

TOWN & COUNTRY PLANNING ACT 1990 SECTION 78

Site: LAND TO THE EAST OF DOWNEND ROAD

Appellant: MILLER HOMES

Local Planning Authority: FAREHAM BOROUGH COUNCIL

LPA reference: P/20/0912/OA

Appeal reference: APP/A1720/W/21/3272188



APPENDIX 1

TO THE APPELLANT'S PLANNING EVIDENCE

HOUSING LAND SUPPLY STATEMENT

SUBMITTED BY TERENCE O'ROURKE LTD

JULY 2021

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INTRODUCTION

- 1.1 This written statement addresses housing land supply (HLS) matters in respect of the appeal case relating to proposals for 350 homes at land to the east of Downend Road, Portchester. Farnham Borough Council (FBC) refused permission on 25 November 2020.
- 1.2 The National Planning Policy Framework (NPPF) paragraph 73 requires that:
- 1.3 *“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.”*
- 1.4 The starting point is FBC’s Five-Year Housing Land Supply Position, as set out in its statement dated February 2021 (HLSP). The February statement contends that the Council has a 4.2-year supply in the period 1 January 2021 to 31 December 2025.
- 1.5 The Council has since updated this position in a ‘Supplementary Statement on Policy DSP40 and Housing Land Supply’ submitted in relation to an undetermined appeal (APP/J1725/W/20/3269030). The Supplementary Statement is dated June 2021 (this document will be referred to in this statement as the June Update, see appendix HLS_1). The update reflects a change in the five year requirement, due to a change in affordability ratios as well as alterations to FBC’s position in regard to the deliverable supply. The result is that FBC now contends that its five year supply has reduced to 3.57 years in the period 1 January 2021 to 31 December 2021.
- 1.6 The Housing Land Supply Statement of Common Ground (HLS SoCG) confirms that, for the purposes of this appeal, FBC considers that it can only demonstrate a supply of 3.57 years, as per the June Update.
- 1.7 Clearly, 3.57 years is a substantial shortfall which not only engages the presumption in favour of granting planning permission for sustainable development, noting that FBC has confirmed its intention to allocate the site in its latest Reg 19 local plan consultation (June 2021), but gives substantial weight to the benefit of delivering additional housing, including affordable housing, within the current five-year period.
- 1.8 Notwithstanding FBC’s updated position, the Appellant’s position is that the shortfall is far more significant than that reported by FBC and, as set out in this statement, is only 1.75 years, representing an even more substantial shortfall of 2,107 dwellings.

2 HOUSING REQUIREMENT

Baseline requirement

- 2.1 For the purposes of maintaining housing supply and delivery the NPPF, at paragraph 73, requires that:

“Local planning authorities should 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 strategic policies are more than five years old.”

- 2.2 The Core Strategy, which sets out the planned housing requirement for Fareham District was adopted in 2011 and is in need of review. In these circumstances, no alternative to using the standard methodology Local Housing Need (LHN) as the housing requirement is allowed for in the NPPF or National Planning Practice Guidance (PPG 68-002-20190722), for the purposes of assessing the five-year HLS. FBC’s HLSP therefore rightly uses the LHN as its housing requirement.
- 2.3 FBC contend that the LHN is 539 dwellings per annum. This is on the basis that the LHN for the period January 2021 to the end of March 2021 was 508 dwellings per annum; and for the period 1 April 2021 to 31 December 2025 the LHN is 541 dwellings per annum.
- 2.4 The Appellant contends that the LHN is 541 dwellings per annum. However, the difference is only 12 dwellings, as demonstrated below in the table, and marginal.

Housing Requirement	FBC position	Appellant position
Local Housing Need: Dwellings per annum	539	541
Local Housing Need: Total Requirement for 1 st January 2021 to 31 December 2025	2,695	2,705
20% buffer	3,234	3,246

Buffer

- 2.5 When using the LHN as the housing requirement for the purposes of calculating the five-year HLS, there is no requirement to take account of any accumulated shortfall from previous years (PPG ID: 68-031-20190722), as this is intended to be

reflected in the affordability ratio as part of the LHN calculation. However, there is a requirement to add a buffer (NPPF para 73).

- 2.6 The extent of the buffer is determined by the Housing Delivery Test (HDT). The latest 2020 HDT, published February 2021, confirms that FBC is a 'buffer' authority, because its delivery over the last three years has only achieved 79% of the requirement. The 20% buffer is added to the requirement. This position is accepted by FBC in its HLSP and the June Update, also in the HLS SoCG.
- 2.7 The effect of the 20% buffer is to increase the total housing requirement for the district, for period 1 January 2021 to 31 December 2025, from 2,695 dwellings to 3,234 dwellings based on the Council's position or from 2,705 to 3,246 dwellings based on the appellants position.

Five-year requirement and supply position

- 2.8 To be clear, the five-year HLS requirement is the LHN plus buffer, as such the calculation is $(539 \times 5) \times 1.20$, which is **3,234 dwellings**. This can be divided into an annual requirement of 647 dwellings (rounded up to the nearest whole number).
- 2.9 FBC identifies a deliverable supply of 2,310 dwellings, which equates to a HLS of 3.57 years and provide a land supply shortfall of 924 dwellings over the current 5 year period.
- 2.10 The Appellant's position on the five year HLS requirement is **3,246 dwellings** $(541 \times 5) \times 1.20$. This can be divided into an annual requirement of 649 dwellings (rounded down to the nearest whole number). Based on FBC's deliverable supply of 2,310 dwellings this equates to a HLS of 3.55 years and provides a supply shortfall of 936 dwellings over the current five year period.

3 SITE ASSESSMENT METHODOLOGY

Definition of deliverable

3.1 There are a number of key paragraphs in the NPPF that specifically relate to the purpose of, and approach to, the HLS assessment and the definition of 'deliverable'. In a number of matters, the PPG further clarifies the policy. Attention is drawn to the following:

- NPPF para 73 – 76
- NPPF Glossary
- PPG 'Housing supply and delivery' ID68 (published 22 July 2019)

3.2 The Glossary to the NPPF provides a definition of deliverable; there are only two categories of sites, with the planning status of the site being a key consideration. In the first category (a) are small permitted sites and sites with detailed permission which should be considered deliverable unless there is clear evidence that housing completions will not be delivered within 5 years. In the second category (b) are outline permissions and development plan allocations which can only be considered deliverable if there is clear evidence that housing completions will start within 5 years.

3.3 It is highly relevant that the NPPF definition, in relation to category (b) sites (including allocations and outline permissions), includes the requirement to demonstrate with clear evidence that *"housing completions will begin on site within five years."* This places the onus on the local planning authority to provide evidence and must be read alongside the requirement that there must be a *'realistic prospect' that housing will be delivered on the site within five years*; it goes significantly further than the 2012 NPPF.

3.4 The PPG addresses in more detail how major allocated sites (more than 10 dwellings) which do not have planning permission or only have an outline permission, rather than detailed permission, might be included in the supply:

"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 NPPF 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.” (ID: 68-007-20190722)

Relevant appeal decisions

- 3.5 It is relevant to note recent, co-joined, appeal decision 3252180 and 3252185 in Fareham Borough where the Inspector addressed the five-year supply position (CD 7.3). The Inspector in that case concluded that:

“based on the evidence before me, I consider that the Council’s expectations of delivery are likely to be unrealistic and the actual housing land supply position is likely to be closer to the appellant’s estimate than the Council’s. The Council acknowledges that other recent appeal decision have found the deliverable supply it has identified to be too optimistic.” (paragraph 91).

The Inspector then commented that:

“I consider it likely that a shortfall in housing land supply will persist for some significant time to come” (paragraph 92).

- 3.6 To provide further context as to how the definition of deliverability is to be approached, the following appeal decisions are relevant (referenced in date order, with the earliest decision first):
- 3.7 The Woolpit decision dated 28 September 2018 (3194926) particularly paragraphs 65, 67, 72 & 73 93 (appendix HLS_2), which confirm that:
- The onus is on the LPA to provide clear evidence for outline permissions and allocated sites
 - There is a clear cut-off date to the assessment, *“... The relevant period is 1 April 2017 to 31 March 2018. There is therefore a clear cut-off date within the AMR, which is 31 March 2018. The Council’s supply of deliverable sites should only include sites that fall within the definition of deliverable at the end of the period of assessment i.e. 31 March 2018. Sites that have received planning permission after the cut-off date but*

prior to the publication of the AMR have therefore been erroneously included within the Council's supply. The inclusion of sites beyond the cut-off date skews the data by overinflating the supply without a corresponding adjustment of need. Indeed, that is why there is a clear cut-off date set out in the AMR.” (para 67).

3.8 The Woolmer Green decision dated 26 October 2018 (3190821) particularly paragraphs 28 – 33 (appendix HLS_3) confirms that:

- There is no presumption of deliverability with respect to the second closed lists (outline permissions and allocations)
- Sites awaiting permission are treated with caution (excluded)
- The required evidence test for the second list must demonstrate homes “will be delivered”

3.9 The Bures Hamlet, Braintree, decision dated 27 March 2019 (3207509) (appendix HLS_4):

“Where there is to be reliance on an annual assessment then that clear evidence should logically be included in that published assessment or at least published alongside it. That would qualify as publicly available in an accessible format as the PPG requires. It would accord with guidance in PPG Paragraph 3-048 which applies to all forms of annual review including, but not limited to, annual position statements. That is not to say that there should be publication of every email or every note of a meeting or telephone conversation. The information can be provided in summary form but there needs to be some means of identifying the basis for the conclusion reached.

The information published here in the AMR is minimal and relies heavily on unsupported assertions that a site will be delivered. That does not amount to evidence. In most cases it does not include the additional information that was introduced only in oral evidence at the inquiry such as: the date when a reserved matters submission was made or anticipated; when a S106 obligation was completed; why a full planning application and not a reserved matters application was submitted on a site that already had outline permission; the source of an estimate of delivery rate; any assumptions and yardsticks that were applied where direct information was in doubt or missing; or other information of the type that could be readily summarised and published, possibly in tabular form.” (paras 66 & 67)

3.10 The Darnhall, Cheshire, decision dated 4 November 2019 (2212671) (appendix HLS_5), where the SoS confirmed that:

“He has gone on to consider the deliverability of six non allocated sites without planning permission that are disputed. The Secretary of State disagrees with the reasons given at IR 365 to 367, and does not consider that the sites, amounting to 222 dwellings, are deliverable since they do not fall within category a or b of the Framework's definition of deliverable, and he does not consider that there is clear evidence of deliverability within five years as required by the Framework, given the outstanding issues of the need for legal agreements and agreements on reserved matters.” (DL para 18)

- 3.11 I note that the Barbrook Lane, Tiptree, Inspector did not approach the NPPF definition as a closed list (appendix HLS_6 para 168) but the SoS did not endorse this approach, restricting his endorsement of the Inspector's conclusions to the assessment of sites in paragraphs 172 – 193. However, in judicial review proceedings brought by East Northamptonshire Council, the SoS for MHCLG has 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’. 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.” (12 May 2020, Claim No. CO/917/2020).

Methodology

Baseline information

- 3.12 The February HLS Position Statement together with the June 2021 Update form the starting point.
- 3.13 All larger sites (of 10 or more dwellings) included in the HLSP have been assessed for their deliverability, with reference to the above and, in particular, current planning status, history and potential yield.

Base Date

- 3.14 As confirmed above, it has long been established that in order to provide a robust position of supply against requirement, without over-inflating supply relative to the requirement, the base date must be treated as a cut-off date.

Categories of sites

- 3.15 I have approached this evidence on the basis that, whether the NPPF delivery definition list is closed or not, major sites that do not benefit from detailed planning permission need their deliverability to be confirmed through clear evidence. I have deleted those sites that are unsupported by the clear evidence necessary to demonstrate deliverability, taking the position that sites said to be in some other category (other than a or b) cannot be subject to a lesser test of deliverability, in terms of the requirement for clear evidence, than those sites falling within category b).

4 FAREHAM BOROUGH COUNCIL'S HLS

- 4.1 The following identified sites contributing to FBC's total anticipated provision of 2,310 dwellings, are included in FBC's HLS trajectory:
- Outstanding Planning Permissions (small and large)
 - Outstanding Outline Planning Permissions (large)
 - Resolutions to Grant Planning Permission (large)
 - Brownfield Register Sites
 - Local Plan Adopted Housing Allocations
 - Windfall
- 4.2 The following evidence only address those elements of the HLS which the Appellant challenges. Given the FBC's five-year HLS position and the agreement in the Statement of Common Ground that even based on FBC position the shortfall is material, the Appellant has not scrutinised every site in the claimed supply.
- 4.3 At the outset, it is relevant to address the on-going challenge FBC faces in respect to Natural England's advice on UK and European protected sites in the Solent (SPA/SAC), as this is relevant to most of the sites challenged in this statement, so will avoid repetition if addressed first.
- 4.4 FBC's position statement (available on the web site, a screen capture is included in appendix HLS_7) sets out the background and confirms that FBC was unable to grant permissions for major development from January 2019.
- 4.5 Natural England (NE) identified two areas of concern;
- That increased levels of nitrates, from increased amount of wastewater from new dwellings, is likely to have a significant effect upon those species and habitats¹, and
 - That effects from increased traffic emission along roads withing 200 metres of the European Protected sites could also likely have a significant effect.
- 4.6 The result is that all applications in the district, where there is a net gain in residential dwellings (or other forms of overnight accommodation), require a Habitat Regulations Assessment (HRA). To satisfy the requirements of the Habitat Regulations, the Appropriate Assessment undertaken for an application needs to incorporate a nitrate neutrality assessment. Where this concludes that nitrate levels entering the Solent are increased because of the proposed development, mitigation is required, and the assessment must demonstrate that there will be no adverse effects on the SPA/SAC.
- 4.7 Until recently, unless sites could deliver on-site mitigation (such as the Appeal Site), no other form of mitigation was readily available to applicants and FBC was

¹ Natural England, June 2020, Advice on achieving nutrient neutrality for new development in the Solent region (Version 5)

unable to issue permissions. This included sites where FBC had resolved to grant permission but, because it had been unable to sign the section 106 agreements, it had not issued the relevant planning consent.

- 4.8 It is acknowledged that FBC has been working with various parties to provide solutions. A report to the Director of Planning and Regeneration dated July 2020 confirmed that FBC was preparing to enter into a legal agreement with the Hampshire and Isle of Wight Wildlife Trust and Isle of Wight Council (HIOWWT) to deliver mitigation at Little Duxmore Farm, located on the Isle of Wight (appendix HLS_8).
- 4.9 Notwithstanding the agreement between the Council and the Trust, it is understood that the scheme requires individual developers to purchase nitrate credits directly from the HIOWWT and to confirm to FBC the purchase at the point of approval (see appendix HLS_9 for the HIOWWT Solent nutrients issues - a nature-based response, dated August 2020 which explains the mitigation).
- 4.10 The HIOWWT paper explains that Natural England has assessed the potential for Duxmore Farm to provide nitrogen credits and has determined that there are 800 nitrate credits available, estimated to provide nitrate credits for about **400 homes** (see appendix HLS_9, page 7 of 10). It should be noted that the number of credits required per dwelling has to be determined on a site by site basis as the calculation takes into account existing land use (with varying level of nitrate saving for different types of farming) and proposed land use (with potential savings depending on the level of green space provided).
- 4.11 The credits can be used/purchased by any development in the five fluvial catchments of the Solent ecosystem (East Hampshire, Isle of Wight, River Itchen, River Test and Chichester Harbour, see appendix HLS_9 page 3 of 10). They are not ring-fenced for sites within Fareham district.
- 4.12 It is unclear as to whether other authorities in the catchment have entered into an agreement with the HIOWWT. However, there is no certainty that all of the available credits (400 homes) will be used as mitigation by Fareham sites alone.
- 4.13 Equally, it is noted that one of the HIOWWT tests to enable a developer to apply for credits is whether the site is allocated in a development plan or has planning permission. Clearly, with a limited supply of credits, priority has to be given to schemes more likely to deliver housing.
- 4.14 It is noted that there are other potential mitigation schemes now available in Fareham. A scheme was considered by the committee on the 19 March 2021 at Warnford in the South Downs National Park and a resolution was made for FBC to enter into a legal agreement with the landowner Mr Sellick (See appendix HLS_10). There is no indication of how many homes this site can provide nitrate credits for.
- 4.15 It is noted that individual applicants will need to enter into agreements with Warnford Park Estate to purchase nitrate mitigation and satisfy the Council these credits have been secured (paragraph 21, appendix HLS_10). Paragraph 33 notes that *"the Council will not be involved in these financial transactions"*, and it is apparent that Mr Sellick could be in a position to charge whatever he wishes for these credits, that will potentially unlock residential development. Mr Sellick is a

private individual and there is no evidence to demonstrate how the costs will be managed or if these credits will render schemes unviable, particularly given FBC's confirmation that the Council will have no involvement in the financial transactions. Equally, the report does not confirm whether Natural England is satisfied that the long-term management of the site has been appropriately secured to provide appropriate mitigation.

- 4.16 Again, there is no evidence provided to demonstrate how many of the other authorities will be relying on credits from Warnford Park, how many credits FBC has secured and how many homes this will enable to be delivered.
- 4.17 It is noted that the Council has one other scheme it is looking to enter into a legal agreement with at Coleman's Lane (see report to the Director of Planning and Regeneration dated 18 May 2021 appendix HLS 11). Again, developers will be required to purchase credits from a private landowner.
- 4.18 It should be noted that the report for Coleman's Lane states that Little Duxmore Farm is *"one of the largest schemes locally which has assisted with nitrate mitigation"* (paragraph 5). If this is one of the largest schemes and only provides credits for 400 homes, further schemes will be needed.
- 4.19 Indeed, the report acknowledges that *"there are a considerable number of planning applications for residential development within the Borough which will remain undetermined until nitrate mitigation has been identified and secured"* (paragraph 5).
- 4.20 Given that each development must provide its own nitrogen budget and, if it is not nitrogen neutral (as the Appeal Site is), then provide mitigation through the purchase an unknown number of credits at an unknown cost, it is the Appellant's position that sites which require off-site nitrate mitigation cannot be considered deliverable until nitrogen credits have been formally secured.
- 4.21 Equally, whilst there are two, possibly three, nitrate credit mitigation schemes available for the Fareham area, it is not clear how many other planning authorities in the Solent catchments are utilising these schemes or how many new homes these schemes might support, or how much demand there may be for these credits.
- 4.22 In a recent appeal decision on two cases (CD 7.3 appeals APP/A1720/W/20/325215 and APP/A1720/W/20/325215) the Inspector concluded on this issue that in *"the absence of favourable completed AAs there is significant doubt about the deliverability of housing within the five year period on those sites."* (paragraph 89). The Inspector in those decisions would have been aware of the HIWWT scheme at Little Duxmore Farm.
- 4.23 Furthermore, at a presentation to the Planning Development and Scrutiny Panel on 24 February 2021, officers explained to members that, *"until a sustainable, long term nitrate mitigation strategy is in place, the Housing Delivery Test is going to be a concern from many years to come"* (appendix HLS_12 page 3). Clearly, officers recognise that individual nitrate mitigation schemes requiring private financial transactions cannot be a long-term solution.

- 4.24 The second area of concern Natural England raised is in regard to increased traffic impact on the protected sites. This is something that will need to be assessed on a site-by-site basis, depending on traffic generation and location of the site. To satisfy the requirements of the Habitat Regulations, the Appropriate Assessment undertaken may need to consider appropriate mitigation for traffic impacts as well. This further casts doubt on deliverability until the HRA has been completed and mitigation required secured.

Outstanding Outline Planning Permissions – large (5+ dwellings)

- 4.25 With respect to this category, eight sites are identified which expected to deliver 296 dwellings in the five-year period. Two are challenged by the Appellant:

Land east of Brook Lane and South of Brookside Drive, Warsash (reference 16/1049/OA)

- 4.26 This site is identified as contributing 85 dwellings to the housing land supply position, 50 dwellings in year 2022 and 35 dwellings in year 2023.
- 4.27 Outline planning permission was approved on appeal 17 May 2018 (reference: P/16/1049/OA).
- 4.28 An application for the approval of the reserved matters details was submitted on the 25 March 2019 (reference: P/19/0313/RM). This application remains undetermined because the outline consent was granted before Natural England raised concerns about nitrates, FBC was then unable to determine the reserved matters application. As such the site remains a category b) site where clear evidence is required that the development will be delivered in the five year period.
- 4.29 Natural England responded to the reserved matters application on 1 May 2019 requiring further information to enable the impacts of the development on designated sites to be determined, specifically, the potential for significant effects on the SPA/SAC. The information required includes an HRA with a nutrient budget for the development. There is no HRA available on the application file.
- 4.30 Additional information was submitted on behalf of the applicant in February 2021. This did not include details of the nitrogen budget. Natural England respond to the submission on the 23 March 2021 reiterating its advice and request for information and making it clear, if this was not received Natural England would object to the application.
- 4.31 There is also an outstanding holding objection to the reserved matters details from Hampshire County Council (HCC) Highways.
- 4.32 Until there is a nitrogen budget for the site, with agreed and secured mitigation (if required) and an HRA confirming there are no significant effects on protected European sites, reserved matters permission cannot be granted. Equally, whilst the Highways holding objection remains, permission cannot be granted. On both counts, the site cannot be considered available or suitable. Without any evidence to demonstrate these matters can be overcome, the site cannot be included in the HLS.
- 4.33 Given the above, 85 homes are deleted from the HLS.

18 Titchfield Park Road, Titchfield

- 4.34 The site is anticipated, by FBC, to deliver 6 dwellings in the five year period.
- 4.35 There is a live planning application for the demolition of the existing dwelling and the erection of 6 dwellings (a net gain of 5 dwellings, not 6 as identified in the HLS) (Reference: P/20/0235/OA). The application was submitted in March 2020. A resolution to grant was made by committee on 19 August 2020. Nitrate mitigation is delivered on site, but a section 106 is required to ensure the nitrate mitigation is retained in perpetuity.
- 4.36 The section 106 is not available as such there is no evidence that it has been completed and agreed in the 10 months since this resolution was made.
- 4.37 Until the section 106 is completed, nitrate mitigation secured, and an HRA confirming there are no significant effects on protected European sites, planning permission cannot be granted. The site cannot be considered available or suitable. Without any evidence to suggest this matter can be overcome in relation to this site, it cannot be included in the HLS.
- 4.38 Once the Section 106 is secured it should be noted that the site will only contribute 5 new dwellings to the HLS position, not 6.

Resolution to Grant Planning Permission – large (5+ dwellings)

- 4.39 There are nine sites in this category identified in the HLSP, expected to deliver 1,372 dwellings in the five-year period. As proposed developments with resolutions to grant they do not fall into either category a) and are not named in category b). However, a similar approach can be taken as to category b) sites, requiring “clear evidence that housing completions will begin on site within five years” in order to be considered deliverable.

Heath Road, Locks Heath

- 4.40 The site is identified as contributing 70 dwellings to the housing land supply position, 35 dwellings in 2023 and 35 dwellings in 2024.
- 4.41 There is a live outline planning application for the site for 70 dwellings. There has been no activity on the application since September 2020.
- 4.42 The applicant is HCC who are not a housing developer so will at some point need to sell the site.
- 4.43 A resolution was made to grant planning permission in 2018, however, this was not possible due to NE's position regarding nitrates (see paragraphs 4.5 to 4.26 above). FBC acknowledges that further ecology survey work is required and that it is anticipated a revised layout will be required before the scheme can be reconsidered by planning committee.
- 4.44 As discussed above (paragraphs 4.05 to 4.26) until there is a nitrogen budget for the site, agreed and secured mitigation (if required) and an HRA confirming there are no significant effects on protected European sites, reserved matters permission cannot be granted. The site cannot be considered available or

suitable. Without any evidence to demonstrate this matter can be overcome in relation to this site, it cannot be included in the HLS.

- 4.45 Given the above, 70 homes are deleted from the HLS.

Welborne

- 4.46 The site is identified by FBC as contributing 350 dwellings to the HLS position in the five year period.
- 4.47 Welborne is allocated in the Fareham Core Strategy and the Local Plan part 3 (LP3). The LP3 identifies that the site could deliver up to approximately 6,000 dwellings and envisages completion by 2036.
- 4.48 An outline application for the site was received by FBC in March 2017 (reference: P/17/0266/OA). The outline application is for a 6,000 dwellings new community along with a variety of services, facilities and employment space, including the remodelling of M27 junction 10 and works to the A32 (including three new junctions).
- 4.49 Welborne is a category b) site as it is allocated in the development plan, however it does not have outline planning permission at this stage; the outline application submitted in 2017 is still under consideration.
- 4.50 The outline application was first considered by FBC planning committee in October 2019. A resolution to approve was given, subject to the agreement of a section 106. That permission has not been issued, instead there have been two further sets of amendments.
- 4.51 The application was considered again in February 2021 by Planning Committee following a series of amendments in relation to viability and affordable housing provision and a resolution to approve subject to section 106 was made. Subsequently, a further revision to the application has been submitted to FBC seeking to agree a further reduction in affordable housing to enable an additional £20 million to be provided in case of cost overruns on the M27 J10 works.
- 4.52 By way of background, significant improvements are required to the M27 J10 as a critical element of infrastructure required to deliver the Welborne new community. HCC Highways was the scheme promoter for the M27 J10 improvements, but this role ended February 2021, as set out below.
- 4.53 In terms of the planning application, it has been agreed that there is local highways capacity to deliver up to 1,160 homes prior to the implementation of the M27 J10 improvements. However, proposed planning condition no. 56 requires that, details of the sources of all funding necessary to carry out the works to J10 of the M27 must be submitted to and approved by the Local Planning Authority before any development can commence.
- 4.54 An amendment to the application was submitted December 2020. The amendment acknowledges the ongoing funding issues associated with the improvement works, notably identifying a £50 million funding gap (Welborne Supplementary Planning Statement, December 2020 appendix HLS_13, page 6, table 2).

- 4.55 The supporting planning statement, January 2021 (appendix HLS-13), sets out a “best case” for anticipated delivery from site, which does accord with the HLSP (paragraph 2.26). However, significantly, table 3 sets out the potential programme with key milestones. Within the programme there are two significant unknowns. The first, the period of time it will take to sign the section 106 agreement; and the second the period of time to secure the M27 J10 funding. The applicant acknowledges that this timetable is “best case” and there are clearly two significant hurdles that remain unknown in terms of if, and then when, they might be resolved. The following paragraphs set out the significant issues with the funding and ability to secure the M27 J10 improvements, necessary to enable development to commence, but the evidence is that this site/scheme is not available at the current time.
- 4.56 The amendment to the application in January sought to provide a £40 million contribution from the development to the M27 J10 improvements, as opposed to the previous £20 million developer contribution, however, this alters the scheme viability.
- 4.57 Without these changes the planning statement states that there is “*little prospect of Welborne progressing further, as additional Government funding outside the HIF is unlikely to be secured imminently, meaning progress with HCC and Highways England will be lost*” (paragraph 3.8).
- 4.58 On the 27 January 2021, the planning committee agreed to the following amendments to the scheme, so that the £40 million contribution to the M27 J10 would be viable:
- A reduced affordable housing contribution with a longer period before the review mechanism in the section 106 is triggered.
 - The removal of the commitment to 10% Passivhaus and 15% Lifetime Homes
 - Zero rate the development at Welborne in terms of CIL (It should be noted that FBC has consulted on an amendment to the draft CIL Charging Schedule and that will be submitted to the Planning Inspectorate for examination but has yet to pass this point).
- 4.59 The applicant hoped that the £30 million funding gap would be secured through grant funding from Homes England, taken from the Housing Infrastructure Fund Marginal Viability Grant. This grant will need to be repaid.
- 4.60 In a letter date 3 February 2021, Peter Grimwood, FBC’s Chief Executive Officer (appendix HLS_14), states that the “*Homes England funding contract allows for review points in the scheme so that the project can be stopped at the point that the final tender cost is known*’. Even if development is commenced, this puts into question ongoing delivery, which can be stopped if any funding commitment is withdrawn, and creates potential for conflict with the agreed draft planning conditions .
- 4.61 The letter also highlights other critical terms of the grant specifically, “*that of full repayment of the grant following specific events of default*”, the consequence of which, the letter indicates, would rule FBC as project lead.

- 4.62 FBC asked HCC to take on the role of Delivery Body for the junction improvements, a role that needs to be filled to progress the scheme and secure the funding. However, HCC was unwilling or unable to accept the risks associated with the grant (see appendix HLS_15, Addendum Revised Recommendations, recommendation 6).
- 4.63 The HCC Decision Report (HLS_16), following the cabinet meeting on 9 February 2021, confirms that there can be *“no further progression without confirmation of a Delivery Body”* (paragraph 8). The report confirms the HCC resolution that:
- “there can be no guarantee at this time that all funding is in place to deliver the Scheme, and cover the financial risks associated with potential cost escalation. This remains a fundamental red line for the County Council, which means that it would not be possible for the County Council to take on the role of delivery body. The risks to the County Council associated with becoming the named Delivery Body, in both financial and reputational terms are very significant, and the County Council is not in a position to take such risks on”* (paragraph 41, our emphasis).
- 4.64 Thus, despite the risk to the delivery of Welborne, HCC is not prepared to be the Delivery Body for the scheme, but would provide a supporting or contractual role (paragraph 43). The report notes that without a Delivery Body the £30 million HIF funding is *“likely”* to be lost (paragraph 42).
- 4.65 In short, without an appropriate body willing and able to take responsibility for the grant, funding is in significant doubt and so is the deliverability of the scheme.
- 4.66 It is important to highlight that the planning statement acknowledges that *“without funding certainty, the delay to delivery could be exponential”* (appendix HLS_13, paragraph 2.19).
- 4.67 The June 2021 further submission is seeking an amendment to the application to enable the Applicant, Buckland Development Limited, to provide an additional £10million towards the scheme should it be required, but if that is required affordable housing provision will drop below 10% to 7% or 440 units in a 6,000 homes new community. The updated supporting Planning Statement confirms that *“Hampshire County Council will not consent to being scheme promoter, and thus the entire funding strategy for the M27 J10 (and thus the delivery of Welborne) would be in jeopardy”* (appendix HLS_16, paragraph 17).
- 4.68 The updated viability position and affordable housing provision will need to be considered by FBC planning committee following a period of public consultation. A decision on reinvesting the repayments of the government grant will also need to be made by FBC Executive Committee (see appendix HLS_17 June Planning Statement, bullet point ‘e’.) Equally, if this is agreed, HCC will need to reconsider their position and whether, with the new funding arrangement in place, the County is prepared to take on the role of the Delivery Body. Each critical decision, that still needs to be made, casts significant doubt in regard to the delivery of the M27 J10 improvements and Welborne itself.
- 4.69 There is also reasonable doubt as to whether the project will be able to secure investors. The viability work presented with the current amendment to the application sets an Internal Rate of Return of 6%. TOR viability experts confirms that the market is generally looking for a rate of return of between 9-12%. So, if

consent is finally issued the applicant may have difficulty secure any investment required.

- 4.70 At the current point in time the scheme is not available and is not deliverable.
- 4.71 There remains considerable uncertainty in regard to the schemes viability and the ability to discharge the pre-commencement condition in relation to the M27 junction 10 works.
- 4.72 At the current time, whilst there is an allocation, there is no outline planning permission, and no clear evidence that the site will be delivered in the five-year period. All of the evidence points towards demonstrating that this site is not deliverable, according to the definition.
- 4.73 In conclusion, 350 dwellings can be deleted from the HLS.

Magistrates Court

- 4.74 The site is identified by FBC as contributing 45 dwellings to the HLS position in the five year period.
- 4.75 An outline planning application was submitted for the demolition of the Magistrates Court and the redevelopment of the site, with 45 apartments, in November 2018.
- 4.76 A response from Natural England to the application notes that nitrate mitigation (see paragraphs 4.5 to 4.26 above for background) is being secured at Knowle but that this will need to be secured by a legal agreement (see appendix HLS_18).
- 4.77 The planning application contains no record of that legal agreement and until that is in place there is no evidence to demonstrate that the nitrate mitigation required has been secured, therefore the HRA confirming there are no significant effects on protected European site is not available and planning permission cannot be granted. As such, the site cannot be considered available or suitable. Without any evidence to demonstrate this matter can be overcome in relation to this site, it cannot be included in the HLS.
- 4.78 In conclusion, 45 dwellings can be deleted from the HLS.

Land at Brook Lane, Warsash

- 4.79 The site is identified by FBC as contributing 174 dwellings to the HLS position in the five-year period, with 24 dwellings delivered in 2022, and 50 dwellings delivered in each year of 2023, 2024 and 2025.
- 4.80 An outline planning application (reference: P/17/0845/OA) was submitted to FBC in July 2017. The scheme was reported to FBC planning committee in October 2018 but could not be determined due to NE advice regarding HRA (see paragraphs 4.5 to 4.26 above). There is no information on the file in regard to nitrate budgets or mitigation.
- 4.81 In November 2020, FBC's ecologist requested further survey work for bats and badgers together with an updated biodiversity matrix (appendix HLS_19). It appears from the planning file that the biodiversity matrix has been supplied but

not the additional survey information requested. This information is outstanding, and the site cannot be considered suitable until it is supplied and accepted/agreed.

- 4.82 Until there is a nitrogen budget for the site, agreed and secured mitigation (if required) and an HRA confirming there are no significant effects on protected European sites, outline planning permission cannot be granted. The site cannot be considered available or suitable. Without any evidence to demonstrate this matter can be overcome in relation to this site, it cannot be included in the HLSP.
- 4.83 In conclusion, 174 dwellings can be deleted from the HLS.

Land to the east of Brook Lane and West of Lockswood Road, Warsash

- 4.84 The site is identified as contributing 157 dwellings to the HLS position in the five-year period. The site is referred to in some documents as Land south of Greenaway Lane, Warsash.
- 4.85 An outline application (reference:17/0998/OA) was submitted in August 2017 by Land and Partners Limited and was considered at FBC planning committee in October 2018, where a resolution to grant was made.
- 4.86 The application was then caught by Natural England's advice in regard to nitrates (see paragraphs 4.5 to 4.26 above) and a final decision has not been made.
- 4.87 In a conversation with the case officer for the application in June, the officer noted that ownership of the site has changed and the new owner has not taken any action in regard to nitrates or the application. The case officer confirmed she did not know if it was the new owner's intention to continue to pursue this application or not. Notwithstanding the points raised by the case officer, there remains no nitrate mitigation in place and nothing on the planning application file to demonstrate this has been progressed.
- 4.88 Whilst there is a live planning application for the site, there has been no progression in terms of the nitrate solution and now there is a new landowner involved. There is no certainty that the current outline application will be progressed. As such the site is not considered to be available or suitable and lacks clear evidence that it is deliverable, it cannot be included in the HLS.
- 4.89 In conclusion, 157 dwellings can be deleted from the HLS.

Local Plan Policy Compliant Brownfield Sites

- 4.90 There are two sites identified in the HSLP in this category, expected to deliver 145 dwellings in the five-year period.

Warsash Maritime Academy

- 4.91 According to FBC's HLPS the site is brownfield and its development compliant with local plan policy. It is not specifically allocated in the adopted local plan. There is no planning application or permission, timescales, and deliverability, remain uncertain.

- 4.92 The site contributes 100 dwellings to the HLS, 50 in year 2023 and 50 in year 2024.
- 4.93 On 19 March 2019 the Council determined a screening request for the re-development of the site to provide up to 100 dwellings (of which 66 would be sheltered apartments) together with 1,735 sqm of employment floor space. In deciding that the proposed development represented EIA development, and an Environment Statement would be required, FBC noted that, *"the environmental sensitivity of the site likely to be affected by the development has in particular led to this decision"* (decision reference: P/19/0202/EA).
- 4.94 There is no further evidence of any subsequent applications or submissions to FBC to progress the planning status of the site. The suitability of the site has not been tested.
- 4.95 Until there is a nitrogen budget for the site, agreed and secured mitigation (if required) and an HRA confirming there are no significant effects on protected European sites, the site cannot be considered suitable. Without any evidence to suggest this matter can be overcome in relation to this site, it cannot be included in the HLS.
- 4.96 As an NPPF category b) site, there remains no clear evidence of progress since FBC determined a screening request two years ago. Without clear evidence of progress, to demonstrate availability and both suitability and the ability of the site to deliver 100 homes, 100 homes can be deleted from the HLS.

Locks Heath District Centre and the Former Filling Station, Locks Heath Centre

- 4.97 Whilst FBC's HLPS considered these as two sites, they are both located in Locks Heath District Centre and both lack the same evidence to demonstrate delivery, so, for efficiency, I have combined the response for both sites into this section.
- 4.98 Locks Heath District Centre is anticipated by FBC to deliver 35 dwellings in the year 2024 and the Former Filling Station is anticipated by FBC to deliver 30 dwelling in the year 2024.
- 4.99 Neither site is subject to a live planning application to demonstrate that the development of either site is feasible or suitable. There is no evidence of any nitrate mitigation that might be required being in place for these dwellings. FBC has provided no evidence to demonstrate the submission of planning applications for either site is imminent.
- 4.100 It is noted there is an application for access works to future development areas 1 and 2 (the two sites in question, application reference: P/21/0148/OA). However, given these works don't provide any details of the development proposed (e.g. no. homes to be delivered / trip generation) there is no way in which to assess if the proposed access arrangements are suitable for the scale and nature of development that might be proposed in the future. There is a holding objection from HCC Highways requesting alterations and further information regarding these proposals to clarify this point. The applicant has yet to make a response to this holding objection.

- 4.101 The planning supporting statement for the future access works application (P/21/0148/OA) identifies the owner of the land as Newriver Retail Limited. Newriver Retail Limited website indicates that the company specialises in buying, managing and developing community and convenience led retail and leisure assets. They are not a housing developer, and there is no evidence to demonstrate that the company would be interested in residential development.
- 4.102 Equally, until there is a nitrogen budget for the site(s), agreed and secured mitigation (if required) and an HRA confirming there are no significant effects on protected European sites, the site(s) cannot be considered suitable. Without any evidence to suggest this matter can be overcome in relation to this site(s), it cannot be included in the HLS.
- 4.103 There is no evidence that either site is available, suitable or could deliver new homes in the five-year period. As a result, 65 dwellings have been deleted from the HLS.

Hammond Industrial Estate

- 4.104 The site is identified as contributing 36 dwellings to the HLS position in the five year period.
- 4.105 There is a live, full, planning application for a 68 bed care home on the site. The application form confirms 3 dwellings will be demolished as part of the development, giving a net gain of 65 dwellings.
- 4.106 The care home application is still under consideration. Natural England has responded to the application indicating that without appropriate mitigation the proposals could have significant effects on protected sites in the Solent. Natural England also recommend that the application is supported by a Biodiversity Mitigation and Enhancement Plan.
- 4.107 Until there is a nitrogen budget for the site, agreed and secured mitigation (if required) and an HRA confirming there are no significant effects on protected European sites, the site cannot be considered available or suitable. Without any evidence to demonstrate this matter can be overcome in relation to this site, it cannot be included in the HLS.
- 4.108 As a result, 36 dwellings have been removed from the HLS.

Asheton Court

- 4.109 The site is identified as contributing 27 dwellings to the HLS position in the five year period.
- 4.110 There is no live planning application for the site.
- 4.111 In the HLS Statement of Common Ground FBC confirm that they have had pre-application discussions with Fareham Housing to redevelop the existing 33 sheltered housing flats and replace the building with 60 sheltered units.
- 4.112 Whilst FBC confirm pre-application discussions have taken place, there is no application for the redevelopment of the site to date and no evidence to indicate that the intensification of the site is acceptable and going to be pursued.

4.113 Equally, until there is a nitrogen budget for the site, agreed and secured mitigation (if required) and an HRA confirming there are no significant effects on protected European sites, the site cannot be considered suitable. Without any evidence to suggest this matter can be overcome in relation to this site, it cannot be included in the HLS.

4.114 Given the lack of clear evidence to demonstrate the site is deliverable, 27 dwellings have been deleted from the HLS.

Wates House, Wallington Hill

4.115 The site is identified as contributing 20 dwellings to the HLS position in the five year period.

4.116 A prior approval application to convert the office building into 20 apartments was approved on 20 January 2021. However, the decision notice is clear that works cannot be begun until the *“developer has received written notification of the approval of the Local Planning Authority”* and that the issue of the prior approval decision notice *“does not absolve the compliance with any other obligations in the Habitats Regulations”*.

4.117 There is no evidence that the developer has provided or considered the need to provide mitigation regarding nitrates and until that evidence is present there is no clear evidence that this development can go ahead.

4.118 In February 2021 a full planning application was submitted for the construction of an additional storey on top of Wates House, to provide 9 additional dwellings. The application remains undetermined with an outstanding objection from the Conservation Officer regarding the potential impact on the neighbouring listed buildings. The subsequent application for additional residential dwellings suggests that the applicant is looking to achieve a greater gain, in terms of the residential units proposed, and that there may be viability issues with the conversation without the additional storey. There is no evidence to demonstrate this is not the case.

4.119 Given that there is no evidence to demonstrate the applicant has undertaken the HRA / AA for the site and, given the submission of a further application for more development on site, the evidence demonstrates that the permitted development is not deliverable. As such 20 dwellings are deleted from the HLS.

Local Plan Adopted Housing Allocations

4.120 There are seven sites in this category, expected to contribute 624 dwellings to the five-year HLS position.

4.121 As these sites are allocated in a development plan they fall within category b), where clear evidence is required to demonstrate housing completions can be within the five-year period.

Wynton Way, Fareham LP2 H3

4.122 The site is allocated in the Local Plan part 2. The supporting text of the local plan provides some background, indicating that it is a former community use deemed

surplus to requirements by HCC. The Local Plan anticipates the site could deliver between 8 and 10 dwellings.

- 4.123 The HLSP states that 13 dwellings will be delivered in the year 22/23.
- 4.124 The site does not benefit from planning permission or even a planning application. FBC has provided no evidence of any pre-application discussions or enquires in regard to this site.
- 4.125 There is no evidence to demonstrate that the site could successfully accommodate 13 dwellings, noting the allocation is between 8 and 10 dwellings.
- 4.126 As an NPPF category b) site, there is still no clear evidence of progress, and as such 13 homes are deleted from the HLS.

Land off Church Road (LP2 H8)

- 4.127 The site is an allocated site in the adopted Local Plan part 2 (2015). Its allocation was rolled forward from the Local Plan Review (2000). The supporting text to the allocation notes that it is adjacent to Warsash Common Local Nature Reserve and Land South of Dibbles Road Site of Importance for Nature Conservation (SINC). Land use records also indicate that there could be contamination at the site.
- 4.128 The site contributes 26 dwellings to the HLS position in the year 2023/24, however the allocation is for 20 dwellings.
- 4.129 The site does not benefit from planning permission or even a planning application. FBC has provided no evidence of any pre-application discussions or enquires in regard to this site. The site has been allocated since 2000, for 21 years, and there appears to be no progress made towards bringing the site forward for development.
- 4.130 There is no evidence to demonstrate that developing adjacent to the Local Natural Reserve and SINC would be acceptable.
- 4.131 There is no supporting information from the site owners, promoters or developers (should they be on board) to demonstrate the site would be brought forward in the next three years, to deliver 26 dwellings.
- 4.132 As an NPPF category b) site, there is no clear evidence of progress, and as such 26 homes are deleted from the HLS.

Summary

- 4.133 The above deletes the following from the HLS:

Table 1: HLS Reductions

Outstanding Outline Planning Permissions – large (5+ dwellings)	
Land east of Brook Lane and South of Brookside Drive, Warsash (reference 16/1049/OA)	-85
18 Titchfield Park Road, Titchfield	-6
Resolution to Grant Planning Permission – large (5+ dwellings)	
Heath Road, Locks Heath	-70
Welborne	-350
Magistrates Court	-45
Land at Brook Lane, Warsash	-174
Land to the east of Brook Lane and West of Lockswood Road	-157
Local Plan Policy Compliant Brownfield Sites	
Warsash Maritime Academy	-100
Locks Heath District Centre and the Former Filling Station, Locks Heath Centre	-65
Hammond Industrial Estate	-36
Assheton Court	-27
Wates House, Wallington Hill	-20
Local Plan adopted Housing Allocations	
Wynton Way	-10
Land off Church Road	-26
Total	-1,171

5. REVISED HOUSING LAND SUPPLY

5.1 The HLS can be recalculated as follows:

Table 3: HLS re-calculation on the basis of FBC's requirement

	Housing Requirement	Supply	Shortfall	HLS
	3,234			
FBC Position		2,310		
Deductions		-1,171		
Revised HLS		1,139		
HLS Position			-2,095	1.76 years

Table 4: HLS re-calculation on the basis of the Appellant's requirement

	Housing Requirement	Supply	Shortfall	HLS
	3,246			
FBC Position		2,310		
Deductions		-1,171		
Revised HLS		1,139		
HLS Position			-2,107	1.75 years

6. SUMMARY AND CONCLUSIONS

- 6.1 This evidence has addressed the HLS position in FBC and demonstrates that the published position is far from robust. Based on the Appellant's requirement and deliverable supply, the HLS is 1.75 years, representing a substantial shortfall of 2,107 dwellings.
- 6.2 The provision of housing at the appeal site in the five-year period must carry substantial weight in the planning balance to help address this shortfall.
- 6.3 Overall, the evidence confirms that NPPF 11 (dii) is engaged, and that the shortfall in housing provision is substantial. The situation can only be managed through the grant of planning permissions for sites such as the appeal site.