

**PLANNING,
REGENERATION
+ INFRASTRUCTURE**

ALEX ROBERTS

**HOUSING NEED
AND SUPPLY
PROOF OF
EVIDENCE**

Land East of Newgate Lane East,
Fareham
Appeal Ref.
APP/A1720W/22/3299739s

Proof of Evidence
Housing Need and Supply

Fareham Borough Council
September 2022

CONTENTS PAGE

1.0	EXPERIENCE AND SCOPE OF EVIDENCE	1
1.1	Experience	1
2.0	INTRODUCTION	3
2.1	Overview	3
3.0	HOUSING NEED AND FIVE YEAR HOUSING LAND SUPPLY NATIONAL POLICY AND GUIDANCE	4
3.2	National Planning Policy Framework and Guidance	4
3.3	Planning Appeal Decisions	10
3.4	Recent Appeals in Fareham.....	12
4.0	HOUSING NEED IN FAREHAM	14
4.2	Fareham Borough Council Housing Requirement	14
4.3	Previous Housing Requirements in Fareham and other housing needs	14
4.4	The Housing Delivery Test Results, the persistence of under supply and actions taken	15
5.0	SUMMARY AND CONCLUSIONS	20

1.0 EXPERIENCE AND SCOPE OF EVIDENCE

1.1 Experience

- 1.1.1 My name is Alex Roberts; I have a Joint Honours Degree in Urban and Regional Planning and Geography and I am an Associate Member of the Royal Town Planning Institute and a Member of the Institute of Economic Development. I am a Director of Lambert Smith Hampton's (LSH), Planning, Regeneration + Infrastructure team. My work specialises in undertaking planning evidence base projects including the assessment of housing land supply and the calculation of housing need.
- 1.1.2 I have a wide range of experience and have held various positions within the private consultancy and local government. Prior to joining LSH I was a Planning Director at a national planning consultancy for 6 years, prior to this I held the post of Development Plan Manager at Tamworth Borough Council.
- 1.1.3 Between 2004 and 2006, I worked at Swansea University. Whilst at the university I undertook research into and assessments of the 2001 Census and in particular changes to urban populations since 1991. Through this work I wrote articles and papers with colleagues. I also taught undergraduate courses on the use of statistical analysis and geographic information systems (GIS) in research.
- 1.1.4 In 2006, I took up the position of Planner within the Cassidy Group. I undertook work identifying development opportunities across England and promoted the development of sites through the development plan process.
- 1.1.5 In 2007, I began working with Wakefield Council as a Senior Planner, within the Spatial Policy department. Whilst at the Council I assisted regional colleagues on the preparation of the Yorkshire and Humber Regional Spatial Strategy, in respect of housing and employment need. I prepared and gave evidence regarding housing need and supply at the examination of the Council's Core Strategy, Area Action Plan and Site Allocations DPD.
- 1.1.6 In 2012, I joined Tamworth Borough Council as Development Plan Manager, a post which I held for 3 years. Within that time, I prepared and represented the Council at the examination of the Tamworth Local Plan (adopted 2016). I also represented the Council at a sub-regional and regional level on strategic planning issues, with particular focus on housing, employment, and transport.

1.2 Scope of this Evidence

- 1.2.1 I have been instructed by the Council to prepare a proof of evidence which sets out the Council's position on Housing Need and 5 Year Housing Land Supply.
- 1.2.2 I confirm that this evidence is true and has been prepared and is given in accordance with the guidance of my professional institution and I also confirm that the opinions expressed are my true and professional opinions.

A handwritten signature in dark ink, appearing to read 'A Roberts', is centered within a light gray rectangular box.

Signed:
Alex Roberts, Director, Lambert Smith Hampton
15 September 2022

2.0 INTRODUCTION

2.1 Overview

- 2.1.1 The appeal is made by Miller Homes Ltd and Bargate Homes Ltd (the Appellant) against Fareham Borough Council's refusal of an application for up to 375 dwellings, access from Newgate Lane East, landscaping and other associated infrastructure works at Land East of Newgate Lane East.
- 2.1.2 I have been instructed by Fareham Borough Council to give evidence on the issue of housing need and five-year housing land supply in Fareham.
- 2.1.3 The Council's most recently published housing land supply position, was published in July 2022, this showed a 5YHLS of 5.01. This was based upon the most recent policy and guidance from the 2021 Framework and associated Planning Practice Guidance.
- 2.1.4 However following the publication of that position statement, the Council have accepted that they cannot demonstrate a 5YHLS in two appeals, furthermore correspondence between the Council and the Local Plan Inspector, confirms that some sites should be removed from the supply, or have their capacity reduced. This results in the Council being able to demonstrate a land supply of 4.88 years.
- 2.1.5 The base date of the assessment is July 2022, as agreed with the Appellant,
- 2.1.6 The Appellant's areas of dispute of Fareham's 5 Year Housing Land Supply, are set out in the Housing Land Supply Statement of Common Ground (SoCG).
- 2.1.7 The Appellant's position on Fareham's 5 Year Housing Land Supply is 3.86 years.
- 2.1.8 The Council consider there is a supply of 4.88 years, based on a baseline LHN requirement of 3,246 dwellings.
- 2.1.9 Acting on behalf of the Council I have worked with the Appellant's 5 Year Housing Land Supply Witness to prepare a SoCG. This has resulted in areas being agreed.
- 2.1.10 Given that it is now agreed between the Council and the Appellant that the housing land supply for Fareham is between 3.86 years and 4.88 years. The Planning SoCG, at paragraph 6.4 agrees that the weight that should be afforded to the provision of housing should be substantial at either end of the range. The Council and Appellant are not inviting the Inspector to draw a conclusion on where the land supply lies within the range. In this appeal, the identification of the broad magnitude is sufficient. On this basis the Council have not rebutted the Appellant's assertions set out in the Scott Schedule appended to 5YHLS SoCG and consider that there is no need to hold a round table session, or present evidence on 5YHLS matters. This is agreed with the Appellant.

3.0 HOUSING NEED AND FIVE YEAR HOUSING LAND SUPPLY NATIONAL POLICY AND GUIDANCE

3.1.1 This chapter begins by setting out the applicable National Planning Policy Framework and Planning Practice Guidance paragraphs, before turning to address the relevant case law and appeal decisions.

3.2 National Planning Policy Framework and Guidance

i) Local Housing Need

3.2.1 The latest version of the National Planning Policy Framework (the Framework) was published in 2021 and came into force with immediate effect. Chapter 5 of the Framework covers the delivery of a sufficient supply of homes.

3.2.2 Paragraph 60 states that the Local Housing Need (LHN) is to be calculated using the standard methodology unless exceptional circumstances justify an alternative approach. In addition to the housing need figure calculated by the standard methodology, any needs that cannot be met within neighbouring areas should also be taken into account in establishing the amount of housing to be planned for.

3.2.3 Paragraph 67 establishes that authorities should have a clear understanding of the land available in their area through the preparation of a strategic housing land availability assessment which should identify a sufficient supply and mix of sites, taking into account their availability, suitability and likely economic viability. In particular it requires planning policies to identify a supply of specific, deliverable sites for years one to five of the plan period. Footnote 32 of the Framework outlines that such sites should be accompanied by an appropriate buffer, as set out further within paragraph 73 of the Framework.

3.2.4 Paragraph 73 specifies that policies should identify a trajectory illustrating the expected rate of housing delivery over the plan period and consider whether it is appropriate to set out the anticipated rate of development for specific sites. Local Planning authorities should also identify, and update annually, a supply of specific deliverable sites sufficient to provide for a minimum of five years' worth of housing against their housing requirement set out in adopted policy, or against their LHN where the strategic policies are more than five years old.

3.2.5 In the context of paragraph 73, the LHN is defined by reference to Annex 2 page 68 which states that this is the number of homes identified by the standard method or a justified alternative approach in the case of the preparation of development plans. The definition is:

3.2.6 "The number of homes identified as being needed through the application of the standard method set out in national planning guidance (or, in the context of preparing strategic policies only, this may be calculated using a justified alternative approach as provided for in paragraph 60 of this Framework)."

3.2.7 Paragraph 015 (Ref ID: 2a-015-20190220) of the Planning Practice Guidance (as well as Paragraph 60 of the Framework) highlights that in the context of Local Plan preparation (and not development management), there will need to be exceptional circumstances to justify an LHN requirement lower than the Standard

Method. This paragraph of the PPG also confirms the use of the 2016 household projections is no longer appropriate when calculating LHN via the Standard Method.

3.2.8 While Paragraph 010 of the Guidance (Ref ID: 2a-010-20190220) states that the Standard Method is the starting point it does not (and cannot) override the Framework and paragraph 73. In the context of what may be a justified alternative approach paragraph 010 (Ref ID: 2a-010-20190229) of the Guidance highlights a number of examples, including: where growth strategies are in place, where infrastructure improvements are planned to support additional housing, and where there is agreement to meet unmet need from other areas. Again, exceptional circumstances, for a justified alternative, are for local plan preparation and plan-making, not development management decisions.

3.2.9 The Guidance (Paragraph 004, ID: 2A-004-20190220) sets out the 3 step process for calculating Local Housing Need, using the Standard Method.

ii) Past Under Delivery

3.2.10 The Standard Methodology to calculate Local Housing Need, uses the 2014-based household projections. One of the reasons why this is used, as opposed to more recent household projections, is that any historic under-delivery of housing and declining affordability levels are reflected in the assessment of need.

3.2.11 The Guidance (Paragraph 011, ID: 2A-011-20190220) is clear on this matter, the affordability adjustment is applied in the Standard Methodology to take account of past under-delivery. Therefore, there is no need to specifically address under-delivery separately.

iii) The Buffer

3.2.12 Footnote 39 of Framework paragraph 73 states that the HDT assessment will only be applied after November 2018. This has now been published and is used to determine the appropriate buffer.

3.2.13 The Housing Delivery Test is an annual measurement of housing delivery in a local authority. The HDT compares the net homes delivered over the previous three years, to the homes required over that period. The Housing Delivery Test is published annually, with the most recent version being the 2021 HDT covering the period 2018/19, 2019/20, and 2020/21.

3.2.14 The top row in the table below shows the 2021 HDT result for Fareham. This states that the Borough has delivered 692 dwellings against the requirement for 1,117 for the period 2018/19 to 2020/21. This equates to a HDT measurement of 62% which results in a 20% buffer.

Table 1. Housing Delivery Test

Year	Number of homes required			Total number of homes required	Number of homes delivered			Total number of homes delivered	HDT: 2021 measurement
	1	2	3		1	2	3		
2021 HDT	347	428	342	1117	290	285	117	692	62%
2020 HDT	327	347	428	1102	291	290	285	866	79%
2019 HDT	270	327	347	944	356	291	290	937	99%

iv) *The Presumption in Favour of Sustainable Development*

3.2.15 Paragraph 11 of the Framework outlines the presumption in favour of sustainable development. This states that plans and decisions should apply a presumption in favour of sustainable development. For decision-taking, this means that:

*c) approving development proposals that accord with an up-to-date development plan without delay; or
d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date⁸, granting permission unless:*

- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed⁷; or*
- ii. 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.*

3.2.16 Footnote 8 of this paragraph states:

This 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 74); 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.

3.2.17 As Fareham has a Housing delivery of less than 75% and cannot at present demonstrate a 5 year supply, the presumption in favour of sustainable development applies. Policy DSP40 within the extant plan, is used to address situations where a 5YHLS cannot be demonstrated. Previous Inspectors and the Council have given this policy and its criteria great, or full weight in cases where the presumption in favour of sustainable development applies. This is set out at in Mr Stephen Jupp’s evidence, within sections 5, 6 and 7.

v) The Definition of 'Deliverable'

3.2.18 It is important to note that in the context of assessing what constitutes a “deliverable” site the 2021 Framework defines “deliverable” in the Glossary as follows (page 66):

“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:

- i) 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).[Category A Sites]*
- ii) 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.” [Category B Sites]*

3.2.19 Sites which fall within part A) are typically referred to as Category A sites, and those within part B) are typically referred to as Category B sites. As I set out later in this section, a deliverable site should have a realistic prospect that housing will be delivered on site within 5 years. For sites which fall within Category A, they should be considered as deliverable. For sites which fall within Category B, they should be considered as deliverable should clear evidence demonstrate the site to be available, suitable, and achievable with a realistic prospect of delivery in 5 years.

3.2.20 Paragraph 003 Ref ID: 68-002-20190722 of the PPG asks the question, 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.

3.2.21 Paragraph 004 Ref ID: 68-002-20190722, then goes on to state 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).

3.2.22 Paragraph 007 Ref ID: 68-002-20190722 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.

3.2.23 To reach a conclusion on whether a site is deliverable or not, it is important to understand if a site is available, suitable and achievable. The PPG identifies what factors should be considered when assessing a sites availability, suitability, and achievability.

3.2.24 The PPG states that for sites to be considered suitable, regard should be had to the following factors (Paragraph: 018 Reference ID: 3-018-20190722):

"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.”

- 3.2.25 The PPG states that the following factors should be considered when assessing the availability of sites (Paragraph: 019 Reference ID: 3-019-20190722):

“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.”

- 3.2.26 With regard to achievability, the PPG identifies the following factors that should be considered when assessing the achievability of sites (Paragraph: 020 Reference ID: 3-020-20190722):

“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.”

3.2.27 The PPG also notes that when constraints are identified that impact the suitability, availability, and achievability of sites *“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).

3.3 Planning Appeal Decisions

3.3.1 There have been many appeal decisions which have considered the various components to housing land supply, covered within this proof of evidence.

3.3.2 The recent Secretary of State decision for Woburn Sands (CDJ 17) covers the definition of deliverability and the base date and timescale of the evidence, by considering several court judgments and recent appeal decisions covering housing land supply matters.

3.3.3 The Secretary of State at paragraphs 12-16 of his letter, agrees with the 5 Year Housing Land Supply analysis of the appointed Inspector at IR.12.4 to IR12.64.

i) The definition of deliverability

3.3.4 At IR12.5 to 12.7 deliverability is considered, whilst this references the 2019 NPPF, there are no changes between the 2021 version on land supply matters and therefore the commentary is still relevant. Here the SoS has agreed with the Inspector, who was considering the well-known cases of St Modwen in the Court of Appeal (CDK 9) and East Bergholt (CDK 10). At 12.5 the Inspector helpfully summarises that:

The Court of Appeal judgment in St Modwen found that realistic prospect did not mean a site’s deliverability must necessarily be certain or probable. It also noted the distinction between deliverability and delivery in that a deliverable site does not necessarily have to be delivered.

3.3.5 The St Modwen judgment is still relevant when considering the definition of deliverability in the context of the 2021 NPPF.

3.3.6 In the appeal at Land to the south of Williamsfield Road, Hutton Cranswick – ref. APP/E2001/W/18/3207411 (CDJ 29) at paragraph 27 the inspector stated:

“The Appellant’s position is that the Council did not adopt an approach to deliverability in line with the definition in the Glossary to the Framework. This states that (amongst other matters) for housing sites to be considered deliverable, they should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years. The definition includes the need for clear evidence. The 2019 Framework has ‘raised the bar’ related to deliverability in comparison with earlier Framework iterations and other national advice. However there is no definition of what constitutes ‘clear evidence’ of future delivery and, as the Appellant accepted, there is no defined minimum criterion. In my view, the Appellant – in using a ‘highly likely’ test - has raised the bar significantly above that advised in national policy and guidance. This would make it difficult for any recently adopted

plan to survive an appeal against a s78 refusal based on five year housing land supply. In contrast, I find that the Council's approach is soundly based on national policy and guidance."

3.3.7 This appeal clarifies that there is no defined criteria as to what constitutes clear evidence to demonstrate a site is deliverable.

ii) Base date and timescales of evidence

3.3.8 Returning to Woburn Sands, at IR12.9 the inspector sets out, agreed by the SoS, that

"...there is nothing in the NPPF or PPG that stipulates that all of the documentary evidence for a 5-year HLS has to be available at the base date itself. Instead the PPG advocates the use of the latest available evidence"

3.3.9 At IR 12.10 and 12.11 there is a distinction made between the skewing of a land supply position by adding in additional sites, that may have come to light after the base date of an assessment and the use of information to support, or confirm the inclusion of a site already within the land supply. The Inspector references 5 other appeal decisions which took a similar approach.

3.3.10 With respect to the importance of a base date and how, or if, it should be updated, the Inspector for the Poplar Hill, Stowmarket decision (CDJ 30), at paragraph 60 stated that:

[in the past]...participants in a local inquiry would have spent many hours of resources in seeking to establish, in the words of the then footnote 11, whether sites were available and offered a suitable location for development "now", ie at the time of the Inquiry; a nugatory exercise because dwellings are completed on a constant basis (and so should be removed from the pipeline) whilst new sites would be brought forward at any time (and so added to the pipeline), an exercise of chasing a will-o'-the-wisp repeated successively for each appeal within a local authority's area. Now, the exercise need not be conducted more than once a year but will inevitably be out of kilter with the most recent calculation of local housing need.

3.3.11 The importance recognised by this Inspector is that whilst whatever the method of calculating the housing requirement may be, it is important that the assessment on the supply side of the equation, need only be done once per year, and that the addition or subtraction of sites should only be carried out on that basis, not updated for every appeal.

3.3.12 Similarly, in the appeal decision at Station Approach, Lower Sydenham, London (CDJ 31), the Inspector noted that in paragraphs 17 and 18:

The final site is the former Town Hall and car park that was granted planning permission for 53 units in November 2015, after the base date of 1 April 2015. The Appellants submit that the appropriate estimate is the 20 units envisaged at the base date, whereas the Council considers that the latest position should be the one on which the figures are based.

Whilst there is more up to date information now available, it seems to me that if additional units granted planning permission after the base date are to be taken into account, so should any units that have been completed after the base date and consequently removed from the future supply availability, in order to present the most accurate overall picture. This exercise had not been completed for the Inquiry and I

therefore conclude that for the purposes of this appeal, the position as agreed in the SoCGH should be adhered to.

3.3.13 The Inspector recognises that if sites are added to the supply after an agreed base date, then those sites which would have been removed from the supply after that base date should be removed.

3.3.14 Within these three appeals referenced, it is clear from the Inspectors that if changes to one of the following components is made to a housing land supply after the base date, then the other actions must also be carried out to ensure that the base date amongst all components remains the same. If only one component is changed then there is a misalignment in base dates, which should not be accepted.

- New sites (permissions, allocations etc)
- Construction activity on site, taking into account completed dwellings
- Planning Status of sites – which would include if permissions have expired, new permissions granted, conditions discharged etc.

3.3.15 It should be noted that there is a distinct difference between updating of baseline of the 5YHLS and using evidence post-baseline to confirm assertions made at the baseline using evidence available at that time.

3.3.16 The 5YHLS SoCG for this appeal agrees that the base date is from July 2022.

3.4 Recent Appeals in Fareham

3.4.1 There are currently two live appeals in Fareham Borough, where the Council has accepted that they cannot demonstrate a 5YHLS, these two appeals are Land East of North Wallington, Fareham (PINS ref:3297544) and Land East of Cartwright Drive, Fareham (PINS ref: 3296756).

3.4.2 In both appeals the Council accepts that there is less than 5 years of supply, at 4.92 years, and in both it is common ground that Policy DSP40 is engaged on account of the HDT results.

3.5 Conclusion

3.5.1 In summary, in assessing whether a Local Planning Authority can demonstrate a five-year supply of housing land, the key principles are:

- For the purposes of calculating a five-year land supply, the housing requirement is either that contained within a development plan which is less than five years old since adoption, or where there is no up to date plan the housing requirement is that defined by paragraph 73 of the Framework.
- Local authorities need to identify and update annually five years' worth of supply of specific deliverable sites for housing against their housing requirements, with an additional buffer of 5%, 10% or 20% as determined by the HDT (Paragraph 73 of the Framework).
- There is a requirement to undertake an assessment once a year, however there are no restrictions on undertaking more than one assessment each year. It is important to maintain the base date of the assessment and that components of this should not be updated independently on an ad-hoc basis.

- Sites that can go in the supply are split between category A and B. With regards to Category B, the Framework requires Category B sites, should be suitable, available and achievable and that there is a realistic prospect completions will begin in five years to be included in the five-year land supply.
- Sites should not be added to the supply post the base date, however evidence can be used post base date to support sites included at the base date cut off point

3.5.2 In Fareham there are two live appeals, both of which agree that the Council cannot demonstrate a 5YHLS.

4.0 HOUSING NEED IN FAREHAM

4.1.1 This section sets out the Council's position on matters of housing need, the failure to demonstrate 5YHLS and responds to matters raised by the Appellant highlighted in the drafting of 5YHLS SoCG. It should be noted that the Council's position, which is common ground with the Appellant, is that the benefit of housing provision from the appeal site would be substantial. The points raised by the Appellant in the draft SoCG which are a matter of disagreement I consider to have no bearing on the weight that is afforded to housing provision.

4.2 Fareham Borough Council Housing Requirement

4.2.1 The extant Development Plan for Fareham includes the Core Strategy (adopted 2011), the Development Sites and Policies Plan (adopted 2015), the Local Plan Part 2 Development Sites and Policies (adopted 2015) and the Welborne Plan (adopted 2015). These documents are all more than 5 years old and therefore the strategic policies which set out a housing requirement, are out of date, in accordance with paragraph 74 of the NPPF.

4.2.2 Therefore, as the extant policies are more than 5 years old and the emerging plan is still at examination, the housing requirement (LHN) in Fareham, for the purposes of calculating the 5YHLS in this appeal, must be calculated by using the Standard Methodology.

4.2.3 The LHN, including a 20% buffer for Fareham Borough Council, as calculated by the Council and agreed in the SoCG is 3,246 dwellings over the 5 year period, or 649.2 dwellings each year. This is the figure that should be used within the calculation of housing need.

4.3 Previous Housing Requirements in Fareham and other housing needs

4.3.1 As set out above and within section 3 of this proof, the correct way to calculate the housing requirement, for the purposes of this appeal, is to use the standard methodology to calculate LHN. The extant development plan is more than 5 years old and therefore those policies setting out a housing requirement, should not be used when calculating the 5YHLS position in Fareham Borough.

4.3.2 Because the standard methodology uses the 2014-household projections and applies an affordability uplift, there is no need to take into account previous levels of under supply which may have occurred within Fareham before the 2022 LHN calculation. Therefore, no weight should be afforded to pre-2022 levels of under supply and it should not factor into the calculation of housing need.

4.3.3 The Partnership for South Hampshire is working together to address the unmet housing needs arising from Southampton and other areas in the Sub-Region. Work has been progressed for the Joint Committee which has considered housing need across the Sub-Region and the ability for Southampton and other authorities to meet housing need. The recent report to the Joint Committee in October 2021 (CDH 17), identified that the unmet need arising from Southampton and other authorities is some 13,000 dwellings (paragraph 13). The redistribution of unmet housing needs is a matter to be addressed through the preparation of Local

Plans and until any level of apportionment is established within an adopted Local Plan, those unmet needs arising from Southampton and other authorities should not factor into the calculation of 5YHLS for those recipient Local Planning Authorities. Therefore, any unmet need which Fareham may meet should be addressed through plan preparation and not added into a housing requirement through a public inquiry, in the absence of an adopted strategic housing policy.

- 4.3.4 The Appellant has not suggested any unmet from the Sub-Region should be factored into the 5YHLS calculation for this appeal. However, reference is made to the 13,000 within the SoCG by the Appellant, who appears to consider that the wider Sub-Regional need has a bearing on the weight to be attributed to the provision of housing. As stated above, this need is not factored into the 5YHLS calculation, and the weight afforded by the Council to the provision housing is substantial, as agreed with the Appellant. The issue of Sub-Regional needs is not material to the calculation of housing need.
- 4.3.5 The Fareham Core Strategy was adopted in August 2011 and in 2015 the Development Sites and Policies Local Plan was adopted. Table 4 within the DSP (CDE 2a), provides a useful summary of the housing requirement (prior to the use of LHN) and how needs had been met at that point in time This table gives the housing requirement used by the Council, prior to the use of the LHN, when those strategic policies became more than 5 years old. As with the current un-met Sub-Regional need of 13,000, the requirement prior to the use of LHN and any short fall, is irrelevant to the 5YHLS calculation, as the LHN takes into consideration past under supply through the affordability adjustment in the Standard Methodology. The Appellant appears to consider that under supply, prior to the use of LHN is material to the 5YHLS.

4.4 The Housing Delivery Test Results, the persistence of under supply and actions taken

- 4.4.1 The latest Housing Delivery Test result for Fareham Borough is 62%, in years previous this has been at 79% and 99%. The reduction in completions for the most recent year recorded can be attributed to a slow down in housing delivery because of the Covid-19 pandemic and also, specifically for Fareham the issue of Nitrate Mitigation.
- 4.4.2 The restrictions put in place by Government in their response to Covid-19 led to delays in house building. This materialised through two main issues – firstly the impact on the workforce; being able to work safely and an increase in absenteeism, and secondly the impact on building materials; availability of materials and delays because of a slowdown in supply chains. The culmination of these led to an acute impact on the construction industry.
- 4.4.3 The issue of nitrate mitigation has previously constrained the ability of the Council to grant planning permission for new dwellings, and therefore a subsequent impact on housing delivery, as seen in the HDT results. However, this obstacle has now been resolved and the Council are currently issuing consents upon completion of appropriate legal agreements. Furthermore, it is clear that, moving forward, this issue should not arise again for the foreseeable future.

- 4.4.4 Nitrate mitigation problems date back to February 2019, when European case law led Natural England to issue advice to relevant local planning authorities recommending that an Appropriate Assessment be undertaken for schemes that result in a net increase of one new dwelling where there is a likely significant impact on European Protected Sites (EPS). The rationale for this premise is that overnight accommodation (to include dwellings) generates nitrates in wastewater that will be discharged into the Solent and thereby harm EPS's.
- 4.4.5 Natural England issued their updated Nitrate advice in February 2019 and the Council immediately halted issuing consents in response. The agreement with the Hampshire & Isle of Wight Wildlife Trust to provide nitrate mitigation at Little Duxmore Farm was signed in September 2020, following that, there was a lag of a several months as applicants began to prepare mitigation proposals for the delayed applications before permissions could be issued.
- 4.4.6 As seen in the table below the number of residential dwellings consented in 2019/20 decreased significantly. By 2020/21 when the agreement with the Wildlife Trust was agreed, an increase in consents occurred and carried on into 2021/22.

Year	Total Net Gain in Residential Dwellings
2015/16	296
2016/17	328
2017/18	298
2018/19	200
2019/20	46
2020/21	507
2021/22	497

- 4.4.7 The table shows permissions granted between April 2015- March 2022 which result in net residential gains. This list includes only outline consents so to avoid the double counting of detailed or reserved matters applications consented in subsequent years.
- 4.4.8 The Council's HDT result is less than 95%, as set out in paragraph 76 of the NPPF it is therefore necessary for the Council to prepare an action plan. Such a plan should be in line with national planning guidance, and assesses the causes of under-delivery, identifying actions to increase delivery in future years.
- 4.4.9 The Council adopted its most recent Action Plan in June 2021 (CDF 7). In summary, the report sets out the purpose of an action plan, past and future housing delivery performance, examines the causes and considers ongoing action already being taken and how those can be strengthened, the report concludes at section 7 with the Council's Action Plan which identifies 9 key actions, to enable an increase in housing delivery, for the Council to address.

- 4.4.10 The Fareham Local Plan 2037 was submitted for examination in September 2021 and is currently subject to independent examination by the Planning Inspectorate. The Inspector has reviewed written representations and explored Matters and Issues relating to the Plan through hearing sessions held in March and April 2022. The Council received a Post Hearings letter in June requesting a focussed consultation on three housing topic papers, which took place in July 2022, following Executive approval.
- 4.4.11 Following this focussed consultation, the Inspector has written again to the Council with proposed main modifications to the plan. The Council are working through these modifications with a view to undertaking a public consultation in Autumn 2022. The Council's Local Development Scheme sets out the timetable for the Local Plan, with adoption identified in Autumn/Winter of 2022 and this remains the Council's intent.
- 4.4.12 The Council's Housing Supply Topic Paper (CDF 9), published in July 2022, as part of the examination into the submission local plan, deals with the Housing Delivery Test and how this may be calculated once the Plan is adopted in due course.
- 4.4.13 Section 4 (page 9) of that paper, table 3, looks at the projected HDT results when the Plan's housing requirement is used, in this table the revised stepped requirement is considered. This shows an expected improvement to the HDT results by the 2024 result, showing a result of 104%. The consideration of the HDT results and an approach using a stepped housing requirement builds on the detail of the Council's Action Plan and 9 key actions.
- 4.4.14 The stepped requirement (which would give the Council a 5YHLS on adoption) has been accepted by the Inspector as justified.
- 4.4.15 As proposed in the submitted plan, the lowering of the requirement in the first few years of the plan would allow the Council to pass the Housing Delivery Test sooner than using the standard methodology figure of 541 homes a year. However, by lowering the requirement in the first few years, the requirement must rise later in the plan period to deliver the Council's housing requirement, based on that standard methodology figure, over the plan period. Acceptance of the stepped requirement is crucial to the Council in terms of its Development Management function as it means that, on receipt of more favourable Housing Delivery Test results expected in early 2024, the Council will not need to apply the presumption in favour of sustainable development to its decision making. At that time, the Council would also be able to revert to applying the 5% buffer to its five-year housing land supply calculation, instead of 20% as is required at present.
- 4.4.16 The HDT results fall below the 75% level and therefore the presumption in favour of sustainable development is engaged. Whilst it may be the case that the presumption will remain in place until the 2024 results are published, it also means that policy DSP40 of the adopted plan, or its equivalent in the emerging plan, Policy HP4, which is at an advanced stage, is to be engaged through this period. The exercise of applying DSP40, for this appeal, is set out in the Planning Evidence of Mr Stephen Jupp.

4.4.17 Addressing housing need through a plan led approach using the policies within the extant and emerging development plans is appropriate. This approach uses criteria within extant policies (DSP40) or those which are at an advanced stage in the examination process (HP4).

4.4.18 Paragraph 48 of the NPPF, states that:

Local Planning authorities may give weight to relevant policies in emerging plans according to:

- a) The stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given)*
- b) The extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and*
- c) The degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given)*

4.4.19 Therefore weight may be given to policies in the emerging plan.

4.4.20 A recent High Court judgment (*Worthing Borough Council v DLUHC* [2022 EWHC 2044] CDK 7) quashed a planning decision on a site, in a situation where there are significant parallels to this appeal. An appeal was allowed for a site for 475 homes on greenfield land in a location proposed as a strategic gap in an emerging Local Plan. It was found that the Planning Inspector had erred in not taking account of the conflict with key policies in the emerging Plan which was at a 'relatively advanced stage' having been through its examination in public and at a time when a schedule of main modifications were being drawn up, and not yet published for consultation.

4.4.21 At paragraphs 103 and 105 of the judgment, the stage that the examination had reached, when the appeal was determined, is considered.

[103] The LP Inspector, whose task it is to consider the soundness of the eLP, has apparently accepted the Council's proposed spatial strategy in Policy SS1, including the restrictions on development outside the built-up area boundary, as detailed in Policy SS4. The eLP proposes 12 main major allocations for residential development, delivering 1,753 houses. The LP Inspector removed one proposed allocation, and has not made any recommendations for further allocations. He did not accept the developer's representation that this Site should be allocated for housing, nor did he cast any doubt on its designation as a Green Gap.

[105] However, the spatial strategy embodied in Policies SS1 and SS4, unlike that in Policy 13, was predicated on an understanding that the Council would not (and could not) meet its current housing requirements. Contrary to the Defendants' submissions, Policies SS1 and SS4 were not merely another layer of policy which continued the effect of Policy 13. They were also the product of a new balancing exercise, carried out in the context of the Framework, which balanced current housing needs and environmental considerations in the Borough, and had been the subject of recent examination by another Inspector. Therefore, it was irrational not to treat them as material considerations, which ought to be considered in reaching a decision.

4.4.22 This judgment has direct parallels with this appeal, within the context of an emerging Local Plan on which a schedule of main modifications is presently being prepared, there are no unresolved objections to elements of the emerging Local Plan which are relevant to this appeal, and there is a degree of consistency

with the NPPF, given that no soundness are identified on these policies. Therefore, there is weight to be afforded to the policies in the emerging Local Plan at this stage of the examination process. The Inspector has not raised points of identifying outstanding soundness or legal compliance issues in relation to the key points of, meeting the proposed housing requirement (LHN + element of Sub-Regional housing need), the spatial strategy, the principal of the strategic gap designation nor emerging policy HP4.

- 4.4.23 The Local Plan Inspector's letter of 5 September (CDF.13) identifies progress to her satisfaction from her previous letter of 6 June 2022 (CDF.8). The 5 September letter identifies that the preparation of Main Modifications (MMs) is already underway by the Council (paragraph 14). Issues identified in both of the Inspector's Letters which would require Main Modifications are; Early Review of the Plan, DS3 Landscape (with concerns satisfied already), alter the capacity and delivery timescales of some housing allocations and remove an allocation , and , Biodiversity Net Gain, Minor changes to the housing trajectory, Windfall Background Paper, Affordable Housing Background Paper, and addendum to the SA and updated HRA where appropriate for both documents.

5.0 SUMMARY AND CONCLUSIONS

- 5.1.1 It is common ground between the Council and the Appellant that the housing land supply for Fareham is between 3.86 years and 4.88 years. The Planning SoCG, at paragraph 6.4 agrees that the weight that should be afforded to the provision of housing should be substantial at either end of the range.
- 5.1.2 There are two live appeals in Fareham Borough, where the Council accept that they cannot demonstrate a 5YHLS, and the position at the point of preparing those SoCG, was the land supply was at 4.92 years.
- 5.1.3 The HDT result for Fareham Borough Council falls below the 75% level and therefore the presumption in favour of sustainable development is engaged, this means that policy DSP40 of the adopted plan is to be engaged. The exercise of applying DSP40, for this appeal, is set out in the Planning Evidence of Mr Stephen Jupp.
- 5.1.4 The extant Development Plan is more than 5 years old and therefore the strategic policies which set out a housing requirement, are out of date, in accordance with paragraph 74 of the NPPF.
- 5.1.5 Therefore, the housing requirement (Local Housing Need, LHN) in Fareham, for the purposes of calculating the 5YHLS in this appeal, must be calculated by using the Standard Methodology.
- 5.1.6 The LHN for Fareham Borough Council, as calculated by the Council and agreed in the SoCG is 3,246 dwellings over the 5 year period, or 649.2 dwellings each year. This is the figure that should be used within the calculation of housing need.
- 5.1.7 The standard methodology uses the 2014-household projections and applies and affordability uplift, there is no need to take into account previous levels of under supply which may have occurred within Fareham before the 2022 LHN calculation. Therefore, no weight should be afforded to pre-2022 levels of under supply and it should not factor into the calculation of housing need.
- 5.1.8 There is an unmet need of 13,000 dwellings across the Sub-Region and the redistribution of unmet housing needs is a matter to be addressed through the preparation of Local Plans and until any level of apportionment is established within an adopted Local Plan, those unmet needs arising from Southampton and other authorities should not factor into the calculation of 5YHLS assessment. No weight should be afforded to this in the calculation of 5YHLS. The appellant does not suggest a proportion of this need should be factored into Fareham's housing requirement.
- 5.1.9 The HDT results fall below the 75% level and therefore the presumption in favour of sustainable development is engaged. Whilst it may be the case that the presumption will remain in place until the 2024 results are published, it also means that policy DSP40 of the adopted plan, or its equivalent in the emerging plan is, to be engaged through this period. The exercise of applying DSP40, for this appeal, is set out in the Planning Evidence of Mr Stephen Jupp.
- 5.1.10 Paragraph 48 of the NPPF states that LPAs (and other decision makers) may give weight to relevant policies in emerging plans, the weight to be given is dependant upon the stage of preparation, the extent of unresolved objections and the degree of consistency with the NPPF.

5.1.11 Parallels can be drawn to the stage of examination, the extent of unresolved objections and degree of consistency, of an emerging Local Plan, considered in a recent judgment in the High Court which quashed the decision to allow an appeal because the Inspector did not treat the emerging plan, or policies as material considerations in reaching said decision.