELPS and the Examining Inspector)³⁰. This has to be the right approach unless where express circumstances dictate otherwise³¹. Whilst such an approach would not be consistent with that applied in Park Road Appeal³² it is consistent with the expectations of the Local Plan Inspector, who anticipated that the Council fully

³⁰ CD40 Examining Inspector's Report paragraph 72.

³¹ PPG/NPPF ref.

³² Ibid.

meet past under-delivery within the next 8 years of the plan period³³. Whilst not supported by the Wrenbury decision³⁴, a rolling deferment of meeting the shortfall beyond the anticipated eight year cycle is at variance with the Government's policy commitments to boost significantly the supply of new homes.

399. The difference in the calculation of backlog delivery of 574 dwellings is a significant number, in the view of the appellant contributing to a depleted five year supply figure of 4.24 years. However, even if the Council's calculation is preferred, in combination with anticipated delivery rates, the Council's five year supply position stands at just 5.37 years or as advised in their last submissions 5.35 years. That said, as in the two other recent appeals³⁵ the greater divergence of view in respect of the supply position is focused on the delivery of housing sites that will help meet the anticipated trajectory. The Council's assessment of supply (recalibrated after the round table discussion at the Inquiry) 15,908 over the defined period, whilst the Appellant calculates a number of 13,101 (again recalibrated) applying the Sedgpool8 methodology, a difference of 2,807 dwellings. These respective positions are reached on the one hand by standard methodology (previously referred to as the 'in principle' approach)³⁶ and more specifically though narrow analysis by the Council, and a detailed exploration of a wider range of larger sites (previously defined as above as 'performance') by the appellant. These matters are now considered below.

Supply

400. With regard to the 'in principle' differences between the parties, the Council applies a standard methodology to predict the lead in times for site delivery and build rates for strategic and non-strategic sites, basing these on past experience. For strategic sites without planning permission, the standard methodology anticipates an average of 2.5 years to the point of completion of the first dwellings. These are calibrated by applying information from site promoters or agents where evidence supports a site coming forward more quickly or the reverse.

401. The Examining Inspector was clear that a lot depends on whether the committed and proposed sites come forward in line with the anticipated timescale in the housing trajectory. Since March 2016 it is evident there has been slippage in the anticipated timescales for delivery of a number of the strategic sites when the March 2017 HMU and the March 2016 position are compared. Delivery in 2016/17 of 1,762 dwellings also fell short of the anticipated trajectory of 2,955 dwellings and in 2017/18 the target of 3,373 dwellings looks like being short by approximately 130 units. Although the CELPS is only two years old, and inertia caused by such factors as the absence of the plan and the unpredictabilities of appeal-based permissions are no longer present, thus potentially hastening delivery, it is difficult to

³³ Paragraph 72 Local Plan Inspector's Report (CD A40).

³⁴ Appeal Ref: APP/R0660/W/17/317649.

³⁵ Ibid

³⁶ CD29, Paragraph 13 White Moss Appeal.

A9.111

escape the conclusions of the two previous Inspectors³⁷ that the assumed delivery rates of the housing trajectory have in fact failed.

402. Although there are positive signals that delivery is picking up, also recognised in the two previous appeals, it is inevitably perhaps in the light of their wider conclusions the Council also presents an analysis of 16 specific sites to demonstrate that on-the-ground delivery is in fact meeting or exceeding the expectations of the trajectory.
403. The evidence here is initially compelling. The Council suggest a commencement period post-detailed consent averaging around 5 months and for those with outline consent around 1.47 years. Such evidence suggests that just under half the chosen sites have started ahead of expectations in the HMU (the 'in principle' expectation time of 2.5 years), an indicator, the Council suggest, of likely commencement rates in the future. This evidence is also supported by feedback from developers and promoters, offering a site specific record of particular circumstances. With the 'in principle' figures consolidated by these accelerated lead-in times delivering above expectation numbers, the Council maintain a 5 supply of 5.35 years with a 20% buffer and 5.83 years with 10% buffer applied, as identified in their post rFramework submissions.
404. However, by the Council's own admission this assessment, though 'decent' was not 'comprehensive'. Indeed, numbering just 16 sites, and without a transparent methodology for selection, it is difficult to avoid the conclusion offered by the appellant that there may have been an element of inadvertent self-selection in the process, and that such evidence does not, of itself, convincingly establish a significant upward trend in delivery. Moreover, this, and the 'in principle' evidence, needs to be considered against that presented (and recalibrated following the round table discussion at the Inquiry) in the context of the site specific evidence presented by the appellant, covering a total of 41 sites within the district. Without reference to each detailed site-specific analysis the sum of the appellant's conclusions on lead in time to construction anticipates 1 year from submission to grant of outline consent; 1 year to reserved matters application; 6 months to their determination and 1 year to the completion of the first dwelling, a total lead-in time of 3.5 years. Such an analysis, as the appellant points out, correlates with the broad conclusions of both Inspectors in the White Moss and Park Road cases, with the Park Road Inspector identifying an average of between 3 and 4 years for strategic sites without planning permission to first completion³⁸.
405. With such lead-in times applied to the 41 sites identified in the appellant's case and the commensurate reduction in the number of units accounted), the broad slippage in delivery previously identified repeated, the appellant identifies a 4.25 year supply with the 20% buffer applied and a 4.64 year supply with the lower 10% buffer used. Even if one were to add the 5% of the total discounted by the appellant to account for lapsed planning permissions as the Council advise (or any part lesser %), this would still not achieve the five year supply threshold, even with a 10% buffer applied.

³⁷ Those who determined White Moss and Park Road.

³⁸ Paragraph 51, APP/R0660/W/17/3168917.

406. Moreover, and notwithstanding the various submissions to the Inquiry, paragraph 67 of the revised Framework clarifies the definition of the term 'deliverable' in relation to the supply of housing, setting this out in Annex 2 therein. In summary the definition applies to two categories of sites; those lesser sites and those with planning permission, which should be considered deliverable and; sites without planning permission in principle or allocated in development plans. These should now only be considered deliverable where there is clear evidence that housing completions will begin on site within five years. This represents a significant shift in emphasis from the previous Framework position; now the latter sites are no longer to be included unless there is specific evidence that they will indeed deliver within the five year period. These clarifications effectively supersede interpretations around the St Modwen case³⁹ that preoccupied the evidence on housing delivery heard at the Inquiry.
407. 34 of the 41 sites identified by the appellant were those without planning permission, those with outline planning permission or those also subject to section 106 commitments. Whilst the Council, on notification of the revisions to the Framework, chose not to address these sites in any detail, it is clear that by default, those within the latter category, without the clear evidence that completions will begin within five years, must now be at risk of dropping out of the calculation. This being so, the Council's position of asserting a 5.35 year supply with a 20% looks to be increasingly untenable, whilst that of the appellant's assessment of 4.25 years, and even that of 4.64 years with a reduced 10% buffer, looks the more robust. Whilst the conclusions reached by the Inspector in the Wrenbury case⁴⁰ take a contrary view on the 5 year land supply position, this appeal was determined prior to the publication of the Framework and the weight to be conferred it is very significantly reduced as a result.
408. Even if the most generous conclusion is reached, there has to be reasonable doubt that the Council is able to demonstrate a five year supply of housing land. Thus the precautionary approach taken by the two Inspectors in the White Moss and Park Road decisions may equally and rightly apply here. Whilst such a conclusion may not only be viewed as consistent with the previous approach, it also now enjoys the support of the High Court in the form of the dismissal of the Shavington case⁴¹ (previously advised of by the Council) which had sought to demonstrate, by proxy reference to White Moss and Park Road, that the 'precautionary approach' adopted by the two previous Inspectors, and as is applied here, was unlawful. Such a view was comprehensively rejected by the Court. This case however also predated the publication of the revised Framework and the editing-out of paragraph 49 of the former document making reference to the requirement for Councils to demonstrate a five year supply of housing sites. However this changes little beyond the structure of the document. Paragraph 11 at sub paragraph d) though footnote 7 makes clear

³⁹ St Modwen Developments Ltd v Secretary of State for Communities and Local Government [2017] EWCA Civ 1643.

⁴⁰ APP/R0660/W/17/3176449 appended to the Council's NPPF revisions submission IDXX.

⁴¹ [2018] EWHC 2906 (admin). Case No. CO/1032/2018.

that where a local authority cannot demonstrate a five year supply of deliverable housing sites policies most important for determining the application can be considered out-of-date. The delegation of the need to identify a supply to a foot note does not diminish the status of the policy as paragraph 3 of the rFramework makes clear; 'The Framework should be read as a whole (including footnotes and annexes).

409. On the basis of the evidence presented, the Council is unable to demonstrate a five year supply of housing sites. In accordance with paragraph 11 of the rFramework therefore, the policies most important for determining these applications are out-of-date. Their status as such will thus need to be taken into account in the final planning balance.

Need for a mixed use development

The relevant preceding paragraphs for the Appellant are 110-112.
The relevant preceding paragraphs for the Council are 279-283.

410. The Council argue in closing that disaggregating the employment component of the scheme and accounting for it in the context of employment floor space would add some 10% to the appropriate employment floor space required by policy. This would amount the Council suggest to 'very significant levels of unplanned growth'. However, the supply of employment land, over and above development plan targets or otherwise, has hitherto not formed part of the Council's case, that application having always been viewed as a mixed use scheme, led by the significant residential component that has always remained the focus of the Council's and the Secretary of States considerations. This is the right approach as to do otherwise would be to invite independent evaluation of its constituent elements across the board. The Secretary of State is invited to consider the proposal as a whole and against the substantive policy issues hitherto set out.

Distortion of the Council's Spatial Vision

The relevant preceding paragraphs for the Appellant are 112-121.
The relevant preceding paragraphs for the Council are 284-287 & 325-326.

411. The Council argue that as Nantwich has achieved target numbers identified in the CELPS and to allow further development above that number would serve now only to distort the spatial vision of the strategy in conflict with its broad strategic policies PG2 and PG7. However, the numbers set out therein are expressed as neither a ceiling not a target to be reached. Moreover, the supporting material for the policy advises such numbers as being an indicative distribution, and no more. Whilst a development of a scale reaching way beyond these aspirational targets may well be seen as distorting the spatial vision, in the context of the phrasing characterised above, the development proposed here cannot be considered of that magnitude. Indeed, it also remains consistent with the policies of the rFramework in paragraphs 59 and 60, which continue to emphasise the imperative of significantly boosting the supply of homes, and in so doing, determining the minimum, not the maximum number of homes needed in differing circumstances. There is therefore no breach of

policies PG2 and PG7 of the CELPS, and therefore no policy-based harm to consider in the planning balance in this regard.

The benefits of the scheme

The relevant preceding paragraphs for the Appellant are 126-128.

The relevant preceding paragraphs for the Council are 291-294 & 303-322.

412. The construction of new housing would create jobs, and support growth, as would new space for employment development. Notwithstanding the Council's view that the employment component of the scheme is not required, such provision, in close proximity to services, new residential property and transport links is likely to prove an attractive offer, and would readily therefore contribute to the growth of the local economy. Nantwich is also one of the preferred locations for development in the CELPS and there is no dispute that in locational terms at least, the site is in a sustainable location. Such recognised benefits garner a medium measure of weight.
413. The provision of a new primary school site to meet future educational provision, the children's play area, and extensive areas of public open space including a new village green and an enlarged LNCA would represent significant additional social benefits, not just to new occupiers of the development but to those in the locality as well. There would be contributions towards new bus stops and an extensive service linking with the town centre and railway station in addition to new path and cycle path networks offering alternative transport modes to the town and its services. Beyond necessary mitigation, these are also measurable social benefits that weigh in favour of the proposals.
414. In both the local and national context the delivery of significant numbers of market housing in a sustainable location is a significant benefit. Nationally, it is a government policy imperative to boost the supply of housing and this is given fresh emphasis in the recently published rFramework. Locally, although the Council fear the final yield of the site within the five year supply period may be curtailed this is rebutted convincingly by the appellant, and the site will in all probability make a contribution to housing numbers within the anticipated part of the plan period. This has all the more value given the identified shortfall in delivery. In both contexts therefore the delivery of market housing merits substantial weight being afforded in favour of the scheme.
415. The proposal would not provide affordable housing above that anticipated by policy, nor would it be above the level expected on other sites. However, such provision would be a tangible benefit when judged against the identified need in the district. Nor is there a suggestion that the contribution, if lost, would be made up from other developments. In light of the above, this contribution to affordable housing also merits significant weight.
416. It was clear from the representations made at the Inquiry that there was a significant degree of apprehension amongst local residents over any increase in traffic numbers in the locality as a result of the development proposed. However, such apprehension does not have the support of technical evidence that would convincingly rebut the appellant's view, not challenged by the

Council, that no severe highway harms would result from the scheme. Such concerns therefore carry the most minimal of weight.

Planning balance

417. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. Such a consideration of importance is the presumption in favour of sustainable development set out in paragraph 11 of the rFramework. The question of a 5 year housing land supply in relation to these appeals is very finely balanced. It is therefore recommended, in accordance with reasoning adopted in the White Moss and Park Road appeals, and as now endorsed by the Shavington case⁴², that a precautionary approach is applied, taking the worst-case position within the range on housing land supply presented, and apply the 'tilted balance' in sub-paragraph d) of paragraph 11 of the rFramework in the determination of these appeals. This makes clear that where the policies most important for the determination of the proposals are out-of-date, permission should be granted unless other policies of the rFramework dictate otherwise, or the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
418. In terms of the adverse impacts of the proposal, the appeal sites form part of the Open Countryside on the borders of Nantwich. As such the development is in clear conflict with the letter and purpose of Policies PG6, SD1 and SD2 of the CELPS, Policy RES5 of the CNLP and Policies GS, H1 and H5 of the S&BNP. However, the degrees of harm to visual amenity here, because of the very specific urbanised context of the site and the contribution open green space makes to the scheme, would, in actuality, be limited in extent.
419. It is also the case that the proposals would result in the loss of BMV and again this would be in conflict with Policy SE2 of the CELPS. No other substantive harms have been identified and other effects of the development can be effectively mitigated through the provisions of the section 106 obligations, thus rendering them neutral in the planning balance.
420. Set against these identified harms the development would deliver up to 189 dwellings. In the context of the national imperative to significantly boost the supply of homes, the identified shortfall in housing delivery over the plan period, and supported by the indicators that it may come forward to the market relatively quickly, this is a clear benefit meriting significant weight in favour of the scheme. This is the more so in light that the site the scheme would also include up to 30% affordable homes, secured through the S106 agreement. Given that there is an undisputed need for affordable housing in Cheshire East, which the appeal scheme would help meet, this is again a benefit meriting significant weight in favour of the proposals.

⁴² Ibid.

A9.116

421. The development would also bring economic benefits in terms of direct and indirect employment during its construction phase, expenditure into the local economy and sustain further enterprise through the mixed uses on offer. Moreover, there are other social benefits in terms of the open space, improvements to sustainable transport connectivity and the scope for the development of a further primary education facility. These latter benefits would accrue not only to occupiers of the residential development proposed, but to others within the vicinity as well. Taken together these positive attributes can be afforded a medium degree of weight.
422. The Secretary of State will be mindful that both the CELPS and the S&BNP are relatively new components of the development plan, each of which has seen the subject considerable investment in terms of local resource and commitment and are which both relatively recently adopted and made. Moreover, there are also incipient signs that delivery of housing sites may indeed pickup more in accordance with expectations later in the plan period. The policies of the development plan should not therefore be set aside lightly. However, against the conflict with these policies, for which there is a presumption development shall be determined in accordance with, there are some material considerations of considerable importance and weight to consider.
423. The first is that despite the conflict with countryside policies, the degree of harm to visual amenity is in fact limited, and reflected in the Council's position on the proposals from the outset. More significantly however, the Council has been found unable to demonstrate a five year supply of housing land and this, in accordance with paragraph 11 of the rFramework and its attendant foot note 7, triggers the presumption in favour of sustainable development heralded therein on the basis that policies most important to the determination of the cases are out-of-date. The policies referred to above (PG6 and SE2 of the CELPS, Policy RES5 of the CNLP and Policies GS1, H1 and H5 of the S&BNP) have to be viewed as being the most import of policies for the determination of these proposals as they are critical to the permitting of residential development in open countryside and immediately adjacent to settlement boundaries. It must follow therefore that in light of the supply position they are out of date, thus diminishing the weight to be afforded them in the planning balance.
424. Moreover, it might be right that the aims and purposes of Policy RG6 remain consistent with those of the rFramework (as the Council maintain). However, in the absence of a five year supply of housing land it has to be considered somewhat Canute-like to argue that the settlement boundaries drawn to reflect the past aspirations of the former local plan (2006-2011) can still be held to be not-out-of date. This is a conclusion all the more compelling given the evidence of appeals being allowed and the Council granting planning permission for development outwith these boundaries in years subsequent to their anticipated utility in order to meet supply. Neither does it come as a surprise that the LP Inspector for the CELPS anticipated that such boundaries would have to be reviewed in the future allocations component of the plan. This position is again reflected in the reasoning of the Inspector in the Park Road Appeal⁴³.

⁴³ Ibid, paragraph 16 thereof.

425. All of these weighty considerations combine to reduce the weight to be applied to these policies in the light of the very particular supply situation identified in this case. Whilst there remains conflict with the policies of the development plan, these proposals would bring forward substantial benefits. These benefits are such that they are not significantly or demonstrably outweighed by the lesser harms identified. The proposals, presented in both appeals, therefore constitute the sustainable development for which the rFramework presumes in favour of.

Recommendation

426. I recommend that both appeals should be allowed and planning permission granted subject to the attached Schedules of Conditions.

David Morgan

INSPECTOR

Schedule of Conditions

Appeal A

1. Details of appearance, access landscaping, layout and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority (LPA) before any development begins, and the development shall be carried out as approved.
2. Application for approval of all the reserved matters shall be made to the LPA not later than three years from the date of this permission. The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
3. This permission shall refer to the following drawing numbers unless any other condition attached to the permission indicates otherwise:

Mixed Use and Access Applications Diagram – dwg SK15 Rev C
(11 November 2017)

Mixed Use and Access Applications Diagram – dwg SK16 Rev C
(11 November 2017)

Mixed Use and Access Applications Diagram – dwg SK17 Rev C
(11 November 2017)

Mixed Use and Access Applications Diagram – dwg SK19 Rev D
(11 November 2017)

4. No development shall commence until details of a scheme for the disposal of foul and surface water from the development has been submitted to and approved in writing by the LPA. The scheme shall make provision, inter alia for the following:
 - a. this site to be drained on a totally separate system with all surface water flows ultimately discharging in to the nearby watercourse
 - b. a scheme to limit the surface water run-off generated by the proposed development
 - c. a scheme for the management of overland flow
 - d. the discharge of surface water from the proposed development to mimic that which discharges from the existing site.
 - e. if a single rate of discharge is proposed, this is to be the mean annual run-off (Q_{bar}) from the existing undeveloped greenfield site. For discharges above the allowable rate, attenuation for up to the 1% annual probability event, including allowances for climate change.
 - f. the discharge of surface water, wherever practicable, by Sustainable Drainage Systems (SuDS).
 - g. Surface water from car parking areas less than 0.5 hectares and roads to discharge to watercourse via deep sealed trapped gullies.
 - h. Surface water from car parking areas greater than 0.5 hectares in area, to have oil interceptor facilities such that at least 6 minutes retention is provided for a storm of 12.5mm rainfall per hour.

A9.119

The development shall not be occupied until the approved scheme of foul and/or surface water disposal has been implemented to the satisfaction of the LPA.

5. No development shall commence until a scheme for the provision and management of an 8 metre wide buffer zone alongside the watercourse on the northern boundary measured from the bank top (defined as the point at which the bank meets the level of the surrounding land) has been submitted to and approved in writing by the LPA. The scheme shall include:
 - plans showing the extent and layout of the buffer zone
 - details of any proposed planting scheme (for example, native species)
 - details demonstrating how the buffer zone will be protected during development and managed/maintained over the longer term including adequate financial provision and named body responsible for management plus production of detailed management plan.

This buffer zone shall be free from built development other than the proposed access road. Thereafter the development shall be carried out in accordance with the approved scheme and any subsequent amendments shall be agreed in writing with the LPA.

6. No development shall commence within the application site until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved by the LPA.
7. No development shall take place until a Construction Method Statement (CMS) has been submitted to and approved in writing by the LPA. The approved CMS shall be adhered to throughout the construction period. The CMS shall provide for:
 - a. the hours of construction work and deliveries
 - b. the parking of vehicles of site operatives and visitors
 - c. loading and unloading of plant and materials
 - d. storage of plant and materials used in constructing the development
 - e. wheel washing facilities
 - f. measures to control the emission of dust and dirt during construction.
 - g. details of any piling operations including details of hours of piling operations, the method of piling, duration of the pile driving operations (expected starting date and completion date), and prior notification to the occupiers of potentially affected properties
 - h. details of the responsible person (e.g. site manager / office) who could be contacted in the event of complaint

A9.120

- i. control of noise and disturbance during the construction phase, vibration and noise limits, monitoring methodology, screening, a detailed specification of plant and equipment to be used and construction traffic routes
 - j. waste management: there shall be no burning of materials on site during demolition/construction.
8. No development shall take place on the commercial and retail element until a detailed noise mitigation scheme to protect the proposed dwellings from noise, taking into account the conclusions and recommendations of the Noise Report submitted with the application, shall be submitted to and agreed in writing by the LPA. The approved mitigation measures shall be implemented before the first occupation of the dwelling to which it relates.
9. Prior to the commencement of development:
 - a. A contaminated land Phase 2 investigation shall be carried out and the results submitted to, and approved in writing by the LPA.
 - b. If the Phase 2 investigations indicate that remediation is necessary, a Remediation Statement including details of the timescale for the work to be undertaken shall be submitted to, and approved in writing by, the LPA. The remedial scheme in the approved Remediation Statement shall then be carried out in accordance with the submitted details.
 - c. Should remediation be required, a Site Completion Report detailing the conclusions and actions taken at each stage of the works including validation works shall be submitted to, and approved in writing by, the LPA prior to the first use or occupation of any part of the development hereby approved.
10. No development shall commence until a scheme of destination signage to local facilities, including schools, the town centre and railway station, to be provided at junctions of the cycleway/footway and highway facilities shall be submitted to and agreed in writing by the LPA. The approved scheme shall be provided in parallel with the cycleway/footway and highway facilities.
11. No development shall commence until schemes for the provision of MOVA traffic signal control systems to be installed at the site access from Peter Destapleigh Way and at the Audlem Road/Peter Destapleigh Way traffic signal junctions, has been submitted to and approved in writing by the LPA . Such MOVA systems shall be installed in accordance with approved details prior to the first occupation of the development hereby permitted.
12. The Reserved Matters application shall include details of parking provision for each of the buildings proposed. No building hereby permitted shall be occupied until the parking and vehicle turning areas for that building have been constructed in accordance with the details shown on the approved plan. These areas shall be reserved exclusively thereafter for the parking and turning of vehicles and shall not be obstructed in any way.
13. Prior to the first occupation of the development hereby permitted a Travel Plan shall be submitted to and approved in writing by the LPA. The Travel Plan shall

A9.121

include, inter alia, a timetable for implementation and provision for monitoring and review. None of the building hereby permitted shall be occupied until those parts of the approved Travel Plan that are identified as being capable of implementation after or before occupation have been carried out. All other measures contained within the approved Travel Plan shall be implemented in accordance with the timetable contained therein and shall continue to be implemented, in accordance with the approved scheme of monitoring and review, as long as any part of the development is occupied.

14. No development shall take place until a scheme (including a timetable for implementation) to secure at least 10% of the energy supply of the development from decentralised and renewable or low carbon energy sources shall be submitted to and approved in writing by the LPA. The approved scheme shall be implemented and retained as operational thereafter.

15. Prior to first occupation of each unit, Electric Vehicle Infrastructure shall be provided to the following specification, in accordance with a scheme, submitted to and approved in writing by the LPA which shall include the location of each unit:

- A single Mode 2 compliant Electric Vehicle Charging Point per property with off road parking. The charging point shall be independently wired to a 30A spur to enable minimum 7kW charging.
- 5% staff parking on the office units with 7KW Rapid EVP with cabling provided for a further 5% (to enable the easy installation of additional units).

The EV infrastructure shall be installed in accordance with the approved details and thereafter be retained.

16. Prior to any commencement of works between 1st March and 31st August in any year, a detailed survey shall be carried out by a suitably qualified person to check for nesting birds and the results submitted to the LPA. Where nests are found in any hedgerow, tree or scrub to be removed (or converted or demolished in the case of buildings), a 4m exclusion zone shall be left around the nest until breeding is complete. Completion of nesting shall be confirmed by a suitably qualified person and a further report submitted to LPA before any further works within the exclusion zone take place.

17. Prior to the commencement of development detailed proposals for the incorporation of features into the scheme suitable for use by breeding birds shall be submitted to and approved in writing by the LPA. The approved features shall be permanently installed prior to the first occupation of the development hereby permitted and thereafter retained, unless otherwise agreed in writing by the LPA.

18. The reserved matters application shall be accompanied by a detailed Ecological Mitigation strategy including a great crested newt mitigation strategy informed by the recommendations of the submitted Protected Species Impact Assessment and Mitigation Strategy dated 2013 prepared by CES

A9.122

Ecology (CES:969/03-13/JG-FD). The development shall be implemented in accordance with the measures of the approved ecological mitigation strategy.

19. Prior to the commencement of each phase of development details of the proposed lighting scheme should be submitted to and approved in writing by the Local Planning Authority.
 - a) The details shall include the location, height, design and luminance and ensure the lighting is designed to minimise the potential loss of amenity caused by light spillage onto adjoining properties. The lighting shall thereafter be installed and operated in accordance with the approved details.
 - b) The scheme should include dark areas and avoid light spill upon bat roost features, boundary hedgerows and trees. The scheme should also include details of: Number and location of proposed luminaires; Luminaire light distribution type; Lamp type, lamp wattage and spectral distribution; Mounting height; Orientation direction; Beam angle; Type of control gear; Proposed lighting regime; and Projected light distribution maps of each lamp. The lighting scheme shall be installed in accordance with the approved details.
20. All trees with bat roost potential as identified by the Peter Destapleigh Way Ecological Addendum Report 857368 (RSK September 2017) shall be retained, unless otherwise agreed in writing by the Local Planning Authority
21. The first reserved matters applications shall include a Design Code for the site and all reserved matters application shall comply with provisions of the Masterplan submitted with the application and the approved Design Code.
22. Prior to the commencement of each phase of development a scheme for landscaping shall be submitted to the Local Planning Authority and approved in writing. The approved landscaping scheme shall include details of any trees and hedgerows to be retained and/or removed, details of the type and location of Tree and Hedge Protection Measures, planting plans of additional planting, written specifications (including cultivation and other operations associated with tree, shrub, hedge or grass establishment), schedules of plants noting species, plant sizes and proposed numbers/densities and an implementation programme.

The landscaping scheme shall be completed in accordance with the following:-

- a) All hard and soft landscaping works shall be completed in full accordance with the approved scheme, within the first planting season following completion of the development hereby approved, or in accordance with a programme agreed with the Local Planning Authority.
- b) All trees, shrubs and hedge plants supplied shall comply with the requirements of British Standard 3936, Specification for Nursery Stock. All pre-planting site preparation, planting and post-planting maintenance works shall be carried out in accordance with the requirements of British Standard 4428 (1989) Code of Practice for General Landscape Operations (excluding hard surfaces).

A9.123

- c) All new tree plantings shall be positioned in accordance with the requirements of Table 3 of British Standard BSD5837: 2005 Trees in Relation to Construction: Recommendations.
 - d) Any trees, shrubs or hedges planted in accordance with this condition which are removed, die, become severely damaged or become seriously diseased within five years of planting shall be replaced within the next planting season by trees, shrubs or hedging plants of similar size and species to those originally required to be planted.
23. An Arboricultural Impact Assessment, Tree Protection Plan and Arboricultural Method Statement in accordance with BS5837:2012 Trees in Relation to Design, Demolition and Construction – Recommendations shall be submitted in support of any reserved matters application which shall evaluate the direct and indirect impact of the development on trees and provide measures for their protection.
24. No phase of development shall commence until details of the positions, design, materials and type of boundary treatment to be erected have been submitted to and approved in writing by the LPA. No building hereby permitted shall be occupied until the boundary treatment pertaining to that property has been implemented in accordance with the approved details.
25. The Reserved Matters application for each phase of development shall include details of bin storage or recycling for the properties within that phase. The approved bin storage facilities shall be provided prior to the first occupation of any building.
26. Notwithstanding the details shown on plan reference no. BIR.3790.09D (September 2012) access to the development herein permitted shall be exclusively from Peter Destapeleigh Way as shown on plan reference no. dwg SK16 Rev C (11 November 2017)
27. Unless otherwise agreed in writing, none of the dwellings hereby permitted shall be first occupied until access to broadband services has been provided in accordance with an action plan that has previously been submitted to and approved in writing by the LPA.

Appeal B

1. The development hereby approved shall commence within three years of the date of this permission.
2. This permission shall refer to the following drawing numbers unless any other condition attached to the permission indicates otherwise:
 - a. Site Location Plan reference no. BIR.3790_13
 - b. Site Access General Arrangement Plan reference no. SCP/10141/D03/ Rev D (May 2015).
3. No development shall commence until there has been submitted to and approved by the LPA a scheme of landscaping and replacement planting for the site indicating inter alia the positions of all existing trees and hedgerows within and around the site, indications of those to be retained, also the number,

A9.124

species, heights on planting and positions of all additional trees, shrubs and bushes to be planted.

4. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the completion of the development whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the landscaping scheme die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species unless the LPA gives written consent to any variation.
5. Prior to the commencement of development or other operations being undertaken on site a scheme for the protection of the retained trees produced in accordance with BS5837:2012 Trees in Relation to Design, Demolition and Construction : Recommendations, which provides for the retention and protection of trees, shrubs and hedges growing on or adjacent to the site, including trees which are the subject of a Tree Preservation Order currently in force, shall be submitted to and approved in writing by the Local Planning Authority.
 - (a) No development or other operations shall take place except in complete accordance with the approved protection scheme.
 - (b) No operations shall be undertaken on site in connection with the development hereby approved (including any tree felling, tree pruning, demolition works, soil moving, temporary access construction and / or widening or any operations involving the use of motorised vehicles or construction machinery) until the protection works required by the approved protection scheme are in place.
 - (c) No excavations for services, storage of materials or machinery, parking of vehicles, deposit or excavation of soil or rubble, lighting of fires or disposal of liquids shall take place within any area designated as being fenced off or otherwise protected in the approved protection scheme.
 - (d) Protective fencing shall be retained intact for the full duration of the development hereby approved and shall not be removed or repositioned without the prior written approval of the Local Planning Authority.
6. No excavations for services, storage of materials or machinery, parking of vehicles, deposit or excavation of soil or rubble, lighting of fires or disposal of liquids shall take place within any area designated as being fenced off or otherwise protected in the approved protection scheme.
7. Prior to development commencing, a detailed Ecological Mitigation strategy including a great crested newt mitigation strategy informed by the recommendations of the submitted Protected Species Impact Assessment and Mitigation Strategy dated MARCH 2013 REVISION) prepared by CES Ecology (CES:969/03-13/JG-FD) shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the measures of the approved ecological mitigation strategy.
8. Prior to any commencement of works between 1st March and 31st August in any year, a detailed survey shall be carried out by a suitably qualified person to check for nesting birds and the results submitted to the LPA. Where nests are

A9.125

found in any building, hedgerow, tree or scrub to be removed (or converted or demolished in the case of buildings), a 4m exclusion zone shall be left around the nest until breeding is complete. Completion of nesting shall be confirmed by a suitably qualified person and a further report submitted to LPA before any further works within the exclusion zone take place.

9. Prior to the commencement of development details of the proposed lighting scheme should be submitted to and approved in writing by the Local Planning Authority. The scheme should include dark areas and avoid light spill upon bat roost features, boundary hedgerows and trees. The scheme should also include details of: Number and location of proposed luminaires; Luminaire light distribution type; Lamp type, lamp wattage and spectral distribution; Mounting height; Orientation direction; Beam angle; Type of control gear; Proposed lighting regime; and Projected light distribution maps of each lamp. The lighting scheme shall be installed in accordance with the approved details.
10. Prior to the commencement of development , and to minimise the impact of the access road on potential wildlife habitat provided by the existing ditch located adjacent to the southern site boundary, the detailed design of the ditch crossing shall be submitted to and approved in writing by the LPA . The access road shall be constructed in full accordance with the approved details.
11. No development shall commence on site unless and until a Deed of variation under s106A TCPA 1990 (as amended) has been entered into in relation to the S106 Agreement dated 20 March 2000 between Jennings Holdings Ltd (1), Ernest Henry Edwards, Rosemarie Lilian Corfield, James Frederick Moss, Irene Moss, John Williams and Jill Barbara Williams (2), Crewe and Nantwich BC (3) and Cheshire County Council (4) to ensure that the Local Nature Conservation Area is delivered, maintained and managed under this permission.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Reuben Taylor of Queen's Counsel

Instructed by the Solicitor to
Cheshire East Council

He called:

Mr Richard Taylor BA (Hons) BTP MRTPI

Mr Adrian Fisher BSc MTPL MRTPI

FOR THE APPELLANT:

Mr Paul Tucker of Queen's
Counsel

instructed by Patrick Downes, Harris
Lamb on behalf of Müller Property
Group

Assisted by Mr Philip Robson
of Counsel

He called:

Mr Jonathan Berry BA (Hons) Dip LA CMLI AIEMA M ArborA

Mr Patrick Downes BSc (Hons) MRICS

Mr Matthew Weddaburn BSc MA MRTPI

Mr William Booker BSc (Hons)

INTERESTED PERSONS:

Councillor M Theobald

Stapeley & District Parish Council

Mr P Cullen

Resident

Councillor P Groves

Cheshire East Council

Mr P Staley

Resident

Ms J Crawford

Resident

Ms G Barry

Resident

Mr K Roberts

Resident

Councillor A Martin

Councillor

INQUIRY DOCUMENTS (IDs)

1. Appearances – Appellant
2. Planning SoCG
3. Housing SoCG
4. Draft s106
5. Revised plans – Appellant
6. Revised Appendix 14 (Mr Fisher) – Council
7. Openings – Appellant
8. Openings – Council
9. Statement Councillor Groves
10. Statement Councillor Theobald
11. Statement Mr Cullen
12. Statement Mr Staley
13. Statement Ms Barry
14. Amended red line drawing
15. Strategic sites list with references
16. Wokingham High Court Decision – Council
17. E mail site LPSA 2
18. Map – LPS 27
19. Appendix E CELPS (Housing trajectory)
20. Appellant's housing evidence amended table 17
21. CD of Traffic issues – Mr Staley
22. Extract PPG paragraph 26
23. Accident Record of area (map) – Appellant
24. Aerial photograph highway improvements – Appellant
25. Bus timetables – Appellant
26. List draft conditions
27. Agricultural land analysis – Appellant
28. Stapley and Batherton Neighbourhood Plan
29. Amended landscape condition
30. CIL compliance schedule
31. Updated s 106
32. Councillor Theobald comments on s106
33. Amended housing supply table – Appellant
34. Letters/email from D Roberts/H Thompson

DOCUMENTS RECEIVED AFTER THE ADJOURNMENT OF THE INQUIRY

- 1a Final list of Core Documents
- 2a Closings Appellant
- 3a Closings Council
- 4a Grounds for Claim to High Court (Shavington case) – Council
- 5a Comments on rFramework – Appellant
- 6a Comments on rFramework – Council
- 7a Final comments on Council's submissions - Appellant

CORE DOCUMENTS

Background (A)	
	National Planning and Ministerial Statement
A9	The Plan for Growth (2011)
A10	Supporting Local Growth (2011)
	Local Plan Policy and Guidance
A11	Extracts of Adopted Crewe and Nantwich Replacement Local Plan (2005) (“CNRLP”)
A12	Secretary of State’s Direction (Saved Policies) February 2008
A13	Removed
A14	Removed
A15	Removed
A16	Interim Planning Policy on Release of Housing Land (February 2011)
A19	Extract of the Draft Nantwich Town Strategy
	Emerging Local Plan Background Documents
A20A	Extracts from the Cheshire East Local Plan Strategy 2010 – 2030 (“LPS”)
A24	Extracts of Cheshire East Strategic Housing Market Assessment (2010)
A25	CEC Strategic Housing Land Availability Assessment (March 2012)
A26	CEC Strategic Housing Land Availability Assessment Letter (4 th December 2013)
A27	Letter of representation from The Home Builders Federation to the SHLAA update methodology (January 2014)
A28	Letter from Muller Property Group to the SHLAA update methodology (January 2014)
A35	Extract from Annual Monitor on Affordable Housing Provision
A36	Stapeley and Batherton Neighbourhood Plan, Referendum Version (SBNP)
A37	Stapeley and Batherton Neighbourhood Plan Examiner’s Report
A38	Council Decision on report of SBNP
A39	Cheshire East Local Plan Strategy 2010 – 2030 July 2017
A40	Report on the Examination of the Cheshire East Local Plan Strategy Development Plan Document, 20 June 2017
A41	Inspector’s Views on Further Modifications Needed to the Local Plan Strategy (Proposed Changes), 13 December 2016
A42	Inspector’s Interim Views on the legal compliance and soundness of the submitted Local Plan Strategy, 6 November 2014
A43	Inspector’s Further Interim Views on the additional evidence produced by the Council during the suspension of the examination and its implications for the submitted Local Plan Strategy, 11 December 2015
A44	Cheshire East Local Plan: Nantwich Town Report, March 2016
A45	Crewe and Nantwich Replacement Local Plan, 2011

Technical Papers (B)	
B3	Extract of Manual for Streets 2 – Wider Application of the Principles (CIHT, 2010)
B4	Extract of Manual for Streets (2007)
B17	Transport for Statistics Bulletin
B18	Walking in Britain
B19	South Worcestershire interim conclusions on the South Worcestershire Development Plan
B20	LDC initial findings report (Sept 2013)
B21	Strategic Housing Land Availability Assessment and the development plan document preparation

A9.129

B22	Cheshire East Council Housing Supply and Delivery Topic Paper (August 2016)
B23	Cheshire East Council Housing Monitoring Update (published August 2017, base date 31st March 2017)

High Court and Supreme Court Cases (C)	
C11	High Court Judgement West Lancashire vs Secretary of State for Communities and Local Government (Neutral Citation Number: [2017] EWHC (Admin))
C12	Supreme Court Judgement Carnworth, Suffolk Coastal District

Appeal Cases (D)	
	Ministerial Appeal Decisions
	Inspector Appeal Decisions
D29	Planning Inspectorate appeal reference: APP/R0660/W/17/3166469. White Moss, Butterton Lane, Barthomley, Crewe CW1 5UJ. 8 th November 2017
D30	Planning Inspectorate appeal reference: APP/R0660/W/17/3168917. Land to the south of Park Road, Willaston, Cheshire. 4 th January 2018
D31	Planning Inspectorate appeal reference: APP/M4320/W/17/3167849. Land to the south of Andrews Lane, Formby L37 27H. 5 th December 2017

Relevant Applications (E)	
E1	Decision Notice for the extant permission - construction of a new access road into Stapeley Water Gardens" (planning application reference P00/0829)
E2	Letter from CEC confirming that planning application reference P00/0829 is extant
E3	Cronkinson Farm Schedule 106 Agreement 2000

Landscape Documents (F)	
F1	Extract of the Guidelines for landscape and Visual Impact Assessment, 3rd Edition The Landscape Institute and IEMA 2013
F2	Extract of the Landscape Character Assessment – Guidance for England and Scotland – Scottish Natural Heritage and the Countryside Agency (2002)
F3	Site Context Plan (2064/P01a JB/JE January 2014)
F4	Site Setting (Aerial Photograph) (2064/P04 JB/JE January 2014)
F5	Extract from the Countryside Agency (now Natural England), Character Area 61 Description
F6	Extract of Cheshire Landscape Character Assessment SPD – Type 7: East Lowland Plain
F7	Extract of Cheshire Landscape Character Assessment SPD – ELP 1: Ravensmoor
F8	Munro Planting Scheme – Appeal B
F9	Tyler Grange Winter Photographs (January 2014) (2064/P03 JB/LG January 2014)
F10	Winter viewpoint locations (TG Ref: 2064/P03)

Ecology & Arboricultural Documents (G)	
G1	Extract of English Nature Great Crested Newt Mitigation Guidelines 2001
G2	Extract of Natural England LPA Standing Advice Species Sheet Great Crested Newts
G3	Extract of Bats {Natural England LPA Standing Advice Species Sheets}
G4	Extract of Badger {Natural England LPA Standing Advice Species Sheets}
G5	Extract of Birds {Natural England LPA Standing Advice Species Sheets}
G6	Extract of Water Vole {Natural England LPA Standing Advice Species Sheets}

A9.130

G7	Extract of Natural England Advice Note European Protected Species & The Planning Process Natural England's Application of the 'Three Tests' to Licence Applications
G8	Extract of Cheshire East Borough Council (Stapeley – the Maylands, Broad Lane) Tree Preservation Order 2013

APPEAL A

Appeal A - Application Documents (H1)	
H1	Covering Letter September 2012
H2	Application Forms
H3	Site Location Plan
H4	Site Setting (Aerial Photograph)
H5	Indicative Masterplan
H6	Archaeological Report
H7	Transport Assessment
H8	Framework Travel Plan
H9	Statement of Community Involvement
H10	Retail Statement
H11	Nantwich Housing Market Assessment
H12	Design and Access Statement
H13	Planning Statement
H14	Arboricultural Implications Assessment
H15	Movement and topography
H16	Landscape Character Plan
H17	Index to views
H18	Viewpoint Location Plan
H19	Viewpoints
H20	Landscape Visual Impact Assessment
H21	Flood Risk Assessment
H22	Phase 1 Contamination Report
H23	Protected Species Impact Assessment and Mitigation Strategy (2012)

Consultee Responses (I)	
I1	Environmental Health (Noise / Air / Light)
I2	Cheshire Wildlife
I3	United Utilities
I4	Network Rail
I5	Public Rights of Way
I6	Natural England
I7	Bob Hindhaugh Associates Ltd on behalf of Stapeley Parish Council
I8	Nantwich Town Council
I9	Reaseheath College
I10	Highways
I11	Arboricultural
I12	Design
I13	Landscape

Documents submitted after the initial submission (J)	
J1	Revised Arboricultural Impact Assessment Phase 2 – Report Ref NWS/11/10/AIA P2 25 th May 2012

A9.131

J2	Revised Air Quality Assessment – Report Ref AQ0310 Dec 2012
J3	Tree Plan – Drawing No. NWS/SP/03/12/01 – 12 th March 2013
J4	Tree Constraints Plan Tile 1 – Report Ref NWS/11/10/TCA/01 – 9 th November 2011
J5	Tree Constraints Plan Tile 2 – Report Ref NWS/11/10/TCA/02 – 9 th November 2011
J6	Tree Constraints Plan Tile 3 – Report Ref NWS/11/10/TCA/03 – 9 th November 2011
J7	Tree Constraints Plan Tile 4 – Report Ref NWS/11/10/TCA/04 – 9 th November 2011
J8	Great Crested Newt Survey
J9	Noise Assessment
J10	9.1.13 – SCP Technical Note
J11	11.1.13 – SCP Technical Note – Response to Parish Council
J12	14.1.13 SCP Technical Note – Sensitivity Test
J13	11.3.13 – SCP Technical Note

Reporting and Decision (K)	
K1	Planning Officers Report to Planning Committee
K2	Formal Decision Notice
K3	Secretary of State First Decision letter 17/03/15
K4	Original Inspector’s Report
K5	Consent Order 3/07/15
K6	Secretary of State Second Decision letter 11/08/16
K7	Consent Order
K8	DCLG letter of 12/04/17, inviting further representations
K9	DCLG letter of 03/08/17 relating to the re-opening of the inquiry
K10	Updated Officer’s Report to Cheshire East Council Strategic Planning Board of 22/11/17
K11	Strategic Planning Board Report on applications 12/3747N and 12/3746N, 31/1/18

APPEAL B

Appeal B - Application Documents (L)	
L1	Covering Letter September 2012
L2	Application Forms
L3	Site Location Plan
L4	Site Access
L5	Transport Statement
L6	Protected Species Impact Assessment and Mitigation Strategy (2012)
L7	Design and Access Statement
L8	Planning Statement
	Updated Application Documents Appeals A and B
L9	Updated Masterplan Documents and Access Drawings
L10	Land Research Letter – BMV – 25/9/17
L11	Redmore Environmental – Air Quality Assessment 29/9/17
L12	Shields Arboricultural Impact Assessment – 26/9/17
L13	RSK Ecological Addendum Report Sept. 2017
L14	Betts Hydro – Flood Risk and Drainage Addendum 26/9/17
L15	SCP – Transport Technical Note 3/10/17
L16	Landscape and Visual Technical Note 26/9/17
L17	Lighthouse Acoustics – Acoustic Note 29/9/17

Consultee Responses (M)	
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A9.132

M1	Environment Agency
M2	Environmental Health
M3	Natural England
M4	Public Rights of Way
M5	Nantwich Town Council
M6	Reaseheath College
M7	Bob Hindhaugh Associates Ltd on behalf of Stapeley Parish Council
M8	Highways
M9	Arboricultural
M10	Cheshire Wildlife
M11	Affordable Housing

Documents submitted after the initial submission (N)

N1	Flood Risk Assessment
N2	Great Crested Newt Survey (Revised November 2012)
N3	SCP Technical Note - 11.01.13
N4	Arboricultural Implication Assessment Phase 2
N5	Protected Species Impact Assessment and Mitigation Strategy (March 2013)

Reporting and Decision (O)

O1	1 st Planning Officers Report to Planning Committee
O2	2 nd Planning Officer's Report to Planning Committee
O3	Strategic Planning Board Meeting - 19/6/13 Notes of Planning Application 12/3746N

Supreme Court Judgements (P)

P1	Removed
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Appeal Court Judgements (Q)

Q1	Suffolk Coastal Appeal Court Judgement
Q2	St Modwen Appeal Court Judgment



Ministry of Housing, Communities & Local Government

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RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.

APPENDIX 10

LAND TO THE SOUTH OF COX GREEN ROAD, RUDGWICK APPEAL DECISION



Appeal Decision

Inquiry Held on 20-23 August 2019

Site visits made on 19 and 22 August 2019

by John Felgate BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th September 2019

Appeal Ref: APP/R3650/W/19/3227970

Land to the south of Cox Green Road, Rudgwick, Surrey

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Parkes Limited against the decision of Waverley Borough Council.
 - The application Ref WA/2018/1109, dated 25 April 2018, was refused by notice dated 7 November 2018.
 - The development proposed is the erection of 53 dwellings with associated access, car parking, open space and drainage ponds.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal proposal seeks outline permission, with all details reserved except for access. In so far as the submitted plans include other details, I have treated these as illustrative.
3. Prior to, or during the inquiry, the appellants tabled a revised illustrative layout plan, a landscape and ecology master plan, a parameters plan, a proposed footway plan, a revised drainage strategy, and an updated reptile survey. No objections have been received to these additional documents, and I have taken them into account in my decision.
4. During the inquiry, the appellants entered into a Section 106 agreement with Waverley Borough Council (WBC) and Surrey County Council (SCC), and unilateral undertakings with WBC and West Sussex County Council (WSCC). In summary, these provide for: 30% affordable housing, a play area, a sustainable drainage system, vehicular access, a new footway along Cox Green Road, a crossing point on Church Street, improvements to off-site footpaths to the west, travel vouchers, a travel pan, and ecological mitigation.
5. In the light of these amended submissions and planning obligations, the Council withdrew a number of its original Refusal Reasons (RRs). These were RR4 which related to housing tenure and mix, RR6 relating to development north of Cox Green Road, RR7 relating to children's play space, RR8 regarding pedestrian access, RR9 relating to impacts on wildlife, and RR14 which related to sustainable travel.
6. Prior to the inquiry, the Council also accepted that a number of its other RRs should be withdrawn, because they related to matters that were already

covered by the Community Infrastructure Levy, which had been introduced in October 2018. These were RR11 which sought a contribution to education, and RRs 10 and 13, which in any event duplicated each other in seeking contributions to recreation and leisure facilities.

7. RR12, which sought a contribution in respect of waste and recycling, was also withdrawn, in favour of dealing with the matter by means of a condition.
8. As a result of these withdrawals, the remaining RRs are Nos 1, 2, 3 and 5, relating to planning policy, character and appearance, and heritage impact.

Main Issues

9. In the light of all the submissions before me, the main issues in the appeal are:
 - whether the Borough of Waverley has an adequate supply of land for housing;
 - whether the proposed development would accord with the WBLP's policies for the location of new housing;
 - the development's effects on the character and appearance of the area and its landscape;
 - and the effects on the setting of the listed building 'Crouchers'.

Reasons for Decision

Supply of land for housing

10. The Council's view of the housing land supply, for the 5-year period 2019-24, is set out in the Position Statement published in July 2019. The requirement figure of 5,501 dwellings, is agreed between the parties, and is derived from the housing policies of the Waverley Borough Local Plan Part 1 (the WBLP), adopted in February 2018. Against this figure, the Position Statement shows a maximum supply of 5,720 units. In subsequent correspondence, the Council has conceded an adjustment of minus 12 units. The adjusted supply is therefore now 5,708 units, or a surplus of 207 units. In terms of years' supply, this equates to just under 5.2 years.
11. The requirement in the National Planning Policy Framework (the NPPF) is for a supply of sites that are deliverable. The meaning of 'deliverable' in this context is set out in the NPPF's Glossary, and further clarified in the Planning Practice Guidance (the PPG). Following the changes made to the NPPF in July 2018, sites for more than minor development, which do not have detailed planning permission, can only be considered deliverable where there is clear evidence that housing completions will be achieved within the relevant 5-year period. In the present case, the sites that are disputed between the parties¹ all come within this category.

Dunsfold

12. The former aerodrome site now known as Dunsfold Park is allocated for 2,600 dwellings, and has outline permission for 1,800 dwellings plus other uses². Out of this total, the Council's 5-year supply relies on 463 units being delivered by

¹ As listed in the schedule of disputed sites, jointly tabled at the inquiry

² The permission is described as a hybrid, but with the detailed elements relating to matters of roads and infrastructure only

April 2024, with the first 50 completed dwellings coming in the year 2021/22, and the build rate accelerating significantly thereafter. The dispute between the parties centres on the length of the lead-in period, prior to those first house completions.

13. The Council's assumptions rest principally on a pro-forma return from the site's lead developer, but the details contained in that document are scant. Although estimated numbers and dates are presented, there is no explanation of how the timing is to be achieved. There is no indication of the intended timescales for submitting and approving reserved matters, including any further public consultation. Neither is there any breakdown of the advance works that are likely to be needed on-site, for discharging conditions, site preparation, and installing infrastructure. On a development of this scale, the planning and programming of these stages is likely to be more complex than on smaller sites, but the evidence contains none of these important details. There is therefore no evidence that house completions can realistically be achieved by 2021/22.
14. I have had regard to the WBLP Examination report³, and to the Dunsfold delivery report⁴, but these clearly cannot reflect the up-to-date position now. I note that a Planning Performance Agreement (PPA) has been entered into, but this deals only with the approval stages, and anyway does not appear to set out any overall programme. There is no evidence that the award of Garden Village status will have any effect on the timescale. I also note that an application has recently been made to vary the outline permission, in respect of the site access, and there is no indication as to how this may affect the programme which was drawn up prior to that.
15. Having regard to the NPPF's revised definition of deliverability, I can see little if anything that amounts to clear evidence that any completions will be achieved on the site within the relevant 5-year period. Although the PPG refers to PPAs and information from developers, it seems to me that the evidential value of these must be dependant on their content. In this case there is no clear evidence of any real progress since the granting of the outline permission in March 2018.
16. To my mind, having regard to the presumptive effect of the NPPF definition, these circumstances would justify excluding Dunsfold from the current supply in its entirety. But nevertheless, the evidence before me challenges the numbers rather than the principle of the site's inclusion. The appellants, somewhat generously, accept a realistic prospect in respect of a reduced figure of 232 units within the relevant period, and in the circumstances I consider this an appropriate number to adopt for my calculations too. This reduces the Council's supply by 225 dwellings.

Milford and Coxbridge sites

17. The land opposite Milford Golf Course has outline permission for 200 dwellings, and some progress has been made on submitting reserved matters and discharging conditions. The Council envisages the whole site being built-out within the relevant 5-year period. However, the Council relies principally on a pro-forma sheet dating from 2017, and even that information seems to offer

³ The WBLP Examination Inspector's report dated 1 February 2018, based on hearings held in June and July 2017

⁴ 'Dunsfold Aerodrome Delivery Rates Assessment', Troy Associates, Nov 2016

limited support for the Council's current assumptions. There is no evidence from the site's current developer, and no evidence of any dialogue with that company. The Council's evidence to the present inquiry is contradictory as to whether the first completions are expected in 2021/22 or 2022/23⁵. The latter programme would depend on a build rate of 100 units per annum, from the start, and the Council agrees that this could only be achieved with two outlets throughout. None of these assumptions are corroborated. There is further uncertainty regarding a restrictive covenant, which may need reference to the Lands Tribunal. The Council's assumptions are not necessarily unrealistic, but neither have they been shown to be clearly realistic; for the site to be deliverable, the evidence would need to be more convincing and more up to date. But again there is a measure of agreement between the parties with regard to at least some completions, 130 units in this case. In the circumstances, I accept that this figure should replace the Council's.

18. Coxbridge Farm is an allocated site and has a current outline application for 350 dwellings. The Council has included 200 units in its 5-year supply, with the first of these coming in 2021/22. There is a programme from the developer, but this is acknowledged to be over-optimistic, and is stated to be subject to the outcome of Section 106 negotiations. The Council has substituted its own more conservative assumptions as to the lead-in time and the annual build rate, based again on evidence prepared for the Local Plan examination⁶. I accept that this report is based on research specific to the local housing market, but even so, it does not look at the specific circumstances of individual sites. It is therefore not a substitute for site-specific information and knowledge. In the absence of a reliable programme from the site's own developer, and in view of the early stage of the planning process, the current evidence does not clearly show the Council's assumptions to have a realistic prospect of being achieved. For similar reasons to those applying to the Dunsfold and Milford sites, I consider the appellants' estimate, which again is 130 units, to be more realistic than the Council's figure.
19. In the remainder of the first section of the 'disputed sites' schedule, the nature of the disputed matters is such that the differences do not affect the outcome of the 5-year supply calculation, and I have therefore not considered these six sites further.
20. The effect of the two adjustments that I have identified, for the Milford and Coxbridge sites, is to reduce the Council's deliverable supply by a further 140 dwellings.

Other disputed sites

21. In view of my findings on the above, it is clear that the Council's 5-year supply must fall below the number that is required within that period. However, it remains necessary for me to get an approximate view of the shortfall's likely full extent. In the light of this, I have considered the other 24 disputed sites, in the second part of the joint schedule, more briefly.
22. None of the other disputed sites has any planning permission. Twelve of the sites are proposed allocations in emerging plans, but this does not ensure that they will be confirmed. About four others are on the Brownfield Register, which

⁵ Shown as 2021/22 in the July 2019 Position Statement, and 2022/23 in the joint schedule of disputed sites

⁶ 'Housing Land Supply and Housing Trajectory Contextual Note', Troy Associates, May 2017

indicates their suitability in principle, but not their capacity, nor their viability. Two sites are identified only in the SHLAA⁷, and this does not guarantee that permission would be granted. Three sites have no planning status at all. Seven of the sites have previously been refused permission, including five on appeal, and one other has an appeal outstanding. Four sites are in the Green Belt, and one in the AONB. At least two others are subject to other unresolved planning objections. At least three sites are currently occupied by existing uses, and are therefore not yet available. Two of these are dependant on new premises being built for their relocation. Several of the sites form extensions to sites that are already included, and thus their timing is contingent on that of the larger site. Some sites are dependent on agreements yet to be reached between two or more landowners.

23. None of these circumstances make it impossible that these sites could contribute to the housing land supply, but that is not the test of deliverability. To justify including sites of these types it would be necessary to produce clear and specific evidence, in sufficient detail, to show that the sites were available, suitable, and achievable, with a realistic prospect of delivery within the required timescale. I appreciate that this would be a large task, but self-evidently the size of that task is related to the number of sites without full planning permission that the Council seeks to rely on. On the evidence before me now, none of the sites in the second section of the schedule can currently justify being included in the 5-year supply.
24. I therefore consider that all 24 of these sites, in the second part of the disputed sites schedule, should be deleted. The result of this is to reduce the deliverable land supply by a further 563 units.

Lapse rate

25. I accept that, even with the above adjustments, the actual housing delivery over the next five years may well prove to be less than what is envisaged. But the exercise is not meant to be a forecast, it is simply a means of identifying sites that are capable of delivering the required numbers. Provided the assumptions and evidence are robust on a site-by-site basis, I see no need for the application of a lapse rate to achieve that purpose.

Conclusion on land supply

26. With the necessary deductions that I have identified, totalling 928 units, the Council's deliverable supply is reduced to 4,780. Against the agreed requirement figure of 5,501 units, this amounts to a supply of around 4.3 years.
27. It follows that the benefit of providing 53 dwellings, including 16 affordable, carries particular weight in the planning balance.

Accordance with the Local Plan's locational policies for housing

28. The principal policy for the location of housing is WBLP Policy SP2, which sets out the spatial strategy for the district. The policy's aims are to maintain the area's character and to meet development needs in a sustainable manner. To that end, the policy defines a settlement hierarchy, in which development is to be focussed at the four largest settlements, with moderate and limited levels of

⁷ Strategic Housing Land Availability Assessment

- development at the second and third-tier villages respectively. After these, the fourth and final tier of the hierarchy is 'all other villages', where only modest growth is allowed, to meet local needs.
29. In the present case, Rudgwick is not identified as a settlement for development in any of the first, second or third tiers of the WBLP's settlement hierarchy (Sections 2, 3, and 4 of Policy SP2). Nor is the appeal site located at, or related to, any of the other settlements thus identified in any of these tiers. With regard to the third tier, the site does fall within the parish of Ewhurst, but it was accepted at the inquiry that the provisions in Policy SP2's Section 4 are intended to apply only to the named villages themselves, and not to whole parishes. I agree with that interpretation. In this case the appeal site is well away from Ewhurst village, and as such, it clearly does not benefit from the provisions of Section 4.
 30. The site therefore falls to be considered, at best, within the bottom tier of Policy SP2's settlement hierarchy, where Section 5 of the policy permits modest growth, for local needs. In this context, the WBLP's text at 5.18 also refers to extremely limited, small scale development. Having regard to both the policy and the text, I can see no basis on which the expression 'modest growth' could be taken to include a development of 53 dwellings such as that now proposed. Nor is there any indication that this development would serve only local, as opposed to general, housing needs. It follows that the proposed scheme does not fall within the type or scale of development that Policy SP2 permits in locations such as this. Policy SP2 as a whole therefore offers no support to this proposed development.
 31. In addition, the WBLP's housing policies also include Policy ALH1, which sets out the broad distribution of development. This includes 100 dwellings in Ewhurst, and in the context of this particular policy it is agreed that the distribution is based on parishes. However, it is not disputed that Ewhurst's requirement has now been met, through planning permissions granted on other sites. Policies SS1 – SS9 allocate strategic sites throughout the District, but the appeal site is not included in any of these. Again therefore, none of these housing policies supports the appeal proposal. Nor has any such support been identified in any other development plan policy.
 32. I accept that Policy SP2 is permissively worded, and does not expressly presume against development in other locations. I also agree that Policy ALH1 is primarily a plan-making, rather than a decision-taking, type of policy. But together these two policies, together with the strategic allocations, represent the WBLP's housing strategy. There are no other policies relevant to housing location. The plan therefore does not provide for development at sites like the appeal site. There is nothing in these policies with which the appeal proposal can be said to accord, and the scheme therefore conflicts with the most relevant policies in this respect.
 33. Having regard to the shortfall in the District's land supply, I agree that there is an urgent need to find additional sites. There is no certainty that sufficient numbers can be found without some degree of compromise, particularly in respect of the locational elements of policies such as SP2 and ALH1. But in these kind of circumstances, the way that the NPPF envisages that matters should be resolved is by adjusting the relative weight given to those policies, not by stretching their meaning. For the reasons already explained, I consider

that the relevant policies are not designed to accommodate the appeal proposal.

34. I also agree that alongside these matters, it will be relevant to consider the site's suitability, its sustainability credentials, and its relationship to the WBLP's underlying aims. In the context of the appeal as a whole, these are material considerations. But that does not make them relevant to determining whether or not there is compliance with the particular policies that I have identified. I will return to these other material considerations later in my decision.
35. For the reasons stated, I conclude that the appeal proposal conflicts with the WBLP's strategy for housing location, and in particular with Policy SP2.

Effects on the character and appearance of the area and its landscape

The existing situation

36. The appeal site is part of a larger parcel of farmland which, in the appellants' LVIA⁸ report, is given the descriptive name 'Rudgwick Park Fields'. This distinct landscape compartment comprises primarily open grass pasture, used for sheep grazing. The topography shelves gently at first, and then more steeply, away from the village, and towards Cox Green Road and the lower-lying fields beyond. Within the site, the grassland is punctuated by scattered tree groups and individual trees, mainly of oak, ash, hornbeam and other native broadleaved species, and these give the land a parkland quality. The small pond on the northern boundary is an attractive natural feature. Although the northern boundary is partly open, the other edges are strongly contained by tree belts and rear gardens, creating an enclosed, intimate character. Together, these ingredients combine to create an attractive and highly distinctive, small-scale, pastoral landscape, of considerable scenic quality. The appeal site itself forms an integral part of this landscape.
37. The appeal site is seen mainly from Footpath No 448 and from Cox Green Road. Approaching along the footpath, from the south-west, the path crosses the western part of the Rudgwick Park Fields, passes through a line of trees, and arrives at the south-western corner of the appeal site itself. From this relative high point there is a sweeping vista, down across the whole of the site. From this point, the undulating slope, the irregular-shaped partial enclosures of the tree groups, and the contrasting textures of the trees and grassland, form a striking composition. As the footpath continues north-westwards across the site, the view changes subtly, with different angles opening up, and new glimpses appearing through and beyond the trees. As I saw on my visits, the morning and evening shadows, from both the trees and the undulations, add a further dramatic visual element at these times of day. In addition, from the upper parts of the path, the site is framed by distant views of the Surrey Hills AONB⁹. Although the backs of some of the houses in Church Street are visible, the views from the Footpath 448 are focussed in the opposite direction, and thus the presence of this existing development does not detract from the site's rural tranquillity.
38. Seen from Cox Green Road, the site is viewed in the context of a quiet rural lane. On my visit I saw that, in summer, views are filtered by the boundary

⁸ Landscape and Visual Impact Assessment

⁹ Area of Outstanding Natural Beauty

hedge and occasional trees, but nevertheless, the site can be clearly seen, and its park-like nature is clearly evident. In winter, it seems likely that these views will be more open and its landscape qualities even more readily appreciated. Approaching from the west, the historic building 'Crouchers' is glimpsed, but there are no other signs of any nearby settlement, and thus the appeal site appears in a context that is almost entirely rural and undeveloped.

39. In addition, from the direction of Church Street, although the appeal site cannot be directly seen from here, there is an evident sense of the openness which exists behind the houses on the road frontage, including Crouchers and the adjoining properties. This openness is discernible from the absence of buildings, roofs, or other artefacts, and from the resulting glimpses of sky and more distant landscape features, as seen through the occasional gaps between the frontage development. Again, in winter these would be more readily perceived than at the time of my visit. The openness to the rear of the frontage buildings in this part of Church Street contributes to its distinctive character, as a transition zone between the village and the countryside.
40. To sum up with regard to the site as it currently exists, it seems to me that the appeal site embodies and exemplifies those qualities of intrinsic countryside character and beauty that are referred to in the NPPF, and which national policy requires to be recognised in planning decisions. I accept that public views of the site are largely confined to those that I have identified, and the site does not have any significant wider visibility. But nevertheless, in this case the site's value lies in its own intrinsic qualities, and in its contribution to the rural character and appearance of this particular part of the countryside.
41. In addition, in this case the appeal site is included within an Area of Great Landscape Value (AGLV), which is a designation originating at County level, and thus indicating its landscape importance in the context of the county of Surrey as a whole. As such, the site falls within the scope of the NPPF's advice relating to 'valued landscapes', which are to be protected and enhanced in a manner commensurate with their quality. In the light of the appeal site's own intrinsic qualities that I have identified, I see no reason to question its inclusion in the AGLV. It therefore seems to me that the designation reinforces the value that attaches to the site's landscape, and its contribution to the character and appearance of the area.

The impact of the development

42. The development now proposed would introduce onto the site 53 dwellings, roadways, gardens, fences, vehicles, lighting, a play area, and associated residential paraphernalia. Although the submitted plans are illustrative, they show that such a development could be attractively designed and laid out, and could create a pleasant residential environment. To my mind however, they do not suggest any way in which such a development could avoid completely changing the site's character from what exists now. I have no doubt that most of the existing trees could be retained, together with the pond, and indeed it might be that these features could be enhanced to a degree, by means of better and more active management. The development would also potentially have sufficient space for substantial new planting and landscaping. But the inclusion of positive elements such as these would not alter the fact that the site's present rural character and landscape quality would inevitably be lost,

and would be subsumed within the very different character that would result from any new residential development on this scale.

43. Seen from Cox Green Road, the development would involve physical changes both within the site and outside it. The existing views of open parkland, albeit partial and glimpsed, would be lost, irrespective of any new planting. The proposed new vehicular access would open up additional views into the development. There is no evidence that these views could be effectively screened. The access itself would have a 6m-radius bellmouth, a 5.5m roadway, and visibility splays, accompanied by road widening on the southern side. In addition, there would be a new footway along a 100m stretch of Cox Green Road, and into Church Street, replacing part of the existing verge, and further road widening on the opposite side. All of these would be urbanising features, on a largely undeveloped rural lane. Moreover, the new access would be sited more than 200m from the junction with Church Street, and thus well outside the perceived threshold of the village. The whole development would therefore appear as an isolated and incongruous incursion into an otherwise wholly rural environment.
44. For users of Footpath 448, the effect would be that the section of that path that runs through the appeal site would be urbanised. Instead of running through open fields, the path would run between houses and managed spaces, the surface itself would necessarily have to be made more durable, and the rural ambience would be lost. The experience of walking this route via Footpath 448 would thus be completely changed.
45. With regard to views from Church Street, although the development would not be prominent from this direction, it is likely that roofs, chimneys, lighting columns, or other taller elements would be visible from some view points. Although the submitted plans seek to show how development immediately behind Crouchers might be minimised, it seems unlikely that views from Church Street could be avoided altogether. The visible presence of built development in the background would erode the semi-rural character of this part of the village fringe.
46. I accept that the density proposed is not excessive, and that the illustrative scheme does not appear noticeably cramped. Judged on its own merits, the style of development and the overall approach shown in the submitted plans seems to me generally appropriate for many semi-rural locations. In this respect I find no conflict with WBLP Policy TD1. But these considerations do not outweigh the harmful impact that any residential development on this particular site would have, due to the loss of the existing valued landscape.
47. I conclude that the proposed development would have a seriously adverse effect on the character and appearance of the area and its landscape. As a result, the scheme conflicts with WBLP Policies RE1 and RE3, which seek to protect the intrinsic character and beauty of the countryside beyond the Green Belt, and the distinctive landscape of the AGLV.

Effects on the setting of the listed building 'Crouchers'

48. The property known as Crouchers comprises a timber-framed house in the form of two parallel ranges. The front range faces Church Street, and the rear looks out towards what is now the appeal site. The building dates from at least the 17th century. It was re-fronted in the 18th century, and further alterations

occurred in the 19th. The house originally had a smaller curtilage, which has been extended over time. From its earliest days, the property formed part of the small hamlet of Cox Green, which also included the surviving properties Dukes Cottage and Trade Winds. All three are listed, and form a recognisable group.

49. The significance of Crouchers as a heritage asset lies partly in the evidential value of its historic fabric, but also in the building's illustrative value with regard to the social history of the locality, and its aesthetic value as a charming and characterful structure in its own right.
50. The appeal site lies directly to the rear of the present day curtilage, and forms the dominant element in outward views from the listed building's first floor windows, and from its rear garden. From within the site, there are clear and unobstructed views of the building's rear elevation, including public views from Footpath 448. The appeal site is also seen in the foreground of views towards Crouchers from Cox Green Road, and forms the background to the important frontal views from Church Street. Consequently, the site is a major visual element in the listed building's setting.
51. Although there is no evidence of any functional or ownership connection between Crouchers and the appeal site, the physical proximity and visual relationship are not in doubt. In all of the available views, the appeal site contributes a sense of the openness, space and rural tranquillity of the surroundings, that the dwelling would have enjoyed up to the mid-20th century. Despite the changes that have occurred in field patterns and boundaries, the site's continued agricultural use reflects the role that it has had throughout the building's lifetime. Thus the appeal site, in its present use and undeveloped condition, helps to preserve a sense of timelessness and a connection to the past which contributes to the listed building's heritage significance.
52. As has already been set out above, the development now proposed would change the nature and character of the appeal site dramatically. Instead of looking out over a scene of agricultural pasture land, the view would be of a housing development. I accept that the central part of the site could be left free of buildings, as shown on the amended plans tabled at the inquiry, and that its treatment could be geared towards a more naturalistic appearance. But this would be little more than a corridor between areas of built development, which would still have to accommodate a play area and drainage basin, and would be crossed by roads and vehicles. The change in the site's character would therefore be immediately obvious in all of the relevant views, either to, from, or around the listed building. The adverse nature of this change would not be diminished by any attempt to recreate former field boundaries, as the new housing would be by far the most dominant element.
53. The loss of the appeal site's openness and agricultural character would therefore cause permanent and irreversible harm to the listed building's setting. In view of the duty imposed by the relevant legislation¹⁰, this harm carries considerable weight in the final planning balance.
54. Given the importance of the setting, it follows that the harm caused to it would also result in a loss of the building's significance. Although this harm to its significance would be 'less than substantial', the NPPF advises that the

¹⁰ Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990

conservation of designated heritage assets should be given great weight. This reinforces my view as to the weight in the present case. I will consider the relative weight of this harm against the scheme's benefits, later in my decision.

55. In the light of the above, I conclude that due to the harm that it would cause to the setting of the listed building Crouchers, the proposed development would conflict with Policy HA1 of the WBLP, and saved Policy HE3 of the Waverley Local Plan 2002.

Other Matters

Sustainability of the location

56. Rudgwick has a range of facilities broadly on a par with some of the WBLP's third-tier settlements. Had it been located within the Borough of Waverley, it is possible that the village might have been included in that category, although this is somewhat hypothetical. In the equivalent settlement policy for Horsham District¹¹, it is classified as a medium village, where the level of local facilities is described as moderate. Although there is no evidence that any relevant Horsham policies would allow a development of the size now proposed, I accept that in principle Rudgwick is the type of settlement where opportunities for sustainable rural development on some level might be found. I also agree that a development of 53 dwellings could potentially provide support for existing services, both in the village itself and in the wider area.
57. However, the appeal site is at the furthest end of the village from most of the main facilities. It is beyond reasonable or regular walking distance from the local shops, schools, nursery, and village hall. The shortest route to these facilities, southwards via Footpath 448, is across open fields and a muddy track. The alternative of going east on the same path, to Church Street, involves climbing over a brick stile. Although the appellants are willing to pay for improvements to these routes, some sections are in other ownerships. The proposed new footway via Cox Green Road would be more user-friendly, but longer. Although buses can be hailed close to the site, there is no shelter and the service is limited.
58. Waverley is a predominantly rural Borough, and much of its new housing is therefore likely to be in locations that are at least partly dependent on car travel. But that does not mean that locational sustainability is irrelevant. In this case the appeal site is poorly integrated with the village, and the development would therefore not be well located to take advantage of the facilities that Rudgwick has to offer. The site is therefore not one which meets the aim of WBLP Policy ST1, to locate development where the opportunities for sustainable transport are maximised.
59. I note the contents of the Statement of Common Ground agreed between the appellants and SCC as Highway Authority. But for the reasons given, I do not necessarily agree with all the opinions expressed in that statement, particularly with regard to pedestrian accessibility. Since SCC was not represented at the inquiry, I have been unable to explore their reasoning further. Instead I have formed my own view, taking account of all the evidence before me.
60. I appreciate that the appeal site is outside the Green Belt and AONB, which together cover a good deal of the District. But this does not change the fact

¹¹ Policy 3 of the Horsham District Planning Framework, adopted November 2015

that, despite its proximity to Rudgwick, the site is poorly related to the village. Overall, I consider that the site's location in relation to Rudgwick adds no material weight in favour of the proposal.

Planning obligations

61. The obligations contained in the S.106 agreement and undertakings are summarised on the first page of this decision. In the light of the evidence presented, I agree that these obligations are necessary, directly related to the development, and reasonable in scale and kind. I have therefore taken them all into account in the overall planning balance.
62. The obligations in respect of the affordable housing, the play area, the crossing point on Church Street, and the provision of kissing-gates in place of stiles on some off-site public rights of way, would all have potential benefits for the general public. However, in the case of the crossing, that benefit would be very limited, as the likely level of usage by the public would be low. All of the other obligations are essentially mitigatory in nature, and their effect on the planning balance would therefore be neutral.

Other benefits of the development

63. In addition to the benefits already noted elsewhere in this decision, the proposed development would generate benefits to the local and national economy, in the form of capital investment, construction employment, local spending, and tax revenues. I have taken these into account in my decision.

Planning Balance and Conclusions

64. For the reasons set out in this decision, I have found that the proposed development would conflict with WBLP Policy SP2 with regard to the Local Plan's housing strategy. It would also conflict with Policies RE1 and RE3 due to its impact on the landscape and countryside, and with WBLP Policy HA1 and saved Policy HE3 because of its impact on the setting and significance of the listed building Crouchers. There are no development plan policies that weigh positively in favour of any development, on this site. The appeal proposal therefore fails to accord with the development plan as a whole.
65. In addressing the planning balance, WBLP Policy SP1 requires a presumption in favour of sustainable development, similar though not identical to that in paragraph 11 of the NPPF. Where relevant policies are out of date, this includes the application of a 'tilted balance'. In the present case, since there is less than a 5-year supply of housing land, it follows that Policy SP2 must be considered out of date. All other policies relevant to the appeal remain up to date. My attention has been drawn to a recent High Court judgement¹² in which it was held that the out-datedness of a single policy did not necessarily trigger the tilted balance. But that case turned on NPPF paragraph 11, whereas Policy SP1 differs slightly in that regard, in that it refers to 'relevant policies' rather than the 'most important' policies. I have therefore applied the tilted balance provisions of Policy SP1, on a precautionary basis.
66. I now turn to the proposed scheme's planning benefits. In view of my finding that the housing land supply only amounts to 4.3 years' worth, the addition of 53 dwellings to the housing stock commands substantial weight in favour of the

¹² Wavendon Properties Limited v SoS and Milton Keynes DC [2019] EWHC 1524 (Admin)

appeal. In addition I note that there is a very high level of need in the affordable housing sector, including a long waiting list for properties specifically at Rudgwick. I therefore give particular weight to the 16 proposed units that would be affordable. With regard to the other benefits, I consider that the economic effects carry moderate weight; the play area and the kissing gates have modest weight; and the crossing point on Church Street has negligible weight.

67. Having regard to the heritage balance required by NPPF paragraph 196, if the less than substantial harm to the listed building were considered on its own, then on balance I consider that the benefits identified above would outweigh that impact. It follows from this that the tilted balance is not dis-applied on the basis of specific NPPF policies relating to heritage assets.
68. However, the overall planning balance requires consideration of the scheme's benefits against the totality of the harm. When the heritage harm is weighed together with the serious harm that I have found to the character and appearance of the area, then my view is that the position is reversed, and the benefits are significantly and demonstrably outweighed by the combination of these two adverse impacts.
69. The scheme therefore does not constitute sustainable development. It follows that the conflict with the development plan is not outweighed by the other material considerations.
70. I have had regard to all the other matters raised, but none leads me to any other conclusion than that planning permission should be refused. The appeal is therefore dismissed.

J Felgate

INSPECTOR

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Heritage Collective

Pegasus Group

Peter Brett Associates

Planit Consulting

AA Environmental

RGP Transport Planning

Planit Consulting

OTHER INTERESTED PERSONS:

Craig Thomson

Paul Kornycky

Michael Ellis

Local resident

Local resident

Local resident

DOCUMENTS TABLED DURING THE INQUIRY

DOCUMENTS TABLED BY THE COUNCIL

C/1	Council's opening remarks
C/2	St Modwen Developments Ltd v SoS and Others: [2017] EWCA Civ 1643
C/3	Nathaniel Lichfield & Ptnrs: 'Start to Finish', Nov 2016
C/4	Bus timetable – service 63 and 63X
C/5	Table: planning permissions alleged to have lapsed
C/6	Closing submissions
C/7	Wavendon Properties Limited v SoS and Milton Keynes DC: [2019] EWHC 1524 (Admin)

DOCUMENTS TABLED BY THE APPELLANTS

AP/1	Revised Location and Illustrative Layout Plan, No 2140/01
AP/2	Landscape and Ecology Masterplan, No. P19-1670-05
AP/3	Opening submissions
AP/4	Reptile survey report, August 2019
AP/5	'Dunsfold Aerodrome: Delivery rates Assessment', Nov 2016
AP/6	Ecological Addendum, 22 August 2019
AP/7	GCN and Reptile Mitigation Plan
AP/8	Proposed footway plan, No 2016/3244/008
AP/9	Extracts from 2002 Proposals Map
AP/10	Table comparing village services
AP/11	List of witnesses' qualifications
AP/12	Unilateral undertaking to Waverley Borough Council
AP/13	Unilateral undertaking to West Sussex County Council
AP/14	S.106 agreement with Waverley Borough Council and Surrey County Council
AP/15	Closing submissions

OTHER PARTICIPANTS' DOCUMENTS

OP/1	Mr Thomson's statement/speaking notes
OP/2	Appeal Ref. T/APP/Z3825/A/98/292135/P8 – 'Timberley', Cox Green (tabled by Mr Thomson)
OP/3	Refusal notice Ref. WA01/1753 – 3 dwellings, land at Horsham Rd/Church Rd, Cox Green (tabled by Mr Thomson)
OP/4	Refusal notice Ref. WA01/1754 – 1 dwelling, land at Horsham Rd/Church Rd, Cox Green (tabled by Mr Thomson)
OP/5	Mr Kornycky's statement/speaking notes

GENERAL DOCUMENTS

GEN/1	Jointly prepared summary table of disputed sites
GEN/2	'Housing Land Supply and Housing Trajectory Contextual Note', May 2017
GEN/3	Final list of draft conditions, with parties' comments (tabled jointly on day 3)

APPENDIX 11

LAND OFF POPES LANE, STURRY APPEAL DECISION



Appeal Decision

Inquiry Held between 30 July and 7 August 2019

Site visits made on 29 July and 2 August 2019

by John Felgate BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd September 2019

Appeal Ref: APP/J2210/W/18/3216104

Land off Popes Lane, Sturry, Kent CT2 0JZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Gladman Developments Limited against the decision of Canterbury City Council.
 - The application Ref 18/01305, dated 22 June 2018, was refused by notice dated 24 September 2018.
 - The development proposed is the erection of up to 140 Dwellings, with public open space, landscaping, sustainable drainage system, and vehicular access.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

General

2. The appeal proposal is for outline permission with all details reserved except for access. In so far as the submitted Framework Plan includes details of other elements, including the type and disposition of the proposed open space and planting, it is agreed that these details are illustrative.
3. During the inquiry, a Section 106 planning agreement was completed. The agreement secures the provision of affordable housing and the proposed on-site open space and sustainable urban drainage (SUDs) system, and a system of travel vouchers for future house purchasers. It also provides for financial contributions to schools, libraries, community learning, healthcare, adult social care, youth services, highways, cycle routes, public rights of way, traffic regulation orders (TROs), and ecological mitigation.
4. In the light of these provisions in the S.106 agreement, the Council withdrew Refusal Reasons (RRs) Nos 6, 7 and 8, relating to housing tenure, infrastructure, and the effects on a designated Special Protection Area (SPA). In addition, the Council withdrew RR5, relating to air quality, in the light of further information submitted prior to the inquiry.

Matters relating to internationally designated sites

5. The SPA contribution provided for in the S.106 agreement relates to mitigation measures for recreational disturbance to the Thanet Coast and Sandwich Bay SPA, for which the Council has established a mitigation scheme in consultation

with Natural England (NE). NE was consulted on the original application and raised no objection subject to this contribution. Subsequently, the appellants prepared a Shadow Appropriate Assessment. The Council has expressed itself to be satisfied with that Assessment.

6. At the inquiry, a copy was produced of a letter from NE regarding certain other proposed developments within the Sturry area. In that letter, NE raised issues relating to possible impacts on water quality at another protected site, the Stodmarsh Special Area of Conservation (SAC), which is also a Ramsar Site and a Site of Special Scientific Interest (SSSI). In the light of this letter, the Council wrote to NE, inviting any further comments regarding the present appeal proposal. NE's reply, dated 16 August 2019 and therefore received after the inquiry had finished sitting, indicates that similar concerns are now considered applicable to this appeal site.
7. In the circumstances, it seems to me that, without further information as to the potential impacts on the Stodmarsh site, planning permission for the appeal proposal could not be granted without contravening the relevant provisions of the Conservation of Habitats and Species Regulations 2017. This is because, in the light of NE's stated position, I cannot be certain that the development could be carried out, either individually or cumulatively, without adversely affecting the protected site's integrity. If in other respects the balance of the evidence had pointed towards granting permission, I would have been minded to allow the appellants some further time to address this new issue before making my decision. However, having fully reviewed all the evidence, I find that is not the case. I have therefore proceeded to my decision, on the evidence that is already before me.

Relevant Development Plan Policies

8. The development plan policies relevant to the appeal are contained in the Canterbury District Local Plan (the CDLP), adopted in July 2017. Policy SP2 sets out the overall housing requirement for the District, of 16,000 dwellings over the period 2011-31.
9. Policy SP3 identifies twelve strategic housing site allocations. One of these comprises land at Sturry and Broad Oak, which is allocated for 1,000 dwellings, business floorspace, local shopping and community facilities. The allocation is also intended to help deliver a new Sturry Relief Road, by-passing the centre of the village. The present appeal site is not included in any of the strategic allocations.
10. Policy SP4 sets out the overall spatial strategy, including the settlement hierarchy. Sturry is identified as a rural service centre, within the hierarchy's second tier.
11. Policy SP1 broadly reflects the presumption in favour of sustainable development in the National Planning Policy Framework (the NPPF). Where other relevant policies are out of date, planning permission is to be granted, unless material considerations indicate otherwise, taking account of whether the adverse impacts would significantly and demonstrably outweigh the benefits, and whether specific NPPF policies indicate that development should be restricted.
12. Other policies relating to particular issues in the appeal are identified elsewhere in this decision, where relevant.

Main Issues

13. Having regard to all the submissions before me, I consider the main issues in the appeal to be as follows:
- whether the district has an adequate supply of deliverable land for housing;
 - the effects of the proposed development on the highway network and safety;
 - the effects on the character and appearance of the area and its landscape;
 - the effects on the setting of nearby listed buildings;
 - the effects on 'best and most versatile' agricultural land;
 - and whether the appeal site is a suitable location for the proposed development, having regard for the CDLP's policies for the location of housing.

Reasons for Decision

Housing land supply

Base data

14. The evidence prepared for the inquiry by both parties, including the agreed Statement of Common Ground (SCG), was based on the Council's 'Housing Land Supply Statement 2017/18'. That document has a base date of 1 April 2018, and looks to a 5-year period of 2018-23 (the 2018 HLSS). Shortly before the inquiry, the Council produced a draft version of the annual update, with a base date of 1 April 2019, and a 5-year period of 2019-24 (the 2019 HLSS). The 2018 HLSS identifies a requirement for 4,611 dwellings, including a 5% buffer, and a supply of 6,059 dwellings, giving a surplus of 1,448. In the 2019 version the requirement, based on the same method, is 4,801 units, whilst the supply is 6,455 units, and the surplus 1,654.
15. The 2019 document has some limitations, in that it has not yet been subject to final checking and internal approval, and is not yet publicly available. Nor did the appellants have a great deal of time to appraise the contents, before the inquiry. But nonetheless, the information within it is more up to date, and provides a basis for a forward view spanning almost five full years from now. In the circumstances, whilst I have had regard to both of the HLSSs, I have based my calculations principally on the 2019 version.

The housing requirement

16. In both versions of the HLSS, the 5-year housing requirement figures are based on the broad phasing indicated in CDLP Policy SP2, which shows a stepped annual requirement, starting from 500 dwellings per annum (dpa) in 2011-16, and then 900 dpa in each of the subsequent phases of the plan period. I accept that elsewhere in the Local Plan, and in the Examining Inspector's report, there are statements or other indications which appear to support a flat rate of 800 dpa across the plan period. But in the event of any contradiction, it is the policies that must prevail over the supporting material. In the present case, that means using the phasing set out in Policy SP2.

17. I acknowledge that in another appeal¹ (in which I was the inspector), in February 2018, the land supply calculations were based on a flat rate approach. But each decision must be based on the evidence given at the time. In the present appeal, the Council's approach differs from that advanced in the earlier case. But this inconsistency does not change my view as to the merits of the two approaches, as set out above.
18. The Council's approach to the housing requirement in the present appeal is based on the 'Liverpool' method, whereby any past shortfall in delivery is to be made up over the remainder of the plan period. I accept that, in general, the advice in the Planning Practice Guidance (PPG) favours the alternative 'Sedgefield' method, of seeking to make up the deficit within the next five years. But the PPG also advises that a Liverpool-type approach may be acceptable, provided that approach is put forward and accepted through the Local Plan examination process. In the case of the CDLP, the Liverpool method was expressly endorsed by the Examining Inspector in 2017. I agree that this does not mean that the methodology can never be reviewed, but having regard to the reasons given by the Inspector at that time, I see no compelling argument for departing from the approach that was agreed only two years ago.
19. For my calculations therefore, I have primarily addressed the requirement figure of 4,801 dwellings, and the period 2019-2024, which are contained in the 2019 HLSS.

Deliverability

20. The NPPF requires that sites which are to be included in the 5-year supply should be deliverable, within the terms of definition set out in the Glossary. To come within that definition, amongst other things, sites should be available now, and be achievable, with a realistic prospect that housing will be delivered on the site within five years. Sites for major development, without detailed planning permission, will only be counted as deliverable where there is clear evidence that completions will begin within that period. In addition, the PPG gives examples of some types of evidence which may be relevant.
21. In the present case, the Council's 5-year supply relies heavily on sites in this category, having only outline permission or no permission at all. In the 2019 HLSS, sites of this kind account for 3,923 units, representing some 60% of the claimed supply for the 5-year period. The evidence before me, in so far as it relates to the 2019 supply schedules, focuses on eleven such sites which are disputed by the appellants². In considering this evidence, I am keenly aware that part of the reason that the Council is reliant on sites of this type is because the CDLP seeks to achieve a rapid increase in the rate of housing delivery, and that process is still in the early stages. However, the NPPF makes it clear that the planning system should aim to ensure continuity in the housing supply in the short term, as well as planning for the longer-term future, and it seems to me implicit that this is what the 5-year supply test is primarily designed to achieve.

¹ Land at Old Thanet Way, Whitstable

² In the Table in the Housing SCG, the disputed sites that are relevant to the 2019 supply are Nos 1-7, 9, 11, 12 and 17. Sites Nos 8 and 13-16 are not forecast in the 2019 HLSS to produce any completions in the relevant period, so are no longer relevant to my consideration. Site No 10 is now under construction, and is no longer disputed.

22. In the light of these considerations, I have given close attention to the nature of the evidence which the Council has produced to demonstrate the disputed sites' deliverability. In this regard, I fully appreciate the efforts that Officers have gone to, to introduce new systems for liaising with developers and landowners, and monitoring progress, particularly through the establishment of the Housing Delivery Group, and the preparation of the Phasing Methodology. I have no doubt that these systems are designed to enable housing delivery forecasts to be accurate, robust, flexible and up to date. But nevertheless, it is clear from the NPPF and PPG that, until sites achieve detailed planning permission, they should not be treated as deliverable, unless the evidence clearly demonstrates that this status is justified.
23. For a number of the disputed sites, the Council's evidence is founded on site-specific SCGs which have been agreed with the developer or landowner of the site in question. I appreciate that the PPG refers to SCGs as an admissible type of evidence, and I have had full regard to that advice. But nevertheless, the evidential value of any particular SCG in this context is dependent on its content. In a number of cases, the SCGs produced by the Council primarily record the developer's or landowner's stated intentions. Without any further detail, as to the means by which infrastructure requirements or other likely obstacles are to be overcome, and the timescales involved, this type of SCG does not seem to me to demonstrate that the development prospect is realistic. In addition, most of the site-specific SCGs are undated, thus leaving some uncertainty as to whether they represent the most up-to-date position.

Disputed sites

24. Only one of the disputed sites has any kind of planning permission. That site is Strode Farm (Site No 4 on the disputed sites list), which has outline permission for 800 dwellings. In the 2019 HLSS, the Council forecasts 190 dwelling completions within the relevant 5-year delivery period, 2019-24. A legal challenge to the outline permission has only recently been resolved, and to that extent it is not surprising that there has been no apparent progress towards an application for reserved matters. But even so, there is no clear evidence of any other kind to show deliverability. An SCG has been agreed with the site's promoter, but it appears that a development partner is to be appointed, and there is no indication that that party has been involved in the SCG. The timings and build rates suggested are not supported by any detailed programme, or explanation of how the timing would be achievable. The development is apparently to include major road infrastructure, both on-site and offsite (albeit now reduced from what was originally sought), and there is no evidence as to how this may affect the timing or viability. The evidence therefore does not demonstrate that the site is deliverable within the terms of the NPPF definition.
25. Five of the disputed sites are the subject of current outline or hybrid applications or appeals. One of these is the site known as South Canterbury (Site No 1). The overall outline scheme, supported by an allocation in the CDLP, is for 4,000 dwellings. The Council resolved in 2016 to grant a hybrid permission, including full permission for the first 140 dwellings, and outline for the remainder. In the 2019 HLSS, the site is forecast to produce 550 completions in the relevant delivery period. However, the permission has not yet been granted. Since 2016, further environmental information has been submitted, which has not been the subject of any further resolution. In

addition, Kent County Council (KCC) has requested an increase of over £7m in the education contribution. There is no information as to what effect this will have. The development also requires major infrastructure works, including on- and off-site highway works, sewer diversions, and the removal of pylons. Conditions relating to archaeology and contamination, amongst others, are proposed. The SCG from the site promoter contains no programme to show how the timescales for all the necessary approvals, advance works and site preparation can be accommodated. At the inquiry, the Council's witness admitted that the Council does not have this information. Without that kind of detail, on a site of such a scale and complexity, the SCG is unconvincing. I have little doubt that the necessary permission is likely to be granted at some point, but the critical factor is likely to be the lead-in time after that occurs, and on this the evidence is entirely lacking. On the evidence submitted therefore, the South Canterbury site cannot realistically be counted as deliverable at this stage.

26. In the same category is the allocated site known as Sturry/Broad Oak (Site No 2). This site is currently the subject of two planning applications, by different developers, totalling 1,106 dwellings. One of these is a hybrid, which seeks full permission for some of the dwellings. The Council forecasts 440 dwellings in the 5-year period. However, no decisions have yet been made on the current applications. As noted earlier, Natural England has raised an objection relating to the effects on the Stodmarsh SAC. The development as a whole is bound up with the proposed Sturry Relief Road, and although contributions to this have been agreed in principle, further funding is needed and is yet to be fully secured. KCC is said to be considering the phasing of the housing in relation to the new road, but this has not yet been agreed. The potential effects of this phasing on the scheme's overall viability are not yet known. From the evidence available, it is not clear how this may affect the scheme. The development also involves the provision of other local infrastructure, but there is no evidence of any binding agreement between the various parties as to how the costs are to be apportioned. Nor is there evidence of any detailed programme for the necessary approvals, site works and other works necessary prior to any house completions. In the face of so many unresolved issues, it seems to me that the prospect of any housing completions on the Sturry/Broad Oak site within the relevant 5-year period is far from certain. The site therefore cannot be classed as deliverable.
27. The next site in this category is Land at Hillborough (Site No 3), which is allocated in the CDLP for 1,300 dwellings, and is in three parcels. Two of the are the subject of current applications totalling 1,080 units. In the 2019 HLSS, the site is forecast to deliver 195 dwellings in the relevant 5-year period. However, the applications are undetermined. The Council's evidence highlights the complex nature of the issues relating to access and road infrastructure, and the apportionment of costs between the owners or developers of the different land parcels. In addition, it appears that these costs may now rise as a result of recent decisions which have reduced the amount that will be contributed by the Strode Farm site. It is said that discussions about viability and costs are continuing. However, there is no evidence as to how the admitted complexities can be overcome, or within what timescale. None of the evidence produced amounts to clear and realistic evidence that the site will deliver housing completions within five years.

28. The site known as Greenhill (Site No 5) has no planning permission, but is the subject of a current outline application. The site is said to have no major infrastructure requirements, and the Council expects it to produce 150 dwellings in the relevant 5-year period. However, the current planning application is for 450 dwellings, which exceeds the CDLP allocation for 300 units, by some 50 per cent. The principle of the site being developed on this scale is therefore unsupported by the Local Plan, and it cannot be regarded as certain that the current application will be found acceptable. Nor can it be assumed that an alternative, policy-compliant scheme would necessarily come forward within the relevant timescale. There is therefore no certainty as to whether any permission will be forthcoming to allow the development to proceed in its present form. As such, the development cannot currently be regarded as deliverable.
29. The only other site with a current proposal awaiting determination is the site known as Grassmere (Site No 9), where there is a current appeal for a hybrid scheme of 300 dwellings. The site is allocated in the CDLP, and is expected by the Council to produce 70 completions, in the 2019 HLSS. At the time of the present inquiry, the Council hoped to be able to withdraw its opposition to the appeal scheme, but had not done so yet. As long as the appeal is contested by the Council, there is clearly no certainty as to the outcome. If the appeal is dismissed, it may still be possible for an acceptable alternative scheme to come forward within the relevant five-year period, but there is no evidence to show that this would be likely, let alone that such a scheme would qualify as a realistic prospect. Consequently, while the appeal remains undetermined, the site cannot be treated as deliverable.
30. None of the other disputed sites is the subject of any current planning application. The largest of these other sites is Land North of Hersden (Site No 7), which is allocated in the CDLP for 800 dwellings, and has been the subject of pre-application discussions. The Council sees it as delivering 160 completions in the relevant 5-year period. But there is no evidence of any firm progress towards a planning application, or any site assessment work. Contractual negotiations between the landowners and the prospective developer appear to be still on-going. The site is likely to be required to make a contribution in excess of £5m to the Sturry Relief Road. The SCG, although involving the developer, contains no details of how the development would be delivered within the relevant timescales, or whether the required contribution would be viable. The evidence does not demonstrate a realistic prospect of completions being achieved within the five years, and the site therefore does not come within the definition of deliverable.
31. The disputed sites at Canterbury West Station (Site No 11), and Rosemary Lane car park (Site No 12), have been allocated for housing since the previous Local Plan, in 2006. Between them, these two small sites are forecast in the HLSSs to deliver a total of 40 dwellings in the relevant 5-year period. But both are currently in active use as Council car parks. Although they may be freed up from that use in February 2020, when a new multi-storey park is completed, this means that they are not available now. From the evidence presented, it also seems that no formal decision has yet been taken by the Council regarding any future development. The sites are therefore not currently deliverable.
32. The site known as Land at Rough Common Road (Site No 17) was likewise allocated in the 2006 CDLP, and is now forecast to produce 16 dwellings in the

relevant period. Pre-application discussions have been held. But there is no evidence of any further progress towards the submission of an application. The site therefore does not qualify as deliverable.

33. The final disputed site is Land North of Thanet Way (Site No 6), which has outline permission for 400 dwellings, and a current reserved matters application for 138 of these units. In the 2019 HLSS the site is forecast to deliver 297 completions in the relevant five years. The site is not challenged by the appellants on grounds of deliverability, but on timing and build rates. Given the involvement of a Registered Provider as lead developer, I consider the forecast in the 2019 document reasonable. I therefore make no further adjustment in respect of this site.

Conclusion on housing land supply

34. In the light of the above, I conclude that the disputed sites numbered 1, 2, 3, 4, 5, 7, 9, 11, 12 and 17 should all be excluded from my assessment of the deliverable supply. In all these cases, this is because there is insufficient clear evidence to show that they meet the NPPF's definition of deliverable. Sites which are not deliverable cannot be counted as part of the supply for the purposes of meeting the 5-year requirement.
35. In total, these 10 non-deliverable sites are relied on in the 2019 HLSS to deliver 1,811 housing completions in the period 2019-24. The effect of excluding these sites is that the supply for that period is reduced to 4,644 units, which represents a shortfall of 157 against the Council's requirement figure of 4,801 units. On this basis, the deliverable supply is 4.8 years.
36. For completeness, if the calculations were instead based on the 2018 HLSS, the effect of deleting the same sites from the Council's supply figures for 2018-23 would be to reduce the supply for that period by 1,760 units. The result in terms of the years' supply would then be very slightly lower, at just under 4.7 years. However, for the reasons that I have explained, I consider the use of the 2019-based figures to be more appropriate. In any event, the difference in the outcome is not significant.
37. For the reasons set out above, I conclude that the Council has been unable to demonstrate a 5-year supply of deliverable housing land. In the circumstances, the provision of up to 140 dwellings in the appeal proposal, including 30% affordable, would be a substantial benefit of the scheme.

Traffic and highway safety

Existing traffic conditions

38. Even though the inquiry took place during the summer holiday period, I was able to see on my visits to Sturry that the village suffers from a combination of factors that make it particularly prone to traffic problems. The coming together of the A28 and A291, at the centre of the village, funnels traffic from two main routes into one. The sharp bend, and the lack of signal controls, makes it difficult for traffic from the A291 to emerge at the uncontrolled junction. The gated railway crossing, directly adjacent, causes extensive queuing on the A28, which blocks the road junction and compounds the problems. The only practical alternative route involves a network of minor roads and narrow lanes, which are unsuited to through traffic.

39. The evidence of both parties confirms the scale of the existing problems. On the A28, the appellants' traffic counts show average 24-hour weekday flows of around 19,000 vehicles. In the morning and afternoon peaks, the average 2-way flow is over 1,400 vehicles an hour, with one-way flows in the busier direction of around 850 and 780 vehicles respectively. These latter figures exceed the link capacity for a road of this type, as advised in the DMRB³, even without taking account of the level crossing, which further restricts that capacity.
40. The Sturry level crossing is said to be amongst the 'top ten' busiest crossings in Network Rail's national database. On average, the barriers close five times per hour, halting traffic flows for a total of about 12 minutes out of every hour, thus losing about 20% of the total time available. Some of the individual closure periods last for 4-5 minutes or more. The appellants' surveys show queue lengths during the barrier closures averaging 79 vehicles on the southbound side in the AM peak, and 115 vehicles northbound in the PM peak. The maximum lengths during the longer closures reached 144 vehicles and 215 vehicles respectively. Even on the less busy side of the crossing in each case, average queues were around 30-33 vehicles, with maxima of up to twice these numbers. Further queuing also takes place on the southbound A291, where the exit onto the A28 becomes blocked during these periods.
41. There is no disagreement that this congestion in the village centre is responsible for large numbers of vehicles diverting onto minor roads. To the west of the A291, on the rat-running route via Sweechgate, Shalloak Road and Broad Oak Road, the evidence indicates 2-way flows of over 700 vehicles an hour in the AM peak and only slightly less in the PM period. Over a full day, the Sturry and Herne Highway Capacity Study (the SHHCS) reports traffic flows of 7,000 vehicles on Shalloak Road. To the east of the A291, it is clear that some traffic from the A28 connects to this route, via Babs Oak Hill, Hawe Lane and Popes Lane. For much of their length, these circuitous rat-runs comprise narrow, winding lanes, with sharp bends and poor forward visibility. Their use by high volumes of through traffic is a cause for justified concern.
42. Some of the junctions along these routes, under existing conditions, are at or approaching their practical capacity. At the A291/Sweechgate junction (Junction SJ8), on the appellants' figures, the current RFC⁴ value for the right-turn movement into Sweechgate in the AM period is 0.97, with a queue length of 16 vehicles. At this point the A291 is only wide enough for one lane in each direction, so all southbound traffic is held behind the vehicles that are waiting to turn. In the PM period, the RFCs on Sweechgate are 0.90 for the left-turn and 0.83 for the right-turn, and again in practice most of the turning vehicles on this arm are combined into a single queue, with the Council's survey showing that this can reach 150m. At the Broad Oak/Vauxhall Road roundabout (SJ 10), the RFCs on all three arms are between 0.92 - 0.95 in either one or both of the peaks. At SJ9, Shalloak Road/Mayton Lane, the RFC in the PM peak reaches 1.08. All of these RFCs indicate that these junctions are operating at, or very close to, their limits. Given the range of daily variation which is evidenced in the traffic counts, it seems likely that on some days their capacities will be exceeded.

³ Design Manual for Roads and Bridges (Mr Finch's Appendix C)

⁴ Ratio of flow-to-capacity

43. The evidence identifies a high number of accidents in the Sturry area, with 108 recorded in a 5-year period in the village as a whole. Although the A291 has been downgraded from the highest risk category in the 'EuroRAP' system, it is apparently still classified as medium-high risk, and the A28 as medium risk.
44. The difficulties of the existing traffic conditions in Sturry, together with those at Herne village, a little further along the A291, are recognised and indeed highlighted in the CDLP. Moreover, it is the need to address the traffic problems of these two villages that has clearly dictated a large part of the plan's spatial strategy, as a significant number of the largest housing allocations have been chosen at least partly for their ability to contribute to a comprehensive highway solution for the A291 corridor.
45. Overall, it seems to me that the evidence adds up to a picture of a local road network in and around Sturry that is under considerable strain, and where delays, inconvenience, unnecessary extra mileage, and potential safety hazards are evidently part of the everyday experience of local residents and other road users. Clearly, none of these problems are of the appellants' making, and refusing permission for the present proposal will not in itself bring any improvement. But nonetheless, the development does have the potential to make the situation worse. The extreme difficulty of the existing traffic conditions in Sturry is a material consideration to which I attach considerable weight in this case.

Committed developments and the Sturry Relief Road

46. The appellants' Transport Assessment (TA) models the impact of the appeal proposal in relation to two scenarios, relating to 2018 and 2031 respectively. The 2018 assessment is based on the observed traffic flows at that date, with no changes to the network, and no other new developments apart from the appeal proposal. The 2031 scenario takes account of known housing commitments, and also assumes the completion of the Sturry Relief Road. The modelled scenarios therefore do not include any assessment of the appeal scheme in a situation where some or all of the other committed developments may have been completed, but not the Relief Road.
47. From the evidence of Mr Finch, on behalf of Kent County Council (KCC) as the Highway Authority, the earliest date envisaged for the completion of the southern section of the Relief Road is in the year 2023/24, and the time lag between this and the northern section is expected to be around four years. The earliest date for the completion of the whole Relief Road is therefore likely to be about 2027/28. These dates have not been challenged. Although the road is designed to be constructed in these two phases, it is self-evident that it can only start to serve its main purpose of bringing traffic relief to the village, when the whole route is complete.
48. KCC is evidently keen to start work on the southern section as soon as possible, and the above programme reflects this aim. Nevertheless, it is equally clear that the Authority is unlikely to start any part of the construction work until they can be confident that the whole of the road can be delivered. As a minimum, this is likely to mean having all the necessary approvals in place, and full funding secured. As things stand, that position seems some way off. Neither of the two planning applications for the road itself have yet been approved, and objections are said to remain outstanding, including that from

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Natural England. Planning permission for the northern section is also bound up with the applications for housing on the Sturry/Broad Oak site. Discussions regarding some aspects of these, and the terms of the permissions that might be granted, are evidently still on-going. With regard to funding, contributions are required not only from these two developments, but also from the North of Hersden site. None of these contributions can be regarded as certain until the relevant planning permissions have been granted. Partial funding is said to have been secured from the LEP⁵, but this appears to be to some extent conditional on the timing. Ultimately, it seems more likely than not that all the necessary approvals and funding arrangements will fall into place. But nonetheless, substantial hurdles remain. At the present time therefore, neither the timing nor indeed the actual delivery of the Relief Road are yet assured. Having regard to the terms of the judgement in *Manor Oak Homes*⁶, the delivery of the road in this case is not beyond sensible doubt.

49. The seven committed housing developments identified in the TA amount to a total of over 5,200 dwellings. The assessment carried out for the SHHCS in 2016 estimated that the traffic generation from five of these sites, those that were known at that time, would add 1,084 additional peak-hour trips to the road network through Sturry. Since that assessment, some 150 or so of the dwellings at the Herne Bay Golf Course site have now been built and occupied, and thus may be accounted for in the appellants' traffic counts. But these are partly balanced out by the Sturry/Broad Oak scheme, where the overall number of proposed dwellings has now grown by about 100, with the current applications totalling 1,106 dwellings compared to the 1,000 units originally allocated. The other sites identified in the SHHCS, at Strode Farm, Hillborough and North of Hersden, are all unchanged. The two additional sites identified in the TA, at Hoplands Farm and Chislet Colliery, amount to 620 dwellings. The traffic from these two sites will therefore be over and above that which was anticipated in the SHHCS.
50. The developments at Herne Bay Golf Course, Strode Farm, Hoplands Farm and Chislet Colliery all have planning permission and are unrestricted in terms of their timing or phasing in relation to the Sturry Relief Road. Although the allocated sites at Hillborough and North of Hersden are not yet permitted, the Council made it clear at the inquiry that it does not anticipate imposing any such restrictions. In the case of the Sturry/Broad Oak applications, the Council will be seeking to agree limits on the number of dwellings to be occupied before the Relief Road is completed, but those numbers have not yet been decided. KCC is currently testing a phasing limit of 350 units for the Sturry part of the scheme, and is also to consider a separate allowance for the Broad Oak part. It is fairly clear from this that the combined limit for the site as a whole is likely to exceed 350 dwellings. Indeed, given that this is the development that will have to contribute the most to the new road, not only financially but also in physically delivering part of it, it would not be surprising if the number of dwellings allowed in advance were to increase further.
51. In any event therefore, the Sturry/Broad Oak development is the only one of the committed sites that is likely to be subject to any timing or phasing restrictions in relation to the Relief Road, and even there a significant part is

⁵ Local Enterprise Partnership

⁶ *Manor Oak Homes v SoS & Aylesbury Vale DC* [2019]EWHC 1736 (Admin)

likely to be unrestricted. All of the other dwellings in the TA's list of commitments are free to come forward ahead of the new road. Although a number of these developments are not yet far enough advanced to be classed as deliverable for the purposes of the 5-year housing supply, they are all potentially capable of being developed, either wholly or largely, prior to the opening of the Relief Road, even if the road is delivered by its earliest date of 2028. If this timing were to slip by as little as two or three years, then the evidence suggests that all of the unrestricted dwellings could be completed in full.

52. All of these committed developments are expected to have an impact on traffic in Sturry. This is evident from the fact that they are identified in the TA and taken account of in its 2031 scenario, albeit that this is the scenario that includes the completed Relief Road. Having regard to the traffic generation figures identified previously in the SHHCS, it seems probable that the numbers of dwellings at Sturry/Broad Oak which will be subject to phasing restrictions will roughly balance the number of units added in the new sites at Hoplands and Chislet Colliery, which were not included in the SHHCS assessment. In round figures therefore, the SHHCS's estimate of about 1,000 additional vehicles through Sturry, from committed developments, probably remains broadly applicable.
53. To my mind it seems likely that the addition of these extra 1,000 traffic movements to the 2018 base model, without the benefit of the Relief Road, is likely to result in some further deterioration in the performance of the network, especially given the number of key junctions which have been shown to be already at or close to capacity. In my view, this likely further deterioration forms part of the context within which the impact of the appeal scheme should be viewed. In the TA however, none of the committed developments is taken into account in any modelled scenario except that which also includes the Sturry Relief Road. Consequently, in so far as the existing network is concerned, the cumulative effect of the appeal scheme together with these other relevant developments is untested.
54. I appreciate that there is a high degree of optimism that the Relief Road will be achieved, but the prospect remains of a lengthy period before it is completed, and indeed there is as yet no certainty about the road at all. This latter scenario is not so remote that it can be disregarded. I appreciate that the scoping for the TA was agreed in advance with the Highway Authority, but this does not change the fact that the necessary testing and modelling, of what in my view is a critical alternative scenario, is conspicuously lacking. To my mind, this flaw significantly weakens the case now advanced by the appellants with regard to traffic impact.

Traffic impact of the appeal scheme

55. The proposed development is forecast to generate 79 traffic movements in the AM peak hour, and 72 in the PM peak. These are not large numbers. But in a situation where some junctions are already under pressure, a relatively small increase may be significant, especially where the effect would be to push some junctions closer to their capacity, or beyond. And in any event, the NPPF makes it clear that traffic impacts should be considered on a cumulative basis, and that a severe cumulative impact may amount to grounds for refusal of permission.

56. At the junction of Popes Lane with the A291 (Junction SJ2), on the appellants' 2018-based figures, the appeal scheme is forecast to add 71 vehicles to the existing AM peak traffic flow on the Popes Lane approach, an increase of 8.7%. As shown in the TA, the effect of this would be to increase the RFC value significantly, from 0.81 to 0.94, with queue lengths and delay times approximately doubled. This sharp increase in the RFC indicates that the junction would, within the space of 4-5 years, come to within a few vehicles of the 'absolute' capacity level of 1.0, and significantly in excess of the 0.85 threshold which is often cited as 'practical' capacity. Furthermore, in so far as these figures indicate that the junction would still have any reserve capacity left at all, the TA records a daily variation of 41, indicating that on some days this reserve would be further reduced by that number of additional vehicles. And in any event, as already noted, these figures exclude any traffic from the other committed developments that are expected. It is common ground that when and if the Sturry Relief Road is built, the level of through traffic on Popes Lane will fall, and the junction's performance will improve. But without the new road, the evidence of the TA indicates that it will be overloaded.
57. A large proportion of the traffic at Junction SJ2 currently turns right onto the A291, heading for the rat-run route via Sweechgate, and in the absence of the Relief Road, this is likely to continue. At this point the A291 has a speed limit of 40mph, and the daily flow is said in the SHHCS to be around 7,500 vehicles. The junction has some recent history of accidents, albeit not a large number. In this type of situation, there seems a strong possibility that the increase in queuing time would result in drivers exiting from Popes Lane taking more risks. I accept that the installation of a toucan crossing on the A291 could potentially help, by creating gaps in the traffic flow. But this would depend on the amount of use. Apart from the Broad Oak Village Stores, there is nothing to attract pedestrian trips to this semi-rural section of the road. I am therefore not convinced that the toucan crossing would improve the safety of the junction to any significant degree.
58. To my mind, the development's potential impact on Junction SJ2, without the Relief Road, gives justified cause for concern. Even without any other development, the effect of the appeal scheme alone would be to significantly increase pressure on the junction, pushing it towards the limits of safe operation. Cumulatively with the other planned developments, the development would be likely to go beyond those limits.
59. Elsewhere on the network, at the already overloaded junctions identified in the TA, the proposed development would lead to further significant deterioration. At SJ8 (A291/Sweechgate), in the AM peak, the RFC on the A291 southbound would be elevated to 0.99. The queue of right-turning vehicles on the main carriageway would extend to over 19 vehicles. In the PM period the Sweechgate arm would reach 0.96 and 0.93, for the left and right turns respectively, with a further lengthening of queues and delay times. This junction has a significant accident history, and this record combined with the high RFC levels suggests that the risk of further accidents would be increased. At SJ9 (Shalloak Road/Mayton Lane), in the PM peak period the queue length would extend to 30 vehicles, with an RFC of 1.13, indicating a junction significantly beyond its capacity. Again, there is no dispute as to the fact that both of these junctions are expected to improve considerably if and when the Sturry Relief Road is available, but for the reasons already given, I consider that the interim situation must also be taken into account.

60. At all of these locations, the RFC values presented in the TA show that the proposed development would depend on these junctions being able to continue to operate under the pressure of congestion levels even worse than those suffered now. And in all cases, when the development is considered cumulatively with the other developments already committed, the RFCs, queue lengths and delay times associated with these junctions would be likely to be higher than those shown in the TA. Even though the TA does not quantify the impacts of those other commitments, the other evidence before me indicates that they would be significant. Where the network is already under strain, it seems to me that these cumulative effects, taking account of the appeal scheme and the other committed developments, would amount to a severe impact on the highway network.
61. The appellants point to the fact that in some cases the incremental effect of the appeal scheme would be less than the existing daily variation in flows. But the scheme's impact would be additional to that daily variation, not in place of it. Just like the base flows, the cumulative impact would vary from day to day. This means that there would be some days when the impact would be less than indicated in the TA, but equally there would be others when it was worse. The argument therefore has little merit.

Mitigation

62. The highways contribution in the S.106 agreement would cover part of the cost of converting Junction SJ10 (Broad Oak Road/Vauxhall Road) to a full-size roundabout. If this improvement were carried out, then Junction SJ10 would function better with the proposed development than it does currently without it. But the proposed contribution would not cover the full cost of the improvement; indeed it would leave something in the order of £1m still to be raised from other sources. There is no evidence as to where this balance could be found, and therefore no apparent prospect at present that the improvement could be realised. And even if it were, an improvement to this single junction, well away from the appeal site, would not remove the adverse effects on the three others that I have identified, which are all closer to it.
63. Various other transport-related mitigation measures are proposed by the appellants, including the toucan crossing, improvements to pedestrian routes and cycleways, and a travel plan which would include a travel voucher scheme. But although these measures would be potentially beneficial in their own ways, there is no evidence to suggest they would reduce traffic impacts that have been identified. Indeed the TA makes it clear that measures of these kinds were taken into account when the trip generation and distribution rates for the development were decided.
64. During the inquiry, the possibility was mooted of a 'Grampian' condition, restricting the development until the Sturry Relief Road is in place. But neither party appears to support such a condition. In any event, given the degree of uncertainty over the road, and the likelihood that it will not become available within the normal 3-year life of an outline planning permission, I consider that a condition along these lines would not be reasonable.

Conclusion on traffic impact

65. For the reasons explained above, I conclude that the proposed development would have an unacceptably severe cumulative impact on traffic flows, and on

the operation of the highway network, and on highway safety. In all these respects, the scheme would be contrary to paragraph 109 of the NPPF, which provides for permission to be refused in these circumstances. It would also conflict with CDLP Policy T1, which amongst other things seeks to control the level of vehicular traffic and its impacts.

Effects on the character and appearance of the area and the landscape

66. The appeal site is essentially a flat, rectangular arable field. Although the trees and woodland on two of its boundaries provide a pleasant backdrop to outward views, the site itself is featureless. These trees separate the appeal site from the surrounding countryside, so that the site is seen only as a discrete compartment rather than as part of any wider landscape context.
67. If the site were developed with housing and open space as now proposed, the main change would be the loss of its openness. With that loss would go the close-range views from Popes Lane, and from the two public footpaths which cross the site. The medium-range views across the site from a short section of the A291 would also be altered, although to a lesser extent. The site itself would change in character from semi-rural to suburban. These impacts would result in some harm to the area's appearance and visual amenity, but the degree of that harm would be no more than minor. The change to the wider landscape would be insignificant.
68. In order to accommodate 140 dwellings, given the constraints of the gas pipeline that crosses the site, the density would be higher than that of most of the other nearby housing. But those existing areas are not necessarily an appropriate guide for new development. And in any event, the site has ample space for structural planting and open space, to create a strong landscape framework. The height of the buildings could also be controlled by condition, if thought necessary.
69. Overall, I conclude that the harm that the development would cause to the area's character and appearance, including any effects on the landscape, would be so minor as to be insignificant. In the light of this conclusion, I find no conflict in this respect, either with Policy DBE3 or with any other policy in the CDLP, nor with the relevant provisions of the NPPF.

Effects on nearby listed buildings

70. The significance of the Grade II listed Sweech Farmhouse lies primarily in its evidential and illustrative value as a 15th century hall house. Some value also derives from its later use as a farmhouse, at the centre of a farmstead with a group of ancillary buildings, including the listed stables and the former listed barn. The stables has some evidential and illustrative value derived from this functional relationship. Although the barn is no longer standing, there is apparently permission for its reinstatement, and although there seems some uncertainty as to what its status would then be, it is likely that it would retain some heritage value, as part of this group.
71. It is an agreed matter that the appeal site lies within the setting of at least the Farmhouse, and in my view it must therefore also form part of the setting of the whole group. But to my mind, its role in the setting is a limited one. The site is separated from the building group by trees and vegetation. There is

little intervisibility. Although the roof and chimneys of the Farmhouse can be made out from the appeal site, the views from this direction are not important ones, and do not assist in the appreciation of any of the buildings. It is believed that the appeal site can be seen from the Farmhouse's upper windows, but such views would be heavily filtered by the trees. In views from further south on the A291, the buildings and the appeal site can be seen as part of the same panorama, but only at some distance. In the more important views, facing the front of the house and the group as a whole, the appeal site cannot be either seen or sensed. There is no evidence of any historic functional relationship between any of the buildings and the appeal site.

72. The site's contribution to the buildings' setting is therefore confined to its role in illustrating the relative isolation that the farmstead would once have had from any nearby settlements. But in so far as that quality may have been important to the buildings' significance at one time, it has now been eroded by other developments, particularly the 20th century housing at Broad Oak, and the modern A291 which runs immediately in front of the building group. In addition, although there are differing accounts of the various planning applications within the Sweech Farm site, it appears that permissions have been granted for up to three new dwellings, as well as for the residential conversion of the Stables. Whilst the details of these developments are not before me, it seems likely that they would have the effect of further emphasising the former farmstead's continuing evolution, away from its one-time agricultural role, and back to its original purely residential function. Having regard to this historical and present day context as a whole, it seems to me that the appeal site makes a very limited contribution to the buildings' significance as heritage assets.
73. If the appeal site were developed as now proposed, the glimpsed views of the Farmhouse from within the site would either be lost or would be seen from within a much-changed context. The same change of context would also be evident in the sideways view from the A291. Housing sited as shown in the Development Framework plan would be well away from the boundary of the listed buildings. Although lighting within this area might be discernible from the Farmhouse and parts of the former farmyard, at night this would not be readily distinguishable from that associated with the existing development in Popes Lane. Any lighting or built development in the part of the site closest to the listed buildings could be adequately controlled by conditions. If a mini sports pitch was located in this part of the site as suggested, there could be some noise, but the development could take place without this facility if required.
74. Overall therefore, I consider that the harm to the setting of the listed buildings would be minor. Given also the limited role that this part of the setting plays in contributing to the buildings' significance, it follows that the harm to their significance would also be minor. To my mind, the characterisation of this by the appellants' heritage witness as being 'at the lower end of less than substantial' is a reasonable way of describing the extent of the harm in this case. Notwithstanding that the effect is agreed to amount to harm, in these circumstances it seems to me that the harm identified would be so minor that, to all intents and purposes, it would be inconsequential.
75. In coming to my conclusion on this issue, I have had full regard to the desirability of preserving listed buildings' settings, and the need to give due

weight to any harm in that respect. I have also taken account of the NPPF's advice that great weight is to be given to the conservation of heritage assets, and that less than substantial harm is to be weighed against any public benefits. In this case, I have found only minor harm to the setting, and to the assets' significance. Given the low level of this harm, even when great weight is attached to it, I consider that in the present case the harm would be outweighed by the benefit of providing the proposed housing, as well as the other benefits identified elsewhere in this decision.

76. In the light of the above, I conclude that the harm identified would be so minor as to involve no significant conflict with CDLP Policy HE1, which seeks to protect, conserve and enhance all historic assets, or with Policy HE4, which has similar aims and is targeted specifically at listed buildings.

Effects on best and most versatile land

77. The appeal site is said to comprise 9.36 ha of agricultural land, of which about 5.06 ha is classed as best and most versatile (BMV) land. CDLP Policy EMP12 states that BMV land will be protected, but permission for significant development on agricultural land may be granted, including BMV land, where the development is shown to be necessary, and where no sites within the urban area or on poorer quality agricultural land are available.
78. I accept that the amount of BMV land in the appeal proposal would be significant. But in view of my findings with regard to the housing land supply, it is evident that some additional housing development is necessary, and also that the available sites on urban and poorer quality land are insufficient to meet the need.
79. As part of its aim to contribute to and enhance the natural and local environment, NPPF paragraph 170 advocates recognising the economic and other benefits of BMV land. But this aim seems to me to be reflected in Policy EMP12, and thus needs no further response beyond compliance with that policy.
80. In the circumstances, I find no conflict with Policy EMP12, and no conflict with NPPF paragraph 170. I conclude that the loss of BMV land in this case would not be unacceptable.

Whether the scheme would accord with the CDLP's locational policies

81. The principal CDLP policy relevant to the location of housing on unallocated sites is Policy SP4. The policy states that the main focus for development is to be at the three larger urban areas, together with development at the rural service centres, of which Sturry is one, and also at the local centres. In relation to Sturry and the local centres, paragraph 2 of the policy goes on to say that, in addition to the plan's allocations, the provision of new housing of a size, design, scale, character and location appropriate to these villages' character and built form will be supported, provided the proposal is not in conflict with certain other policies. Under paragraph 5 of SP4, development in the open countryside will be permitted for agriculture and forestry. In addition, Policy HD4 sets out in more detail the circumstances in which new dwellings in the countryside may be permitted, none of which apply to the appeal scheme.

82. Policy SP4 therefore gives some encouragement to development at Sturry and the local centre villages, as settlements where development is to be focussed, and also allows for some sites to come forward over and above those already allocated. Nothing in this part of the policy requires sites to be within the existing built confines, and in the absence of a defined boundary, it seems to me that the policy permits some flexibility with regard to sites on the village edge. In this context, I note that 'flexibility' was the term used by the Examining Inspector in explaining the need for the modifications that he recommended to the policy⁷, and I consider that his comments in this regard are helpful in understanding the way the policy is designed to operate.
83. In the present case, the appeal site is adjacent to Sturry's main built-up area, and relates reasonably well to the existing development pattern. Although its size would be substantial, the settlement itself is a large village, and the development would not be out of scale with it. Design is a reserved matter, and the final criterion, character, is largely a function of the others. None of these criteria therefore seem to rule out the proposed scheme from being supported within the terms of SP4's second paragraph.
84. With regard to Policy SP4's fifth paragraph, I agree that there is a clear inference that development in open countryside that is not for the specified purposes will not normally be permitted, and this approach is reinforced by Policy HD4. In the case of Sturry, with its lack of a defined boundary, this leaves unanswered the question of whether a particular site falls within open countryside, or within the ambit of SP4's second paragraph. But to my mind this is part and parcel of the same flexible approach that is inherent in that paragraph as a whole. I therefore find nothing in either Policy SP4 or Policy HD4 that specifically requires the appeal site to be treated as countryside.
85. In coming to this view, I accept that the CDLP is to be read as a whole, and I have had regard to all the various paragraphs that I have been directed to, including the explanatory text supporting Policies SP4 and HD4, and Policy HD3 relating to exception sites, and also page 237 which refers to the plan's objectives for the countryside. However, nothing in these seems to me to be conclusive, and I have therefore drawn my interpretation of Policy SP4 from the words of the policy itself. I have also noted the Inspector's reasoning in the recent appeal relating to a site in Westbere. But Westbere is defined as a hamlet, in the lowest tier of the settlement hierarchy, where a different policy approach applies, under another part of Policy SP4.
86. I fully agree with the Council that Policy SP4 cannot have been intended to permit development on each and every site around the fringes of Sturry, or the other paragraph 2 villages. Rather, it seems to me, the policy allows decisions on proposals at these settlements to be made on a case-by-case basis, having regard to the policy's own criteria, together with the nature of the particular site, and the circumstances at the time. Different and more restrictive approaches for the lower tiers of the settlement hierarchy are set out in Policy SP4's other paragraphs, and it seems to me that the greater flexibility given to Sturry and the local centres is clearly intended to complement that approach.
87. For completeness, I note that the final proviso in Policy SP4's second paragraph, regarding compliance with other CDLP policies, is relevant to the

⁷ Inspector's Report on the CDLP Examination, paras 55 and 97

appeal, as I have already found the proposal to conflict with Policy T1 with regard to traffic impact. However, that matter is taken into account elsewhere in this decision, and does not affect my conclusion as to the policy's locational aspects.

88. In the circumstances of this case, I find that the appeal proposal falls within the type and scale of development that could be accepted within the terms of the second paragraph of Policy SP4. As a result, it follows that Policy HD4 is not relevant in this case. The proposal is therefore not in conflict with either of these policies.

Other Matters

The Section 106 agreement

89. The provisions of the S.106 agreement relating to the provision of 30% affordable housing are needed for compliance with CDLP Policy HD2. This provision, amounting to up to 42 affordable units, has no mitigatory role and would therefore represent a substantial public benefit.
90. The provisions relating to the proposed on-site open space, including an equipped play area, a proposed mini pitch and a trim trail, and also the SUDs drainage system, are all needed to ensure a high standard of development and future maintenance. The quantity of the proposed open space exceeds policy requirements, but is necessary because of the large amount of land within the site that is sterilised by the pipeline. The open space would be available to the public and would therefore be a general benefit, to which I give some weight.
91. The agreed contributions to the Canterbury-Herne Bay cycle route, surfacing and improvements to public footpath CB59, and the provision of travel vouchers for new residents, are all necessary to manage travel demand and mitigate the development's transport impacts to the levels assumed in the TA, in accordance with relevant policies. The first two of these items would also have benefits for the general public, carrying a small amount of weight.
92. The contributions to primary and secondary education, community learning, healthcare, adult social care, libraries, youth services, and the SPA, are all needed to mitigate the development's impacts on these services, in accordance with the relevant CDLP policies. The contribution for TROs is needed, to allow for the introduction of waiting restrictions on Popes Lane, in order to mitigate any impact on safety in connection with the proposed site access.
93. All of the above obligations have been demonstrated to be necessary to make the development acceptable, and to be relevant to the development and reasonably related in scale and kind. I have therefore taken these into account, and where I have identified that these would involve public benefits, I have given weight to those benefits accordingly.
94. The proposed contribution to highway works at Junction SJ10, Broad Oak Road/Vauxhall Road, would help to relieve congestion at that junction. It would thus have potential benefits for the general public, assuming that the balance of the cost could be raised from another source, and the improvement scheme could then be implemented. However, the junction is remote from the appeal site, and is not one of those where the impact of the proposed development would be most severe. Nor would the improvement to this junction, if carried out, make the development acceptable, in terms of its

overall traffic impact. In the circumstances, the proposed contribution does not meet the necessary legal tests, and I have therefore not taken the potential benefit of this obligation into account.

Other benefits of the development

95. In addition to the benefits already identified above, the development would have significant benefits for the local and national economy. The overall construction spend is estimated by the appellants at £16.3m. Over the construction period, it is estimated that 140 full-time equivalent direct jobs, and 152 indirect jobs, would be created. The gross value added is put at £5.4m. The development's future residents are estimated to generate a total household expenditure of £4.17m, and the Council would benefit from Council Tax receipts and New Homes Bonus payments totalling around £3.2m. The appellants' figures for these items have not been challenged. These beneficial economic effects would be additional to the District's other committed housing sites. I consider that the economic benefits carry moderate weight.
96. In addition to the contributions in the S.106 agreement, improvements are also proposed by the appellants to existing pedestrian routes between the site and the village centre⁸. These improvements could be secured by condition. Although minor in nature, they would have some benefits for existing residents as well as future occupiers at the development itself. These carry modest weight.
97. The creation of new and enhanced wildlife habitats, and other biodiversity gains, could also be secured through conditions, likewise attracting some modest weight.
98. Although new public parking bays are proposed in Popes Lane, these would merely replace the on-street spaces lost due to the necessary TROs. As such, this would represent mitigation rather than a net benefit.

Planning Balance and Overall Conclusions

99. For the reasons set out in this decision, I find that the proposed development would fit acceptably well with the CDLP's spatial strategy, embodied in Policy SP4. I also find no serious adverse consequences for the area's character and appearance, or for the nearby listed buildings, or for agriculture. Having regard to all of the above matters, I find no significant conflict with the development plan in respect of any of these matters.
100. However, in the light of the development's impact on the road network and highway safety, there would be a serious conflict with Policy T1. Numerically, this conflict is with only one policy compared to the larger number where I have found no such conflict in relation to other issues. But nevertheless, the conflict with Policy T1 is in my view so substantial that it is not outweighed merely by causing no harm in those other respects. In the context of this particular scheme therefore, I find Policy T1 to be the most important development plan policy in the appeal. The proposal before me is in clear conflict with that policy.

⁸ Shown on Plan no. 1592/13, Revision A