

NORTH SOMERSET CORE STRATEGY EXAMINATION OF REMITTED POLICIES

HEARING STATEMENT: MATTER 2

ON BEHALF OF STRONGVOX HOMES

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Housing Calculation

2. Is the Council's calculation of a residual housing requirement of 1,715 dwellings for the remainder of the plan period an appropriate figure to incorporate into the consequential changes to the policies?

The housing requirement

- 2.1 A new Strategic Housing Market Assessment (SHMA) for the Wider Bristol Housing Market Area (HMA) was published in July 2015. This identifies an objectively assessed need (OAN) of 85,000 homes across the HMA from 2016 to 2036 (or 4,250 per annum). The Core Strategies of the constituent authorities (Bristol, North Somerset and South Gloucestershire) currently provide for only 3,718 homes per annum based on SHMAs which do not take account of the latest evidence (including the 2014 based household projections). These adopted housing requirements (including that identified within Policy CS13 of the North Somerset Core Strategy) are therefore out-of-date in the context of the latest evidence. It is therefore necessary to increase housing provision across the HMA to meet the OAN in accordance with the NPPF (paragraph 47).
- 2.2 The housing requirement of the North Somerset Core Strategy (CS) extends to 2026 providing for only a 10-year period and does not provide a supply for years 11-15 contrary to the NPPF (paragraphs 47 and 157). The limited time-horizon and out-of-date, constrained housing requirement have resulted from elements of the CS being found unsound and remitted. However, this doesn't detract from the necessity for the CS to provide for an NPPF compliant development plan. This would require that the housing requirement was amended to reflect the full OAN.
- 2.3 The Council however, base the remaining requirement of 1,715 dwellings on the housing requirement identified in Policy CS13. If the housing requirement is not reviewed to provide for an NPPF compliant Local Plan, given that this has already been adopted, is the housing requirement must be recognised as providing an absolute minimum and policies (including CS14, CS28, CS30, CS31, CS32 and CS33) must be sufficiently flexible to support additional opportunities for sustainable development. This flexibility would contribute to the needs in a timely manner and provide for certainty going forward, rather than continuing to constrain growth through inflexible policies regardless of the need.

Housing supply

- 2.4 The Council's letter to the Inspector (dated 14th March 20146) identifies a supply of 21,114 dwellings, which equates to a surplus of 129 against the minimum housing requirement for 20,985 dwellings.
- 2.5 The supply comprises a number of sources including completions, permissions (including sites subject to a resolution to grant permission), existing allocations, allocations that are or will be proposed in the North Somerset Site Allocations Plan (NSSAP) and a windfall allowance.
- 2.6 Paragraph 44(i) of the letter identifies that "...all sites with an extant planning permission or resolution to approve subject to a legal agreement" are included, taking no account of the likelihood of some permissions lapsing and/or not being implemented. Assuming that all sites will deliver irrespective of their ownership, site-specific constraints and infrastructure requirements is so aspirational as to be unrealistic, contrary to the NPPF (paragraph 154).
- 2.7 This issue has been discussed in the examination of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (GCTJCS). Pegasus Group submitted representations identifying that based on the local record of delivery somewhere in the region of 20% of permissions lapse on average (in addition to those which do not lapse as a result of a spade in the ground but which are never implemented). The Inspector in this case has supported the application of such a lapse rate (given that the site-specific assessment was clearly unrealistic in this case as it is in North Somerset) which reflects the local record and has asked the Councils to confirm the calculations.
- 2.8 The application of lapse rates has also been supported in a wealth of S78 decisions. Although this will be specific to local circumstances it is common to apply a 10% rate. This is the approach adopted in paragraph 36 of the decision letter for Land south east of the Lion Inn, Chelmsford (Ref 3001771, included as Appendix 2.1); paragraph 57 of the decision letter for Land off Maldon Road, Essex (Ref 3032632, included as Appendix 2.2); paragraph 33 of the decision letter for Land off Stratford Road, Hampton Lucy (Ref 2215757, included as Appendix 2.3); and paragraph 39 of the decision letter for Land between Station Road and Dudley Road, Honeybourne (Ref 2171339, included as Appendix 2.4).

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- 2.9 Paragraph 43 of the letter identifies 6,558 permitted dwellings. The application of a 10% or 20% lapse rate would reduce the supply by 656 or 1,312 dwellings. This would result in a need to identify sites and provide flexibility to deliver an additional 527 to 1,183 dwellings (once the identified surplus is taken into account) to achieve the housing requirement which doesn't reflect the OAN.
- 2.10 Paragraph 44(ii) identifies that all of the remaining capacity on extant allocations is assumed to deliver. 372 of these are on sites which were allocated in the North Somerset Replacement Local Plan, adopted March 2007 but which haven't delivered in the intervening 9 years. The delivery prospects of these shouldn't be relied upon unless there is specific evidence of a change of circumstance. As a result there could be a need for additional allocations of up to 372 dwellings.
- 2.11 Paragraph 44(iii) identifies that all of the allocations proposed in the NSSAP are assumed to deliver. However, the weight to be afforded to these policies should be determined in the context of the NPPF (paragraph 216).
- 2.12 Paragraph 44(iv) relies upon other sites which have recently been included in the NSSAP. At the time the letter was written these hadn't been subject to consultation and there had been no opportunity to submit objections. Even now, the extent of any objections hasn't been identified or considered. Therefore, these sites cannot be relied upon to deliver.
- 2.13 The NSSAP has not yet been submitted to the Secretary of State for examination. Therefore, the identified allocations aren't at an advanced stage of preparation. The allocations will also inevitably be subject to some level of objection, which will be resolved through the examination of the Plan but until that point the allocations shouldn't be relied upon as some may be found to be unsound. Accordingly the weight to be afforded to these proposed allocations is very limited.
- 2.14 Indeed, Mr Justice Stuart-Smith in *Wainhomes v SOS CLG & Others [2013] EWHC 597 (Admin)* (included as Appendix 2.5) identifies in respect of

emerging allocations that "...in the absence of site specific evidence, the only safe assumption is that not all such sites are deliverable."

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- 2.15 The deferral of allocations to the subsequent NSSAP is a significant issue for the examination of the consequential changes, as this prevents the supply, which is necessary for the CS to be found sound in terms of the NPPF (paragraph 47), from being examined.
- 2.16 Other development plans (such as the Wiltshire Core Strategy and the GCTJCS), have included strategic allocations which alongside committed sites have been sufficient to demonstrate a five-year land supply, deferring less strategic allocations to subsequent plans. However, the CS is reliant upon sites in the emerging plan/s to demonstrate a five-year supply. These sites cannot be relied upon prior to the examination of the NSSAP and so a five year supply cannot be demonstrated. The only way to address this is to identify sufficient strategic allocations within the Core Strategy now.
- 2.17 If the consequential changes were found to be sound as drafted without additional sources of supply, the Council won't be able to demonstrate a five-year supply owing to the emerging nature of the allocations. This would immediately result in policies relevant to the supply of housing (including all of the remitted policies) being out-of-date until such time as the allocations upon which the Council rely are adopted.
- 2.18 As a result of a robust application of lapse rates; recognition that emerging allocations cannot be relied upon at present; and recognition that the housing requirement forms a minimum which doesn't represent the current needs, the identified residual requirement of 1,715 homes will significantly under-estimate the true needs.
- 2.19 The CS needs to provide a positive framework to facilitate growth in excess of the housing requirement of Policy CS13 which is capable of providing for and should not constrain delivery of the current housing needs. In order to achieve this strategic allocations are required now and there needs to be flexibility within the policies to support additional opportunities for sustainable development.

Five year land supply

- 2.20 In the Council's response to the Inspector (CC/02) the Council identify that there have been 7,426 dwelling completions between 2006 and 2015. This compares to the annualised requirement identified in Policy CS13 which requires 9,441 dwellings over this period. The result is that there was a backlog of 2,015 dwellings at April 2015. It is understood that the completion figures for 2015/16 are due imminently but that these are not yet available. Furthermore the annual requirement has not been met in a single year for the last 7 years and as such it is clear that there is a record of persistent under delivery which requires the application of a 20% buffer.
- 2.21 It is also relevant that the Inspector examining Policy CS13 agreed in his report that the approach to dealing with this backlog in housing supply "should be considered at the next stage of the re-examination process when consequential changes to policies dealing with the delivery of the housing requirement will be considered."
- 2.22 Paragraph 60 of the report goes on to support the application of the Sedgefield approach. The Council then wrote to the Secretary of State on 17th March 2015 requesting that the Inspector's report was reviewed such that "...any housing backlog should be delivered over the remaining plan period (i.e. the Liverpool approach)." Mr Brandon Lewis MP replied on 18th September 2015 providing full support for the Inspector's report including the application of the Sedgefield approach.
- 2.23 The Council however adopted the Liverpool approach in the Five Year Land Supply Position Statement, April 2015 contrary to the findings of the Inspector. It has since been accepted by the Council in the Supplementary Statement of Common Ground on Housing Land Supply prepared in support of the S78 appeal at Land to the North of the A368, Sandford (Ref 3139633, dated 15th April 2016) that "the Sedgefield approach is the correct methodology to be applied".
- 2.24 Given the findings of Inspector Punshon, Mr Brandon Lewis and the recent acceptance of the Council, which all reflect the PPG (3-034) by applying the Sedgefield approach, Pegasus Group do not consider it necessary for this to be re-examined. Nevertheless, it would be beneficial if the Sedgefield approach was endorsed (again) in order to provide certainty for Development

- Management purposes going forward, especially given the Council's current use of the Liverpool approach.
- 2.25 These factors alone generate a five year housing requirement (including buffer) for 8,712 dwellings. This alone without any adjustment to the supply identified in CC/23 would result in a 3.8 year land supply.
- 2.26 However, once a more detailed assessment of the components of supply is undertaken it is considered that the deliverable supply is actually in the region of 4,741 dwellings (as compared to the 6,644 dwellings identified by the Council), which equates to a 2.7 year land supply.
- 2.27 Even if, contrary to the evidence, it was concluded that it was appropriate to apply a 5% buffer, then the Council would still only be able to demonstrate a 4.4 year land supply (on their figures) or a 3.1 year supply (with a more robust assessment).
- 2.28 In all scenarios, there is a significant delivery problem in North Somerset, which needs to be addressed through the allocation of sites now and through the adoption of permissive policies to fully support opportunities to address the significant unmet needs.

APPENDIX 2.1

LAND SOUTH EAST OF THE LION INN APPEAL DECISION

Appeal Decision

Inquiry opened on 5 October 2015

Site visits made on 15 October 2015 and 2 March 2016

by Clive Hughes BA (Hons) MA DMS MRTPI

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

Decision date: 08 March 2016

Appeal Ref: APP/W1525/W/14/3001771

Land South East of The Lion Inn, Main Road, Boreham, Chelmsford, Essex

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Cogent Land LLP against the decision of Chelmsford City Council.
 - The application Ref 14/00826/OUT, dated 13 May 2014, was refused by notice dated 15 October 2014.
 - The development proposed is described on the planning application form as "outline planning application for the development of up to 200 homes and creation of new publicly accessible open space (all matters reserved)".
 - The inquiry sat for 7 days on 6 to 9 and 13 to 15 October 2015.
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Preliminary matters

1. As part of the appeal process the appellant submitted a revised scheme reducing the number of homes from up to 200 to up to 163. This was the subject of extensive public consultation before the Inquiry opened. A revised outline planning application, ref: 15/01079/OUT, also for up to 163 homes, was refused in September 2015 on similar grounds to the appeal scheme.
2. At the Inquiry the appellant formally requested that this amended scheme be substituted for the appealed scheme. As the revised scheme is for a lesser amount of development on the same site and as interested parties have had the opportunity to consider and comment on it, I am satisfied that it accords with the "Wheatcroft" principles and that no interests would be unfairly prejudiced by my consideration of the amended scheme. The Council raised no objections to this approach. In view of the above this Decision is based upon the revised scheme for up to 163 homes (Drawings 001 Rev D, 005 rev H and the revised Illustrative masterplan dated 22 June 2015).
3. The revised scheme is in outline form with all matters of detail reserved for future consideration. Both the original application and the reduced scheme were accompanied by parameter plans identifying the extent of the residential area and public open space, proposed maximum ridge heights, the vehicular access point and existing and proposed pedestrian routes. They were also accompanied by illustrative master plans showing an indicative site layout.
4. As set out in the Council's Statement of Case and in the Statement of Common Ground, revised highway models were submitted by the appellant which addressed the concerns of the Essex Highway Authority and Highways England. In the light of this the City Council did not provide any evidence to support the fifth reason for refusal relating to highway matters.

5. A signed and completed Agreement under s106 of the Act was submitted by the appellants and is dated 14 October 2015. It has been signed by the appellants, other land owners, and the City and County Councils. The Agreement makes provision for affordable housing (35% of the units); local open space; public art; wheelchair housing units (3% of the units); a secondary school transport contribution; various highway works; and a residential travel plan.
6. Before this Decision was made the appellant drew attention to two documents which had been published after the Inquiry closed. These documents, copies of which the appellant provided, are the Chelmsford Local Plan: Issues and Options Consultation Document (November 2015) and an Officers' Report to the Council's Planning Committee in respect of an outline planning application for up to 100 dwellings on land north east of 158 Main Road, Great Leighs (ref: 14/01791/OUT) (25 January 2016). I have taken these documents into account and given the parties the opportunity to comment on them. I have also carried out an unaccompanied site visit to the site at Great Leighs.

Decision

7. The appeal is dismissed.

Main Issues

8. The main outstanding issues are:
 - Whether the Council can demonstrate a 5-year housing land supply and the implications of this on local and national planning policy;
 - The effect of the proposals on the visual amenity of the area;
 - Whether the necessary infrastructure can be delivered to accommodate the proposals, with particular regard to primary school education; and
 - Whether the proposals would preserve or enhance the setting of local heritage assets, and in particular Boreham House, a Grade I listed building set within a Grade II Registered Park and Garden (RPG).

Reasons

Background

9. The appeal site, which has an area of about 14.77ha, is of irregular shape, roughly square, and is in use for agriculture. It is located immediately to the west of Boreham, outside the Defined Settlement Boundary (DSB). It adjoins existing housing/ gardens and the Lion Inn to the north and east; Main Road (B1137) to the north; and further agricultural land to the west and south. A stream, the Boreham Brook, is to the south. The site is crossed by a public footpath (FP29), that runs in an east/ west direction, and there is a further public footpath (FP30) that runs along much of the eastern boundary.
10. The site slopes downhill from north to south with a drop of around 15m. There is a hedge along the western boundary. In the field to the west there are electricity pylons and overhead lines. Further west lies Boreham House, a Grade I listed building set within a Grade II RPG. To the east, within the built-up part of Boreham, lies the Church Road Conservation Area while a little way to the south is the Chelmer & Blackwater Navigation Conservation Area.

11. Boreham is a Key Defined Settlement as set out in the Core Strategy (2008). Within walking distance of the site are shops, including a small supermarket, various community facilities and a primary school. It is served by a number of bus services with routes to Chelmsford, Colchester, Maldon and Great Baddow.

Proposals

12. The revised proposals reduce the number of homes from 200 to up to 163 and the residential area from 6.1 ha to 5.3 ha. There is a related increase in the area of public open space to 9.5 ha. The revised illustrative Masterplan shows that the housing would be located in the north east portion of the site, abutting existing housing and the Lion Inn car park. The remainder of the site would be open space with the footpaths retained on their present alignments. The plans indicate various paths giving access to the open space which, according to the Design and Access Statement, would be meadowland. There would be planting to the western and southern boundaries and a balancing pond.

Planning Policy

13. The development plan comprises the Core Strategy and Development Control Policies DPD (adopted February 2008) (the CS); the Site Allocations DPD (February 2012); the Core Strategy and Development Control Policies Focused Review DPD (December 2013) (the CSFR); and the Community Infrastructure Levy Charging Schedule (February 2014). The CS and Site Allocations DPDs both pre-date the National Planning Policy Framework (2012) (the Framework).
14. The CSFR involved amendments to a number of the policies in the CS to bring them into line with the Framework. The CSFR only sought to reconsider and redraft a limited range of policies; it was not a total review. It only considered some policies that would not necessitate the provision of new evidence so such matters as housing were excluded. It has been though the rigors of an Examination and was found sound. The relevant policies that were amended by the CSFR are Policies CP1, CP5 and DC2. These can be given full weight as they have been found to be consistent with the Framework. The Council continues to rely on many policies from the CS; the weight that they can be given varies in accordance with their consistency with the Framework.
15. Also relevant to this appeal is the Boreham Village Design Statement (BVDS) which was produced by the community in collaboration with the City Council in March 2008. It identifies that the western border of the parish is the most vulnerable because of its proximity to the edge of the urban area of Chelmsford. It says that the village should continue to be surrounded by agricultural land maintaining its distinct identity and separation from the urban edge. The weight that can be given to this document, however, is limited as it is not consistent with the Framework which it pre-dates by several years.
16. The development plan identifies that the site lies outside the DSB for Boreham and within the Rural Area beyond the Metropolitan Green Belt. The site was considered as part of the Council's Strategic Land Availability Assessment when it scored well against availability and achievability criteria. The Assessment identified some suitability constraints in respect of its location adjacent to a DSB and the proximity to Boreham House and its RPG.
17. The emerging plans include the Chelmsford Local Plan: Issues and Options Consultation Document (November 2015) (the IOCD). The consultation period

for this document ended on 21 January 2016. It is still at an early stage in the plan-making process and so carries only limited weight. It refers to some of the policies in the Framework and it does provide an indication of current thinking concerning the direction of travel for development in Chelmsford.

Whether the Council can demonstrate a 5-year housing land supply and the implications of this on local and national planning policy

18. Paragraph 47 of the Framework says that a local planning authority should use its evidence base to ensure that the Local Plan meets the full objectively assessed needs of market and affordable housing (the FOAN). The CS sets a minimum housing target of 700 new homes per year. The East of England Plan increased that figure to 800 per year, but this was revoked in January 2013 so that figure carries no weight. The Council accepted that its CS housing requirement was not up to date and so, together with Braintree, Colchester and Tendring, commissioned a FOAN for the housing market area. The PBA Study was completed in July 2015 and in September 2015 the Council adopted as its FOAN requirement a figure of 775 dwellings per year to be used for the calculation of its 5-year housing land supply.
19. To this the Council added 254 dwellings due to historic shortfall and a 20% buffer. The Council had an average completion rate of 552 dwellings per annum for the period 2001/2 to 2014/5 which, when compared to the (then) requirement of 700, represents persistent under-delivery. A 20% buffer is justified. The 5-year requirement was calculated to be 4,955 dwellings, which works out at 991 dwellings per year.
20. In contrast, the appellants consider that a FOAN requirement figure in excess of 1,000 dwellings per year would be reasonable, giving an overall 5-year requirement of 6,000 dwellings allowing for a 20% buffer for persistent under-delivery. This would equate to a requirement of 1,200 dwellings per year.
21. The Council's figure is not accepted by the appellant for a number of reasons, not least of which is that it has not been tested through an Examination in Public. It is certainly not the purpose of this Decision to forensically examine the figures; that is the role of a future Examination. It is not for me on this s78 appeal to seek to carry out some sort of local plan process as part of determining this appeal. There was no other figure for the FOAN before the Inquiry; the appellants did not put forward an alternative FOAN and indeed are not obliged to do so. The Council's FOAN was produced by a leading practitioner in this field who gave evidence to the Inquiry. He is also author of the Planning Advisory Service's document "Objectively Assessed Needs and Housing Targets" (2015). The appellant was able to cross-examine this witness which gives his evidence added weight.
22. The figure is an unconstrained figure; it is not "policy on". The approach of the Council's consultants seems to follow the PAS Technical Advice Note and follows the methodology in the Planning Practice Guidance (PPG). The PBA Study has been adopted by the Council for the purposes of assessing its 5-year housing land supply.
23. The appellant raised various concerns about the FOAN but nonetheless accepted that it will be for the Local Plan review to determine the FOAN for Chelmsford. With regard to the main areas for dispute, concerning affordable housing I have noted that the appellant used planning judgement to arrive at a

figure well in excess of the Council's figure. They did not assess the actual need. The Council's reasoning is derived from paragraphs 2a-001 to 029 of the PPG and it will be for the Examination to test this approach. From the information before this Inquiry it appears to be a sound approach.

24. Concerning employment growth, the parties used slightly different predictions which mainly differed in their approach to part time working. It may be that the Council's uplift figure is too low as it assumes that part-time jobs will be filled by people with more than one part time job. However, it is likely that some jobs would be filled in this way which would limit the uplift. Overall, however, the figure should probably be raised but the extent of this is not possible to determine on the basis of the evidence before this Inquiry. In any case, this would have only a limited impact on the overall figures.
25. The exclusion of Maldon from the housing market area is unlikely to make a significant difference. It is a matter of judgement and there is no evidence before me to show that the housing market area adopted in the PBA Study does not function as a housing market area.
26. The various differences of opinion concerning the robustness of the PBA Study can and will be tested at a future Examination. For the purposes of this Inquiry, however, none of the appellant's criticisms are so clear-cut as to demonstrate that the Council's calculations are unsound. I have therefore adopted the Council's figure of 775 dwellings per year as the starting point.
27. Concerning supply, footnote 11 to paragraph 47 of the Framework sets out what constitutes a deliverable site. The Council's position is that it can demonstrate a 5-year housing land supply. It claims a 5-year supply of 6,095 dwellings which is 1,140 dwellings above the identified 991 dwellings per year requirement and equates to a 6.15 year supply. In support of this contention it argued that 87% of the identified sites have the benefit of planning permission and so, in accordance with the footnote, should be considered to be deliverable. This figure rises to 97% when allocated sites are also included. Delivery is considered to be realistic given that housing completions in Chelmsford are increasing.
28. In advance of the Inquiry the Statement of Common Ground – Addendum (September 2015) was submitted which listed the eleven specific sites in dispute. These involve a total of 3,197 dwellings. During the Inquiry the list of disputed sites was reduced to 8, involving 2,567 dwellings. It was not contended by the appellant that none of the units would come forward. The Report by New Hall Properties (Southern) Ltd (the NHPR) on behalf of the appellant gives a revised figure of 1,350 units from these 8 sites for the 5-year period. If all the appellants' reduced figures for these 8 sites are correct, then the Council's identified 1,140 surplus would be reduced to a deficit of 77 units. These sites are therefore considered in turn. The potential for sites not to come forward, known as the lapse rate, and the likelihood of windfall sites is also considered.
29. The Car Park, Western End Wharf Road is an allocated site owned by the Council. The Council estimates it will generate 300 units by 2019/20; the appellants (based upon the NHPR as updated in September 2015) anticipate 150 dwellings. The original NHPR gives a figure of 225 for this site; it is not clear why the earlier figure has been reduced. The appellant's witness accepted that the site would come forward; it was simply a matter of timing

- given the uncertainties concerning the need for planning permission and the discharge of conditions. Clearance of conditions, such as archaeology, may take longer than anticipated. There is, inevitably, a degree of speculation in such matters, but it seems reasonable that commencement could be achieved in 2017 with 300 dwellings delivered within the 5 year period.
30. The Lockside Industrial Estate site is also in the Council's ownership; it has resolved to sell it. The whole site would accommodate 200 dwellings and the Council contends that 100 of these could come forward within the period. Part of the land is subject to tenancies but the Council's figure relates solely to the open land which is not subject to tenancies and so could come forward independently. That may not be the final outcome as there may be commercial reasons for developing the whole site as a single development as was suggested by the appellant. However, there is no evidence to support the contention that all the land has to come forward as a comprehensive scheme. There is no planning requirement for such an approach. A large part of the site is not constrained by tenancies and it seems reasonable to conclude that this land could come forward now.
31. The "Channels" site, Belsteads Farm Lane, Broomfield has the benefit of planning permission. The Council says that 700 units can come forward within the period; the appellants say 450 dwellings. There is no debate about the earlier phases. The appellant argued that the pace of delivery for the later phases is a matter of judgement, which is a fair point but has not been backed up by the clear evidence of non-delivery sought by Footnote 11. While phases 3a/ 3b have been sold to Croudace Homes, there is still time for the new owners to have the reserved matters approved by the Council and for the development to start on site to enable it to be included in the 5 year period. There is time for the later phases to come forward. As the Council's figures arise from information provided by the promoter of the site, and as there is no evidence to show the timescale to be unrealistic, I consider that it is reasonable for the Council to rely on them.
32. The site on land to the east of North Court Road, Broomfield also has the benefit of full planning permission. However, no reserved matters applications have yet come forward. According to the NHPR, Countryside Properties have put the site on hold due to third party constraints. Land Registry details indicate that the landowners have not yet sold the site and there are potential issues with highway works covered by a Grampian condition. Nonetheless, the developer has advised the Council that once commercial discussions with the landowner are concluded the site should come forward in the period.
33. The landowner did not give evidence to the Inquiry and given the contrasting information provided to the parties it is difficult to conclude on the likelihood of this site coming forward. The appellant's contention that no dwellings will come forward seems unduly pessimistic while the Council's contention that the whole site will be developed within 5 years may be unrealistic. I expect the correct figure is somewhere in between. There is, however, no "clear evidence" to the effect that the site cannot be delivered in the period.
34. Greater Beaulieu Park is a major development that has the benefit of outline planning permission. Development has commenced and the appellants provide a 5-year figure of 750 dwellings compared to the Council's 1037 (a figure that includes 50 units from the Beanfield). It is a joint venture between

Countryside Properties and London Quadrant and the Council has used figures provided on a phase by phase basis by these developers. While this means an ambitious build rate, indeed one that is higher than other home builders in Chelmsford in recent years, the supporting evidence is such that the Council would have been reckless to have ignored it. The appellant again relies on the judgement of advisors. In these circumstances the Council's evidence is more substantial and I have no reason to contradict it.

35. During the Inquiry the remaining three sites were generally considered together. They are known as the Royal & Sun Alliance site (55 units); Threadneedle House (42 units); and Rosehart Properties (65 units). They are all sites for which permission has been granted through the GPDO for changes of use from offices to residential. The appellant's argument was based, in part, on the anticipation that these temporary permitted development rights would expire in May 2016 before the development took place. During the Inquiry, however, the Government announced that this permitted development right was to be made permanent. While the appellant also put forward judgements concerning the likelihood of the sites coming forward, as planning permission is in place such judgements do not amount to the "clear evidence" necessary for the sites to be discounted. In any case, during the Inquiry an application for works to the Royal & Sun Alliance site was received by the Council, further evidence of the likelihood of this site coming forward. There is no compelling reason not to include any of these three sites in the 5 year total.
36. I have also had regard to the fact that there is likely to be a lapse rate; it seems improbable and unrealistic that all the identified sites will come forward within the 5 year period. The appellant's suggested lapse rates of 5% for sites with planning permission and 10% for other sites seems reasonable and has been used elsewhere, for example in West Dorset. This would result in the loss of 343 dwellings (5% of 5315 = 265 plus 10% of 780 = 78).
37. The Council has made an allowance for 181 dwellings from windfall sites. This is based on the figures for the past three years (about 140 dwellings per year) with the Hayes Leisure Park units, where the status of park homes was regularised, omitted from the calculations as being outliers. This seems a fair assessment. It is unrealistic to consider that no further windfalls will come forward, especially in years 4 and 5. There are existing windfall sites in the Council's Housing Site Schedule and these, together with an allowance for the last two years, brings the total to 181 units per year. As this is based upon recent figures, albeit over a relatively short period, the figures are reasonable.
38. I conclude on the supply side, therefore, that the Council has taken a reasonable approach in terms of the sites that have been contested by the appellant. While the achievement of the Council's figure for North Court Road, Broomfield, is challenging, it is nonetheless the figure given to it by the developers. The figure for windfalls is based upon recent windfall rates and the known supply of windfalls. The Council's figures for the contested sites and windfalls, therefore, appear to be sound. The total needs to be reduced, however, to take account of a lapse rate. Using the rates adopted in West Dorset, this would result in a reduction of 343 dwellings.
39. This brings the supply side figure down from 6,095 dwellings to 5,752. Using the 5-year housing land supply requirement of 991 dwellings per year, this gives a supply of 5.8 years rather than 6.15 years.

40. On the evidence before me at the Inquiry I am satisfied that the Council can demonstrate a 5-year housing land supply. Even if the requirement has been under-calculated due to such factors as employment growth there is sufficient flexibility in the supply side. For the purposes of paragraph 49 of the Framework relevant policies for the supply of housing are not excluded from my determination of this appeal on the basis that they are not up to date.
41. However, being able to demonstrate a 5-year housing land supply does not mean that all schemes for housing on other sites need necessarily be refused. The cited figure of 991 dwellings per year is not a maximum. It needs to be read in conjunction with paragraph 47 of the Framework where it states the Government's objective of boosting significantly the supply of housing. This objective needs to be further considered in the overall planning balance.

The effect of the proposals on the visual amenity of the area

42. The appeal site lies to the east of Boreham, immediately abutting its DSB as identified in the CS. The whole site is clearly visible from the public footpaths, which are not bounded by fences or hedges, and there are open views of the site from Main Road. Views from the public footpaths are inevitably dependant upon the direction of travel but the site appears contiguous with the open countryside to the south and west. When travelling eastbound on public footpath FP29 the view is dominated by the fences, dwellings and domestic landscaping within the village. From Main Road the edge of the village and the dwellings are clearly visible but these do not dominate the view as the distant hills are visible above the housing and form a fine backdrop to the village.
43. Policy CP5 of the CSFR says that urban growth will be contained by defining the physical limit of defined settlements (which include Boreham). Within the rural areas beyond the Metropolitan Green Belt the Council will protect the intrinsic character and beauty of the countryside, while supporting rural communities and economies. Paragraph 3.3 of the CSFR says that the objective of this amended policy is to ease restrictions placed on development within the rural area beyond the Green Belt. Paragraph 3.4 says that the policy seeks to prevent the erosion of the intrinsic beauty and character of the countryside from inappropriate forms of development.
44. Policy DC2 of the CSFR sets out the types of development for which planning permission will be granted in such areas, albeit subject to the caveat that the intrinsic character and beauty of the countryside is not adversely impacted upon. The current proposals do not fall within any of the cited forms of development. Supporting paragraph 3.15 says that the objective of the amended policy is the same as that for Policy CP5.
45. The BVDS sets out guidelines for the Parish which include that Boreham should continue to be surrounded by agricultural land. The reason given for this is to maintain its distinct identity and separation from the urban edge of Chelmsford. The proposals would bring Boreham closer to Chelmsford. The new access from Main Road would be located on the Chelmsford side of the Lion Inn where there is currently a field. While the Lion Inn would still be the first building on this side of the road, the entrance paraphernalia would alter the character of this entrance to the village.
46. The location of the proposed development within the site, as shown on the illustrative Masterplan, is on the eastern side of the site, adjacent to the

- existing houses. The boundary is now roughly concave in shape; the development would fit within the curve such that, when viewed from the site entrance from Main Road, it would all lie between the viewpoint and existing housing. However, being closer to the viewpoint, it would appear much larger and this increased scale would mean the long views, over the existing houses, would be lost. The BVDS identifies that one of the main strengths of the village are the outstanding views to the south over the Chelmer Valley. From this vantage point in Main Road such views would be harmfully diminished.
47. The appeal site is currently open and in agricultural use. The expansion of the village into the eastern side of the site would be visually intrusive when seen from Main Road and from the public footpaths. This would result in some harm, as accepted in the appellant's LVIA. While the built form would be set back from Main Road, in accordance with advice in the BVDS, it would still be visually prominent from these public viewpoints. In longer views the impact would be significantly less, however, as the village is already visible in long views and the development would just bring the built form a bit closer.
48. I am not convinced by the Council's contention that the site provides a transition between the built form of the settlement and the countryside. The boundary is in fact quite stark with domestic fences and planting abutting the agricultural field. There is no urban/ rural transition between the two. The character of the site also needs to be considered in the light of the proximity of the built form of the village. The houses, fences and planting within Boreham contribute to both the character of the site and the appearance of the area.
49. Nonetheless, the site lies outside the DSB of Boreham. The proposals would therefore be contrary to the provision of up to date policies in the CSFR that seek to prevent such development in the rural area. The proposals would, in effect, move the western boundary of Boreham some distance to the west, towards Chelmsford. The BVDS, which carries limited weight, identifies that one of the main threats to the village is the continued eastward expansion of Chelmsford, resulting in the potential absorption of Boreham into Chelmsford and the loss of its separate identity. While the landscape has no specific designations, it contributes to the rural setting of Boreham and to the separation of the village from Chelmsford. This contribution includes allowing views over the built form of the village to the hills beyond.
50. I have had regard to the Officers' Report in respect of the scheme at Great Leighs. This proposal is the subject of an appeal against non-determination. While the Officers recommended that, had the Council been in a position to determine the application it should have approved it subject to appropriate conditions and the completion of a s106 Agreement, Members disagreed and resolved that they would have refused the application.
51. While there are some similarities between that proposal and the scheme the subject of this appeal, including its siting outside the DSB and the site being crossed by public footpaths, the sites are very different in other respects. In particular the Great Leighs scheme would, in part, involve the infilling of an uncharacteristic gap in an otherwise built-up road frontage with the ribbon of existing development continuing for about 0.5 km to the north. According to paragraph 6.33 of the Report, the site adjoins developed land inside the DSB to the north, south and west. Due to this, and the lack of important long views across the site, the impact on the character and the appearance of the area

would be very different to the scheme before me. These differences impact upon the overall planning balances for the respective schemes.

52. The development on the current appeal site would not only be contrary to the cited development plan policies but would also result in some visual harm to the amenity of the area. The conflict with advice in the BVDS carries limited weight. Overall, however, this harm weighs against the proposals.

Whether the necessary infrastructure can be delivered to accommodate the proposed development, with particular regard to primary school education

53. The IOCD identifies that there is very little spare capacity in both primary and secondary schools in Chelmsford. It says that new development to 2036 will require new and expanded schools. It is common ground that Boreham Primary School, which can accommodate 210 pupils, is presently at capacity. In the school year 2015/16, two children in the priority admissions area who put it as first preference failed to secure a place; in the preceding year the figure was 5. It is also common ground that the proposed development can reasonably be expected to generate 45 children of primary school age. It is recognised that as a result of the Community Infrastructure Levy Regulations (CIL) it is not possible for the appellants to provide for the necessary primary level education infrastructure.
54. While the school is tightly constrained by surrounding development it seems that it would be feasible to increase its capacity within its existing site. There is no permission for such development; the County Council has no plans to expand the school. It would be possible to expand it to accommodate either 280 pupils (based upon 40 pupils per year) or 315 pupils (45 per year). Both options would involve mixed age teaching. The desk-top survey shows that additional classrooms and related facilities could fit on the site. This may involve a second storey although there is no evidence as to whether or not the existing structure could support that. It would also be necessary to provide an all-weather pitch to replace the playing fields or, if that was not possible, then permanent off-site provision of playing pitches would be necessary. It is not clear how or where this would or indeed could be provided.
55. It was agreed by the respective witnesses that a capacity of 280 pupils would be educationally detrimental due to the necessary mix of classes including some pupils being separated from the rest of their age groups. This solution is not supported by either the school or the County Council and the only 2 schools in Essex where it takes place are being considered for expansion.
56. The school cannot accommodate the increase in the number of children in its priority admissions area that this scheme would be likely to generate. There are no other schools within a reasonable walking distance. The probability, therefore, is that the County Council would have to bus a significant number of pupils to alternative schools. I agree with the Council that such an outcome would not result in the promotion of sustainable travel.
57. I have also had regard to the fact that the proposed redevelopment of the Cock Inn in Boreham to provide 28 new dwellings was recently granted planning permission. It is a brownfield site, having accommodated a waste recycling business and is the only housing site allocated in Boreham in the Site Allocations DPD. The County Council's Community Infrastructure Planning (Education) noted that it is an allocated site and that due to the relatively small

scale of the development and the site constraints of the school, it would not be possible to mitigate the impact on the local Primary School by providing additional accommodation. The County Council did not raise any objections to that development. Expansion of the school to 315 pupils, therefore, would meet the extra need generated by that smaller site.

58. The benefits of expanding the school would, therefore, be greater than simply enabling the additional pupils generated in the priority admissions area to attend the local school. The Cock Inn scheme also demonstrates that the Council accepts that some bussing of children to alternative schools is likely. I also have sympathy with the appellant's position in that the company cannot provide financial assistance towards the costs of providing sufficient places through no fault of their own. There is no mechanism to enable this.
59. However, the current proposals, and the inability of existing infrastructure to accommodate the primary school pupils, seems to me to demonstrate the benefits of a plan-led system in which new housing can be located in appropriate locations where schools can either accommodate the increase in pupils or be readily expanded to prevent the need for pupils to be bussed out of the area. The appeal site is not allocated for housing in any plan so there is no reason as to why the education authority would consider it necessary to provide additional facilities in this area. This situation may change, of course, depending on the outcome of the on-going local plan process. One of the 3 options under consideration in the IOCD, Option 3, includes the distribution of some of the new housing to larger villages, including Boreham. This emerging consultation document suggests the expansion of Boreham in an area to the east of the village to provide a potential capacity of 800 dwellings in the period 2021-2026. The indicative infrastructure requirements include a new primary school. As set out above, however, this is just one of the options and as it is still at an early stage in the process it carries limited weight.
60. The circumstances at Boreham represent further differences with the scheme referred to by the appellant at Great Leighs. At Great Leighs the existing primary school could not accommodate the likely number of pupils arising from the dwellings now proposed. However, all the excess pupils could be accommodated in a single school (White Court Primary School, Great Notley) which lies about 3 miles away and which can be safely accessed on foot. In addition, Great Leighs is identified for expansion in all three of the Options in the IOCD. In Options 1 and 2 the IOCD indicates that two new primary schools would be required; in Option 3 one new primary school would be required. In Boreham only one of the Options includes any housing development with the need for a new primary school.
61. The result of the current scheme in Boreham is that additional pupils would need to be bussed out of their priority admissions area. That would not be in the interests of either the pupils themselves or the principles of sustainable development. This weighs against the scheme in the overall balance.

Whether the proposals would preserve or enhance the setting of local heritage assets, and in particular Boreham House, a Grade I listed building set within a Grade II Registered Park and Garden

62. The parties agree that the heritage significance of Boreham House lies primarily in the high quality of its architectural composition; the renown of its possible architect; the age of its building fabric; and the aesthetic quality of its formal

- setting. The quality of its interior is also of significance. The significance of the RPG is centred on the aesthetic quality of what remains of the original gardens. This includes an unusual canal feature laid out in the 1720s and the pleasure grounds designed by Richard Woods in the 1770s as well as its historical association with the House.
63. The House lies about 300m from the appeal site and about twice that distance from the edge of the proposed built development. There are fields, hedges, pylons and overhead wires in the space between the heritage assets and the proposed development. These, together with the distance, the change in level and the boundary planting at Boreham House, combine to result in few clear long distance views between the House and the appeal site. Nonetheless, the parties agree that the proposed development would be located in the setting of the heritage assets.
64. Policy DC18 of the Core Strategy was not cited in the reasons for refusal. Nonetheless, when read in conjunction with supporting paragraph 3.37, it is clearly relevant. It says that planning permission will be refused where development proposals fail to preserve or enhance the setting of a listed building. Policy DC20 of the Core Strategy says that planning permission will be refused where development would have an adverse effect on the special character or the setting of RPGs. These policies date from 2008 and so pre-date the Framework. They are not fully consistent with the Framework as no balancing exercise is called for and so they carry reduced weight.
65. The parties agree that the development would result in less than substantial harm to the setting of both these identified heritage assets. I agree with that conclusion. In accordance with paragraph 134 of the Framework any harm has to be weighed against the public benefits of the proposal.
66. In terms of harm Historic England (HE) (writing initially under their former name, English Heritage) object to both the original scheme for 200 dwellings and the revised, reduced proposals for up to 163 dwellings. HE concur that the harm is less than substantial. The objection says that the proposed development would further erode the setting of both the House and the RPG.
67. The character of these two heritage assets is, in part, derived from their rural location and their setting in this wider landscape. It is undeniable that this setting has been compromised by recent developments to the north of the B1137 and by infrastructure associated with the A12. The junction between the A12 and the B1137 lies a short distance to the west, beyond this junction lie the outskirts of Chelmsford. The proximity of this junction, the development around it and its urban characteristics have all reduced the scale of the rural setting for the House and the RPG. Further harm, albeit rather more limited in scale, has been caused to their setting by the pylons and overhead wires to the east. It is clear that the existing harm to their setting does not mean that further harm is justified but it does reduce the contribution that the appeal site can make to their setting.
68. The most important of the views of Boreham House is from Main Road from where the front elevation can be seen with the canal feature in the foreground. This view has been changed as it is no longer framed by mature elm trees; these were lost to disease in the 1960s. Nonetheless, it remains a valuable view. It would not be affected by the proposed development. Indeed, there are few other views of the House due to the boundary planting and its set back

from the road. Even from public footpaths the views are limited by the planting; from Danbury Hill to the south and from the appeal site to the east views are long distance with limited views of the House itself. The RPG, surrounded as it is by mature planting, is quite inward looking and the relationship between it and the House is not really discernible from outside the boundary. This relationship would not be affected by these proposals.

69. The assets, however, are set within a designed, rural setting. They were designed to relate to their surroundings and the current proposals would further encroach into their setting and would increase the cumulative change to their designed setting. This change would further harm their setting. The elevated location of the new housing and the likely scale and height of the buildings would inevitably make them conspicuous in the landscape. While additional planting would, in time, be likely to reduce this impact the new housing would make it more difficult to read the history of the House and its RPG within their designed setting. The character and, more importantly, the appearance of this part of the valley would undergo further change with the built form encroaching closer to these assets. This would result in some harm to the setting of this Grade I listed building and its Grade II RPG.
70. This harm to the setting of designated heritage assets would be contrary to the development plan and in particular to Policies DC18 and 20 of the CS. These policies, however, carry limited weight due to their non-conformity with the Framework. In accordance with paragraph 134 of the Framework it is necessary to weigh this harm against the public benefits of the proposals.

The planning balance

71. The Framework sets out a presumption in favour of sustainable development. It is therefore necessary to first consider whether the proposals comprise sustainable development as defined in that document. Paragraphs 18-219 of the Framework, taken as a whole, constitute the Government's view as to what sustainable development means in practice for the planning system. Paragraph 7 identifies the three dimensions to sustainable development, referring to the economic, social and environmental roles. These are considered in turn.
72. Concerning the economic role, the proposals would contribute towards achieving the Government objective of boosting significantly the supply of housing. They would provide up to 163 dwellings, of which 35% would be affordable housing. This is a significant benefit notwithstanding my conclusions on the housing land supply. Other benefits of the proposals include the benefits arising from the s106 Agreement. In addition, the proposals would bring economic benefits in the form of additional trade to shops and other businesses in Boreham and the surrounding area. There would be further economic benefits including jobs in the construction industry. The lack of infrastructure, and in particular the lack of sufficient primary school places, however, weighs against the development as this would be likely to result in the need to bus pupils to schools elsewhere.
73. Concerning the social role the proposed housing, including the associated affordable housing, is in line with Government objectives of supplying housing to meet the needs of present and future generations. The development would be well located to access local services including shops and other businesses as well as some local community facilities, although, as stated above, the Primary School is already at capacity. It would also be well located for access to local

bus services. The provision of open space would be of particular benefit to the occupiers of some of the new houses as they would overlook this land. The other benefits of the open space are limited as it would comprise meadowland. While there would be public access, there is a wide network of public footpaths in the surrounding countryside and the benefits of public access to this land appear to be limited. In this regard I have noted that the Parish Council and local residents do not support this part of the proposals. The public open space would not accord with the Guidelines in the BVDS.

74. In terms of its environmental role the proposed development would result in some harm to the visual amenity of the area and would be harmful to the setting of a Grade I listed building and its Grade II listed RPG. That harm is less than substantial and so needs to be balanced against the public benefits of the proposals. The development would fail to protect or enhance the natural, built or historic environment.
75. In considering whether the proposals constitute a sustainable form of development it is necessary to weigh the environmental harm with the economic and social benefits. The economic and social benefits arising from the provision of additional housing need to be seen in the light of my conclusions concerning the Council's ability to demonstrate a 5-year housing land supply. Overall, there is no doubt that the totality of the harm is significant and outweighs the identified benefits and so, in accordance with advice in the Framework, the proposals do not constitute sustainable development. The public benefits of the proposals are not so substantial as to outweigh the less than substantial harm to the setting to the heritage assets.
76. The identification of Boreham in the IOCD as a possible location for a substantial amount of additional housing gives an indication of a possible way forward for the Council. However, the weight that can be attributed to this is limited by its early stage in the plan process. It is further limited by Boreham only being identified as a possible location for housing in one of the three Options, unlike Great Leighs for example, which is identified for expansion in all three Options. In respect of the appeal site the weight is reduced still further by the identification in the IOCD of an area to the east of Boreham for housing while this appeal site lies to the west of the village. The indicative plan shows a "potential green buffer" between Boreham and Chelmsford which adds some limited weight against the proposals. The IOCD identifies that such an expansion would require a new primary school. This reduces the likelihood of the current school being extended within its existing site in advance of plan-led decisions as to where development in Chelmsford should be concentrated.
77. The IOCD identifies that since 2001 brownfield sites have provided the majority of development in Chelmsford and that there are now only a limited number of such sites that are not earmarked for development. Consequently there will be more development required to be built on greenfield sites in the future. The appeal site is a greenfield site but, due to the need to develop such sites, this does not in itself weigh against the proposals.
78. The Framework also reiterates the primacy of the development plan. These proposals would be contrary to the CS and the FRCS as the site lies outside the defined settlement boundary of Boreham and would be in conflict with cited policies CP5, DC2, DC18 and DC20, albeit that the latter two policies carry limited weight. There is further conflict with guidance in the BVDS.

Overall conclusions

79. On balance, therefore, the proposals would provide benefits including boosting the supply of housing and the provision of affordable housing. However, the Council has an identified 5-year housing land supply and the proposals do not constitute sustainable development as defined in the Framework. The benefits of the proposals are outweighed by the harm and the proposals are in conflict with the development plan. The appeal is dismissed.

Clive Hughes

Inspector

APPEARANCES

FOR THE APPELLANT:

| | |
|-----------------------------------|--|
| Paul Brown QC | Instructed by Clyde & Co LLP |
| He called | |
| Paul Drew BA(Hons) Dip Arch DipUD | Design Director, Icen Projects Ltd |
| Brita von Schoenaich DipLA MLI | Joint Principal, Schoenaich Landscape Architects Ltd |
| Laurie Handcock MA MSc | Senior Associate Director, CgMs Ltd |
| John Powell LL.B(Hons) | Operations Director, EPDS Consultants Ltd |
| Ian Anderson BA(Hons) DipTP MRTPI | Executive Director, Icen Projects Ltd |

FOR THE LOCAL PLANNING AUTHORITY:

| | |
|----------------------------------|--|
| Guy Williams | Of Counsel; instructed by Nicola Doole, Solicitor to Chelmsford City Council |
| He called | |
| Richard Pestell MPhil MRTPI | Senior Associate, Peter Brett Associates |
| Jeremy Potter MA MRTPI | Senior Planning Officer, Chelmsford CC |
| Michael Hurst BSc MSc MRICS IHBC | Senior Conservation Officer, Chelmsford CC |
| Blaise Gammie BA(Hons) | Infrastructure Planning Manager, Essex CC |
| Julie Broere MTP MRTPI | Senior Planning Officer, Chelmsford CC |

INTERESTED PERSONS:

| | |
|---------------------|---|
| Cllr John Galley | City Councillor for Boreham and the Leigs Ward; Parish Councillor for Boreham; local resident |
| Charles Martin | Local resident |
| Catherine Etheridge | Hatfield Peverel Parish Council |
| Lynne Button | On behalf of Mark Button, local resident |
| Jeffrey Bowman | Local resident |
| Richard Beauchamp | Vice Chair, Essex CPRE |
| Alan Swash | Chairman, Boreham Conservation Society; local resident |
| David Wheatley | Local resident |

DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 Council's notification letter and list of persons notified
- 2 List of contested sites showing New Hall Properties September update
- 3 Maps showing locations of contested sites
- 4 Delegated report – 15/01079/OUT – Land South East of The Lion Inn, Main Road, Boreham, September 2015
- 5 Opening submissions on behalf of the Appellant
- 6 Opening submissions of the Council
- 7 Statement of Cllr John Galley
- 8 Statement of Catherine Etheridge
- 9 Statement of Jeffrey Bowman
- 10 Corrected table for Appendix 7 of Jeremy Potter's proof of evidence
- 11 Plan showing Michael Hurst's photograph viewpoints
- 12 Agenda Item 7: Development Policy Committee (2 September 2015) – Strategic Land Availability Assessment
- 13 Committee Report 14/01890/FUL – Land adjacent The Cock Inn, Main Road, Boreham
- 14 Tables for two Primary School class scenarios for 280 pupil roll
- 15 Letter from Tricia Moxey, CPRE Essex, to City Council (5 August 2015)
- 16 Letter dated 6 May 2015 from the Infrastructure Planning Officer, Essex County Council to Chelmsford CC
- 17 Revised Design and Access Statement (June 2015)
- 18 Statement of Alan Swash
- 19 A3 version of Brita von Schoenaich's Appendix 4
- 20 Draft conditions
- 21 Housing land supply Update 9 October 2015
- 22 S106 Agreement (unsigned)
- 23 Committee Report (21 November 2006): The Red Lion Public House, Main Road Boreham
- 24 Housing land supply update 9 October 2015 – CCC Site 4
- 25 Design and Access Statement update 6 October 2015
- 26 Press release - Prime Minister: Councils must deliver local plans for new homes by 2017 (12 October 2015)
- 27 CIL Regulations 2010 (as amended): Compliance Note
- 28 S106 Agreement dated 14 October 2015
- 29 Final submissions of the Council
- 30 Closing submissions on behalf of the appellant with attachments

DOCUMENTS SUBMITTED AFTER THE INQUIRY

- 31 Officers' Report to Planning Committee: 14/01971/OUT
- 32 Chelmsford Local Plan: Issues and Options Consultation Document

PLANS

- A Drawing No 001 Rev D – Application area plan
- B Drawing No 002 Rev C – Constraints plan
- C Drawing No 005 Rev H – Parameter plan
- D Unnumbered plan dated 22.06.2015 – Illustrative masterplan

APPENDIX 2.2

LAND OFF MALDON ROAD APPEAL DECISION

Appeal Decision

Hearing held on 18 August 2015

Site visit made on 19 August 2015

by Peter Rose BA MRTPI DMS MCMi

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

Decision date: 25 January 2016

Appeal Ref: APP/X1545/W/15/3032632

Land off Maldon Road, Great Totham, Essex CM9 8NH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Gladman Developments Ltd against the decision of Maldon District Council.
 - The application Ref OUT/MAL/14/00936, dated 30 September 2014, was refused by notice dated 13 March 2015.
 - The development proposed is erection of up to 115 dwelling houses with associated infrastructure.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application is for outline planning permission with all matters reserved for subsequent approval, except for access.
3. A completed Unilateral Undertaking dated 18 August 2015 was submitted to the hearing and is considered as part of the proposal.
4. The Maldon District Replacement Local Plan (the RP) was formally adopted in November 2005. Its proposed replacement, the Maldon District Pre-Submission Local Development Plan 2014-2029 Consultation (the LDP), is the subject of an Examination in Public (the EIP) and review by the Secretary of State for Communities and Local Government. I afford weight to relevant policies of both documents as indicated in the main issues below in accordance with the advice of paragraphs 49, 215 and 216 of the National Planning Policy Framework (the Framework).

Main Issues

5. The main issues are:
 - (a) the effect of the proposed scheme upon the special architectural and historic interest of The Bull public house and adjacent stables, both grade II listed buildings, and upon the locally listed Great Totham village hall;
 - (b) the effect of the proposed development upon the character and appearance of the appeal site and surrounding area;
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(c) whether the Council is able to demonstrate a five-year supply of housing land;

(d) the effect of the proposed development upon the supply of housing required to meet local housing needs with particular regard to affordable housing;

(e) whether the proposed scheme would constitute sustainable development.

Reasons

Listed buildings

6. The appeal site is an open field which lies adjacent to The Bull public house, a grade II listed building. The statutory List Entry identifies the public house as dating from the seventeenth century or earlier. It is largely two-storeys in form with a single-storey extension behind, and is of timber-framed construction. It has a hipped, red plain tiled roof with two red brick chimney stacks, and comprises a distinct and impressive building displaying a range of architectural and historic features. The main elevation fronts Maldon Road to the south.
7. Some 10 metres south-west of the public house is a former stable building which is also grade II listed and which the List Entry dates from the nineteenth century. It is of painted brick with a red plain tiled roof and contains two red brick chimney stacks.
8. To the south-east of the appeal site on the opposite side of Maldon Road is Great Totham village hall. This is a locally listed, twentieth century building and comprises a large rendered, barn-like hall with arcading along its side walls.
9. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a duty upon the decision-maker, in considering applications for planning permission, to have special regard to the desirability of preserving statutorily listed buildings or their settings or any features of special architectural or historic interest which they possess. The Council's particular concerns relate to the effect of the development upon the settings of the listed buildings.
10. The Framework makes clear that the setting of a heritage asset is the surroundings in which it is experienced and that the setting of a designated asset can contribute to its significance.
11. Historic England's Historic Environment Good Practice Advice in Planning: 3 The Setting of Heritage Assets advises that the contribution of setting to the significance of a heritage asset is often expressed with reference to views, a purely visual impression of an asset, and including views of the surroundings from or through the asset. It states that views which contribute more to understanding the significance of a heritage asset include those where relationships between the asset and places or natural features are particularly relevant. It further advises that setting is not in itself a heritage asset, nor a heritage designation, and its importance lies in what it contributes to the significance of the heritage asset.
12. Of relevance to the significance of listed buildings, English Heritage's Conservation Principles Policies and Guidance for the Sustainable Management

- of the Historic Environment, 2008, identifies four types of heritage value that an asset may hold: aesthetic, communal, historic and evidential.
13. The significance of the public house as a building of special architectural and historic interest relates, amongst other matters, to its quality as a traditional historic public house and to the evidential, historic and aesthetic value arising.
 14. The historic parts of the stables are enclosed by subsequent extensions to its north and south sides but the public house and stables effectively form part of the same site and, by reason of their proximity and associated historic use, together offer significant group value in terms of their evidential, historic and aesthetic contributions.
 15. Whilst a visually interesting and attractive building, the main significance of the village hall relates to its background communal value. The building was designed by a local arts and crafts architect, A H Mackmurdo, who lived and worked in Great Totham. He had a particular interest in social reform and designed a number of village halls in Maldon under the auspices of the Rural Community Council for Essex. Notwithstanding its undoubted local interest, I do not find the setting of the village hall to be a particular contributory factor to its significance.
 16. The public house includes an extensive car park to the front and side and the building is set back from Maldon Road, and incorporates an attractive, extensive public garden to the north. To the west, the site is adjacent to a public footpath which marks the boundary to an area of extensive twentieth century residential development. To the north and east, however, the setting is significantly defined by the original open character of the appeal site. To the south, the site overlooks the village cricket pitch beyond Maldon Road, and the adjacent village hall.
 17. The undisputed evidence is that, historically, the public house and stables formed a prominent coaching inn/hostelry on a significant road and set within open countryside. That open setting has been lost to the residential development to the west and, to a lesser degree, by built development to the south-west. To the east, however, the open setting of the appeal site is retained in views to and from the appeal site and I consider that remains part of the building's historic significance.
 18. Whilst much of the historic parts of the stables is not readily evident in views around the site, the setting of the stables remains significant in relation to its physical and historic association to the public house.
 19. The proposal would incur the loss of the appeal site to built development and, notwithstanding proposals for landscaping and re-siting of boundary hedges along Maldon Road, significant historic views of the appeal site within open countryside would be lost. I recognise that views from the east towards the public house along Maldon Road are already limited by the hedges to the front of the appeal site and by other vegetation along the shared boundary between the two sites. Even so, the public house is not physically enclosed, and the appeal site provides a significant backdrop to the listed building in views towards the east/north-east and significant views from within the curtilage of the public house. There would be an erosion of the established rural setting of the buildings which would result in some harm to the significance of the statutorily designated heritage assets.

20. Nevertheless, I consider the contribution that the appeal site makes to the overall significance of the adjacent listed buildings to be relatively limited. That said, I find that the development, by reason of its scale and location, would still fail to preserve the settings of the statutorily listed buildings and would thereby diminish the significance of those assets.
21. I note that English Heritage similarly considers that the existing open, rural outlook to the front, rear and east side makes a contribution to the significance of both buildings and that the introduction of up to 115 dwellings would effectively suburbanise their setting, resulting in harm to their significance. English Heritage does not accept that the appeal site makes a 'neutral' contribution to the significance of these assets, and I agree.
22. Hence I find that the proposed development would be harmful to the architectural and historic integrity of the listed buildings but, given its relationship to those buildings as described, that the harm would be less than substantial. The Framework makes a distinction between development causing substantial harm to the significance of a designated heritage asset, such as a listed building, and development that would lead to less than substantial harm. The Framework requires less than substantial harm to be weighed against the possible public benefits of the scheme and this is addressed as part of my overall planning balance to follow.
23. I therefore conclude that the scale and location of the proposed development, by reason of its impact upon the setting of The Bull public house and adjacent stables, would be harmful to the significance of those listed buildings. Accordingly, the proposed development would be contrary to Policy D3 of the LDP which seeks to ensure that all development affecting a heritage asset or its setting should preserve or enhance its special character, setting and townscape/landscape value in a manner appropriate to its significance.
24. Given the formally unadopted status of Policy D3, I attach only limited weight accordingly. The Council has also confirmed that Policy BE16 of the RP is not directly relevant to the development as it relates to development within the curtilage of a listed building and not to its wider implications. Nonetheless, the scheme would still be contrary to the Framework insofar as it recognises that heritage assets such as listed buildings are an irreplaceable resource and requires them to be conserved in a manner appropriate to their significance. The Framework further states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.

Character and appearance

25. The appeal site comprises a large area of open land outside, but adjacent to, the defined development boundaries of Great Totham accompanying Policies H1, S1 and S2 of the adopted RP and Policy S8 of the emerging LDP.
26. The site comprises some 5.85 hectares of land in agricultural use with no buildings or other structures present. It effectively forms part of the open countryside and Policy S2 of the RP (Development outside development boundaries) seeks to protect the countryside for its own sake, particularly with regard to various matters, including landscape, historical, ecological and recreational value.

27. The site lies within an area defined by the Braintree, Brentwood, Chelmsford, Maldon and Uttlesford Landscape Character Assessments (September 2006) as wooded farmland. The key characteristics of this area are indicated to include predominantly agricultural fields enclosed by woodland patches or hedgerows with mature trees, and with colour-washed buildings both in villages and scattered in the landscape.
28. The site also forms part of the Chelmer-Blackwater Ridges Special Landscape Area (SLA) as referred to in Policy CC7 of the RP. I note that paragraph 3.44 of the RP states that Landscape Character Assessments (LCA's) would supersede SLA designations and the Council accepted at the hearing that the site's SLA designation now technically no longer applies.
29. Nevertheless, these references all contribute to a recognition of the significance of the appeal site as a valued landscape for the purposes of the Framework, and this value is also reflected in the various representations made by the local community as part of the appeal.
30. Great Totham is further defined in the Maldon District Characterisation Assessment published July 2012 as an Arcadian settlement displaying a dispersed settlement pattern which it defines to be not consistent with a scale or sense of enclosure approaching an almost urban configuration.
31. The built environment to the west terminates at the public house and at the village hall on opposite sides of Maldon Road, and this is broadly where the local built environment meets open countryside from the north, east and south. The public house, village hall and village cricket pitch to the south all contribute to a distinct sense of place, and all benefit from an essentially open, rural aspect.
32. The appeal site itself makes an important and integral contribution to this local distinctiveness in terms of its scale and openness in-keeping with its predominantly rural surroundings. Whilst set behind a large hedgerow and therefore relatively limited in views from Maldon Road, the relatively unkempt hedgerow is itself significant in its contribution to this distinctive local rural character, set in a forward position adjacent to the highway and without footpaths.
33. The appellant's indicative Development Plan Framework seeks to recognise the existing qualities of the site and its visual attributes and includes significant boundary treatment and open space within the site, and the scheme includes proposals to increase biodiversity. The submitted Landscape and Visual Impact Appraisal (LVIA) also suggests the appeal site is well contained visually, and identifies its main exposure to the south and from footpaths and gaps to the north. The LVIA has also been subject to a formal independent evaluation which agreed that the landscape impacts would be localised to the site itself and to the close vicinity.
34. Notwithstanding the findings of the LVIA, and its subsequent independent endorsement, I find that a distinction is still to be made between the impact of the development within the site itself, and implications relating to the broader character and role of the site in its wider context.
35. The scheme would introduce a substantial built form across a large area of open countryside and development of this open field on the scale proposed

- would undoubtedly change its distinctive character and appearance. That, in turn, would also undermine the existing broader pattern of surrounding open countryside and other open space to which it significantly contributes, and would not be in-keeping with the established dispersed Arcadian townscape of the wider settlement.
36. The scheme would be visible from the south, from the west, and from various viewpoints along the higher ground to the north, including nearby footpaths. Views of unspoilt open countryside across the appeal site from in and around the public house, and notably from its public garden, are particularly attractive features of the local setting and would be lost.
37. The Framework advises that the planning system should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes. More generally, the Framework also places importance upon local distinctiveness. A core principle also seeks for planning to take account of the different roles and character of different areas, which includes recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities within it.
38. I therefore conclude that the loss of open land arising from the scale and location of built development proposed would be seriously harmful to the distinctive character and appearance of the appeal site and of its surrounding area. The development would suburbanise an important part of Great Totham to the detriment of its wider distinctive rural character and appearance.
39. Accordingly, the proposed development would be contrary to Policy CC6 of the RP which seeks to protect the natural beauty and traditional quality of the District's landscape. The scheme would also be contrary to Policy H1 of the RP, which makes a presumption against housing development outside development boundaries, and to Policy BE1 which seeks to ensure that development outside defined development boundaries makes a positive contribution to the landscape and open countryside. Policy S2 also states that outside development boundaries, the countryside will be protected for its own sake. Similar aims are expressed by Policy S8 of the LDP. Policy D1 of the LDP also seeks to ensure that all development should respect and enhance the character and local context.
40. The status of Policies H1, S2, BE1 and S8 for the purposes of this appeal, and the weight to be attached, will also depend upon my assessment of the Council's ability to demonstrate a five-year supply of housing land in accordance with the expectations of the Framework, and this is considered further below.

Housing land supply

41. The Framework requires the local planning authority to prepare a five-year supply of deliverable housing sites in response to its full objectively assessed needs for market and affordable housing (OAN).
42. The housing requirement of the adopted local plan has not been saved, and the target figure of the Regional Spatial Strategy (the RSS) has been revoked.
43. Notwithstanding the Council's previous progress towards adoption of its LDP, no up-to-date housing requirement has yet been tested and agreed as part of

- the formal statutory development plan process and, accordingly, no statutory five-year housing land supply is available.
44. In this local policy vacuum, I have been presented with two contrasting sets of evidence.
 45. From the Council, I have received a revised Planning Policy Advice Note published in July 2015 accompanied by a Five-Year Housing Land Supply Statement 2014/15 (the Statement). The Statement identifies the District's housing requirement to be 310 new homes per annum and considers it can now demonstrate 6.95 years' worth of housing land supply relative to a five-year housing target of 1776 dwellings.
 46. In response, I have received from the appellant three alternative calculations of five year supply. The first is based upon the Council's own housing need figure of 310 dwellings per annum and concludes there to be a supply of 4.98 years. The second is based upon the appellant's own assessment of the District's housing requirement which it assesses to be 444 dwellings per annum and finds a land supply of 3.4 years. A third scenario is based upon a housing requirement of 381 dwellings per annum contained within a previous Strategic Housing Market Assessment dating from 2014 (the SHMA) and concludes a supply of 4.05 years. This third scenario is significant as, in the EIP Inspector's statement of Key Concerns dated 24 June 2014, he expresses an initial view that the full objective housing need assessment is more likely to be that set out in the SHMA rather than a lower figure put forward by the Council, and that it may be higher if further work is required to take account of recessionary under-estimation.
 47. In terms of housing need, it was agreed at the hearing that a significant explanation of the differences in OAN between the Council's Statement and the alternatives put forward by the appellant relate to underlying assumptions of economic growth and of household formation. The appellant's submission is based upon the latest 2012 ONS Sub-National Population Projections and the CLG's household projections. Whilst the Council confirmed its Statement to be based upon 2011 data, the hearing was advised that the 2012 data had been considered and that the Council's assessment of its requirement remained at 310 dwellings per annum. The Council has adopted more conservative figures of household formation and lower rates of economic growth than those applied by the appellant. This also includes differences identified with regards to the wider housing market areas. These differences of approach are also subject to on-going examination as part of the EIP.
 48. In terms of housing land supply, there are also significant differences in the respective submissions.
 49. The Statement includes a significant contribution of eleven LDP Strategic Allocations which the Council estimates would contribute 1729 dwellings over five years of its total deliverable housing land supply of 2468 units, and this appears to be based upon statements made by developers prior to discussions at the EIP. Two sites are each allocated for over a thousand dwellings, and all but one are allocated for over a hundred dwellings.
 50. To be considered developable, Footnote 11 to the Framework requires each site to be available now, to offer a suitable location for development now, to have a

realistic prospect that housing will be delivered on the site within five years and, in particular, that development of the site is viable.

51. Some 391 dwellings are forecast to be delivered from the eleven Strategic Allocation sites by 2016/17 i.e. over the next eighteen months. Of the eleven sites, however, unchallenged evidence was submitted that only two currently have planning permission (accounting for 82 dwellings), four have applications pending, and the remaining five (accounting for 210 dwellings of the identified delivery) have no permission and outstanding delivery issues. Contrary to the tests of Footnote 11, I also note that at least one of the sites (Heybridge Swifts) appears not to be currently available.
52. Evidence was also submitted regarding the significant lead-in times generally required for development of large-scale sites, including in relation to matters of infrastructure and of detailed viability. The appellant's estimates, supported by other empirical evidence, suggest a realistic lead-in time from submission of application to starting on site to be some 23-35 months. The EIP Inspector similarly identified possible concerns in relation to multiple ownerships, and unresolved key infrastructure matters.
53. In light of these doubts, the appellant's assessment of the eleven Strategic Allocations is that the Council's overall five-year supply of 1481 dwellings not yet subject to planning permission should be reduced by some 525. Notwithstanding the Council's commitment to an Infrastructure Delivery Plan, for the reasons indicated, I share the appellant's concerns regarding the general robustness of the Council's stated delivery in relation to these sites.
54. In support of the Council's position, the authority is now pursuing a proactive approach to bring forward for development its LDP allocations and other housing sites, and the Council's progress was noted by the Inspector in the Interim Findings of the EIP. By March 2015, there was a total of 944 dwellings with extant planning permission in the District compared to 497 in March 2014.
55. Nonetheless, I also have other concerns relating to the robustness of the forecast delivery. Whilst the Council states that it has historically met its housing targets, I note that, in the five years from 2010/11 to 2014/15, housing completions in Maldon only once exceeded the RSS target of 120, by 4 dwellings in 2012/13. The Statement proposes in excess of a two and half-fold increase in annual provision relative to need and, notwithstanding its recent concerted efforts to bring forward sites for development, I have insufficient evidence to satisfy me that the proposed step change in provision will materialise. More generally, the Planning Advisory Service's Objectively Assessed Need and Housing Targets Technical advice note dated June 2014 also indicates that the level of completions is a good indicator of the severity of local planning constraints.
56. I also have other doubts regarding a number of detailed aspects of the Council's Statement.
57. The Council employs a lapse rate of some 5% based on local empirical data, whilst other evidence, including Appeal Ref: APP/H1840/A/12/2171339 dated 24 August 2012 and relating to land at Honeybourne, Worcestershire, suggests a figure of 10% to be more appropriate. I consider a higher lapse rate would also be reasonable where the robustness of data may be in question. The

- appellant suggests this would reduce the Council's five-year supply by 94 dwellings.
58. I am unclear why 69 completions from 2014/15 should be included in a future delivery plan given that this figure is already set against the Council's unmet target of 310 dwellings for 2015/16.
59. I am unconvinced, given the necessary lead-in period and the trawl of sites already identified, that windfall allowances should apply to the first two years. The appellant suggests this should reduce the Council's figure by a further 40 dwellings.
60. The Council's Statement does not apply the buffer to the annual housing requirement and backlog but adds it as a separate element. This is contrary to the practice of a number of recent appeal decisions quoted, and means the Council's estimated need is lower than if calculated by the alternative method, although relevant numbers would be relatively small.
61. In the absence of a statutorily defined housing requirement reflecting Maldon's OAN, I place particular weight upon the EIP Inspector's initial view that the full objective housing need assessment is more likely to be that set out in the 2014 SHMA, and that it may be higher. Importantly, the Inspector also describes that SHMA as a sophisticated and robust assessment. Whilst the SHMA figure of 381 is less than that identified by the appellant's assessment, I also find it significant that the appellant's submission is consistent with the Inspector's finding of a possibly higher figure.
62. Applying the minimum 2014 SHMA figure of 381, which is still significantly below that advocated by the appellant, to the appellant's suggested supply figure of 1871, would give a supply of 4.05 years.
63. Applying the 381 figure to the Council's total supply figure of 2468 (unadjusted for lapse rates, windfalls, and completions) would involve an initial requirement of 1905 dwellings (5 x 381 dwellings per annum). Adding a backlog of 312 and a 5% buffer would require 2328 dwellings over five years at 466 dwellings per annum. This would yield a supply of 5.3 years (2468 dwellings/466).
64. Setting aside wider and potentially more far-reaching issues around differences in delivery rates, and other uncertainties relating to the Strategic Allocations, just removing the identified 69 completions, 40 windfalls (two years' allocation), and 47 lapses (5% of 944 dwellings identified with planning permission) from the same Council total would reduce this figure of 2468 to 2312 and would yield a deficient supply of some 4.96 years (2312/466).
65. In summary, I recognise that the Council's Statement may have significant benefit as a list of potential future housing sites, but I cannot be satisfied that the Statement is sufficiently robust as to constitute a five-year supply of sites each meeting the detailed terms of Footnote 11. This is particularly so as the Statement has not been endorsed following the rigours of an EIP, its overall robustness as a strategic planning tool is untested, and significant questions remain.
66. The Planning Practice Guidance (the Guidance) advises that planning permission or allocation in a development plan is not a prerequisite for a site being deliverable in terms of the five-year supply. Local planning authorities will need to provide robust, up-to-date evidence to support the deliverability of

sites, ensuring that their judgements on deliverability are clearly and transparently set out. Full such details are not before me as part of this appeal.

67. I am therefore not satisfied from the information before me that the Council is able to demonstrate a five-year housing land supply as required by paragraph 47 of the Framework, and nor has any other evidence or decisions been presented to me to suggest otherwise. It follows that policies within the development plan relating to the supply of housing are considered out-of-date in accordance with paragraph 49, and the presumption in favour of sustainable development would thereby otherwise be engaged.
68. The implication is that Policies H1, S2 and BE1 of the RP and Policy S8 of the LDP, which act as constraints to future housing supply by presuming against housing development outside development boundaries, are considered out-of-date, and little or no weight is attached as part of my overall planning balance.

Affordable housing

69. The proposal makes provision through the submitted Unilateral Undertaking for 30% of the housing to be affordable, of which 80% is intended to be social rented housing and 20% intermediate. This level of provision accords with the requirements of Policy H9 of the adopted RP.
70. Policy H1 of the LDP requires a higher provision of 40%. The Council indicated at the hearing its pressing needs for affordable housing and the importance of securing a higher figure where the viability of sites is not in question. The Council considers Policy H1 to be a more up-to-date reflection of its needs, and explained that, whilst objections have been raised to the policy as part of the EIP, these relate to site-specific matters and not to the principle of the policy itself.
71. Policy H1 is not a formally adopted policy of the development plan and, accordingly, can only be afforded limited weight. Further, I note the proposal was the subject of pre-application discussions, that a figure of 40% was not raised at that time, and that the application proceeded in accordance with that advice reflecting the requirements of the adopted Policy H9.
72. In these circumstances, I find a requirement of 40% to be unreasonable given the history of the scheme and, more particularly, its compliance with the extant, adopted development plan and the limited, emerging status of Policy H1.
73. I therefore conclude that the proposed development would not be harmful with regard to the supply of housing required to meet local housing needs and, in particular, affordable housing. Accordingly, the proposed development would be consistent with a core principle of the Framework which looks for planning to proactively drive and support sustainable economic development to deliver required homes.

Sustainable development

74. The Framework makes clear that housing applications should be considered in the context of the presumption in favour of sustainable development.

75. The purpose of the planning system is to contribute to the achievement of sustainable development. Sustainable development is defined by the Framework with reference to the policies in paragraphs 18 to 219 taken as a whole. At the heart of the Framework in paragraph 14 is a presumption in favour of sustainable development. The Framework further identifies economic, social and environmental dimensions to sustainable development.
76. I have noted the various appeal decisions referred to by the appellant, and the recognition given to the role of housing in supporting the broader sustainability of villages and of smaller settlements as set out in the government's Guidance.
77. I have had particular regard to the appellant's Socio-Economic Sustainability Statement. The scheme would undoubtedly provide considerable housing benefits, and not just in terms of affordable housing but also in terms of market provision, and such benefits would be consistent with the social dimension of sustainable development. The investment represented by the development would also be consistent with the economic dimension, and there is no dispute between the main parties that the location is, in principle, a sustainable one.
78. In environmental terms, however, I find the impact of the scheme upon the character and appearance of the appeal site and surrounding area, and with particular regard to its location and scale, and its relationship to the settings of the adjacent listed buildings, to be unsustainable for the reasons described.
79. I therefore conclude that, although the development would yield significant benefits in terms of the economic and social dimensions of sustainable development, other aspects of the scheme, particularly with regard to the site's environmental impact, would not be sustainable. In overall terms, given the extent of the environmental harm reflecting the scale and location of the proposed development, I find the scheme would not be sustainable development in accordance with the expectations of Policies S1 and S8 of the LDP. Policy S1 states that the Council will take a positive approach that reflects the presumption in favour of sustainable development, including supporting growth within the environmental limits of the District, conserving and enhancing the historic environment, and in maintaining the rural character of the District without compromising the identity of individual settlements. Policy S8 states the Council will support sustainable developments within the defined settlement boundaries. Whilst I consider Policy S8 to be technically out-of-date for the purposes of the Framework, I still find the underlying aims of these policies to be broadly consistent with national policy.

Unilateral Undertaking

80. The Unilateral Undertaking makes commitments to various matters, including affordable housing, early years and childcare facilities, health, secondary school transport, a travel plan, and in relation to open space.
81. Although the Undertaking provides for considerable benefits, it is still incumbent upon me to assess the proposed contributions with regard to the tests identified in Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 (the Regulations), and with reference to the advice of the Framework, of the Guidance, and in relation to the general expectations of the Planning Inspectorate's Procedural Guide Planning Appeals - England, published July 2015.

82. Regulation 122 makes clear that it is unlawful for a planning obligation to be taken into account in a planning decision unless it meets three tests. These are that the obligation is necessary to make the proposal acceptable in planning terms, that it is directly related to the scheme, and that it is fairly and reasonably related in scale and kind to the development, and these tests are more generally expressed in the Framework and Guidance. Further, Regulation 123 also places limitations upon the number of pooled contributions for particular projects.
83. I note the Council's case for the contributions and the justification provided, including the Council's Developer Contributions Guide Adopted December 2005, and in Essex County Council's Developers' Guide to Infrastructure Contributions 2010 Edition, and in the County's Education Contribution Guidelines, and by Policy H9 of the RP. On this basis, I find the contributions would each satisfy the appropriate tests.
84. The Council raises no issues regarding the form and drafting of the Undertaking which I find is fit-for-purpose, and is content with the contributions as they relate to Regulation 123.
85. I therefore have regard in my decision to the Undertaking, and consider these matters further as part of the overall planning balance.

Other Matters

86. I have considered all other matters raised, including concerns relating to the impact upon the village's limited transport and social services. The Council explained these matters had been carefully considered as part of its decision in consultation with relevant authorities, and that it is satisfied with the terms of the Undertaking in those regards. I have little reason from the evidence before me to conclude otherwise.
87. I note that no objection is raised by the highway authority on the grounds of highway safety, and I have little basis to disagree.
88. The Council also raises no objection with regard to impacts in relation sewage/drainage, wildlife/ecology, and to matters of access for disabled people. Given the outline status of the application with all matters reserved except access, I have little basis to conclude otherwise.
89. I have noted references made to pre-application discussions, and to the appellant's Statement of Community Involvement. I also note the scheme has been assessed as not to involve Environmental Impact Assessment (EIA) development.
90. I have had regard to all other planning decisions and appeals as referred to in the submitted evidence, to all correspondence and other documents submitted in relation to the EIP, and to all other considerations raised at both the hearing and in written evidence.

Overall Planning Balance

91. I consider Policies H1, S2 and BE1 of the RP and Policy S8 of the LDP to be policies for the supply of housing. As I am not satisfied that the authority has a five-year supply of deliverable housing sites, I find those policies to be out-of-date and attach little or no weight accordingly.

92. Policy CC6 of the RP is a formally adopted development plan policy which broadly accords with the Framework. Given the emerging status of the LDP, I only attach limited weight to Policies S1, H1, D1 and D3. Notwithstanding on-going issues around the EIP, it was also agreed at the hearing by the main parties that comments made by the Inspector to date were neither criticising nor endorsing these particular policies but related to other detailed aspects of housing policy, particularly in relation to accommodation for gypsies and travellers.
93. I have concluded that there would be some harm to the significance of the public house and stables as designated heritage assets but that this would be limited, and thereby less than substantial. I consider that the public benefits of the development in terms of its economic and social implications described would be sufficient to outweigh that harm to the significance of the heritage assets. I therefore find that the appeal scheme would not conflict with policies of the Framework relating to the historic environment.
94. Notwithstanding the undoubted economic and social benefits of the development, and the commitments arising from the Unilateral Undertaking, substantial harm would still be incurred by the scheme. In particular, substantial harm would arise to the character and appearance of the appeal site and surrounding area. The scheme would involve the loss of a considerable area of countryside with wider implications for the character and appearance of Great Totham contrary to expectations of both the development plan and of the Framework. The appeal site is integral to the character and appearance of Great Totham and development would harmfully suburbanise an important part of the village and its surrounding countryside.
95. In this regard, I place particular weight upon the aims of the Framework. The Framework advises that the planning system should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes, places importance upon local distinctiveness, and seeks for planning to take account of the different roles and characters of different areas. This includes recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities within it. All these expectations would be harmed by the scheme.
96. Taken together, I therefore find that the adverse impacts of the scheme, by reason of its location and scale, would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, and with regard to the development plan as a whole. Further, there are specific policies in the Framework which indicate that development should be restricted.

Conclusion

97. For the above reasons, the appeal is dismissed.

Peter Rose
INSPECTOR

APPEARANCES

FOR THE APPELLANT:

| | |
|---------------|--------------------------|
| Steve Latham | Gladman Developments Ltd |
| Nicky Parsons | Pegasus Group |
| Lydia Voyias | Pegasus Group |
| Katie Machin | Pegasus Group |
| Jason Clemons | CgMs Ltd |

FOR THE LOCAL PLANNING AUTHORITY:

| | |
|--------------------|--|
| Clive Tokley | Planning consultant |
| Jacqueline Longman | Senior Conservation and Urban Design Officer |
| Tai Tsui | Senior Planning Policy Officer |
| Gary Sung | Planning Policy Officer |

INTERESTED PERSONS:

| | |
|-----------------------|----------------|
| Councillor Jim Gregan | Parish Council |
| Kevin Bennett | Local resident |
| Paul Mutton | Local resident |
| Graham Thorne | Local resident |
| Wendy Stamp | Local resident |
| Christine Adams | Local resident |
| Rupert Marks | Local resident |

DOCUMENTS SUBMITTED AT THE HEARING

1. Signed Statement of Common Ground dated August 2015
2. Completed Unilateral Undertaking dated 18 August 2015
3. Update to appellant's Core Document List dated 11 May 2015
4. Maldon District Council List of Assets of Local Heritage Value (undated)
5. Extract from 'Essex', Nikolaus Pevsner, 1954

6. Council's 'Matter 2: Strategic Housing Growth: Implications of DCLG's 2012-based Household Projections (published 27 February 2015)',
Ref: EWT - M02b - 01 dated 31 March 2015
7. Council's 'Identification of Objectively Assessed Needs for Housing (OAN)'
Ref: EBO98c dated September 2014
8. Appendix G of Council's Five-Year Housing Land Supply Statement July 2015
9. Council comments re. Unilateral Undertaking financial contributions
10. Council's annotated aerial views of the appeal site and surroundings

APPENDIX 2.3

LAND OFF STRATFORD ROAD APPEAL DECISION

Appeal Decision

Inquiry held on 24 - 26 September 2014

Site visit made on 26 September 2014

by Karen L Baker DipTP MA DipMP MRTPI

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

Decision date: 3 November 2014

Appeal Ref: APP/J3720/A/14/2215757

Land off Stratford Road, Hampton Lucy CV35 8BH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Charles Church Developments Limited against the decision of Stratford-on-Avon District Council.
 - The application Ref. 13/01876/FUL, dated 1 August 2013, was refused by notice dated 14 March 2014.
 - The development proposed is the erection of 28 dwellings with associated access, landscaping and infrastructure.
-

Procedural Matters

1. Although the application form describes the proposed development as being for the erection of 28 dwellings, this number was subsequently reduced to 25 during the course of the planning application. Furthermore, the plans submitted with the planning application were amended to reflect this. The plans upon which the application was determined by the Council are contained in Core Document 10 and are listed at the end of this Decision. As such, I have determined the appeal on this basis.
2. The appellants and the Council submitted a Section 106 Agreement at the Inquiry. This document includes obligations relating to a number of matters including the provision of 9 affordable dwellings on the appeal site and the provision, maintenance and transfer of on site open space, along with financial contributions towards the provision of footpath, highway, library, primary education and off site public open space (children's play area and youth and adult active provision) services and facilities and householder travel packs. I have had regard to this Section 106 Agreement during my consideration of this appeal.
3. Prior to the opening of the Inquiry, the Council confirmed that it would be advancing no evidence in support of its 2 reasons for refusal. At the time the Council made its decision on the planning application it could not demonstrate a 5 year supply of deliverable housing land. However, the Council's position changed in this respect prior to the Inquiry. In August 2014 the Council issued Information Sheet No. 029/2014: Five Year Housing Land Supply Calculation Summary – as of March 2014 (Revised)¹ which indicates that the Council considers that it can demonstrate a 5.4 year supply of housing land. This is disputed by the appellants. Nevertheless, both the Council and the appellants

¹ Core Document 43

agree that whatever the housing land supply position, relevant policies of the development plan (in particular, with regard to the supply of land for housing) are out of date and, as such, the presumption in favour of sustainable development set out in paragraph 14 of the National Planning Policy Framework (The Framework) is engaged in this case. For decision taking this means granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in The Framework taken as a whole or specific policies in The Framework indicate development should be restricted. No evidence of harm is advanced by the Council and, as such, it does not rebut the presumption in this case. Hampton Lucy Parish Council and Neighbourhood Planning Group, along with many local residents, do consider that the proposed development would be harmful, and that this harm would significantly and demonstrably outweigh the benefits of the scheme before me.

Decision

4. The appeal is allowed and planning permission is granted for the erection of 25 dwellings with associated access, landscaping and infrastructure on land off Stratford Road, Hampton Lucy CV35 8BH in accordance with the terms of the application, Ref. 13/01876/FUL, dated 1 August 2013, subject to the conditions in Appendix 1.

Application for Costs

5. At the Inquiry an application for costs was made by Charles Church Developments Limited against Stratford-on-Avon District Council. This application is the subject of a separate Decision.

Main Issues

6. The main issues in this appeal are:
 - a) whether or not a 5 year supply of deliverable housing land can be demonstrated;
 - b) the effect of the proposed development on the character and appearance of the settlement of Hampton Lucy;
 - c) whether or not the proposed development would result in the unacceptable loss of best and most versatile agricultural land;
 - d) the effect of the proposed development on community infrastructure; and,
 - e) whether or not the proposed development would represent a sustainable form of development.

Reasons

Housing Land Supply

7. Government guidance in paragraph 47 of The Framework says that local authorities should boost significantly the supply of housing and should identify and update annually a supply of specific deliverable sites sufficient to provide 5 years worth of housing against their housing requirements with an additional buffer of either 5% or 20% depending on previous delivery.

8. Paragraph 49 of The Framework says that housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up to date if the local planning authority cannot demonstrate a 5 year supply of deliverable housing sites.
9. During the Inquiry the Council and the appellants prepared a note on housing land supply², which sets out their respective positions on this matter. The Council's position is that it can demonstrate a 5.4 year supply (applying a 5% buffer), whereas the appellants' position is that only a 1.9 year supply can be demonstrated (with a 20% buffer applied).
10. Although both the Council and the appellants agree that the Sedgefield approach is the most appropriate method for dealing with any backlog, there are disagreements between the parties relating to the housing requirement, the appropriate buffer and the housing supply. I therefore consider each of these matters below.

Housing Requirement

11. There is a dispute between the Council and the appellants as to the appropriate figure to use to determine the housing requirement within Stratford-on-Avon. Government guidance in paragraph 47 of The Framework says that to boost significantly the supply of housing, local planning authorities should use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area. The PPG sets out the standard methodology for assessing housing need. It states, in paragraph 2a-015, that household projections published by the Department for Communities and Local Government should provide the starting point estimate of overall housing need, which may require adjustment to reflect factors affecting local demography and household formation rates which are not captured in past trends. Furthermore, other issues should be taken into account, including employment trends, such as likely changes to job numbers, the growth of the working age population in the housing market area and any cross boundary migration assumptions; and, market signals, such as land prices, house prices, rents, affordability, rate of development and overcrowding.
12. The Council considers that the full objectively assessed need for housing would require 10,800 dwellings over the period 2011 – 2031, which would give an annual requirement of 540 dwellings. This housing target has been derived from the Coventry and Warwickshire Joint Strategic Housing Market Assessment³ (SHMA), published in November 2013, following an independent review⁴ of the evidence prepared in respect of housing need by ERM Consulting, on behalf of the Council. This review took into account the Joint SHMA, as well as an earlier SHMA for the District published in January 2013, along with a further report, the Housing Provision Options Study⁵, produced by GL Hearn in association with JG Consulting in June 2011 and further update produced in December 2012. The figure of 10,800 dwellings included within the Core Strategy Proposed Submission Version⁶, published in June 2014, is

² Document 28

³ Core Document 39g

⁴ Core Documents 40 and 41

⁵ Core Document 39c

⁶ Core Document 42

- the mid-point projection from the Joint SHMA incorporating a higher migration rate of 1,056pa).
13. The appellants, on the other hand, consider that the full objectively assessed need for housing would require 20,342 dwellings over the period 2011 – 2031, which would give an annual requirement of 1,017 dwellings. This housing target has been derived from the Chelmer Model, run by the Pegasus Group, on behalf of the appellants, taking account of economic considerations (b)2. This model relies upon an economic forecast by Cambridge Econometrics. This exercise utilised the 2012 population projections, using the truncated mean of the overall migration figures for the last 11 years, rather than the 5 year migration figures upon which the 2012 population projections were based, due to that being a period of recession.
 14. At the time of the Inquiry, the emerging Core Strategy had yet to be submitted to the Secretary of State for Examination. However, it was submitted shortly after the close of the Inquiry, on 30 September 2014. Representations have been made to this document in respect of the housing requirement put forward by the Council, including the appellants, and this matter will no doubt be the subject of debate at the upcoming Examination. Given this, I have afforded the emerging Core Strategy limited weight, having regard to the advice in paragraph 216 of The Framework.
 15. The approach advocated by the appellants in terms of determining the housing requirement is based upon an economic forecast, the assumptions for which are not known. This assessment⁷, which forms part of the appellants' representation to the emerging Core Strategy, has not as yet been tested. As such, I have afforded it little weight in my consideration of this appeal.
 16. Policy STR.2 of the Stratford-on-Avon District Local Plan Review 1996-2011⁸, adopted in July 2006, says that provision will be made for approximately 1,450 dwellings to be completed in the District during the period 2005 – 2011, in accordance with the requirements of the Regional Spatial Strategy (RSS). The RSS has since been revoked and, as such, does not now form part of the development plan. The appellants and the Council agree that the Local Plan Review does not contain an up to date housing requirement, as the relevant policies only relate to the plan period and thus do not go beyond 2011. I concur with this view. As such, I have afforded Policy STR.2 no weight in my consideration of this appeal.
 17. As the development plan does not contain an up to date housing requirement, the starting point in this appeal is the full objectively assessed need. In this respect, there are 2 figures before me, namely 10,800 dwellings or 20,342 dwellings over the period 2011 – 2031. Although the emerging Core Strategy has yet to be examined, I acknowledge that the approach used by the Council to identify its full objectively assessed housing need was derived from the Joint SHMA and following an independent review of the evidence prepared in respect of housing need for the District. This review concluded that the Council should set a housing requirement of between 10,500 and 10,800 dwellings within the emerging Core Strategy for the period 2011 – 2031. The Joint SHMA states⁹,

⁷ Appendix 17 to Mr Bateman's Proof of Evidence

⁸ The Local Plan policies to which I refer in this Decision have been saved by a Direction, under paragraph 1(3) of Schedule 8 to the Planning and Compulsory Purchase Act 2004, of the Secretary of State for Communities and Local Government, dated 9 July 2009.

⁹ Paragraph 7.74 of Core Document 39g

in relation to Stratford-on-Avon, that overall the evidence points to a need for a minimum of 480 homes per year. However, it goes on to say that, the evidence points towards this resulting in some suppression of household formation and to a need to consider a higher level of provision to support economic growth in south Warwickshire. As such, the Joint SHMA considers that an appropriate level of provision based on the evidence in the report would equate to between 540 – 600 dwellings per annum (dpa). The lower end of this range is based on the PROJ 1A Midpoint Headship Projection, while the higher end assumes a proportionate uplift on this to support stronger growth in the workforce and to improve affordability in the District. The figure included within the emerging Core Strategy would equate to around 540dpa and, although at the lower end of the range suggested as being appropriate by the Joint SHMA, would be consistent with it.

18. The Chelmer Model used by the appellants is based on the most recent ONS 2012-based population projections. However, the migration figures have been amended by the appellants by examining the last 11 years of migration, which cover both a period of growth and a period of recession, rather than the previous 5 years, which were recession based. In addition, account is taken of the economic requirements. Nevertheless, I am not satisfied that sufficient information has been provided by the appellants about the particular relationships and assumptions used within the Chelmer Model to enable proper scrutiny of it. The requirement for 20,342 dwellings over the period 2011 – 2031, which would equate to around 1,017dpa, is considerably higher than Council's assessment and, indeed, any of the projections made in the Joint SHMA¹⁰. As such, in the absence of any substantial evidence in respect of the assumptions made within the Chelmer Model and, given that the Council's approach more closely reflects that advocated within the PPG, I have used the housing requirement put forward by the Council in its emerging Core Strategy as the full objectively assessed need for the purposes of this appeal.

Appropriate Buffer

19. Paragraph 47 of The Framework says that to boost significantly the supply of housing, local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide 5 years worth of housing against their housing requirements with an additional buffer of 5% (moved forward from later in the plan period) to ensure choice and competition in the market for land. Where there has been a record of persistent under delivery of housing, local planning authorities should increase the buffer to 20% (moved forward from later in the plan period) to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land.
20. The appellants and the Council also differ on the appropriate buffer to be used in the housing land supply calculations. The Council considers that a buffer of 5% should be applied, whereas the appellants are of the view that the Council has a record of persistent under delivery of housing and, as such, a buffer of 20% would be more appropriate.
21. The appellants and the Council agree¹¹ that the basis for assessing past housing delivery, in order to determine whether a 5% or 20% buffer should be

¹⁰ Tables 47 and 48 of Core Document 39g

¹¹ Paragraph 10 of Document 28

applied, can be the correct application of the West Midlands RSS Phase 2 Revision Panel Report, September 2009, recommendations and the Local Plan Review.

22. Table 1 of Appendix 1 to the Council's Policy Advice Note: 5 Year Housing Land Supply¹², August 2014, indicates that when completions are assessed against the Stratford-on-Avon District Local Plan Review housing requirement of 475dpa for the years 2001/02 – 2010/11 and the emerging Core Strategy housing requirement of 540dpa for the years 2011/12 – 2013/14, the targets were not met in 10 of the last 13 years. Table 2 shows the delivery against the West Midlands RSS (including the Phase 2 Revision Recommendations) housing requirement. However, during the Inquiry a discrepancy was identified between the targets included within this table for the years 2006/07 - 2013/14 and those referred to in the RSS. The latter sets out the annual levels of delivery required in Warwickshire as 1,300 (2006-11) and 1,915 (2011-16). This would equate to 343dpa in years 2006/07 – 2010/11 ($1,300 \div 100 \times 26.4$) and 506dpa in years 2011/12 – 2015/16 ($1,915 \div 100 \times 26.4$), rather than the figures of 225dpa and 330dpa used by the Council in Table 2. When applied correctly, the RSS targets were not met in 8 of the last 13 years.
23. I note that during the period 2006 – 2011 a housing moratorium was in place in the District, which the Council says had the effect of slowing down the release of sites for housing. Government guidance in the PPG says that it is legitimate to consider a range of issues, such as the effect of imposed housing moratoriums and the delivery rate before and after such moratoriums when assessing whether or not there has been a persistent under delivery. It goes on to say that the assessment of a local delivery record is likely to be more robust if a longer term view is taken, since this is likely to take account of peaks and troughs in the housing market cycle.
24. I acknowledge that, although the moratorium ended in 2011, the residual effects were still evident in the years 2011/12 and 2012/13 due to the time lag between obtaining planning permission and constructing homes on site. Nevertheless, in all but 2 of the years between 2006/07 and 2012/13 the dwellings built were substantially less than the targets in the RSS and less than the Local Plan Review targets in each year. Indeed, in the period 2001/02 – 2005/06 a total of 2,965 dwellings were built ($472 + 436 + 602 + 806 + 649$) against an RSS target of 2,640 (528×5) and a Local Plan Review target of 2,375 (475×5) giving a surplus of 325 and 590 dwellings respectively against the RSS and Local Plan Review targets at that time. In the period 2006/07 – 2012/13, which includes the 2 years following the end of the moratorium 1,791 dwellings were built ($454 + 401 + 172 + 244 + 102 + 133 + 285$) against an RSS target of 2,727 ($343 \times 5 + 506 \times 2$) and a Local Plan Review/emerging Core Strategy target of 3,455 ($475 \times 5 + 540 \times 2$) giving a shortfall of 936 and 1,644 dwellings respectively against the RSS and Local Plan Review/emerging Core Strategy targets at that time. Indeed, when the whole period between 2001/02 and 2012/13 is examined, a shortfall exists of 611 dwellings ($936 - 325$) and 1,054 ($1,644 - 590$) respectively against the RSS and Local Plan Review/emerging Core Strategy targets over that time. Although housing completions are showing signs of increasing since the end of the moratorium, they remained substantially below both the RSS and emerging Core Strategy

¹² Core Document 46

targets in the most recent year 2013/14, with a shortfall of 159 dwellings and 193 dwellings respectively.

25. Although Stratford-on-Avon was subject to a housing moratorium between 2006 – 2011, it is apparent that, even against the lower targets set in the RSS during this period, there has been a record of persistent under delivery, which has continued following the end of the moratorium. I acknowledge that this view differs to that of my colleague in his Report to the Secretary of State on a previous appeal within this District (Ref. APP/J3720/A/11/2163206). However, that Decision was made by the Secretary of State around 2 years ago and there remains an under delivery of housing against the targets within the District. As such, in order to reflect Government guidance in The Framework which seeks to boost significantly the supply of housing, by providing a realistic prospect of achieving the planned supply and ensuring choice and competition in the market for land, I consider that the requirement for a 20% buffer now applies in this District.

Supply

26. In terms of the supply, the Council considers that 3,934 dwellings should be included, compared to the appellants' figure of 3,418 dwellings. While both the Council and appellants agree that dwellings under construction; dwellings with planning permission (outline and full); remaining Local Plan allocations; dwellings with a resolution to grant planning permission; and, stalled sites, are all components that comprise part of the supply, the inclusion of Class C2 uses (elderly persons' residential homes) and windfalls are disputed by the appellants. Furthermore, with the exception of dwellings under construction, there is disagreement between the appellants and the Council as to the number of dwellings to be included in each of these components. I consider each of these matters below.

Class C2 Uses

27. Government guidance in paragraph 3-037 of the PPG says that older people have a wide range of different housing needs, ranging from suitable and appropriately located market housing to residential institutions (Use Class C2). It goes on to say that local planning authorities should count housing provided for older people, including residential institutions in Use Class C2, against their housing requirement. Paragraph 3-037 of the PPG does not set out how local planning authorities should count housing provided for older people against their housing requirement. It does state, however, that the approach taken, which may include site allocations, should be clearly set out in the Local Plan. No such approach is set out in the existing development plan or the emerging Core Strategy.
28. The appellants consider that Class C2 uses should not be included within the supply until the approach to be adopted has been fully examined as part of the Local Plan process. The Council's Policy Advice Note provides an explanation of how the Council's housing land supply is calculated, including its approach to dealing with Class C2 uses. It states in paragraph 11 that accommodation in residential institutions comprises bedrooms as opposed to dwellings and as such the number of bedrooms provided cannot necessarily be used as a proxy for the number of dwellings. It goes on to say that for older people it is necessary to judge the extent to which an increase in care accommodation would lead to the release of existing housing onto the market, thus contributing

to a net increase in supply. The Council considers it appropriate to apply a reduction of one third to reflect the fact that a proportion of care spaces (beds) would not be occupied by single people, but by individuals whose partners still occupy the family home, thus not releasing a home onto the market. However, I am not satisfied that substantial evidence has been provided to support such a reduction or that this approach has been adequately tested. While I concur with both the Council and the appellants that housing provided for older people, including residential institutions in Use Class C2, should be counted against the housing requirement, the approach to be taken should be determined as part of the Local Plan process.

Windfall Allowance

29. The Council has included a windfall allowance of 240 dwellings (large and small sites excluding residential gardens) in the last 3 years of its supply at a rate of 80dpa. The Council's Policy Advice Note refers to an analysis of completions which it states shows that the District has achieved a consistent supply of homes from windfall sites in previous years and that analysis of commitments shows that this trend is continuing at a high level. The Council states that it has mapped the supply of housing from windfall sites and the pattern of distribution which, coupled with the nature and number of historic settlements in the District, suggests that there is capacity, and therefore a likelihood, that windfall rates will continue to be relatively high. The appellants consider, however, that there is no case in Stratford-on-Avon to add to the supply with a significant additional element of windfall, since large site windfall provision is not consistent and reliable due to policy considerations and small site windfall is already allowed for within the overall supply figure, thereby resulting in double counting.
30. It is apparent that the inclusion of an allowance for windfall sites within the supply will be debated at the forthcoming examination into the emerging Core Strategy, when the full extent of local circumstances will be considered. Paragraph 3-024 of the PPG says that a windfall allowance may be justified in the 5 year supply if a local planning authority has compelling evidence as set out in paragraph 48 of The Framework. Paragraph 48 says that any allowance should be realistic having regard to the Strategic Housing Land Availability Assessment (SHLAA), historic windfall delivery and expected future trends, and should not include residential gardens. The Glossary in Annex 2 to The Framework defines windfall sites as sites which have not been specifically identified as available in the Local Plan process and would normally comprise previously developed sites that have unexpectedly become available.
31. From the evidence before me, it is apparent that within Stratford-on-Avon windfall provision has traditionally provided a significant percentage of the housing supply. However, although I acknowledge that the Council has excluded 'super-sized' sites (99+ homes) and replacement dwellings from its calculations of the windfall allowance, and only applies the windfall assumption in the last 3 years of the 5 year period to avoid double counting, I am concerned that there is a heavy reliance on past performance. I note the appellants' assessment of windfall sites already granted permission or under construction on small sites of less than 10 dwellings, which currently exceed the expected completions on windfall sites over the next 5 years. Furthermore, I am not satisfied that the Council has provided compelling evidence to support its inclusion of an additional 240 dwellings on windfall sites within the 5 year

housing land supply. On this basis, I do not consider that a windfall allowance should be included within the housing land supply.

Sites with Planning Permission

32. The main difference between the Council and the appellants in respect of dwellings with outline or full planning permission relates to the deduction applied for non-implementation. The former favours a 5% deduction, while the latter prefers a 10% deduction. In addition, with regards to the sites with outline planning permission, the Council considers that a larger proportion of dwellings would be delivered on a site on land to the west of Shottery. The appellants therefore consider that a total of 1,533 dwellings (684 + 849) should be included within the supply, compared to 1,712 dwellings (721 + 991) included by the Council.
33. The Council considers that a 5% deduction reflects local circumstances and the buoyant housing market within the District. The appellants, on the other hand, refer to other appeal Decisions where Inspectors and the Secretary of State have accepted a lapse rate of 10% to ensure a robust 5 year supply figure. There is no evidence before me relating to past take up rates. As such, I consider that the more cautious approach should be used in this case with a 10% deduction applied in order to ensure that the housing land supply figures are robust and boost significantly the supply of housing in the District. This would also reflect the deduction figure used for the remaining Local Plan allocations, dwellings with a resolution to grant planning permission and stalled sites.
34. With regards to the Shottery site, the Council has added in a further 150 dwellings from this site within its supply calculations, making a total of 450 dwellings to be delivered on this site within this time. I note that there will be 2 private developers and an affordable housing provider on site and that the developer suggests that up to 615 units are achievable within 5 years. The Council suggests that, given the size of the site and the number of housebuilders involved, it would be reasonable to assume that 30 dwellings per quarter would be achievable. The appellants consider that the number of dwellings included within this site should only be increased by a maximum of 50 dwellings. In my opinion, the number of units included within the supply by the Council is overly optimistic and a more cautious approach should be taken with regards to this site. I concur with the appellants' view that an increase of around 50 dwellings would more accurately reflect the likely build out rates on this site, having regard to the presence of 2 developers and an affordable housing provider on site. I therefore consider that the appellants' figures for dwellings with full and outline planning permission should be used for the purposes of the housing land supply calculation.

Local Plan Allocations

35. The Council has included a site at Friday Furlong within the housing land supply calculation as it is a Local Plan allocation which was previously omitted from the housing land supply calculation in error and the Phase 2 element of the allocated site was given a resolution to grant planning permission, subject to a Section 106 Agreement, in April 2014. The Section 106 Agreement is nearing completion and the Council considers that it could be delivered within 5 years. A deduction of 10% has been applied, which gives a total of 55 dwellings included within the housing supply. The appellants disagree that the site

should be included as the site has been problematic over a number of years and was not granted planning permission, or had a resolution to grant, before the end of March 2014.

36. Given that this site is a Local Plan allocation it should be included within the supply figures. The fact that it now has a resolution to grant full planning permission, subject to a Section 106 Agreement, increases the likelihood that it will be developed within the next 5 years and, as such, I concur with the Council's view that an allowance for 55 dwellings should be included within the overall supply.

Dwellings with a Resolution to Grant Planning Permission

37. The Council considers that 457 dwellings should be included within the supply, which have a resolution to grant planning permission, with a 10% deduction applied for non-implementation. The appellants, however, consider that this figure should be 433 dwellings, with a 10% deduction applied. The differences relate to the inclusion of sites at Dudfield Nursery and Long Marston. The Council considers that both sites are achievable within the 5 years, while the appellants do not.
38. I understand that the Long Marston site is part of a larger development which is currently being built out with completions. There is, therefore, no evidence to indicate that this later phase would not follow within the next 5 years. With regards to the Dudfield Nursery site, there is no evidence before me to show that this development on a brownfield site could not be completed within the next 5 years.
39. I am satisfied, therefore, that the Council's figure of 457 dwellings should be used within the supply for the purposes of the housing land supply calculation.

Stalled Sites

40. The appellants consider that 72 dwellings, including a 10% deduction for non-implementation, should be included within the housing supply figures on stalled sites. The Council considers, however, that this figure should be 90 dwellings, including a 10% deduction for non-implementation. The difference relates to planning permission being granted for a greater number of dwellings than previously granted on the Cattle Market site, Alcester Road, Stratford-on-Avon. The Council anticipates that, given the amount of money that has already been invested on this site, it would be built out quickly and that this is the developer's intention. I also note that there is a condition attached to the grant of planning permission on this site (Appeal Ref. APP/J3720/A/13/2205108) which requires that the development begin not later than 18 months from the date of the Decision (07/05/14). From the evidence before me, I am satisfied that the correct figure to use in respect of the stalled sites is that of 90 dwellings put forward by the Council, which would more accurately reflect the current position in respect of the Cattle Market site.

Conclusion in Respect of Housing Land Supply

41. For the purposes of this appeal and in advance of the detailed Examination of full objectively assessed need included within the emerging Core Strategy, I have used the housing requirement put forward by the Council in its emerging Core Strategy of 540dpa (2,700 for the 5 year period) as the full objectively assessed need. On this basis, I concur with the Council's approach which says

that the target number of dwellings that should have been delivered from the start of the plan period in 2011 to the start of the 5 year period in 2014 is 1,620 (540dpa x 3). The number of completions from the start of the plan period to 2014 is stated by the Council as being 847 dwellings (2011/12 + 2012/13 + 2013/14 is 133 + 327 + 387). This gives a shortfall from the first 3 years of the plan period of 773 dwellings (1,620 – 847). The 5 year requirement (2,700 + 773 = 3,473) plus a 20% buffer (695) would equate to a requirement of 4,168 dwellings (834dpa).

42. In terms of supply, I consider that the Council's figure of total supply should be adjusted to reflect the removal of the windfall allowance and the use of the appellants' figures for dwellings with full and outline planning permission (684 and 849 dwellings respectively) which incorporate a 10% deduction for non-implementation and a smaller increase in the number of dwellings expected to come forward on the site on land to the west of Shottery. This would give a total supply of 3,515 dwellings (1,380 + 684 + 849 + 55 + 457 + 90), including Class C2 uses. If Class C2 uses were excluded from the supply, the supply would fall to 3,350 dwellings (3,515 – 165).
43. From the evidence before me, it is apparent that when Class C2 uses are included, a shortfall of 653 dwellings exists (4,168 – 3,515), and that this shortfall increases to 818 dwellings (4,168 – 3,350), when Class C2 uses are excluded from the supply. This equates to a housing land supply of 4.21 years and 4.02 years respectively.
44. I conclude, therefore, that irrespective of whether or not Class C2 uses are included within the housing land supply, a shortfall is still evident. The Council cannot therefore demonstrate a 5 year supply of deliverable housing land. I have afforded this matter substantial weight in my consideration of this appeal.

Character and Appearance

45. The appeal site is located adjacent to the western edge of the village of Hampton Lucy, within open countryside. To the east of the appeal site is residential development, which comprises a collection of cul de sacs known as The Langlands, Hithersand Close, Farther Sand Close and The Close. Further residential development is located to the south, along Stratford Road. To the north and west the land is in agricultural use. To the south of the appeal site, on the other side of Stratford Road, is a playing field and children's play area. The appeal site slopes gently upwards from Stratford Road and is currently overgrown.
46. Hampton Lucy Parish Council and the Neighbourhood Planning Group, along with many local residents, are concerned about the impact of the proposed development on the character and appearance of the area. In particular, they are concerned about the rapid change of scale proposed, which they say would be at odds with the historic and organic growth of the settlement and would not be conducive to maintaining the social well being of the community.
47. Government guidance in paragraph 57 of the Framework says that it is important to plan positively for the achievement of high quality and inclusive design for all development. Paragraph 58 says that decisions should aim to ensure that developments will function well and add to the overall quality of the area; optimise the potential of the site to accommodate development, create and sustain an appropriate mix of uses (including incorporation of green

and other public space as part of developments) and support local services and facilities; respond to local character and history, and reflect the identity of local surroundings and materials; and are visually attractive as a result of good architecture and appropriate landscaping.

48. The appellants submitted a Design and Access Statement¹³ for the proposed development as part of the planning application. This Statement includes an assessment of the site and the surrounding area, along with details of the proposed design from conceptual schemes, through public consultation meetings with the Parish Council and local residents, to the final scheme for submission to the Council for consideration. It indicates how the style of the elevational treatment and appearance of the proposed dwellings, along with the design and materials used, would take direct reference from features and elements found on existing buildings in the settlement of Hampton Lucy. From the evidence before me, I am satisfied that the proposed development would provide a well designed, landscaped layout which would incorporate an appropriate mix of dwellings of a scale and density appropriate to its village setting.
49. Policy CS.16 of the emerging Core Strategy identifies Hampton Lucy as a Category 4 Local Service Village, where approximately 10 – 25 homes would be required. The Council identified, through its SHLAA process, that the appeal site exists, is available and is capable of accommodating development without undue harm to the character and setting of the village. I note that the suggested yield for the appeal site in the SHLAA was 28 units, but that the Panel commented that 28 units would be too many for the character of the village and suggested that 8 units would be more appropriate on a reduced site. Therefore the yield was adjusted to reflect the Panel's comments. I acknowledge Hampton Lucy Parish Council and the Neighbourhood Planning Group's statement at the Inquiry that there are other smaller sites available within and on the edge of the village which could accommodate small numbers of housing. However, no other site was identified in the SHLAA as being capable of meeting the need.
50. The appellants say that the proposed development would increase the settlement size by around 19% and that this would not be dissimilar to other increases in the size of the village which occurred when the neighbouring Langlands development was brought forward in the 1980s, which represented an 18% increase at that time, and when the local authority housing off Stratford Road was developed, which represented a 19% increase at that time. Hampton Lucy Parish Council and Neighbourhood Planning Group dispute the latter of these which they say represented an 8% increase due to the demolition and replacement of 12 existing dwellings.
51. Although the proposed development would represent a significant addition to the village, the scale of the development proposed would accord with that proposed in the emerging Core Strategy and with the previous development at The Langlands. Furthermore, from the evidence before me, the appeal site represents the most appropriate place within Hampton Lucy to accommodate the housing required in the emerging Core Strategy. The proposed development would include a mix of house types which would be appropriate to the village. The appeal site, although on the western edge of the village, is

¹³ Core Document 6d

within walking distance of the centre of Hampton Lucy with good access to the public house, village hall, primary school and church, along with the children's play area on Stratford Road. There is no evidence before me to suggest that the design, nature or amount of development proposed at the appeal site would be detrimental to social cohesion. Indeed, in my opinion, residents of the proposed development would be likely to interact with existing occupiers in a similar way to those living within The Langlands development.

52. I conclude, therefore, that the proposed development would not harm the character and appearance of the settlement of Hampton Lucy.

Agricultural Land

53. The appeal site extends to around 2.02ha. The appellants commissioned an Agricultural Land Classification (ALC)¹⁴ of the appeal site, which indicated that it is ALC Grade 3a. This is disputed by Hampton Lucy Parish Council, who consider that the appeal site is ALC Grade 2. To support this view, the Parish Council refers to the neighbouring agricultural land, which is used for intensive salad and vegetable cropping, and to the published 1:250,000 series Provisional ALC Map, in the absence of recent (post 1988) ALC survey data for the appeal site, which shows the area of interest as lying within an area shown as a mixture of Grade 2 and 3 land¹⁵. I note, however, that the latter map is designed to give an indication of land quality at a strategic level and, consequently, is not suitable for site specific assessments, for which a more detailed field survey may be needed. Such a survey has been undertaken by the appellants and, in the absence of any substantial evidence to the contrary, it is apparent that the appeal site constitutes Grade 3a agricultural land which, nevertheless, represents some of the best and most versatile agricultural land. Hampton Lucy Parish Council and Neighbourhood Planning Group, along with many local residents are concerned about the loss of this best and most versatile agricultural land if the proposed dwellings are constructed.
54. Government guidance in paragraph 112 of The Framework says that local planning authorities should take into account the economic and other benefits of the best and most versatile agricultural land. It goes on to say that where significant development of agricultural land is demonstrated to be necessary, local planning authorities should seek to use areas of poorer quality land in preference to that of a higher quality. The appeal site is currently overgrown and not actively farmed. However, this would not preclude the appeal site from being used for agricultural purposes in the future. Indeed, the intensive use of the neighbouring land to the north for salad and vegetable cropping indicates that the fields to the west and north of Hampton Lucy are currently productive.
55. At the Inquiry the Neighbourhood Planning Group indicated that there are a number of small sites where new housing could be accommodated in the village and within the wider Parish. However, I note the SHLAA Review 2012 which indicates that there may be one broad location for further growth around the settlement on land to the west of the village, to the north of Stratford Road. From the evidence before me, it is apparent that, given the extent of

¹⁴ Agricultural Land Classification, undertaken by Soil Environment Services Limited, August 2014 (Appendix 44 to Mr Fenwick's Proof of Evidence)

¹⁵ Email from Kayleigh Cheese, Planning Advisor, Natural England (Document 13 appended to Dr Dunkerton's Proof of Evidence)

best and most versatile agricultural land around Hampton Lucy, along with the limited number of sites for housing within the confines of the village, an area of agricultural land would have to be developed if the Council's housing targets within the emerging Core Strategy are to be met.

56. I conclude, therefore, that only limited weight can be afforded to the loss of the best and most versatile agricultural land in this case.

Community Infrastructure

57. The Council's first reason for refusal stated that the financial contribution proposed towards education infrastructure provision would not satisfactorily mitigate for the proposed development and notwithstanding the financial contribution towards acute and community healthcare services, the new residents of the proposed development would not have adequate access to GP facilities. However, it confirmed at the Inquiry that it would not be defending this reason for refusal. Nevertheless, Hampton Lucy Parish Council and Neighbourhood Planning Group, along with many local residents expressed concern about the impact of the proposed development on the village primary school and the GP surgery in Wellesbourne.
58. In terms of education, Warwickshire County Council is the Local Education Authority (LEA) for the area. Hampton Lucy benefits from a primary school within the settlement (Hampton Lucy Church of England Primary School), which is a small rural school with a half a form of entry. The LEA confirms that it is full in most year groups and is forecast to be completely full in Key Stage 1 from 2015. Space is very limited and the school has to teach Nursery and Reception classes together in a cramped building separate to the main school. The LEA states that it would not be possible to admit any further children from any developments in the area, with the school in need of a separate Reception classroom to enable it to reorganise and admit further pupils.
59. The LEA calculates that the proposed development would generate a primary school pupil yield of 4 and, given that there is no space for any children from the development at Hampton Lucy Primary School, requires that a financial contribution of £46,748 be made by the appellants for the purpose of providing, extending, improving or otherwise altering facilities or services for primary education at Hampton Lucy Primary School or such other primary schools which are in the catchment area or priority area of the appeal site. This sum is included within the submitted Section 106 Agreement. As such, I am satisfied that the proposed development would not lead to an undue burden being placed on the existing village primary school.
60. With regards to healthcare, following the determination of the planning application, the South Warwickshire NHS Foundation Trust informed the Council that it has decided to no longer pursue Section 106 contributions for developments of less than 50 dwellings. As such, it confirmed that it no longer requested a contribution in relation to the proposed development. The local GP surgery is Hastings House Medical Practice in Wellesbourne. In response to the planning application the Practice stated that its current premises are already running at full capacity and do not comply with the latest NHS design guidelines which is affecting efficient service delivery leading to the Practice to consider various options for the future. It confirmed that only with the delivery of a new primary care facility could future healthcare services for the projected increase in population be met. However, funding for primary healthcare

provision is within the remit of NHS England and the Practice is currently discussing this option with NHS England. Finally, the Practice confirmed that it would be pleased to accept patients from any growth in population with NHS England support.

61. Although the Practice in Wellesbourne is running at full capacity, it has made it clear that it is looking at the development of a new primary care facility to meet the increasing demand for its services and to comply with the latest NHS design guidelines. NHS England has a responsibility to provide services and facilities where they are needed. It is apparent that the South Warwickshire NHS Foundation Trust has set a threshold for new developments of 50 dwellings above which developers would be expected to make a contribution towards healthcare services if appropriate. The proposed development falls below this threshold and as such the South Warwickshire NHS Foundation Trust is not seeking a financial contribution in this case. At the Inquiry it was stated that some residents of the village use GP surgeries in Stratford-on-Avon. It is apparent, therefore, that there are alternative surgeries in the local area. Although the Practice in Wellesbourne is running at full capacity, it is clearly seeking to expand and, in the absence of any objection from the South Warwickshire NHS Foundation Trust, I am satisfied that the healthcare requirements of future occupiers of the proposed development could be satisfactorily accommodated in the local area.
62. I conclude, therefore, that the proposed development would not harm the community infrastructure.

Sustainable Development

63. Paragraph 7 of The Framework sets out the 3 dimensions to sustainable development: economic, social and environmental and paragraph 8 says that the roles performed by the planning system in this regard should not be undertaken in isolation, because they are mutually dependent. It goes on to say that, to achieve sustainable development, economic, social and environmental gains should be sought jointly and simultaneously through the planning system, which should play an active role in guiding development to sustainable solutions. At the heart of The Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan making and decision taking. Paragraph 14 of The Framework says that for decision taking this means approving development proposals that accord with the development plan without delay; and, where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in The Framework taken as a whole, or specific policies in The Framework indicate development should be restricted.
64. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The Framework does not change the statutory status of the development plan as the starting point for decision making. Proposed development that accords with an up-to-date Local Plan should be approved, and proposed development that conflicts should be refused unless other material considerations indicate otherwise.

65. There is no dispute between the Council and the appellants that the proposed development would be sustainable. However, Hampton Lucy Parish Council and Neighbourhood Planning Group, along with many local residents dispute this. In particular, they refer to the limited public transport services and village facilities.
66. In terms of the economic role, the proposed development would provide employment in the construction of the scheme, which would offer opportunities in the short term to local people. Furthermore, the future occupiers of the proposed development would offer longer term support to the local economy, including the public house, along with wider economic benefits to the District, given the site's proximity to 3 principal centres of employment locally, including Stratford-on-Avon town centre, the Wellesbourne Industrial Estates and Jaguar Land Rover at Gaydon, as well as through Council Tax revenues and expenditure in the local area. In addition, a New Homes Bonus of around £245,974 would be payable to the District and County Councils.
67. With regards to the social role, the proposed development would provide 25 dwellings, of which 9 would be affordable. I acknowledge the local housing survey carried out by the Neighbourhood Planning Group, which identifies the type of properties required in the village. However, it is apparent that the Council is unable to demonstrate a 5 year supply of deliverable housing land and there is an identified high level of need for affordable housing in the District as a whole. I am satisfied, therefore, that the proposed development would go some way to meeting the needs for such housing in this area. Furthermore, the proposed development would increase the local population which would help to sustain local services in the village, including the public house, village hall, church and primary school, and increase participation in community and social activities.
68. Finally, in terms of the environmental role, the proposal would involve the loss of agricultural land. However, I have afforded the loss of this agricultural land limited weight in my determination of this appeal. Furthermore, I consider that the design quality of the proposed development, along with the inclusion of substantial elements of open space and landscaping, would represent an environmental gain, which, in addition to the social and economic gains detailed above, would represent a sustainable form of development.
69. I acknowledge the concerns of local residents about the inclusion of Hampton Lucy as a Category 4 Local Service Village in the emerging Core Strategy, along with the limited public transport services and village facilities. However, as well as assessing each settlement for the presence and comparative quality of 3 key services – general store, primary school and public transport – the size of the settlement has been applied by the Council as the overriding factor by which a settlement has to have at least 100 dwellings to be identified as a Local Service Village regardless of the presence of key services. The emerging Core Strategy is promoting a dispersed approach to development which includes provision for some new housing in villages across the District, including an allowance for small-scale development in the Local Service Villages to help meet the needs of these communities, to provide some scope for new households to move into them and to help support the services they provide. From the evidence before me, it is apparent that the proposed development would satisfy the aims of the emerging Core Strategy in this respect.

70. I conclude, therefore, that the proposed development would represent a sustainable form of development, having regard to local and national policy.

Other Matters

71. Hampton Lucy Parish Council and Neighbourhood Planning Group, along with many local residents and other interested parties have raised a number of other matters. One of their main concerns relates to flooding and drainage. During the course of the Inquiry a video was played which showed the impact of pluvial flooding on the appeal site in the form of water run off from the adjacent farmland to the north.
72. The appellants submitted a Flood Risk Assessment¹⁶ (FRA) as part of the planning application, which was later updated¹⁷. No objections were received from Severn Trent Water, the Environment Agency or Warwickshire County Council's drainage team in respect of flood risk and drainage matters. Following concerns raised by local residents in respect of pluvial flooding the appellants propose to construct an infiltration trench as part of the proposed development, which would run around 288m along the northern boundary and wrap around and continue along parts of the western and eastern boundaries of the appeal site. The infiltration trench would be stone filled and around 1m wide, with a depth of around 2m. Its purpose would be to intercept overland flows and protect properties from the risk of pluvial flooding. Its proposed design, including the back up system, is shown on Drawing No. AAC5003 Option 2 Rev. C¹⁸. I acknowledge the concerns of third parties with regards to flooding on the appeal site. However, I am satisfied, from the evidence before me, including that provided orally and in writing at the Inquiry by Mr Turner on behalf of the appellants, that the proposed infiltration trench would be sufficient to intercept overland flows from the fields to the north and, subject to its continued maintenance to ensure that the trench is kept silt free, it would be capable of delivering betterment. This matter could be controlled by a planning condition.
73. With regards to drainage, the appellants included a Drainage Strategy within the FRA. Following a Preliminary Site Investigation Report and comments from the Environment Agency, additional soakaway testing was completed in October 2013. The results of this demonstrated that ground conditions would be suitable to utilise infiltration based drainage for the whole appeal site and Indicative Micro Drainage calculations have been completed to demonstrate that soakaways would be suitable. The appellants submitted the results to Warwickshire County Council and it confirmed that the surface water drainage strategy by the use of soakaways would be acceptable. From the evidence before me, I am satisfied that the proposed on site drainage system would be suitable to accommodate flows up to and including the 1 in 100 year + 30% rainfall event. This matter could also be controlled by a planning condition.
74. The matter of prematurity has been raised by third parties. However, the emerging Core Strategy is yet to be examined and I have afforded it limited weight during my consideration of the appeal, having regard to the guidance in paragraph 216 of The Framework. Furthermore, the Neighbourhood Plan has yet to be prepared, with work not set to begin until Spring 2015. Hampton

¹⁶ Core Document 6h

¹⁷ Core Document 12

¹⁸ Core Document 18

Lucy is identified as a Local Service Village with the potential to accommodate between 10 and 25 dwellings in the emerging Core Strategy and the appeal site is identified in the SHLAA as being the best location for housing development in Hampton Lucy. As such the proposed development would be consistent with the emerging Core Strategy in any event.

Conclusions

75. From the evidence before me I have concluded that the Council cannot demonstrate a 5 year supply of deliverable housing land. Paragraph 49 of The Framework says that relevant policies for the supply of housing should not be considered up to date if the local planning authority cannot demonstrate a 5 year supply of deliverable housing sites. Furthermore, it was agreed at the Inquiry that the policies for the supply of housing are out of date.
76. It is apparent that the proposal would represent a sustainable form of development. Paragraph 14 of the Framework states that at its heart is a presumption in favour of sustainable development which should be seen as a golden thread running through both plan making and decision taking. For decision taking this means approving development proposals that accord with the development plan without delay and where the development plan is absent, silent or relevant policies are out of date, granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in The Framework as a whole; or specific policies in The Framework indicate development should be restricted.
77. Although the proposed development would lead to the loss of some best and most versatile agricultural land, I have afforded its loss limited weight in this case.
78. In my opinion, the lack of a 5 year supply of deliverable housing land is a material consideration of substantial weight in this appeal. I have considered all the other matters raised by Hampton Lucy Parish Council and Neighbourhood Planning Group and third parties including the volume of objections from local residents; the proposed housing mix; highway and pedestrian safety; the scale of the development; the greenfield nature of the appeal site; opportunities for residential development on brownfield sites within a few miles of Hampton Lucy; and, the loss of existing hedgerows. However, given that the proposal would not harm the character and appearance of the settlement of Hampton Lucy or community facilities and would represent a sustainable form of development, along with the need to boost significantly the supply of housing in the District, I consider that this would outweigh the loss of this agricultural land. As such, I conclude that the appeal should be allowed.

Conditions

79. The Council and the appellants submitted an agreed list of draft conditions¹⁹ at the Inquiry. In addition to the standard time limit condition, the agreed list includes 22 conditions. Hampton Lucy Parish Council and Neighbourhood Planning Group submitted a list of 9 matters²⁰ at the Inquiry, which they

¹⁹ Document 26

²⁰ Document 29

consider should be included within any conditions. I have had regard to the advice in the PPG²¹ when considering these conditions.

80. A condition which sets out the approved plans would be reasonable for the avoidance of doubt and in the interests of proper planning. Conditions which require the submission and approval of sample materials to be used in the construction of the external surfaces of the dwellings, soft and hard landscaping details and a scheme for the protection of trees, along with their implementation, would be necessary to safeguard the character and appearance of the area. Hampton Lucy Parish Council and Neighbourhood Planning Group is concerned about the trees and hedges on the other side of Stratford Road. The requirement for the submission and approval of a scheme for the protection of trees during construction would safeguard any trees to be retained within the site as well as those trees outside the site whose Root Protection Areas (RPAs) (as defined in British Standard BS 5837 (2012)) fall within the site.
81. A requirement that the development be carried out in accordance with the approved Flood Risk Assessment, along with the submission and approval of a Drainage Maintenance and Management Strategy, and the submission and approval of a scheme for the disposal of sewerage, would safeguard the development from the risk of flooding and protect the environment. The condition relating to the Drainage Maintenance and Management Strategy should include a specific reference to the infiltration trench and soakaways, for the avoidance of doubt. A condition which requires the development to be carried out in accordance with the recommendations of the Phase 1 Habitat Survey would be necessary to safeguard protected species.
82. Details of all external light fittings and external light columns including their predicted luminance levels would be necessary to safeguard the living conditions of local residents and to prevent light pollution. Hampton Lucy Parish Council and Neighbourhood Planning Group have requested that any lighting scheme should not produce light pollution. The imposition of this condition would enable the assessment of luminance levels from all external light fittings and external lighting columns. A condition which requires the submission and approval of a scheme for the provision of energy from on site renewable sources and/or a 'fabric first' design sufficient to replace a minimum of 10% of the predicted carbon dioxide emissions from the total energy requirements of the development would be reasonable to safeguard the environment.
83. A condition requiring the submission and approval of detailed plans and sections showing existing and proposed site levels, along with proposed finished floor levels would be necessary to safeguard the character and appearance of the area. The submission and approval of a scheme for the provision of water supply and fire hydrants necessary for fire fighting purposes at the site would be reasonable in the interests of the safety of future occupiers. A requirement that a Management and Maintenance Plan for the site is submitted and approved would be necessary to safeguard the character and appearance of the area, in the interests of highway safety and to ensure satisfactory living conditions for future occupiers. A condition requiring that highway works and improvements shown on Drawing No. JNY7970-01 be

²¹ Circular 11/95: The Use of Conditions in Planning Permissions has been largely superseded by the Planning Practice Guidance, with the exception of Appendix A (Model Conditions)

- completed would be necessary in the interests of highway and pedestrian safety.
84. A condition requiring the laying out and substantial construction of the roads serving the development, prior to its occupation, would be reasonable in the interests of highway safety. The submission and approval of a Construction Method and Transport Management Statement would be necessary to safeguard the living conditions of local residents and in the interests of highway safety. Hampton Lucy Parish Council and Neighbourhood Planning Group have suggested that traffic routing, working hours and flags advertising the development need to be controlled. A requirement for the submission and approval of a scheme for the routing of construction vehicles and the hours of construction work, along with the erection and maintenance of security hoarding, including decorative displays and facilities for public viewing, are included in this condition. Conditions requiring that all new dwellings shall achieve a minimum rating of Level 3 Code for Sustainable Homes and that a minimum of 50% of all new dwellings shall be designed and built to meet the Joseph Rowntree Foundation's 'Lifetime Homes' standards would be reasonable in the interests of providing a sustainable development.
85. The provision of a water butt, for each dwelling that has a downpipe, and 3 bins for the purposes of refuse, recycling and green waste, for each dwelling, would be reasonable to safeguard the environment and in the interests of sustainability. A condition requiring that details of any temporary buildings, compounds, structures or enclosures required in connection with the development should be submitted and approved, would be reasonable to safeguard the character and appearance of the area. A condition requiring that a site investigation of the nature and extent of contamination affecting the site, along with any necessary remediation, would be reasonable to safeguard the health of future occupiers.
86. Hampton Lucy Parish Council and Neighbourhood Planning Group have raised a number of other matters to be considered. In terms of pedestrian access to the village, I note that the appellants have tried, unsuccessfully, to negotiate with an adjacent landowner to provide a more direct pedestrian access to the centre of the village from the proposed development. To impose a condition requiring a footpath link, which would be reliant on works on land not controlled by the appellants and which has no real prospect of being provided would be unreasonable. As such, it would not pass one of the 6 tests in paragraph 206 of The Framework.
87. With regard to the reinstatement and repair of Stratford Road up to the main road, due to damage from heavy vehicles, and money for effective traffic calming measures along Stratford Road, neither of these improvements has been sought by the Highway Authority. Indeed, in my opinion, neither is needed to make the development acceptable in planning terms and, as such, would fail the test of necessity. Finally, Hampton Lucy Parish Council and Neighbourhood Planning Group also request that the appellants liaise with Valefresco over timings and details of vehicle movements and possible interference with the farm work in the adjacent fields. Given the nature of these matters, I am not satisfied that such conditions would be necessary to make the development acceptable in planning terms, sufficiently precise or reasonable in all other respects. As such, they would not pass 3 of the 6 tests.

Section 106 Agreement

88. The appellants submitted a Deed of Agreement²² under Section 106 of the Town and Country Planning Act 1990, which includes a number of obligations to come into effect if planning permission is granted. I have considered these in the light of the statutory tests contained in Regulation 122 of The Community Infrastructure Levy (CIL) Regulations 2010. I have also had regard to the Council's Statement addressing the application of the statutory requirements in Regulation 122 of the CIL Regulations to the planning obligations, submitted prior to the Inquiry.
89. Policy IMP.4 of the Local Plan Review says that planning permission will only be granted where proper arrangements have been put in place to secure the provision of the full range of physical and social infrastructure necessary to serve and support the development proposed. It goes on to say that planning obligations will be sought through negotiation with developers where these would secure provision, either on or off site, of the necessary physical and/or social infrastructure. The obligations within the Section 106 Agreement relate to the following matters:
90. *Affordable Housing*: Policy COM.13 of the Local Plan Review says that in order to maximise the supply of affordable housing as a proportion of overall housing supply all proposals involving residential development on allocated and windfall sites will be expected to provide a proportion of affordable housing, where in the case of a settlement with a population fewer than 3,000, such as Hampton Lucy, the development would comprise either 10 or more dwellings and/or involve a site of 0.4ha or more of land. Paragraph 6.12.2 of the reasoned justification to this policy indicates that, based on the 1999 Housing Needs Survey, which was updated in February 2002, the Council has approved a target of 35% of housing on qualifying sites that should be provided as affordable housing. This is supported by the Council's Meeting Housing Needs Supplementary Planning Document (SPD), adopted in July 2008, which states in MHN2 that the minimum of 35% on site affordable housing provision will be sought from every site to which Policy COM.13 applies. This would equate to 9 affordable dwellings on the appeal site, given that the proposed development would include the construction of 25 dwellings in total. The Section 106 Agreement would include the provision of 9 affordable dwellings on the appeal site. Given the level and nature of the need for affordable housing in the District, I am satisfied that this obligation would pass the statutory tests.
91. *Library*: Local authorities have a duty under the 1964 Public Libraries and Museums Act to provide a comprehensive and efficient public library service to all who live, work or study in the area. Warwickshire County Council is seeking a financial contribution of £5,014 towards the provision, extension, alteration and improvement of library and information facilities including the provision of books, computer equipment and other media in the nearest library to the appeal site at Wellesbourne and/or in relation to the Mobile Library which visits the village. The contribution is determined by a formula used by the County Council which is based on the Public Library Service Standard and the need to provide a comprehensive Library Service measured by those standards. In the case of the proposed development the sum requested is based on a unit cost per person of £71, with around 71 people generated by the proposed housing

²² Document 19

mix. The Section 106 Agreement would include a financial contribution of £5,014 for the purposes of providing, extending, altering or improving library and information facilities including the provision of books and other media for Hampton Lucy. Given that the proposed development would result in an increase in the population of Hampton Lucy and that these residents would have requirements for a library service, I am satisfied that this obligation would pass the statutory tests.

92. *Public Right of Way*: Policy RW5b of the Warwickshire Local Transport Plan 2011-2026 seeks improvements, both within a development site and in the surrounding area, where the development is likely to lead to an increase in use of the local network or where the development impacts on the existing network. Furthermore, Policy LUT3 promotes sustainable development and seeks developer contributions, where appropriate, to provide for pedestrian facilities, amongst other things, to serve new development. Finally, Policy W9 encourages measures that enable good accessibility by pedestrians to, from and within new developments and, where appropriate, will secure funding from developers towards wider improvements to the pedestrian network. Policy COM.9 of the Local Plan Review says, amongst other things, that negotiations will be carried out with developers for contributions where a development generates a need for improved pedestrian or cycle facilities outside the development site.
93. Warwickshire County Council has requested a financial contribution of £1,650 towards improvements to public rights of way within a 1.5 mile radius of the appeal site. It states that this would mitigate for the increase in the Highway Authority's maintenance liability resulting from the increase in use of local public rights of way by new residents from the proposed development. The improvements would include upgrading stiles to gates and path surface improvements. The amount requested has been calculated based on the estimated length of public rights of way within a 1.5 mile radius of the proposed development, the estimated cost of improvements to this network, the estimated cost per resident based on residency figures for local wards, and the estimated number of future residents for the proposed development. The Section 106 Agreement includes a financial contribution of £1,650 for the purpose of improvements to public rights of way within a 1.5 mile radius of the appeal site. Given that the proposed development would result in an increase in the population of Hampton Lucy and that these residents would be likely to use the public rights of way within a 1.5 mile radius of the appeal site, which would result in increased wear and tear, I am satisfied that this obligation would pass the statutory tests.
94. *Sustainable Travel Packs*: Policy LUT3 of the Warwickshire Local Transport Plan promotes sustainable development and seeks developer contributions, where appropriate, to provide for travel packs to serve new developments, amongst other things. The County Council has requested a contribution of £1,250 (£50 per dwelling) to provide a sustainable travel pack for each dwelling and to promote sustainable travel in the local area. The Section 106 Agreement includes a financial contribution of £1,250 for the purpose of purchasing sustainable transport information packs. Given the nature of the proposed dwellings and their village location, I am satisfied that the provision of sustainable travel information in the form of Travel Packs, along with the funding of local sustainable travel/energy promotion, would assist future occupiers in making sustainable transport choices and inform them of

opportunities for recycling and energy saving. I am satisfied, therefore, that this obligation would pass the statutory tests.

95. *Open Space Provision – Children’s Play:* Policy COM.4 of the Local Plan Review sets out the standards of open space that will be sought and includes children’s play areas to a minimum of 0.8ha per 1,000 population in settlements such as Hampton Lucy. Policy COM.5 says that where there is a deficiency in public open space in terms of Policy COM.4, new residential development should make provision to meet the needs which would be generated by that development. It goes on to say that where this cannot be provided within the site, a contribution towards open space provision in the locality or for the upgrading of existing facilities will be sought. It then sets out the minimum standard of 10sqm per person (1ha per 1,000 population) of incidental open space, which should consist of children’s play areas and informal areas for quiet relaxation, which would be expected to be incorporated in proposals for residential development. The Council’s Supplementary Planning Guidance (SPG) Provision of Open Space, adopted in March 2005, sets out the methodology for calculating open space provision and the level of developer contributions.
96. I note the Council’s revised formula for calculating public open space requirements for new residential development within small scale settlements such as Hampton Lucy which seeks open space for children’s play to a standard of 2,400sqm per 1,000 population for informal children’s play and 600sqm per 1,000 population for equipped children’s play. I also acknowledge the Council’s PPG17 Open Space, Sport and Recreation Assessment – update, Addendum Report, published in June 2012, which identifies a surplus of children and young people’s play facilities within the settlement of Hampton Lucy totalling 0.04ha or 400sqm.
97. The Council has calculated, using its revised formula, that the amount of open space required by the proposed development would be 165sqm for informal children’s play and 41sqm for equipped children’s play. The proposed development would provide in excess of the required 165sqm of informal children’s play area on site. Given the surplus of children and young people’s play facilities in the settlement of Hampton Lucy, the Council did not seek the provision of an area for equipped children’s play on the appeal site. However, the Council considers that the future residents of the proposed development would be likely to put additional wear and tear on the existing children’s equipped play area, which is sited in close proximity to the appeal site, on the other side of Stratford Road. As such, the Council requires a financial contribution of £4,510 towards the maintenance of the existing equipped children’s play area. This has been calculated by multiplying the figure for the maintenance of such areas (£110 per sqm) by the calculated requirement of equipped children’s play area to serve the appeal site (41sqm).
98. The Section 106 Agreement includes obligations for the provision, maintenance and transfer of the on site open space and a financial contribution of £4,510 towards the provision, upgrade or maintenance of public open space which might reasonably be used by the residents of the proposed development. Although there is a surplus of equipped children’s play area within the settlement of Hampton Lucy, given its close proximity to the appeal site and the nature of the dwellings proposed, it is likely that children from the appeal site would use the existing facility on Stratford Road leading to increased wear

and tear of the facility. As such, I consider that a financial contribution towards its future maintenance would be reasonable. Given the nature of the proposed development and the likely demands of future occupiers of the proposed dwellings, I am satisfied that the obligations in relation to the provision, maintenance and transfer of on site open space and the financial contribution to the maintenance of off site public open space would pass the statutory tests.

99. *Open Space Provision – Youth and Adult:* Policy COM.4 of the Local Plan Review sets out the standards of open space that will be sought and includes children’s play areas to a minimum of 0.8ha per 1,000 population in settlements such as Hampton Lucy. Policy COM.5 says that where there is a deficiency in public open space in terms of Policy COM.4, new residential development should make provision to meet the needs which would be generated by that development. It goes on to say that where this cannot be provided within the site, a contribution towards open space provision in the locality or for the upgrading of existing facilities will be sought. It then sets out the minimum standard of 10sqm per person (1ha per 1,000 population) of incidental open space, which should consist of children’s play areas and informal areas for quiet relaxation, which would be expected to be incorporated in proposals for residential development. The Council’s Provision of Open Space SPG sets out the methodology for calculating open space provision and the level of developer contributions.
100. I note the Council’s revised formula for calculating public open space requirements for new residential development within small scale settlements such as Hampton Lucy which seeks open space for adult and youth to a standard of 4,400sqm per 1,000 population for active public open space and 600sqm per 1,000 population for incidental public open space. I also acknowledge the Council’s PPG17 Open Space, Sport and Recreation Assessment – update, Addendum Report, which identifies an undersupply of youth and adult active playing pitch provision (junior football pitches, cricket and mini football pitches) within Wellesbourne and Kineton, which is the sub area relating to Hampton Lucy, totalling 3.6ha or 36,000sqm.
101. The Council has calculated, using its revised formula, that the amount of open space required by the proposed development would be 302sqm for active youth and adult use and 41sqm for incidental youth and adult use. The proposed development would provide in excess of the 41sqm required for incidental youth and adult use on site. However, no provision would be made on site for the active youth and adult use. The Council has calculated that, based on the population generated by the proposed development, a financial contribution of £7,550 would be required in lieu of on site provision to be used towards redressing the identified under supply of youth and adult pitch provision in the Wellesbourne and Kineton sub area. However, the Council considers that the requested contribution should be proportionate and should not be used to overcome the deficit, but only to provide facilities to accommodate the additional demand that the development would generate. On this basis, the Council states that there are currently around 3,600 dwellings in the Wellesbourne and Kineton sub area, with the proposed development of 25 dwellings representing a 0.69% increase. By applying 0.69% to 36,000sqm gives a requirement for 248.4sqm. As such, the Council calculates that, as the cost of off site provision is £25 per sqm, a financial contribution of £6,210 (248.4 x 25) would be required in this case.

102. The Section 106 Agreement includes obligations for the provision, maintenance and transfer of the on site open space and a financial contribution of £6,210 towards the provision of youth and adult active provision which might reasonably be used by the residents of the proposed development. Given the significant under supply of youth and adult pitch provision in the Wellesbourne and Kineton sub area, along with the demand for such facilities likely to be generated by future occupiers of the proposed dwellings I consider that a financial contribution towards the off site provision of such facilities would be reasonable. Furthermore, given the nature of the proposed development and the likely demands of future occupiers of the proposed dwellings, I am satisfied that the obligations in relation to the provision, maintenance and transfer of on site open space would be fairly and reasonably related in scale and kind to the proposed development. As such, these obligations would pass the statutory tests.
103. *Highway – Traffic Regulation Order (TRO) Works:* Policy DEV.4 of the Local Plan Review says that new or improved access arrangements to serve development will be treated as an integral part of the overall layout and their design will be required to meet a number of criteria. Policy IMP.5 says that each planning application will be assessed to gauge the level and form of contribution towards transport related facilities required as a result of the development, taking a number of factors into account. Policy LUT9 of the Warwickshire Local Transport Plan seeks developer contributions where appropriate for improving the local and surrounding highway and transport network, as well as ensuring new development is not accessed to the detriment of the existing highway. It goes on to say that developers will be required to enter into suitably worded agreements through Section 106 of the Town and Country Planning Act 1990.
104. The County Council requires a financial contribution of £10,000 for the design, advertisement, processing and issuing of the required TROs which would enable the extension of the existing 30mph limit along Stratford Road beyond the entrance to the proposed development, in the interests of highway safety. The Section 106 Agreement includes a financial contribution of £10,000 for the purpose of providing funding towards pedestrian enhancements and traffic management measures in Hampton Lucy. Given the location of the proposed access and the number of dwellings that would be served by it, I am satisfied that the extension of the 30mph speed limit beyond the entrance to the proposed development would reduce speeds in the vicinity, which would be beneficial to highway and pedestrian safety along Stratford Road. I consider therefore that this obligation would pass the statutory tests.
105. *Education:* The Education Authority calculates that the proposed development of 25 dwellings on the appeal site would generate a pupil yield of 4 primary school age pupils. Hampton Lucy benefits from a primary school within the settlement, which is a small rural school and is full in most year groups and is forecast to be completely full in Key Stage 1 from 2015. As a result, the Education Authority requests a financial contribution of £46,748 towards the provision of a further 4 places for the anticipated yield from the proposed development. The costings utilised by the County Council are based on guidance issued by the Department for Education. The Section 106 Agreement includes a financial contribution of £46,748 for the purpose of providing, extending, improving or otherwise altering facilities or services for primary education at Hampton Lucy Church of England Primary School or such

other primary schools which are in the catchment area or priority area of the appeal site. Given that there would be no possibility of admission for primary school age children from the proposed dwellings to the village school and the likely pupil yield from the development I consider that this obligation would pass the statutory tests.

Karen L Baker

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

| | |
|---------------------------------|--|
| Mr Ian Ponter <i>of Counsel</i> | Instructed by Mr Macer Nash, Solicitor for the Council |
| He called | |
| Mrs Philippa Jarvis | Principal of PJPC Limited (Planning Consultancy) |
| BSc(Hons) DipTP MRTPI | |

FOR THE APPELLANTS:

| | |
|--|---|
| Mr Jeremy Cahill QC | Instructed by Mr Keith Fenwick, Alliance Planning, on behalf of Charles Church Developments Limited |
| He called | |
| Mr Christopher May | Director of Pegasus Planning Group |
| BA(Hons) MRTPI | |
| (presented the evidence prepared by Mr Anthony Bateman BA(Hons) TP MRICS MRTPI MCFI MIOB FRSA) | |
| Mr Joe Turner HNC | Senior Engineering Manager, Persimmon Homes Limited |
| Mr Keith Fenwick | Director of Alliance Planning |
| BA(Hons) TP MRTPI | |

FOR THE HAMPTON LUCY PARISH COUNCIL AND NEIGHBOURHOOD PLANNING GROUP:

| | |
|-------------------------|------------------------------|
| Dr John Dunkerton | Hampton Lucy Parish Council |
| Mrs Jacqueline Williams | Neighbourhood Planning Group |

INTERESTED PERSONS:

| | |
|---------------------------|---|
| Councillor Peter Richards | Ward Member |
| Mr Nicholas Butler | Warwickshire Branch of the Campaign to Protect Rural England (CPRE) |
| Mrs Sue Main | Chair of Hampton Lucy Parish Council |
| Mr Chris Schroeder | Member of the Hampton Lucy Housing Action Group |
| Mr L Michael Woodman | Langlands Association |
| Mrs Angela Chedham | Stratford Road Residents Group |
| Mr Clive Letchford | Local Resident |
| Mr Alan Scaife | Local Resident |
| Mr Tony Horton | Stratford-on-Avon District Council |
| | (Conditions/Section 106 Session only) |
| Mrs Kate Tait | Charles Church Developments Limited |
| | (Conditions/Section 106 Session only) |

DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 List of Appearances on behalf of the appellants, submitted by the appellants
- 2 Core Documents CD39b, 39c, 39d, 39e, 39f, 39h and 39j, submitted by the appellants
- 3 Copy of Mrs Williams' presentation to the Inquiry, submitted by Mrs Williams
- 4 Copy of Dr Dunkerton's Slide Show, submitted by Dr Dunkerton
- 5 List of Agreed Draft Conditions, submitted by the appellants
- 6 Costs application on behalf of the appellants, submitted by the appellants
- 7 Opening submissions on behalf of the appellants, submitted by the appellants
- 8 Opening submissions on behalf of the Council, submitted by the Council
- 9 Report on the Stratford-on-Avon District Core Strategy Proposed Submission Document – Analysis of Formal Representations to the Cabinet on 8 September 2014, submitted by the appellants
- 10 2012-based Sub-National Population Projections and Economic Forecasts: Implications for Housing Need in Coventry and Warwickshire, dated September 2014, prepared by GL Hearn Limited, submitted by the appellants
- 11 Neighbourhood Plan File, submitted by Mrs Williams
- 12 Statement by Councillor Peter Richards, submitted by Councillor Richards
- 13 Statement By Mr Nicholas Butler, on behalf of the Warwickshire Branch of the CPRE, submitted by Mr Butler
- 14 Statement by Mrs Sue Main, Chair of Hampton Lucy Parish Council, submitted by Mrs Main
- 15 Statement by Mr Chris Schroeder, on behalf of the Hampton Lucy Housing Action Group, submitted by Mr Schroeder
- 16 Statement by Mr L Michael Woodman, on behalf of the Langlands Association, submitted by Mr Woodman
- 17 Statement by Mrs Angela Chedham, on behalf of Stratford Road Residents' Group, submitted by Mrs Chedham
- 18 Statement by Mr Clive Letchford, local resident, submitted by Mr Letchford
- 19 Section 106 Agreement, submitted by the Council
- 20 Statement by Mr Nick Mauro, Director of Valefresco, submitted by Mr Schroeder
- 21 Statement by Mr Clive Letchford, local resident, submitted by Mr Letchford
- 22 Qualifications and experience of Mr Christopher May, submitted by the appellants
- 23 Qualifications and job title of Mr Joe Turner, submitted by the appellants
- 24 Note by Mr Joe Turner in response to points raised in evidence by Mr Schroeder, submitted by the appellants
- 25 Table 1: Flood Zones extract from the Planning Practice Guidance, submitted by the appellants
- 26 Revised list of draft conditions, submitted by the Council
- 27 Neighbourhood Plan Designation application consultation responses, submitted by Mrs Williams
- 28 5 Year Housing Land Supply Note prepared by Mrs Philippa Jarvis and Mr Christopher May, submitted by the Council
- 29 List of suggested conditions, submitted by Hampton Lucy Parish Council and the Neighbourhood Planning Group
- 30 Closing Statement on behalf of Hampton Lucy Parish Council, submitted by Dr Dunkerton
- 31 Closing Statement on behalf of the Neighbourhood Planning Group, submitted by Mrs Williams
- 32 Closing Submissions on behalf of the local planning authority, submitted by

- the Council
33 Closing Submissions on behalf of the appellants, submitted by the appellants

APPLICATION PLANS

- A1/1 Site Location Plan (Drawing No. 12-1323/L)
- A1/2 Scheme Proposals (Drawing No. 011-rev K)
- A1/3 Street Scenes (Drawing No. 013rev E)
- A1/4 2060 Elevations (Plot 1) (Drawing No. 12-1323/22-4B)
- A1/5 2210 Elevations (Plot 2) (Drawing No. 12-1323/24-4B)
- A1/6 2210 Elevations (Plot 3) (Drawing No. 12-1323/24-3B)
- A1/7 1779-4B 6P House (Plots 4, 7 & 8) (Drawing No. 12-1323/021B)
- A1/8 2060 Elevations (Plot 5) (Drawing No. 12-1323/22-3B)
- A1/9 2060 Elevations (Plot 6) (Drawing No. 12-1323/22-2B)
- A1/10 1565 Plans and Elevations (Plot 9) (Drawing No. 12-1323/020-1B)
- A1/11 1565 Plans and Elevations (Plot 10) (Drawing No. 12-1323/020-2B)
- A1/12 2 Bed 3P Bungalow Plan and Elevations (Plot 11) (Drawing No. 12-1323/028-1)
- A1/13 2 Bed 3P Bungalow Plan and Elevations (Plot 12) (Drawing No. 12-1323/028-2A)
- A1/14 80 – 3 Bed 4 Person Affordable Planning Drawing (Plots 13-15) (Drawing No. 80.3B4P_Planning Rev A)
- A1/15 663 Audley (Plots 16 & 17) (Drawing No. C 663)
- A1/16 876 Blickling (Plots 18 -19) (Drawing No. C 876)
- A1/17 1123-3B 5P House (Plot 20) (Drawing No. 12-1323/023-1C)
- A1/18 1123-3B 5P House (Plot 21) (Drawing No. 12-1323/023-2C)
- A1/19 3 Bed 5P Bungalow Plans and Elevations (Plots 22 & 23) (Drawing No. 12-1323/012-1A)
- A1/20 2210 Elevations (Plot 24) (Drawing No. 12-1323/24-2B)
- A1/21 2060 Elevations (Plot 25) (Drawing No. 12-1323/22-5B)
- A1/22 2060 Plans (Drawing No. 12-1323/22-1)
- A1/23 2210 Plans (Drawing No. 12-1323/24-1)

Appendix 1 – Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 12-1323/L; 011-rev K; 013rev E; 12-1323/22-4B; 12-1323/24-4B; 12-1323/24-3B; 12-1323/021B; 12-1323/22-3B; 12-1323/22-2B; 12-1323/020-1B; 12-1323/020-2B; 12-1323/028-1; 12-1323/028-2A; 80.3B4P_Planning Rev A; C 663; C 876; 12-1323/023-1C; 12-1323/023-2C; 12-1323/012-1A; 12-1323/24-2B; 12-1323/22-5B; 12-1323/22-1; and, 12-1323/24-1.
- 3) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the dwellings hereby permitted and a schedule detailing where the samples of the materials are to be used on a plot by plot basis have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) Notwithstanding the soft landscaping details that have been submitted with the planning application, no works or development, including site clearance, shall take place until full details of a soft landscaping scheme have been submitted to and approved in writing by the local planning authority. The details shall include:
 - a) Planting plans;
 - b) Written specifications;
 - c) A schedule of plants noting species, plant sizes and proposed numbers;
 - d) Existing landscape features such as trees and hedges to be retained;
 - e) Existing landscape features such as trees and hedges to be removed; and,
 - f) A timetable of landscaping implementation.

All planting, seeding or turfing comprised in the approved soft landscaping scheme shall be carried out in accordance with the agreed timetable; and if, within a period of 5 years from the completion of the development, any of the soft planting is removed, uprooted, destroyed or dies or becomes seriously damaged or defective, it shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.

- 5) Prior to the commencement of development hereby permitted, details of the hard landscaping shall be submitted to and approved in writing by the local planning authority. Hard landscape details shall include:
 - a) Existing and proposed finished floor levels, including details of any grading and earthworks;
 - b) The means of accommodating changes in level, for example through steps, retaining walls and ramps;

- c) The type, design, colour, bonding pattern and manufacturer of any hard surfacing materials, samples of which shall be submitted for approval when required by the local planning authority;
- d) The position and design of all site enclosures and boundary details;
- e) External lighting details;
- f) Other vehicular and pedestrian areas; and,
- g) Minor artefacts and structures including, for example, street furniture, refuse areas and signage.

The approved scheme shall be carried out concurrently with, and completed prior to the first occupation of, the development hereby permitted.

- 6) No site clearance or building operations of any type shall commence or equipment, machinery or materials be brought onto the site until a scheme for the protection of trees has been submitted to and approved in writing by the local planning authority. The scheme shall include:
 - a) The submission of a Tree Protection Plan and appropriate working methods;
 - b) The provision of protective fencing around any retained tree within the site and around those trees outside the site whose Root Protection Areas (RPAs) (as defined in British Standard BS 5837 (2012)) fall within the site; and,
 - c) Details of the erection of protective fencing in accordance with Clause 6.2 of BS 5837.

The erection of fencing for the protection of any retained tree shall be undertaken in accordance with the approved scheme before any equipment, machinery or materials are brought on to the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, nor anything be attached to or supported by a retained tree and no fires shall be lit within 10m of the nearest point of the canopy of the retained trees within or adjacent to the site, without the written approval of the local planning authority.

- 7) The development hereby permitted shall only be carried out in accordance with the approved Flood Risk Assessment produced by RPS, dated 24 October 2013, and Drawing No. AAC5003 Option 2 Rev. C.
- 8) The development hereby permitted shall not commence until a Drainage Maintenance and Management Strategy, to include details of the long term maintenance regime for the infiltration trench and soakaways, has been submitted to and approved in writing by the local planning authority and thereafter the site will be maintained and managed in accordance with the agreed Strategy. The following strategy mitigation measures shall also be secured by the development as part of the approved Strategy:

- a) The proposed on site drainage system will be suitable to accommodate flows up to and including the 1 in 100 year + 30% rainfall event; and,
 - b) All surface water drainage will be discharged to soakaways.
- 9) No part of the development hereby permitted shall commence until a scheme for the disposal of sewerage has been submitted to and approved in writing by the local planning authority and thereafter no part of the development shall be first occupied until the approved works have been carried out.
 - 10) The development hereby permitted shall be carried out in accordance with the recommendations of the Phase 1 Habitat Survey, dated May 2013, which requires the provision of bat/bird boxes. Details of, and a timetable for, such provision shall be submitted to and approved in writing by the local planning authority prior to the first occupation of any dwelling and thereafter implemented in accordance with such approved details and timetable.
 - 11) No part of the development hereby permitted shall commence until details of all external light fittings and external light columns, including isolux diagrams demonstrating predicted luminance levels within and adjacent to the site have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
 - 12) No part of the development hereby permitted shall commence until a scheme for the provision of energy from on site renewable sources and/or a 'fabric first' design sufficient to replace a minimum of 10% of the predicted carbon dioxide emissions from the total energy requirements of the development above that of current Building Regulations at the time of commencement has been submitted to and approved in writing by the local planning authority. The design features, systems and equipment that comprise the approved scheme shall be fully implemented in accordance with the approved plans and particulars prior to the first occupation of the development or alternatively in accordance with a phasing scheme which has been agreed in writing by the local planning authority, and shall thereafter be retained in place and in working order at all times unless otherwise agreed in writing with the local planning authority.
 - 13) No part of the development hereby approved shall commence until detailed plans and sections showing existing site levels, proposed site levels and proposed finished floor levels of the dwellings have been submitted to and approved in writing by the local planning authority. The development shall thereafter be carried out in accordance with the approved details.
 - 14) No part of the development hereby permitted shall commence until a scheme for the provision of water supply and fire hydrants necessary for fire fighting purposes at the site has been submitted to and approved in writing by the local planning authority. The development shall thereafter be carried out in accordance with the approved scheme.
 - 15) The development hereby permitted shall not be occupied until a Management and Maintenance Plan for the site, detailing who is

responsible for managing and maintaining the roads, parking areas, incidental landscaping, garden areas, public open space and any other land shown within the site, has been submitted to and approved in writing by the local planning authority. The management and maintenance of the site shall thereafter be carried out in accordance with the approved plan.

- 16) The development hereby permitted shall not be occupied until the works and improvements shown on Drawing JNY7970-01 contained within the Transport Statement prepared by RPS, dated 23 July 2013, relating to the public highway footways; the access to the site; and, the relocation of the 30mph speed limit signs and associated road markings, have been completed in accordance with the details shown on the plan.
- 17) The development hereby permitted shall not be occupied until the roads servicing the development have been laid out and substantially constructed.
- 18) No development shall take place, including any works of site clearance, until a Construction Method and Transport Management Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the site clearance and construction period. The Statement shall provide for:
 - a) The hours of construction work and deliveries;
 - b) The parking of vehicles of site operatives and visitors;
 - c) Loading and unloading of plant and materials;
 - d) Storage of plant and materials used in constructing the development;
 - e) The erection and maintenance of security hoarding, including decorative displays and facilities for public viewing, where appropriate;
 - f) Wheel washing facilities;
 - g) Measures to control the emission of dust and dirt;
 - h) A scheme for storage, recycling and/or disposing of waste resulting from site clearance and construction works; and,
 - i) A scheme for the routing of all construction vehicles.
- 19) All dwellings shall achieve a minimum rating of Level 3 Code for Sustainable Homes. A final Code Certificate shall be issued certifying that a minimum of Code Level 3 has been achieved for all dwellings prior to the occupation of the final dwelling.
- 20) A minimum of 50% of all dwellings shall be designed and built to meet all relevant specifications of the Joseph Rowntree Foundation's 'Lifetime Homes' standards.
- 21) No dwelling that has a downpipe within the development hereby permitted shall be occupied until it has been provided with a minimum 190 litre capacity water butt fitted with a child proof lid and connected to the downpipe.
- 22) Each dwelling hereby permitted shall not be occupied until 3 bins for the purposes of refuse, recycling and green waste have been provided, in accordance with the Council's bin specifications.

- 23) Notwithstanding the provisions of Part 4 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking or re-enacting that Order with or without modification), no buildings, compounds, structures or enclosures which are required temporarily in connection with the development hereby permitted shall be placed or erected on the site or adjacent land until details have been submitted to and approved in writing by the local planning authority and shall thereafter only be sited in accordance with the approved details.
- 24) No development shall take place until a site investigation of the nature and extent of contamination affecting the site has been carried out by a suitably qualified and experienced person, in accordance with a methodology based on a Phase I assessment and conceptual site model for the site, in accordance with BS 10175. The site investigation methodology and its results shall be made available to the local planning authority before any development begins. If, during the site investigation, any contamination is found a report specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures before development begins.

If, during the course of development, any contamination is found which has not been identified in the site investigation, additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures.

The development hereby permitted shall not be brought into or continue in use unless and until any approved remediation measures have been carried out and a Validation or Post-remediation Report, produced by a suitably qualified and experienced person, has been submitted to and approved in writing by the local planning authority.

APPENDIX 2.4

LAND BETWEEN STATION ROAD AND DUDLEY ROAD APPEAL DECISION



Appeal Decision

Inquiry held on 24-26 July 2012

Site visit made on 26 July 2012

by Harold Stephens BA MPhil DipTP MRTPI FRSA

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

Decision date: 24 August 2012

Appeal Ref: APP/H1840/A/12/2171339

**Land between Station Road and Dudley Road, Honeybourne,
Worcestershire**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Lioncourt Homes (Honeybourne) LLP; and E, J, M and H Westoby against the decision of Wychavon District Council.
 - The application Ref W/11/02531/OU, dated 11 November 2011, was refused by notice dated 7 February 2012.
 - The development proposed is an outline planning application for mixed residential and business development, public open space, landscaping with detailed access arrangements.
-

Decision

1. The appeal is allowed and planning permission is granted for an outline planning application for mixed residential and business development, public open space, landscaping with detailed access arrangements on land between Station Road and Dudley Road, Honeybourne, Worcestershire in accordance with the terms of the application, Ref W/11/02531/OU, dated 11 November 2011, and the plans submitted with it, subject to the conditions listed at Annex A.

Application for costs

2. At the Inquiry an application for costs was made by Lioncourt Homes (Honeybourne) LLP; and E, J, M and H Westoby against Wychavon District Council. This application is the subject of a separate Decision.

Preliminary matters

3. The appeal site comprises some 4.6 hectares which is currently undeveloped and unused agricultural land. On its northern boundary the site adjoins the mainline railway linking Evesham and other settlements to the west, to London. Station Road runs along the western boundary of the site, with an existing field gate access positioned towards the north-west corner. A mature hedgerow runs along most of the western boundary of the site. Honeybourne Railway Station and a housing development surrounding the Station lie on the opposite side of Station Road.
4. To the south, the site adjoins residential properties facing onto Station Road, Dudley Road and Harvard Avenue. An existing access drive leading from Dudley Road and serving a garage parking area leads to the southern

boundary of the site and the northern end of Harvard Avenue also adjoins the southern boundary. Open fields lie to the east. A high pressure gas pipeline runs across the site in a north east to south west direction.

5. The proposal is for outline planning permission with all matters reserved for later consideration, except for detailed access arrangements. Both parties agreed that the plans on which the proposal should be determined are as follows: Location Plan: 11-030/01; Proposed Site Access Drawings: 0349-011, 12 and 13 and Development Framework Plan: 11/030/DF01 Rev A.
6. In addition to the above plans, Drawing 11-030 MP06 was submitted as an illustrative Layout Plan to demonstrate one way in which the site might be developed for 67 dwellings. An additional illustrative Layout Plan 11/030/MP06 Rev A was submitted which superseded the originally submitted illustrative layout and it shows how a development of up to 70 dwellings could be accommodated on the site. Another illustrative plan, Drawing MID3157/003 Rev A was submitted by the Appellant at the Inquiry. This drawing shows Noise Mitigation Stand-Off Distances. I have had regard to all of these illustrative plans in coming to my decision in this case.
7. The proposal is therefore for a residential development of up to 70 dwellings. The illustrative layout plan¹ shows the majority of these units being positioned in the northern half of the site. However, 5 of these units would be located off a new access from Dudley Road, using the existing drive accessing the garage parking area, and a single dwelling towards the southern boundary with access directly off Station Road. The development would include 34.2% of the proposed dwellings as affordable housing i.e. some 24 affordable dwellings.
8. The proposed business development would comprise of up to 2,000 sq metres of B1 (a) (offices) or B1 (b) use (research and development) positioned towards the southern boundary of the site although to the north of the proposed residential development off Dudley Road. The provision of an open space area measuring some 2.5 hectares is shown on the illustrative layout plan² as lying within the central part of the site. The plan shows community woodland and surface water balancing ponds within the proposed open space area.
9. A new vehicular access is proposed off Station Road leading to the majority of the proposed development. Also the proposal includes a new vehicular access off Dudley Road (to serve 5 of the proposed dwellings), a vehicular drive off Station Road to serve a single dwelling and a new pedestrian access off the site onto Station Road with pedestrian crossing, close to the access drive to the railway station.
10. The application was supported by various reports including a Design and Access Statement (DAS), a Desk Based Assessment of Land Next to Station Road, an Ecological Assessment, a Transport Assessment, a Framework Business Travel Plan, a Residential Travel Plan, an Archaeological Evaluation, a Landscape Assessment, a Planning Statement, a Noise Assessment, a Hedgerow Report, a Flood Risk Assessment and a Water Management

¹ Layout Plan 11/030/MP06 Rev A

² Op. cit.

Statement. A Statement of Common Ground (SCG) was agreed between the Appellant and the Council.³

11. I note that Reason for Refusal 2 (RFR2) relating to the business element of the scheme was withdrawn prior to the Inquiry and was not defended by the Council. Furthermore, I am aware that on 20 July 2012 the Council accepted that the issue of noise (RFR5) was capable of being addressed by an appropriate planning condition.⁴
12. The Appellant and the Council have completed a S106 Agreement⁵ to take effect should planning permission be granted for the appeal. Amongst other matters this Agreement provides arrangements for: some 34% of the proposed dwellings on the site to be delivered as affordable units; the enhancement/provision of off site measures to encourage travel to and from the site by means other than the private car including improvements to the local cycle network and improvements to local bus shelters; the enhancement/provision of education facilities; and the maintenance and/or improvement of recycling facilities and/or services.
13. The S106 Agreement also provides for a contribution towards off site public open space including provision and/or enhancement and/or maintenance of a sports ground/sports club for use by the occupants of Honeybourne as well as a financial contribution towards the provision and/or enhancement and/or maintenance of recreational facilities in the Parish of Honeybourne. It includes a public art and community culture contribution to help fund a project aimed at integrating the new community into local village life and public art. I have had regard to the provisions of the S106 Agreement in the consideration of the appeal. I return to the Agreement later in the decision.

Main Issues

14. I consider the main issues in this appeal are:
 - (i) Whether in the light of the development plan, national guidance and other material considerations, including the housing land supply position, the appeal proposal would be a sustainable form of development;
 - (ii) Whether the nature and design of the proposed development would adversely affect the character and appearance of the village;
 - (iii) Whether the proposed development would unacceptably harm the historic, visual and ecological value of the hedgerow fronting Station Road;
 - (iv) The effect of the proposed development on the significance of any designated heritage assets and/or their setting;
 - (v) Whether the occupiers of the proposed dwellings on the site would suffer from excessive noise and disturbance; and

³ INQ3

⁴ Mr Cahill's Opening Statement paragraph 6

⁵ APP7

- (vi) Whether the proposal makes adequate provision for mitigating any adverse impact it would have upon local services and infrastructure.

Reasons

Planning history

15. I am aware of the planning history of the site and other relevant planning applications. The SCG⁶ provides brief details of the only other planning application submitted and relating to the site.⁷ The SCG also mentions the planning application and appeal relating to the land on the opposite side of the road. The Applicant (Sharba Homes) has appealed against the Council's decisions to refuse planning permission for this application and a planning appeal Inquiry commenced on 18 July 2012.⁸
16. I am also aware of two other applications which have been submitted. Firstly, I note that the Appellant has submitted a revised planning application relating to the appeal site. Details of this are set out in Mr Edwards' proof.⁹ The new application relates to residential development of up to 60 units and a redesigned/re-located vehicular access of Station Road. Secondly, I note there is a planning application submitted by Taylor Wimpey West Midlands which relates to a site of some 4.16 hectares on Grange Farm, High Street, Honeybourne. This application seeks permission for the erection of up to 75 dwellings. Details are included within Mr Edwards' proof.¹⁰ The Council resolved to approve this application subject to various matters including a S106 Agreement on 19 July 2012.¹¹

Planning policy background

17. The development plan for the area includes the Regional Spatial Strategy for the West Midlands (WMRSS) (2008), The Worcestershire County Structure Plan (WCSP) (2001) and the Wychavon District Local Plan (WDLP) (2006).
18. The WMRSS remains part of the development plan, although the SoS is committed to abolishing it. The revocation of Regional Strategies has come a step closer following the enactment of the Localism Act on 15 November 2011. However, until such time as the WMRSS is formally revoked by Order, I have attributed limited weight to the proposed revocation in determining this appeal. There is broad agreement between the parties with regard to the WMRSS policies that are relevant in this case. These are set out in the SCG¹² and there is no need for me to repeat them here.
19. I am aware that the housing figures in the WMRSS are only on a county wide basis and are extremely old, being based on household projections from the 1990s. In respect of paragraphs 214 and 215 of the National Planning Framework (NPPF) full weight cannot be given to the saved policies of this plan and any weight that is given will depend on the degree of consistency with the NPPF. Given the policies relating to housing land requirements are out of date and based on old information then little weight can be accorded

⁶ INQ3

⁷ SCG Section 3

⁸ APP/H1840/A/12/2172588

⁹ Mr Edwards' proof paragraph 8

¹⁰ Mr Edwards' proof paragraph 9

¹¹ APP2 and LPA2

¹² SCG Section 4

to the policies. They should not be used for future requirements. I note that no WMRSS policy is referred to in the Council's reasons for refusal.

20. The Phase 2 Revision Draft of the WMRSS is not an approved document and therefore it does not form part of the development plan. It is though a document which is a material consideration in this appeal and given the stage reached (Panel Report) would normally be of substantial weight. In a number of appeals the emerging RSS has been given substantial weight, particularly because it has undergone an EIP and the housing figures are more up to date and have been properly examined.¹³ The Phase 2 Revision Draft as amended by the Panel seeks the provision of an annual average of 475 dwellings per annum (dpa) in Wychavon in the period 2006 to 2026 (total 9,500 dwellings). The figures contained within the Panel Report remain the most recent objectively assessed figures available, although there have been more recent household and population projections since these were published. The figures in this plan are therefore of weight and are a starting point in the consideration of housing supply.
21. The WCSP was adopted in 2001 and covers the period to 2011. Many of its policies were saved by a SoS Direction under paragraph 1(3) of Schedule 8 of the Planning Compulsory Purchase Act 2004. There is broad agreement between the parties with regard to the WCSP policies that are relevant in this case. These are set out in the SCG¹⁴ and there is no need for me to repeat them here. WCSP Policies SD2, SD4, SD8, CTC5, CTC17, CTC 19, D10 and D26 were referred to in the Council's reasons for refusal. However, the WCSP policies cited in RFR2 are no longer relevant, as RFR2 has been withdrawn.
22. The WCSP does contain housing figures relating to Wychavon. In respect of paragraphs 214 and 215 of the NPPF full weight cannot be given to the saved policies of this plan and any weight that is given will depend on the degree of consistency with the NPPF. Given the policies relating to housing land requirements are out of date and based on old information then little weight can be accorded to the policies. The policies relating to the provision of housing were not saved. There is therefore no figure relating to housing provision within this plan.
23. The WDLP was adopted in 2006 and covers the period 1996 to 2011. Many of its policies were saved under a Secretary of State Direction in May 2009. A number of policies within the plan were not saved. There is broad agreement between the parties with regard to the WDLP policies that are relevant in this case. These are set out in the SCG¹⁵ and there is no need for me to repeat them here. WDLP Policies GD1, GD2, GD3, SR5, ENV1, ENV7, ENV8, ENV10, COM2, COM12 and ECON6 were referred to in the Council's reasons for refusal. In respect of paragraphs 214 and 215 of the NPPF full weight cannot be given to the saved policies of this plan because the plan was not adopted in accordance with the Planning and Compulsory Purchase Act 2004 and any weight that is given will depend on the degree of consistency with the NPPF.

¹³ Mr Bateman's proof and appendices

¹⁴ SCG Section 4

¹⁵ SCG Section 4

24. I note that the policies relating to housing provision are time expired and are out of date so limited weight can be given to these policies. Any interpretation of policies within the WDLP which sought to restrict a ready supply of housing and therefore adversely impact on the NPPF requirement to "boost significantly the supply of housing"¹⁶ would clearly conflict with the NPPF. In respect of housing supply, Policy SR1 sought to provide 7,450 dwellings in the District between April 1996 and March 2011 (497 dpa). The plan is therefore time expired in respect of housing provision policies.
25. Emerging Local Planning Policy is contained in the South Worcestershire Development Plan (SWDP). This is being produced jointly by Wychavon District Council, Malvern Hills District Council and Worcester City Council to guide development in the South Worcestershire area. The Preferred Options version of this document was the subject of a public consultation exercise that ended in November 2011. The most recent timetable for the SWDP outlines that the Council aims to consult on the pre-submission draft in November 2012, with the document being submitted to the Secretary of State in March 2013. The independent Examination would be likely to take place in July 2013 with adoption in December 2013. In respect of housing in Wychavon the document suggests that 7,803 dwellings will be provided in the period 2006 and 2030. There have been a number of objections to this figure and inevitably it will be discussed in detail at the independent Examination. The Council has recently resolved¹⁷ to increase the dwelling requirement figure in the SWDP to a total of 23,200 dwellings with the Wychavon figure (excluding WWA) being 8,900 dwellings. Given the stage reached the SWDP can be given little weight.
26. With regard to other documents, I am aware of the Worcestershire Strategic Housing Market Assessment (2012) (WSHMA). This document considers a great deal of background information relating to housing and population within the area, including projections for households. There are a number of detailed concerns with this document in respect of the work that has been undertaken in respect of household projections, not least because of its significant divergence with the demographic projections used by ONS. The document has not been subject to any public consultation and I consider it can be given little weight at this appeal.
27. The following Supplementary Planning Guidance and Documents are relevant in the assessment of this appeal: Developer Contributions Towards Service Infrastructure SPG; Developer Contributions for Education Facilities SPD; Affordable Housing SPG; Water Management SPD; Planning and Wildlife SPD Development Guide - Developer Contributions to Public Open Space; and the Residential Design Guide SPD. I also have taken into account the Written Ministerial Statement Planning for Growth¹⁸ and Laying the Foundations,¹⁹ which emphasises the Government's approach to house building and the need to provide action to build more houses and to boost economic growth.
28. The NPPF was published in March 2012. The NPPF largely carries forward existing planning policies and protections in a significantly more streamlined and accessible form. It also introduces the presumption in favour of

¹⁶ Paragraph 47

¹⁷ APP13

¹⁸ March 2011

¹⁹ November 2011

sustainable development²⁰ and makes adjustments to some specific policies. Paragraph 7 of the NPPF explains the three dimensions to sustainable development – an economic role, a social role and an environmental role. Paragraph 17 sets out 12 principles that planning should achieve. Paragraph 47 indicates that the Government's ambition is to boost significantly the supply of housing. Moreover, paragraph 49 indicates that relevant policies for the supply of housing should not be considered up to date if the Local Planning Authority cannot demonstrate a five-year supply of deliverable housing sites. The NPPF also sets out how decision-takers should proceed taking account of the date of adoption of the relevant policy and the consistency of the policy with the NPPF. I have taken the NPPF into account as a material consideration in this case.

Issue 1 – Housing Land Supply and Sustainability

29. From the evidence that is before me there are a number of shortcomings in the Council's approach in this case particularly in relation to the wider development plan context. Firstly, the Saving Letters²¹ made clear that the Council should adopt a 2004 Act²² compliant development plan "promptly". That request was made in May 2009 and there is still no such development plan nor will there be until the end of 2013. This failure is compounded by the fact that the time period which the WDLP was intended to cover expired on 31 March 2011. Secondly, the Council supported the Option Figure of 9,100 for WDC for the period 2006 to 2026 which was presented for Examination by the Panel.²³ That Preferred Option was submitted in draft in December 2007 and committed the Council to providing 9,100 over the 20 year period, i.e. 455 dpa starting from 2006.
30. Thirdly, it is clear that the Council has not achieved this total in any one year since 2006. Instead it has relied upon the saved policies to refuse planning applications such as this. Overall this approach is in direct conflict with the advice in the former PPS3 (2006) to bring about a "step change" in housing land supply. It also ignores the Planning for Growth's injunction to issue planning permissions where possible which was issued in March 2011 and most recently it denies that the failure to make 5 year provision engages paragraph 14 of the NPPF by reason of paragraph 49.
31. It seems to me that the "Saving Letters"²⁴ make clear the contingent basis upon which the policies were saved, namely the requirement in the decision making process to have regard to up-to-date policies, such as the former PPS3, which required a 5 year land supply. These "material considerations", now include the NPPF, which means that it is simply not good enough to regard saved policies as an opportunity to refuse rather than grant planning permission. The Council's approach is at odds with the requirement in the Saving Letters. Relevant policies in the WCSP and the WDLP must be viewed in the context of paragraph 215 of the NPPF. Importantly, there is an obligation to consider the development plan in the light of any absence of a 5 year supply which predated the NPPF and can be traced back to 2006.

²⁰ Paragraph 14

²¹ Mr Bateman's Appendices 9 and 10

²² Planning and Compulsory Purchase Act 2004

²³ Mr Bateman's Appendix 7 page 105

²⁴ Mr Bateman's Appendices 9 and 10

32. It is common ground in this case that the Council is unable to demonstrate a 5 year housing land supply. It follows that paragraph 49 of the NPPF is engaged. The Council does not accept that land supply polices which are not "up-to-date" (paragraph 49) must therefore be considered "out of date". I disagree with the Council's interpretation. The Council also argues that the extent of the housing supply deficit is relevant when ascertaining the weight to be attributed to this fact in the overall assessment of the proposal. However, I cannot find evidence to support this view. The Council's delivery record is very poor (234 dpa²⁵) when compared to the targets it set for itself in 2007 (455 dpa) and 2012 (371 dpa).
33. In my view the target should be guided by the WMRSS Panel Report which indicates a figure of 9,500 additional dwellings i.e. 475 dpa.²⁶ This remains a reliable evidence base, consistent with the NPPF.²⁷ More up to date information is available in the CLG 2008 Household Projections and the 2010 population figures adjusted by using the Chelmer Model are now available and relevant.²⁸ The result of using these three information sources is that it is obvious that the Council has a 5 year supply of below 3 years when the correct approach is adopted.²⁹
34. The Council argues that it has responded proactively to the recognised shortfall by granting planning permissions beyond the WDLP development boundaries. In addition, it states that the lack of completions is, in very large part, due to the on-going economic recession, especially the dearth of finance, which is beyond the control of the Council rather than a lack of extant planning permissions. Whilst this may be so I note that the Council prefers to rely on the housing provision figures in the emerging SWDP. In my view there are fundamental problems with this. Firstly, it is not yet "objectively tested" in the context of the NPPF.³⁰ Secondly, it relies upon WSHMA figures to which unjustified adjustments have been made.³¹ Thirdly, the SoS places importance upon tested figures. This was confirmed in a recent decision in Salford.³²
35. Fourthly, the Council was unable to point to one recent decision where an Inspector or the SoS had relied upon figures in an emerging plan. Neither could Mr. Bateman. Fifthly, reliance upon the emerging SWDP conflicts with The Planning System: General Principles paragraph 18 as the plan is not likely to be submitted for independent Examination until March 2013. Nor can it be afforded weight under paragraph 216 of the NPPF for reasons already set out above. Finally, the Bishops Cleeve decisions make clear that little weight can be attached to a Preferred Options document which is yet to be consulted upon.³³ The most recent overall timetable for the SWDP also refers to a Preferred Options Consultation document which is indicative of its present status.³⁴ For all the above reasons I consider that the full, objectively assessed housing needs target cannot be the SWDP figure.

²⁵ Mr Bateman's proof paragraph 7.5

²⁶ Mr Bateman's Appendix 7 page 126

²⁷ NPPF paragraph 218

²⁸ NPPF paragraph 159

²⁹ Mr Bateman's proof and APP12 Tables 4-6

³⁰ NPPF paragraph 47

³¹ Mr Bateman's evidence at page 37 onwards

³² APP10 paragraph 15

³³ APP9 paragraph 19

³⁴ APP13 paragraph 14

36. The Council considers that the residual method for assessing housing needs should be preferred over that of the Sedgefield approach. It is common ground that the NPPF is silent on the matter. However, the Council was unaware of any post NPPF decision which followed the residual approach. Recent pre-NPPF decisions by the SoS expressly approve the Sedgefield approach at Andover and Moreton in Marsh.³⁵ In my view, it is inconsistent with Planning for Growth and the NPPF paragraph 47 to meet any housing shortfall by spreading it over the whole plan period. Clearly it is better to meet the shortfall sooner rather than later. Moreover, if the buffers are brought forward into the first 5 years as in the NPPF,³⁶ so also should the shortfall. I cannot agree with the Council's use of the residual method. In my view the Sedgefield approach should be used for the reasons outlined.
37. There was debate at the Inquiry as whether the Council was a 5% authority or 20% authority in relation to buffers. The test is to be found within NPPF paragraph 47 which refers to "persistent record of under-delivery." When using the SWDP figures (371 dpa) measured from 2006, the agreed table attached to APP16 shows the Council's delivery rates compared to the required rate. It is clear from this evidence that in every one of the last 6 years delivery is below the SWDP requirement of 371 dpa.
38. In my view that failure to deliver amounts to a "persistent" record of under-delivery. Indeed the overall deficit is 823 dwellings which equates to over 2 years. Clearly if the figures in the Phase 2 Revision Draft of the WMRSS were used the deficit would be considerably more. The evidence of the deficit figures left the Council with no option other than to accept that this is a 20% authority. Moreover, it cannot be right to blame the slump in the property industry for under performance so long as there is not a 5 year supply of sites available now as required by paragraph 47 of the NPPF.
39. In terms of housing supply calculations and the need to identify a supply of specific and developable sites, I am aware that the Appellant's approach was not to argue for exclusion of any site. The Appellant simply referred to the circumstances of each and concluded that a 10% reduction was justified overall and reasonable having regard to lapses, delays and reduced delivery. The comparison of the 2006 AMR forecasts with actual deliveries showed this was justified and conservative.³⁷ Moreover, this approach is supported by "*Housing Land Availability*" DOE, Planning and Research Programme Paper, Roger Tym and Partners 1995 and it was accepted in planning appeal decisions at Moreton in Marsh³⁸ and Marston Green.³⁹ I recognise from the table included in the Appendix to APP16 that delivery is often less than expected. Overall I consider it is reasonable to allow for a 10% discount on sites with planning permission.
40. I also accept the Appellant's approach in excluding large windfalls from future delivery. To include them there must be "compelling evidence" according to paragraph 48 of the NPPF. Even in the past there were no large windfalls in 2006/7 and 2008/9.⁴⁰ So far as the future is concerned I

³⁵ Mr Bateman's Appendices 3 and 15

³⁶ NPPF paragraph 47

³⁷ See figures in APP16 Appendix

³⁸ Mr Bateman's Appendix 15 paragraph 178

³⁹ Mr Bateman's Appendix 13 paragraph 8

⁴⁰ Mr Davies' Appendix D Table 4

consider these sites would either be allocated – in which case to include them would be double counting – or will be granted on appeal – in which case there would not be any "compelling evidence" of future delivery, merely the chance thereof. In my view large windfalls should be excluded from the calculation.

41. The Council indicates that there have been 485 small windfalls developed over 6 years which equates to approximately 80 dpa.⁴¹ The previous percentage of garden land planning permissions of all windfalls was 28%⁴² and therefore the appropriate figure using the Council's evidence is 72% of 80 which equals 58 dpa. This compares with the Appellant's estimate of 55 dpa. The Council's 5 year figure of 490 for windfalls is not reliable or based on "compelling evidence": quite the opposite, it is contradicted by the evidence. The appropriate figure should be $58 \times 5 = 290$ or $55 \times 5 = 275$.
42. Taking into account all of the above information it is clear to me that the Council does not have a 5 year housing land supply available. The Appellant's evidence indicates a number of ways of calculating housing supply based on housing requirement figures using policy advice and based on the most up to date information. In respect of the Appellant's supply figure, which I prefer, there is between 1.9 to 2.76 years supply. Taking account of the 20% buffer required by NPPF, this amounts to a shortfall of between 3,129 and 1,705 dwellings. Using the Council's supply figures the years supply situation improves to between 2.56 and 3.71 years supply. Taking account of the 20% buffer required by NPPF there is a shortfall of between 2,627 and 1,203 dwellings.⁴³ In all cases there is always less than a 5 year supply available. In my view, the Council has serious housing land supply problems. It is imperative that restorative action should be taken.
43. It is common ground that the appeal is in conflict with Policy GD1 of the WDLP. The Council argues that due weight, not full weight, should be applied to the conflict in the light of the current housing supply deficit. I accept that the proposed development lies beyond the defined settlement boundary of Honeybourne and I attach some weight to that conflict. However, I am aware that the Council has granted planning permissions for other schemes beyond the settlement boundaries such as at Copcut Lane, Droitwich Spa. I also note the advice in paragraph 47 of the NPPF to boost significantly the supply of housing and paragraph 49 of the same document which indicates that relevant policies for the supply of housing should not be considered up to date if the Local Planning Authority cannot demonstrate a five-year supply of deliverable housing sites. It is agreed that in this context paragraph 14 of the NPPF comes into play and also that no "relevant policies"⁴⁴ affect the appeal site. The test therefore is whether the advantages are "significantly and demonstrably" outweighed by the benefits. This can be tested by reference to the 3 dimensions to sustainable development.⁴⁵

⁴¹ Mr Davies' Appendix D Table 4

⁴² Mr Davies' Appendix D Table 4

⁴³ APP12 Tables 4-6

⁴⁴ NPPF paragraph 14 footnote 9

⁴⁵ NPPF paragraph 7

44. In terms of an economic role I consider the housing construction would bring direct and indirect employment according to "Laying the Foundations".⁴⁶ The location is adjacent to a Category 1 village with good services and transport links including a nearby railway station. The employment element of the scheme would provide the opportunity for local employment.⁴⁷ The open space on site would be new village "infrastructure". In terms of a social role, I consider that open market housing is needed as evidenced by the deficit in the 5 year housing land supply. There is also a significant under provision of affordable housing against the established need figure and an urgent need to provide affordable housing in Wychavon. The local services are accessible. The new development would serve to "knit in" the Stephenson Green development as part of the village.
45. In terms of an environmental role, I consider that any necessary development brings about change and this one is no exception. I am aware that in a recent SoS decision for a residential development at Burgess Farm Worsley, the SoS acknowledged that development of the site *"would result in the permanent loss of an area of open countryside enjoyed by local people; encroachment into the wildlife corridor; a significant intrusion into the setting of Walkden; and that it would seriously degrade the character and appearance of the area and the amenities of neighbouring residents (IR206)."*⁴⁸ Nevertheless, the SoS decided that the proposal would have an environmental role. *"... by providing open areas and nature parks. He accepts that there are substantial environment disbenefits to the development of this site including the loss of countryside that is valued by residents and the impact on the rural setting of Walkden."*⁴⁹
46. It follows that even a site which has the effect of seriously degrading the character of an area can still have an environmental role. In this case the development (i) would lead to the loss of 23m of hedgerow but would provide planting on the northern boundary of the site with a new one; (ii) would lose some ridge and furrow but makes publicly available for close enjoyment by future generations the best of what would remain. This represents a net benefit in its own right according to the evidence of the Appellant's expert, and (iii) would provide a large open space with woodland, grass management and three SUDS areas all of which would increase biodiversity.
47. Overall I conclude on the first issue whilst there would be conflict with aforementioned development plan policies, other material considerations including the housing need position far outweigh such conflict. This is genuinely a sustainable form of development as envisaged in the NPPF.

Issue 2 – Effect on the character and appearance of the village

48. The Council refers to particular paragraphs in the NPPF as providing evidence as to why the appeal proposal should be rejected. Paragraphs 17 and 56 to 64 in relation to design are highlighted. It is common ground between the parties that the yardstick to which the appeal proposal should be judged is whether it can be characterised as high quality design. Paragraph 64 states

⁴⁶ Mr Bateman's Appendix 5 page 57 paragraph 11

⁴⁷ Report by Halls (Worcester) LLP November 2011

⁴⁸ APP10 paragraph 21

⁴⁹ APP10 paragraph 28

that permissions should be refused for development of poor design that fails to take opportunities available for improving the character and quality of an area and the way it functions. The Council submits that by siting the vast majority of the houses (64 of the 70 units) in the north-west corner of the site most of the development would be poorly related to, and visibly divorced from, the remainder of the village. The Council also argues that the scheme runs contrary to Policy GD2 of the WDLP and the provisions of the Council's Residential Design Guide SPD, notably paragraphs 4.3 and 4.7. It is claimed that the proposed development would be seen as detached and not well connected to Honeybourne.

49. From the evidence that is before me and from my site visit, it seems to me that Honeybourne, has grown in a rather haphazard and fragmented way over the last 100 years and, should the proposed development be implemented, it would not be uncharacteristic of the way in which Honeybourne has evolved. Whilst layout is a reserved matter, I consider that the appeal proposals would conform to the Council's SPD. The scheme has taken appropriate care to reflect the surrounding scale and appearance of the existing settlement in the design of all the built environment; and its design ensures that it would fit into the surrounding built environment and landscape. Moreover, the proposed layout provides a clear contrast between the public and private realm and it includes home zones which establish pedestrian priority. In addition, the proposals are of a higher design quality than the Stephenson Way development, which was granted consent by the Council in 2001.
50. In my view, the scheme is designed in such a way as to maximise the public benefit of the scheme to the local community, including dedicated public open space, community woodland (2.16 hectares) and it would make a positive contribution in terms of local employment and community facilities. It could hardly be described as exclusive or indeed 'non inclusive'. The layout of the housing is outward-looking offering plenty of natural surveillance both to the open space and Station Road. Furthermore, the layout completes and creates a more robust boundary to the settlement than the weak and poorly defined edge created by the 1970's housing to the south.
51. Having regard to the advice in the NPPF, I consider that the development constraints attributed to the location of the gas main do not provide sufficient negatives to warrant dismissing this appeal. Given that the consent of the development would be representative of Honeybourne's organic evolution, and the scheme conforms to the principles of high quality inclusive design, from a design perspective there is no reason why the appeal scheme should not be granted planning permission. On the second issue I conclude that nature and design of the proposed development would not adversely affect the character and appearance of the village.

Issue 3 - Effect on the hedgerow fronting Station Road

52. The Council points out that hedgerows are a characteristic feature of the Worcestershire countryside and that the value to be attached to the hedgerow is high as it is a recurring and oft-repeated theme of the "Village

Claylands" LCT.⁵⁰ The single key primary characteristic of this landscape type is "hedgerow boundaries to fields". The LCT information sheet states that these are landscapes where the conservation of the hedgerow network is of prime importance and the landscape guidelines indicate that the pattern of hedgerow boundaries should be conserved. It is agreed that by applying the criteria under the Hedgerow Regulations 1997, the hedgerow is 'important' but it is in no way exceptional compared to other hedgerows of similar age in Worcestershire. It is also agreed that the proposed development would only result in a relatively small loss of hedgerow amounting to 23m in length with the remaining hedgerows on Station Road totalling 269m being retained in the development. In the Appellant's view the hedgerow is unkempt and suffers from extensive elm death from disease, albeit it currently remains dense, stock proof and an effective visual screen.⁵¹ It is also common ground that the Station Road hedgerow is the principal habitat on the appeal site but it is not unusually valuable in terms of biodiversity compared with others in the county.

53. The Appellant's survey of the Station Road hedge indicates that the portion of hedge in Highway Authority ownership on the road embankment has limited species diversity with hawthorn dominant. There is then a break in the hedge which serves as the current field access. Immediately south of this break in the hedge the hedge vegetation is dominated by elm which is suffering from Dutch Elm disease leading to extensive dieback of the hedge. Progressing south the quality and species composition of the hedge improves but at chainage 220-254m is not of high quality because this is where the high pressure gas main was laid which involved the removal of a 35m length of hedge to provide a working corridor for construction works. This gap has subsequently been replanted with a single species of hawthorn. The lengths of hedge between chainages 172-220m and 268-310m are typically more species diverse.⁵²
54. The Council argues that the proximity of a number of the dwellings in the proposed development as well as the direct loss of hedgerow as a consequence of the proposed new accesses from Station Road would devalue its importance and threaten its wellbeing contrary to WDLP and WCSP policies and national guidance. I disagree. Whilst the relatively small loss of part of this hedgerow is regrettable from both a visual, historical and ecological viewpoint, the impact has to be assessed against the backdrop of the mitigation and landscape strategy proposed for the site. This includes the improved management of the retained hedgerow which would increase species diversity and wildlife population density, as well as increasing visual and amenity value. The retention of most of the hedgerow, its long term protection and management as part of the wider public open space would be a positive benefit which significantly outweighs the minimal and minor loss of hedgerow to gain access to the site. I consider that the Council's concern about a maintenance strip to the side of the hedge of a sufficient width so as to act as a buffer to protect the ecological value of the hedge is a detailed layout matter which could be resolved at the reserved matters stage.

⁵⁰ LPA3 - Village Claylands Landscape Character Type Information Sheet

⁵¹ Mr Dobson-Smyth's proof, paragraph 6.3.5

⁵² Mr Dobson-Smyth's Hedgerow Survey Plan Drg No. 902B-01

55. In my view the loss of hedgerow would be compensated for by the provision of new hedgerow, SUDS areas, open space and extensive new tree planting in the proposed community woodland. The loss of hedgerow would be more than compensated for in the ecological sense by the positive wider impact set out above. Whilst the hedgerow has historic value the extent of the loss is limited compared to the loss of 123m at the Taylor Wimpey site.⁵³ The Council's witness agreed that the hedge fronting the Taylor Wimpey site was similar to the one at Station Road albeit the former has a lower ecological value since it has fewer species and contained a higher proportion of dead/dying elm. I consider the visual impact of the loss at the appeal site would be minor compared to the major removal at the Taylor Wimpey site. The absence of a 5 year housing land supply also adds considerable weight in favour of allowing the development. I consider that there would be no material harm to the WDLP and WCSP policies as overall the proposal would conserve and enhance biodiversity through mitigation and compensatory measures. Similarly there would be no conflict with national advice including that contained in the NPPF paragraph 118. On the second issue I conclude that the proposal would not unacceptably harm the historic, visual and ecological value of the hedgerow fronting Station Road.

Issue 4 - Effect on the significance of heritage assets and/or their setting

56. Both parties acknowledge there are ridge and furrow earthworks on the site that are undesignated heritage assets. The LCT for the area records the notable representation of ridge and furrow. The ridge and furrow earthworks are agreed to be locally significant in view of their survival and, to a lesser extent, their condition. The remains are in poor condition but do survive to a height of about 400mm and are readily visible. They are a visual expression of medieval arable activity. There is variation in condition over the appeal site. From the Appellant's evidence ridge and furrow is not rare within Honeybourne. However, they are vulnerable to rapid reduction by ploughing of land which may mean that they become rarer.⁵⁴ The earthworks within the site contain two areas of ridge and furrow on different alignments, but no other features of note.
57. The proposed development would retain about 50% of the earthworks but as the preservation is better to the east the proportion increases to about 80% of the better preserved earthworks. The development proposals would also greatly increase the potential for appreciation. The earthworks are readily visible and they would fall within the open space provision. Although there may in principle be some minor loss of a non-designated heritage asset of local significance, the significant retention of much of the best and most well preserved areas of ridge and furrow and its long-term protection means that there are more benefits to the proposals here in terms of heritage assets, which substantially outweigh the minor adverse impact. I consider there would be no material conflict with WCSP Policy CTC17, WDLP Policy ENV10 or the advice in the NPPF. I conclude that the development would not have an adverse effect on the significance of undesignated assets or their setting.

⁵³ APP1

⁵⁴ Mr Woodiwiss' proof page 9

Issue 5 - Effect of noise and disturbance on future occupiers

58. The Council's RFR5 indicates that the appeal site lies adjacent to Station Road and a mainline railway. It refers to the submitted Noise Assessment and records that parts of the site suffer from noise levels that require either a stand-off between the proposed dwellings and the road/railway or design measures incorporated in the proposed development such as the positioning of gardens and habitable rooms away from the sources of noise. It is argued that the submitted layout plan does not reflect the recommendations set out in the Noise Assessment and therefore the proposal would conflict with Policy GD2 of the WDLP and the provisions of the former PPG24.
59. The Appellant has confirmed that there are two remedies for addressing the ambient sound levels which represented a constraint of less than 1dB(A) in magnitude. Mitigation can be achieved either through the introduction of stand-off distances between the noise source and the proposed dwellings or by incorporating noise reduction features into the design of each dwelling. All that needs to be done in relation to the proposed dwellings within noise band NECB shown on Drawing MID3157/003 Rev A could be as simple as double/triple glazing detail with acoustic grade trickle vents, acoustically attenuated wall construction and other building elements, given that the noise levels to be achieved are only a reduction of less than 1 dB(A) from ambient noise levels. At the outset of the Inquiry both parties agreed that issue could be dealt with by means of a planning condition.
60. I am aware that in relation to the proposed development at Copcut Lane Salwarpe, the level of noise that has to be addressed is 6.8 dBA above the acceptable (former PPG24) levels because 2,400 vehicles pass on the A38 each hour as opposed to 420 each hour on Station Road. I note that the Council was content to use planning conditions to deal with the noise issue at Copcut Lane⁵⁵ where the Council wished to grant planning permission but not at the appeal site where the acoustic problems were lesser and could have been addressed either by siting or by construction detail. I consider that the proposal would not be in conflict with Policy GD2 or national guidance on noise. I conclude on this issue that the occupiers of the proposed dwellings on the site would not suffer from excessive noise and disturbance.

Issue 6 - Effect on local services and infrastructure

61. Both parties agree that RFR7, RFR8, RFR9, RFR10 and RFR11 could be addressed through the completion of an appropriately worded S106 Planning Obligation.⁵⁶ A S106 obligation⁵⁷ was submitted at the Inquiry and is agreed by the main parties. It was discussed in detail at the Inquiry. Regulation 122 of the Community Infrastructure Levy Regulations 2010 (CIL) indicates that any planning obligation entered into must meet the following tests: (a) necessary to make the development acceptable in planning terms; (b) directly related to the development and (c) fairly and reasonably related in scale and kind to the development. I was also provided with an agreed

⁵⁵ Mr Tait's Appendix 13 conditions 12, 13

⁵⁶ SCG Section 6

⁵⁷ APP7

statement of compliance with the CIL Regulations 2010.⁵⁸ From all the evidence that is before me I consider that the provisions of the S106 Agreement complies with paragraph 204 of the NPPF and meets the 3 tests of Regulation 122 of the CIL Regulations 2010. I accord the S106 Agreement significant weight and I have had regard to it as a material consideration in my conclusions. I conclude that the Appellant has made adequate provision for mitigating any adverse impact that the proposed development would have upon local services and infrastructure.

Other matters

62. I have taken into account all other matters raised including the business units proposed, the evidence on site access, sustainable travel, flood risk and drainage. The Council and interested persons raise concerns about the cumulative impact of this proposal and the advice in NPPF paragraph 17 that planning should be genuinely plan-led, empowering local people to shape their surroundings. Reference was made to the fact that there are currently 3 proposals for significant residential development at this village, one of which has now been allowed. It is common ground that some 189 dwellings could be built in the village over the next 5 years which constitutes a 28% increase in the number of dwellings. Concern was expressed about the effect on local services, the effect on the character of the village and on the spatial strategy of the district (SWDP) which anticipates only 75 dwellings in Honeybourne up to 2030. I am aware that there was local preference and Parish Council support for the Taylor Wimpey site.
63. Whilst I understand these concerns I also note that in this case the Council did not include any RFR alleging over-development of Honeybourne nor could there be as the Council has decided to grant planning permission for the Taylor Wimpey site without knowing the result of either of the two current appeals. Certainly it was an option for the Council to await the decisions on these two appeal decisions to determine the "proper level" of development at Honeybourne. The Council has been minded to put other applications in abeyance such as the proposal at Crown Lane, Wychbold.⁵⁹ In any event the concept of a "satisfactory" amount of development for Honeybourne comes only from the emerging SWDP to which little weight can be attached for reasons set out above. In my view prematurity should not be given any decisive weight in respect of the appeal proposals.
64. I have also considered the point made by the Council that there may be an alternative proposal which omits the employment land, provides a lower number of dwellings and is likely to cause less material harm to the hedgerow.⁶⁰ However, no alternative scheme was submitted to the Inquiry. No alternative is before me and it would not be right for me to comment on such a scheme as it could prejudice the Council's consideration of the matter. In any event I found that overall the appeal proposal would conserve and enhance biodiversity.

⁵⁸ APP15

⁵⁹ APP14

⁶⁰ See paragraph 16 above

Conclusions

65. Although the proposal would conflict with some development plan policies including Policy GD1 of the WDLP, I conclude that it represents a sustainable form of development in line with the NPPF and there are material considerations which clearly outweigh this conflict. There are a considerable number of positive benefits in this case such as housing provision, business units, heritage and ecology. In line with paragraph 14 of the NPPF there are no adverse impacts which would significantly and demonstrably outweigh the considerable number of benefits and therefore the appeal should be allowed.

Conditions

66. Both parties prepared a schedule of suggested conditions which were discussed at the Inquiry.⁶¹ I have considered these conditions in the light of the advice in Circular 11/95. Condition 1 is necessary because the application was made for outline permission. Condition 2 refers to time limits for the submission of reserved matters which I consider is reasonable and necessary. I can see no justification for the shorter time limit proposed in the alternative condition 2 requested by the Council. Condition 3 relating to surface water and foul drainage is necessary to ensure that the site can be properly drained without flooding. Condition 4 is necessary to ensure a satisfactory development. Conditions 5-12 are necessary in the interests of highway safety and to establish measures to encourage more sustainable non-car modes of transport. Condition 13 is necessary in the interests of protecting nature conservation issues. Condition 14 is necessary to protect ridge and furrow earthworks on the site. Condition 15 is necessary to encourage an energy efficient development. Conditions 16-19 are necessary to ensure a satisfactory development of the site. Condition 20 is necessary to ensure that the detailed site investigation and remediation strategy will not cause pollution of ground and surface waters. Condition 21 is necessary to ensure a satisfactory development in the interests of visual amenity. Condition 22 is necessary in the interests of protecting residential amenity. Condition 23 is necessary to ensure that inappropriate uses do not occur.

Harold Stephens

INSPECTOR

⁶¹ APP8

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Jack Smyth of Counsel Instructed by the Solicitor to Wychavon District Council

He called:

Mrs Susanne Hiscock Landscape and Natural Heritage Officer
Dipl. Ing. (FH) CLMI

Mr Jonathan Edwards Development Manager (Planning)
BSc (Hons) Dip TP
MRTPI CLMS

Mr Fred Davies MTP Policy Manager
MRTPI

FOR THE APPELLANT:

Mr Jeremy Cahill QC Instructed by Mr Tait, Planning Prospects Ltd

He called:

Mr Anthony Bateman BA Managing Director, Pegasus Planning Group
(Hons) TP MRICS MRTPI
MCMi MIOd

Mr Ian Turvey BSc MSc Director, JMP Consultants Ltd
CMILT MIEnv Sc

Mr Simon Woodiwiss BA Archaeological Services Manager, Worcestershire
(Hons) Prehistory County Council
Archaeology MifA

Mr Martin Sullivan MA Managing Director, The Urbanists
BSc (Hons) Dip UD
MRTPI FRSA

Mr Nigel Dobson-Smyth Chartered Landscape Architect and Urban
BA DipLA Dip UD CMLI Designer, Arthur Amos Associates

Mr Jason Tait BA (Hons) Director, Planning Prospects Ltd
Dip TP MRTPI

INTERESTED PERSON:

Councillor Alastair Adams Local Councillor

INQUIRY DOCUMENTS

| | |
|------|---|
| INQ1 | Notification of Public Inquiry and list of persons notified, submitted by the Council |
| INQ2 | Letters received in response to the Notification of the Public Inquiry |
| INQ3 | Statement of Common Ground |

DOCUMENTS SUBMITTED DURING THE INQUIRY**Appellant's List of Additional Inquiry Documents**

| Reference | Document |
|-----------|---|
| APP1 | Taylor Wimpey Committee Report |
| APP2 | Update to Taylor Wimpey Committee Report |
| APP3 | Sapcote Road Appeal Decision |
| APP4 | Noise Correspondence |
| APP5 | Taylor Wimpey Layout |
| APP6 | Taylor Wimpey Access Drawing |
| APP7 | Section 106 Agreement |
| APP8 | List of Proposed Conditions |
| APP9 | Bishops Cleeve Appeal Decision |
| APP10 | Salford, Manchester Appeal Decision |
| APP11 | Torquay Appeal Decision |
| APP12 | Updated Housing Land Supply Tables produced by Anthony Bateman |
| APP13 | WDC July Report to Special Council – SWDP Update |
| APP14 | WDC Letter re Crown Lane, Wychbold – 6 th July 2012 |
| APP15 | CIL Compliance Statement |
| APP16 | Closing submissions including Appendix on Five Year Supply Update |

Council's List of additional Inquiry Documents

| | |
|------|--|
| LPA1 | South Worcestershire Development Plan, Policy SWDP23 |
| LPA2 | Resolution on Taylor Wimpey planning application, Ref. No. W/12/01020 |
| LPA3 | Landscapes of Worcestershire, Landscape Type Information Sheet – Village Claylands |
| LPA4 | The Hedgerow Regulations – Your Questions Answered |
| LPA5 | Comments from the Council's Planning Policy Officer regarding Public Open Space Requirements |
| LPA6 | Extract of Minutes of Meeting of the Council's Planning Committee for 1 st March 2012 referring to Minute No. 190 including resolution of the Committee relating to planning application Ref. No. W.11.02055, Land off Crown Lane, Wychbold |
| LPA7 | Closing Submissions |
| LPA8 | Response to application for costs |

Interested Persons Documents List

| | |
|-----|--|
| IP1 | Statement of Councillor Alastair Adams |
|-----|--|

ANNEX A

CONDITIONS

- 1) Details of the appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of reserved matters relating to the appearance, landscaping, layout and scale of the development must be made not later than the expiration of 3 years beginning with the date of this permission and the development must be begun not later than whichever is the latter of the following dates:
 - the expiration of 5 years from the date of this permission; or
 - the expiration of 2 years from final approval of the reserved matters, or in the case of approval of different dates, the final approval of the last such matter to be approved.
- 3) The development shall not commence until drainage plans and information for the disposal of surface water and foul sewage have been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details before the development is first brought into use.
- 4) The Reserved Matters details required under condition 1 shall include the following;
 - a. a plan showing how the proposed development relates to the high pressure gas pipeline that runs across the site as well as any Consultation/Exclusion zones as defined by the Health and Safety Executive
 - b. details of the floor levels of the proposed buildings
- 5) Before any dwelling hereby approved is first occupied visibility splays shall be provided from a point 0.6m above ground level at the centre of the access to the application site and 2.4 metres back from the nearside edge of the adjoining carriageway, (measured perpendicularly), for a distance of 120 metres in each direction along the nearside edge of the adjoining carriageway, Station Road. Nothing shall be planted, erected and/or allowed to grow on the triangular area of land so formed which would obstruct the visibility described above and these areas shall thereafter be retained and kept available for visibility purposes at all times.
- 6) The development shall not be occupied until the approved access arrangements as shown on Proposed Site Access Drawings 0349-011, 12 and 13 have been completed.
- 7) The development shall not be occupied until the road works to the individual units from the adopted highway, their respective individual vehicular accesses and entrance, turning areas and parking facilities have been properly consolidated, surfaced, drained and otherwise constructed in accordance with details to be submitted to and approved in writing by the

Local Planning Authority and these areas shall thereafter be retained and kept available for those uses at all times.

- 8) The development shall not commence until a temporary means of vehicular access for construction traffic between the nearside edge of the adjoining carriageway and the highway boundary and any set back entrance is agreed in writing with the Local Planning Authority in consultation with the Highway Authority and shall be carried out in accordance with a specification to be submitted to and approved in writing by the Local Planning Authority, at a gradient not steeper than 1 in 20.
- 9) The development shall not be occupied until the temporary vehicular access for construction is permanently closed in accordance with details to be submitted to and approved in writing by the Local Planning Authority.
- 10) The development shall not be occupied until the existing field gated access entrance onto Station Road shall be permanently closed to vehicular traffic in accordance with details which shall be submitted to and approved in writing by the Local Planning Authority.
- 11) The development shall not be occupied until secure parking for cycles for the respective dwelling or business unit to comply with the Council's standards is provided in accordance with details to be submitted to and approved in writing by the Local Planning Authority and thereafter be retained for the parking of cycles only.
- 12) The development shall be not be occupied other than in accordance with the provisions of the submitted Framework Business Travel Plan November 2011 and Residential Travel Plan November 2011.
- 13) No development shall commence until a habitat creation/enhancement and management plan and programme has been submitted to and approved in writing by the Local Planning Authority in consultation with specialist advisors. The plan shall include (but not be limited to) further details of measures for: the maintenance and enhancement of retained hedgerows, proposed replacement hedge planting and ecological enhancement and habitat creation proposals within the proposed open space and site drainage ponds. The approved habitat creation/enhancement and management plan shall be implemented in full in accordance with the approved programme.
- 14) No development shall commence until measures to protect ridge and furrow earthworks on the site both during and after construction have been submitted to and approved in writing by the Local Planning Authority. The measures shall be implemented as approved.
- 15) No development shall commence until details of the following have been submitted to and approved in writing by the Local Planning Authority:
 - how renewable energy measures are to be incorporated into the proposed development;
 - measures to conserve and recycle water to be incorporated into the proposed development;

- energy efficiency measures to be incorporated into the proposed development; and
- construction materials to be used in the proposed development with the aim of minimising the use of primary non-sustainable materials
- an implementation timetable

The approved details shall be implemented and incorporated into the approved development in line with the approved implementation timetable.

- 16) No development shall commence until a Construction Method Statement has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
- (i) the parking of vehicles of site operatives and visitors
 - (ii) loading and unloading of plant and materials
 - (iii) storage of plant and materials used in constructing the development
 - (iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
 - (v) wheel washing facilities
 - (vi) measures to control the emission of dust and dirt during construction
 - (vii) a scheme for recycling/disposing of waste resulting from construction works.
- 17) Applications for the approval of reserved matters shall be in accordance with the principles and parameters broadly described and illustratively indicated in the submitted "Design & Access Statement" (as clarified in Planning Prospects letter dated 9th December 2011) including with regard to the general areas of development, floor areas and storey heights. Any reserved matter application shall include a statement providing an explanation as to how the design of the development responds to the Design and Access Statement.
- 18) The development shall not commence until details of the facilities for the storage of refuse for the proposed buildings within the development has been submitted to and approved in writing by the Local Planning Authority. The development shall not be occupied until the approved refuse storage facilities to serve the respective dwelling or business unit have been provided in accordance with approved details.
- 19) The development shall not commence until details of a phasing plan for the development have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved phasing plan.
- 20) The development shall not commence until the site has been subject to a detailed scheme for investigation and recording of contamination of the land and risks to the development, its future uses and surrounding environment. A detailed written report on the findings including proposals and a programme for the remediation of any contaminated areas and protective measures to be incorporated into the buildings shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include proposals for the disposal of surface water during remediation. The

remediation works shall be carried out and a validation report shall be submitted to and approved in writing by the Local Planning Authority in accordance with the approved proposals and programme. If during the course of the development further evidence of any type relating to other contamination is revealed, work at the location will cease until such contamination is investigated and remediation measures, approved in writing by the Local Planning Authority have been implemented.

- 21) A landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas including the proposed open space and the frontage hedge to Station Road (which shall not be demised to individual dwellings) but other than small, privately owned, domestic gardens, shall be submitted to and approved in writing by the Local Planning Authority prior to the occupation of the development or any phase of the development, whichever is the sooner, for its permitted use. The landscape management plan shall be carried out as approved.
- 22) No development shall commence until a noise mitigation scheme designed to minimise the impact from road and railway traffic such that the noise levels within the dwellings do not exceed the recommendations set out in BS8223:1999 Sound Insulation and Noise Reduction for Buildings shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details.
- 23) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking, re-enacting or modifying that Order), the approved business units shall only be used for B1a and B1b purposes as defined by the Town and Country Planning (Use Classes) Order 1987 (or any order revoking, re-enacting or modifying that Order).

APPENDIX 2.5

JUDGMENT OF MR JUSTICE STUART-SMITH EWHC 597 (ADMIN)



Neutral Citation Number: [2013] EWHC 597 (Admin)

Case No: CO/12207/2012

IN THE MANCHESTER CIVIL JUSTICE CENTRE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Manchester Civil Justice Centre,
1 Bridge Street West, Manchester,
Greater Manchester,
M60 9DJ

Date: 25/03/2013

Before:
THE HONOURABLE MR JUSTICE STUART-SMITH

Between:

WAINHOMES (SOUTH WEST) HOLDINGS LIMITED **Claimant**

- and -

(1) THE SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT **Defendant**

(1) WILTSHIRE COUNCIL
(2) CHRISTOPHER RALPH CORNELL AND SARAH CECILIA CORNELL **Interested Parties**

David Manley Q.C.~~**D. E. Manley Q.C.**~~ (instructed by **Ashfords LLP**) for the **Claimant**
Lisa Busch (instructed by **The Treasury Solicitor**) for the **Defendant**

Hearing date: 11 March 2013

Approved Judgment

Mr Justice Stuart-Smith:

Introduction

1. This is a claim under s.288 of the Town and Country Planning Act 1990. The Claimant (“Wainhomes”) challenges a decision dated 5 October 2012 by which inspector Mike Robins dismissed an appeal against the non-determination by Wiltshire Council (“the Council”) of a proposal to build up to 50 houses on land at Widham Farm, Widham Grove, Station Road, Purton, in Wiltshire. The inquiry was undertaken on the appeal of Mr and Mrs Cornell, who are now interested parties in these proceedings, against the Council’s non-determination of their application for planning permission. Wainhomes has an interest in the land the subject of the challenge by reason of an option agreement dated 13 November 2012.
2. The inspector indentified as one of the main issues in the case, whether or not there were material considerations that would outweigh the development plan presumption against development in the countryside. Central to that issue was whether or not there was a supply of specific deliverable sites sufficient to provide five years worth of housing against the Council’s relevant housing requirements with an additional buffer of five per cent to ensure choice and competition in the market for land, as required by paragraph 47 of the National Planning Policy Framework (“NPPF”). As discussed in greater detail below, that issue involved consideration of whether the strategic sites included in Wiltshire’s draft Core Strategy and AMR should be included by the inspector when determining the supply of deliverable sites over the next five years. The Council contended that they should be included; the appellants said that they should be excluded. After the hearing of the inquiry two decisions by another inspector (Inspector Papworth) were promulgated in relation to sites in Calne, which is also in Wiltshire. Those decisions decided, in materially identical terms, that strategic sites should be excluded from consideration of the supply of deliverable sites. Those decisions were sent promptly to the inspectorate by those who were at that time advising Mr and Mrs Cornell; but they were not considered by Inspector Robins. When he made his decision on 5 October 2012 he found against the appellants and included the strategic sites. Having done so he concluded that a five year housing supply had been shown.
3. By these proceedings Wainhomes advances five grounds of appeal, namely:
 - i) The inspector failed to have regard to a material consideration namely the two decisions at Calne or give reasons for not following the approach taken in those cases to the five year housing land supply;
 - ii) The inspector failed correctly to interpret the NPPF;
 - iii) The inspector gave inadequate reasons for the inclusion of strategic sites in the five year housing land supply and/ or the inclusion of the site was irrational;
 - iv) The inspector failed to take into account material considerations; gave inadequate reasons for concluding a five year housing land supply existed or otherwise behaved irrationally in so concluding;

- v) The inspector made a mistake or otherwise reached a conclusion based on no evidence.
4. In summary, this judgment concludes that:
- i) Ground 1 of the challenge is established. The inspector failed properly to exercise his discretion in deciding whether or not to admit the Calne decisions for consideration and failed to give proper reasons for his decision;
 - ii) The other grounds of challenge fail because when the Decision Letter is read fairly and with the reasonable latitude appropriate to a review of such decisions, it appears that the inspector made no material error of law, reached conclusions that it was open to him to reach on the material he considered, and gave adequate reasons for his decision.

The applicable principles

5. The principles applicable to a challenge under s.228 of the Town and Country Planning Act 1990 have been set out frequently and repeatedly in many decisions including decisions of the highest authority. It is neither necessary nor desirable to provide a comprehensive review in this case, and I merely highlight principles that are directly in point for this challenge.
6. In *Wiltshire Council v Secretary of State for Communities and Local Government and Robert Hitchins Limited* [2010] EWHC 1009 (Admin) Simon J provided a useful summary of the applicable principles at [7-8] which I gratefully adopt without setting it out again. I bear in mind at all times that:
- a) Where an expert tribunal (such as a planning inspector) is the fact finding body, the *Wednesbury* unreasonable test will be “a difficult obstacle” and poses a “particularly daunting task” for an applicant under s.288;
 - b) A decision letter must be read in good faith and as a whole. It should be construed in a practical manner and not as if it were a contract or statute.
7. The scope and extent of an inspector’s obligation to provide reasons were explained in *South Buckinghamshire DC v Porter (no.2)* [2004] 1 WLR 1953 by Lord Brown of Eaton-Under- Heywood at [36]:

“The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the “principal important controversial issues”, disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily

be drawn. The reasons need refer only to the main issues in the dispute, not to every material consideration. They should enable disappointed developers to assess their prospects of obtaining some alternative development permission, or, as the case may be, their unsuccessful opponents to understand how the policy or approach underlying the grant of permission may impact upon future such applications. Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision.”

8. A decision maker ought to take into account all matters which might cause him to reach a different conclusion to that which he would reach if he did not take it into account. That includes considerations where there is a real possibility that the decision maker would reach a different conclusion if he did take that consideration into account. If a matter is excluded from consideration and it is clear that there is a real possibility that the consideration of the matter would have made a difference to the decision, a Judge is able to hold that the decision was not validly made. But if the Judge is uncertain whether the matter would have this effect or was of such importance in the decision-making process then he does not have before him the material necessary for him to conclude that the decision was invalid: see *Bolton MBC v SoSE* [1991] P&CR 343, 352-353. This obligation derives from s.70 (2) of the Town and Country Planning Act 1990 which applies to the determination of appeals by virtue of s.79 (4) of the Act: and see *R (on the application of Kides) v South Cambridgeshire DC* [2002] EWCA Civ 1370 at [122-127]. *Kides* establishes that the obligation to have regard to material considerations continues up to the time that the decision maker (in this case the inspector) makes his decision.
9. It is common ground that a previous inspector’s planning decision is capable of being a material consideration, though the importance to be attached to a previous decision will depend upon the extent to which the issues in the previous decision and the current decision overlap. In *North Wiltshire DC v SoSE and Clover* [1992] 605 P&CR 137 Mann J addressed the limits of the inspector’s obligation to have regard to previous decisions. At page 145 he said that ‘an inspector must always exercise his own judgment. He is therefore free upon consideration to disagree with the judgment of another but before doing so he ought to have regard to the importance of consistency and to give his reasons for departure from the previous decision’. Mann J provided what he called ‘a practical test for the inspector’ which was to ask ‘whether if I decide this case in a particular way, am I necessarily agreeing or disagreeing with some critical aspect of the decision in a previous case?’ This guidance cannot simply be applied by rote. S.38(6) of the Planning and Compulsory Purchase Act 2004 requires applications for planning permission to be determined in accordance with the development plan, unless material considerations indicate otherwise; and this requirement is reflected and reiterated. The development plan may itself be in a state of flux and development. That being so, previous decisions that were made when the planning regime or development plan were significantly different are likely to be of

less materiality than recent decisions made in the same or a closely similar planning context.

10. The Town and Country Planning Appeals (Determination by Inspectors) (Enquiries Procedure) (England) Rules 2000 provides the procedural framework for the conducting of inquiries. They include rules that are intended to ensure that all relevant materials upon which the inspector will make his decision are available both to the inspector and to other parties according to an orderly timetable. The rationale for this procedural framework is self evident: the late submission of additional materials is liable to produce inefficiency, delay, increased expense and, at worst, injustice. However, it is inevitable that there will be occasions when information that is material to an inspector's decision will become available for the first time at a date which prevents compliance with the normal framework and rules. Against that eventuality the inspector has a discretion to admit materials which have not been provided in accordance with the normal procedural timetable. That discretion continues up to the time that he makes his decision. Rule 18 makes express provision for the admission of material after the inquiry has been held and before he has made his decision as follows:

“(2) When making his decision the inspector may disregard any written representations or evidence or any other document received after the close of the inquiry.

(3) If, after the close of an inquiry, an inspector proposes to take into consideration any new evidence or any new matter of fact (not being a matter of government policy) which was not raised at the inquiry and which he considers to be material to his decision, he shall not come to a decision without first (a) Notifying [in writing] the persons entitled to appear at the inquiry who appeared at the matter in question; and (b) affording them an opportunity of making written representations to him or of asking for the re-opening of the inquiry. And they shall ensure that such written representations or requests to re-open the inquiry are received by the Secretary of State within three weeks of the date of notification.

(4) An inspector may, as he thinks fit, cause an inquiry to be re-opened and he shall do so if asked by the appellant or the local planning authority in the circumstances and within the period mentioned within paragraph (3): and where an inquiry is re-opened – (a) The inspector shall send to the persons entitled to appear at the inquiry who appeared at it a written statement of the matters with respect to which further evidence is invited;...”

11. The inspector's power to admit material after an inquiry and the basis upon which he should exercise his discretion when asked to consider further material is the subject of Planning Inspectorate Good Practice Advice Notes. Advice Note 07 says at [67]:

“At any point before deciding the appeal the inspector may exercise his/her powers to seek further information from the

parties if it is considered necessary to enable a properly informed, and reasoned, decision to be made.”

Advice note 10 says (at [7]) that, if new matters arise which are considered likely to be material to the inspector’s consideration of the case, the relevant material should be submitted at the earliest possible stage. At [9] the note says:

“The Secretary of State and Inspectors have discretion as to how to treat new materials submitted with or during the consideration of an appeal. They will apply their discretion on the basis of the relevance of the material to the appeal proposal, whether it simply repeats something that is already before the Inspector (for example, rebuttal evidence which adds nothing to what is already recovered in a proof of evidence) and whether it would be procedurally fair to all parties “including interested persons” if the material were taken into account...”

12. These being principles that are relevant to apply in this case, I turn to consider the grounds of challenge.

Ground 1: The inspector failed to have regard to a material consideration namely the two decisions at Calne or to give reasons for not following the approach taken in those cases to the five year housing land supply

13. It is necessary to examine the factual background in more detail to put this ground of challenge in context. For convenient reference, the relevant passages of the Decision Letter are reproduced at Annexe A and are not set out again in the body of this judgment.

Factual background

14. The NPPF was introduced in March 2012. Under the heading “Delivering a wide choice of high quality homes”, [47] of the NPPF provides:

“To boost significantly the supply of housing, local planning authorities should:

- Use their evidence base to ensure that their local plan meets the full, objectively assessed needs for market and affordable housing in the housing market area as far as is consistent with the policies set out in this framework, including identifying key sites which are critical to the delivery of the housing strategy over the planed periods;
- Identify and update annually a supply of specific deliverable sites sufficient to provide 5 years worth of housing against their housing requirements with an additional buffer of five per cent (moved forward

from later in the planned period) to ensure choice and competition in the market for land...”

15. A footnote attached to the word “deliverable” in the second bullet point (“Footnote 11”) defines what that word means in [47] as follows:

“To be considered deliverable, sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years and in particular that development of the site is viable. Sites with planning permission should be considered deliverable until permission expires, unless there is clear evidence that schemes will not be implemented within 5 years, for example they will not be viable, there is no longer a demand for the type of units or sites have long term phasing plans.”
16. It was central to the appellants’ case before the inspector that there was an insufficient supply of deliverable sites and that insufficiency was a material consideration in favour of the appellant’s proposal. The importance of the existence or otherwise of deliverable sites sufficient to provide 5.25 years worth of housing against the identified housing requirements was made clear by Tracy Smith, the Council’s Area Team Leader, who expressly accepted in evidence that if it were to be concluded that there was a shortfall in the 5 year housing land supply and if it were to be concluded (as the inspector did conclude in the Decision Letter) that prematurity was not a legitimate basis on which to reject the appeal then development of the appeal site would be permissible in principle subject to satisfactory s 106 contributions being made. She also accepted that the Council was not suggesting that any more sustainable sites existed within the settlement boundaries of Purton, that the site had no constraints that would preclude its development, and that the development of up to 50 units could not be characterised as “large scale”. Accordingly, given the inspector’s conclusion on prematurity, the sufficiency of the housing land supply was of primary importance.
17. Various different sources of data relating to land supply were available. The appellants favoured the evidence base that had underpinned the dRSS while the Council favoured the approach adopted in the emerging Core Strategy for Wiltshire (“eWCS”). A number of reasons were put forward by the parties in support of their respective positions, which were encapsulated in the witness statements of Mr Stephen Harris, a Chartered Town Planner who gave evidence for the appellants, and Mr Neil Tiley, who gave evidence for the Council and who was the Council’s Manager of Monitoring and Evidence within Economy and Regeneration.
18. The inspector set out the competing positions at [11-14] of the Decision Letter. In summary, both parties accepted that the date and projections found in the adopted development plan were out of date. Revised housing requirements were promoted during the development of the dRSS, which was subject to Examination in Public and revision for the version that was published for consultation in 2008. However, because of the Coalition Government’s antipathy towards RSSs, it was recognised that although the dRSS had reached an advanced stage it was extremely unlikely to be adopted. In response to this state of affairs, the Council reconsidered the housing

requirements for Wiltshire and its reconsideration informed the eWCS. The eWCS had reached the stage of being submitted for Examination in Public but that examination had not taken place. The Council preferred to rely on the eWCS evidence base because extensive consultation had already taken place; but the outcome of the EIP was as yet unknown and uncertain, not least because it was subject to objections to proposed housing numbers and because concerns had been raised which suggested a need for the Council to re-consult.

19. A discrete but important argument related to what sites could properly be regarded as “deliverable” within the meaning of Footnote 11. The Council had included in its calculations 1,657 units from sites identified as “strategic sites” in the eWCS. None of these sites had planning permission. Mr Tiley did not know which, if any, were objected to. Mr Harris gave unchallenged evidence that, to the best of his knowledge, all were subject to objection. Mr Tiley was unable to identify any case in which the Secretary of State had deemed it appropriate to include emerging Core Strategy “strategic sites” in a calculation of the 5 year housing land supply where such sites were subject to objection. At the present hearing, the Court was informed that no such decision of the Secretary of State had been identified but that there are decisions of the Secretary of State going the other way (i.e. excluding strategic sites which were subject to objection from inclusion in the calculation of the 5 year housing land supply). No further details about these decisions have been provided¹.
20. The potential impact of this dispute about strategic sites on the raw figures as found by the inspector emerges clearly from the evidence of Mr Harris for the present proceedings. Inspector Robins included strategic sites in his calculations, which led him to produce a table at [52] of the decision letter as follows:

| Plan/Policy | Housing Requirement | 5 year Housing Requirement | Housing Supply | Assessment (years) |
|-------------------------|---------------------|----------------------------|----------------|--------------------|
| dRSS Rest of Wiltshire | 3,024 | 1,008 | 1522 | 7.5 |
| dRSS North Wiltshire | 10,684 | 3,549 | 3052 | 4.3 |
| eWCS North and West HMA | 15,249 | 5,083 | 6292 | 6.2 |

In other words, adopting the Appellant’s favoured approach by reference to the dRSS North Wiltshire would support the conclusion that there was a shortfall in supply but adopting the Council’s favoured approach by reference to the eWCS North and West HMA would support the conclusion that there was not.

21. Mr Harris, whose evidence is not contradicted, says that “for North Wiltshire the total supply from [strategic sites] in the next 5 years was 990 dwellings ... and 1,657 dwellings for the North and West HMA ...” The effect of excluding these dwellings

¹ Save possibly for a reference to one decision in the Calne Decision letters: see [26] below.

upon the inspector's table is shown in the right hand column of the adjusted table below:

| Plan/Policy | Housing Requirement | 5 year Housing Requirement | Housing Supply | Inspector Robins' Assessment (years) | Adjusted assessment excluding strategic sites |
|-------------------------|---------------------|----------------------------|----------------|--------------------------------------|---|
| dRSS Rest of Wiltshire | 3,024 | 1,008 | 1522 | 7.5 | 7.5 |
| dRSS North Wiltshire | 10,684 | 3,549 | 3052 | 4.3 | 2.9 |
| eWCS North and West HMA | 15,249 | 5,083 | 6292 | 6.2 | 4.6 |

In other words, if the strategic sites are excluded there is a much greater shortfall by reference to the dRSS for North Wiltshire and there is also a shortfall by reference to the eWCS North and West HMA.

22. During the inquiry the inspector was referred to three previous decisions which touched on the issue of inclusion or exclusion of strategic sites. The decisions predated the introduction of the NPPF and were referred to at [22-23] of the Decision Letter. The decisions were:
- i) The decision of Inspector Youle relating to land at Meadow Lane, Ruands, in Northamptonshire dated 18 January 2010. At [41] of his decision the inspector referred to "impending consents and DPD allocation" which the Council had brought into account in its calculation of the housing land supply. The inspector said:

"This includes a number of sites which are proposed as housing allocations in the Preferred Options versions of the TTP and the RAP. However, these Plans have not been subject to independent testing through an examination and several of the sites do not appear to have planning permission or to be allocated for housing in the Local Plan. In addition, some sites appear to have constraints which could impede deliverability. Consequently I have not been given sufficient evidence to indicate that these sites can be regarded as being available, suitable and achievable as required by PPS3. Therefore, it has not been demonstrated that a five year supply exists. "
 - ii) The decision of Inspector Graham relating to land at Moat House Farm, Marston Green, in the area of Solihull MBC dated 21 February 2012. At [11] of her decision she addressed the question of Draft Local Plan sites, which the Council had brought into account in its calculation of the housing land supply. The inspector said:

“The draft Local Plan identifies proposed sites for 1,445 net additional dwellings, and the Council maintains that these should be taken into account when calculating the 5 years supply position. However, it is important to bear in my mind that this emerging Local Plan is still only a draft, which has yet to be the subject of further consultation, representations, and Examination in Public. Paragraph 54 of PPS3 explains that to be considered deliverable, sites should be available, suitable and achievable at the point of adoption of the relevant Local Development Document. There can be no guarantee that sites included in the current draft will remain in the finished version of the Local Plan, which in any event will not be adopted before 2013. As the situation stands at present, I consider that these sites should not be included when calculating the current five year land supply position”

- iii) The later decision of Inspector Graham relating to land at Park Road, Malmesbury, Wiltshire dated 15 March 2012. At [18] of her decision she accepted that “the Council’s 2010/2011 Annual Monitoring Report (AMR) provides the logical starting point for assessing the supply of deliverable housing sites.” She then considered specific sites, and at [23] she addressed the inclusion of three strategic sites at Chippenham which the Council had brought into account in its calculation of the housing land supply. The inspector said:

“It is fair to note that all three sites have physical, environmental and infrastructure constraints that will need to be addressed. However, the council has liaised with the developers of each, and obtained delivery trajectories which update the information provided in AMR. I see no convincing reason to doubt these revised figures, which indicate that within the five year period an additional 420 dwellings will be provided at the north Chippenham site, and a further 110 at the East Chippenham site. ”

23. Certain points may immediately be noted:

- i) Each inspector was prepared in principle to treat sites which did not yet have planning permission as potentially satisfying the PPS3 requirements;
- ii) The inspectors at Meadow Lane and Moat House Farm identified the fact that the Plans in those cases had not been subjected to Examination in Public as a feature weighing against the inclusion of the sites there listed;
- iii) In the Malmesbury decision, the inspector’s reservations about the status of two of the sites² were resolved by the calling of site specific evidence about

² The reference to “the North Chippenham site, and ... the East Chippenham Site” suggests that they were two of the three strategic sites being considered in [23], with the third site not being named or included. However, it makes no difference to the argument if the North Chippenham and East Chippenham Sites in fact comprised all three sites: whether two or three strategic sites were included by the inspector, they were included after the provision of site-specific evidence.

their availability and deliverability. By contrast, no such evidence had been called in the other two appeals.

24. In the present case it was not suggested before the inspector and is not suggested now that strategic sites which did not yet have planning permission were necessarily to be excluded from the calculation of the housing land supply. The case advanced before the inspector (relying upon the previous decisions from Meadow Lane and Moat House Farm) was that because the eWCS had not been adopted, sites could not be regarded as available by virtue of their inclusion in the eWCS since their deliverability would be assessed through the Core Strategy process³. Inspector Robins dealt with the previous decisions specifically at [22-23] of the Decision Letter. He accepted that he should not prejudge the outcome of the eWCS Examination in Public and that the weight to be ascribed to the eWCS depended upon “the specific stage of preparation of the evidence base and the evidence supporting deliverability.” In contrast to what had happened at Malmesbury, no site specific evidence of deliverability was presented to Inspector Robins. Referring to that decision he said that “the Inspector in that case also accepted the principle of including strategic sites.” It is evident that he saw the Malmesbury decision as supporting the conclusion (which he ultimately reached) that the strategic sites in the present case should be included.
25. Before Inspector Robins made his decision, two potentially relevant events occurred. First, on 3 September 2012 Mr Harris sent to the inspector a copy of a letter to the Council dated 29 August 2012 from Mr Andrew Seaman, the Senior Housing and Planning Inspector who was to conduct the Examination in Public of the eWCS. That letter raised a number of concerns about the eWCS and its prospects when submitted to the EIP. There were concerns relating to the soundness of the evidence base underpinning the housing chapter and the quality of the sustainability appraisal that had been carried out. Mr Seaman noted that the Council was “undertaking further consultation on its proposed pre-submission changes which will include details of the revised Sustainability Appraisal and an opportunity to comment upon the implications of the [NPPF] and Government Policy for Gypsies and Travellers.” He foresaw that the Examination would certainly extend into 2013. This further information was admitted by Inspector Robins. It seems likely that he had it in mind when he said, at [12] of his Decision Letter, that “the Council’s ambitions for this plan to be adopted by the end of 2012 or early 2013 may, however, be questioned in light of recent concerns and a need to re-consult.”
26. The second potentially relevant event was that Inspector Papworth made two decisions on 18 September 2012. Each decision related to land at Calne, in Wiltshire. Each considered in some depth (and in identical terms) the principles of development to be applied, at and from [9]. At [13-15] Inspector Papworth considered the housing requirement side of the equation established by [47] of the NPPF. He regarded the Malmesbury decision as “an anomaly” and contrasted it with a decision of the Secretary of State at Salisbury which “expressed a different view on a more advanced core strategy.” Turning to the state of development of the eWCS he said that it was “advanced inasmuch as an Examination is imminent, but in view of the extent of unresolved objections, including to the adequacy of the provisions for housing, there must remain doubts over the outcome and the consistency with Framework policies on increasing the supply of housing.” He held that the assumption that the Regional

³ See Mr Harris’ Witness Statement to the inquiry at [7.24-25]

Strategy will not now be taken further does not materially alter the weight that can be attached to that evidence base relative to that presently informing the emerging Core Strategy”; and he concluded that, having regard to the first bullet point of Framework [47] “it is appropriate to regard the figures derived from the evidence for the Regional Strategy as a robust basis for determining the requirement.”

27. Turning to the supply side of the equation at [16], Inspector Papworth took the view that “to ensure a robust appraisal it is necessary to look further at the list of sites as discussed at the hearing.” It is apparent that site specific evidence had been presented in relation to some but not all sites, and that no site specific evidence had been submitted in relation to strategic sites, because Inspector Papworth said at [17-18]:

“17. Of the large permitted areas, there does appear to be doubt over the delivery of the former Bath and Portland Stoneworks site given its past history, not being in the 2009/10 Annual Monitoring Report, and little evidence that matters have moved on substantially since. Similarly with the Blue Hills Site, this appears to have been subject to persistent delays and to being put back in time in the successive Annual Monitoring Reports. The delivery timescale for land adjacent to the scrap yard at Trowbridge also appears to be receding and reduction here is appropriate.

18. Other sites with permissions that had been previously dismissed have been brought back into the list, but it is apparent that even with the acceptance of these sites in total, a shortfall is possible. The Council has added 183 units in this category where none were previously included. Footnote 11 of the framework does provide for live permissions to be counted unless there is clear evidence that the schemes will not be implemented within 5 years, for example, they will not be viable, there is no longer a demand for the type of units or sites or sites have long term phasing plans. Clearly those where the permission has expired should not be included and where land was bought at or near the height of the market, doubts over viability would be legitimate. The prospect of new permissions on new land being required to replace such stalled schemes was discussed. Windfalls have also been significantly increased and that is provided for in paragraph 48 of the framework subject to certain requirements on historic evidence. There appears to be good reason to reduce the figure on that basis as suggested, *Vision and strategic sites are disputed in their entirety, and given the process to be gone through and the doubts over delivery, a degree of caution is appropriate. The requirement is to identify a supply of specific deliverable sites and to be considered deliverable, sites should be available now. These sites cannot truly be described as being available now.*”
[Emphasis added]

28. Inspector Papworth concluded that there were sufficient doubts remaining over a number of included sites and supply provisions to increase further the shortfall which

he had already found to have existed by reference to the various evidence bases even if those sites were included.

29. On 26 September 2012 Mr Harris had a conversation with someone at the relevant PINS team who advised him to send the Calne decisions together with a brief note. As a result of that conversation he sent the Calne decisions by email times at 10:35 that day. In that email he provided the suggested note in the following terms:

“Following our conversation earlier, I understand that the Council has not commented on the letter from Wiltshire Core Strategy Inspector and therefore you do not require any further comment from the Appellant.

We also discussed two appeal decisions which were issued last week for the two sites in Calne, Wiltshire. As they are in the same policy area of North Wiltshire we consider that they are relevant to our appeal as they deal with similar issues. However we are conscious that the Inquiry closed a number of weeks ago. Therefore you requested that we send the decisions to you and you would decide whether or not they can be taken into account on this appeal.

Both of the attached appeals were heard at the same hearing in July this year. The first (APP/Y3940/A/12/2171106/NWF) was for some 154 dwellings and the second (APP/Y3940/A/12/2169716) was for up to 200 dwellings. Therefore both appeals (some 354 dwellings) would meet the 370 dwellings that remain to be planned for in the emerging Core Strategy for Calne. These decisions conclude that:

- The housing requirement to be used is the RSS Proposed Changes;
- The geographical area to determine the supply is the former North Wiltshire;
- Limited weight can be given to the emerging Core Strategy due to the stage it has reached;
- There are concerns on the deliverability of commitments and emerging allocations;
- The appeals would not result in prematurity against the emerging Core Strategy and neighbourhood plan.

Should you require any further information please do not hesitate to contact me”

30. Receipt of Mr Harris’ email was acknowledged at 15:50 on 26 September 2012. The only additional comment made by the person acknowledging receipt was the accurate

but inconsequential statement that “The Appeals referred to have now been decided and the Decisions issued on 18 September”, which Mr Harris obviously knew already.

31. No further response was sent until 14:11 on Tuesday 2 October 2012 when a Case Officer from the relevant team at PINS emailed Mr Harris above a copy of the email with which he had sent the Calne decisions:

“Thank you for your email below. Unfortunately it was received too late to be considered by the Inspector.”

32. Inspector Robins’ decision was made on 5 October 2012. No reference was made in the Decision Letter to the Calne decisions; nor has any further information or reason been given to explain why Mr Harris’ email of 26 September 2012 and the Calne decision he had attached to it were not considered by the inspector.

33. The relevant passages in the Decision Letter are set out in Annexe A. The following features may conveniently be highlighted here:

- i) The Decision Letter addresses the issue of “deliverable” sites and whether strategic sites should be included specifically at [21-24] and [51-54];
- ii) At [21] the inspector’s acceptance that allocated sites, including those within emerging plans, could be included was subject to two provisos:
 - a) Acceptance would be “subject to the weight that can be given to that plan and its evidence base”; and
 - b) Acceptance would be “subject to ... the submission of information indicating a reasonable likelihood of them progressing within the five year period.”
- iii) At [22] and [24] the inspector accepted that the existence of outstanding objections to sites meant that housing supply from such sites could not be guaranteed; and that he could not prejudge the outcome of the eWCS Examination. He treated these as matters going to the weight that he was able to attach to the Council’s assertion that such allocations should be included;
- iv) At [23] he identified the evidential factors supporting his conclusion that exclusion of all the draft allocations was not appropriate, including that the Malmesbury inspector had “accepted the principle of including strategic sites.”;
- v) He referred to the Moat House Farm and Meadow Lane decisions at [22]. There was no discussion of the basis or reasoning supporting either of those decisions or the Malmesbury decision. In particular, the Decision Letter does not evidence an appreciation that there was site specific evidence in the Malmesbury decision (but not in the other two) or that this might be a significant factor, despite his statement in [21] that acceptance would be subject to the submission of evidence indicating a reasonable likelihood of sites progressing within the five year period;

- vi) He accepted at [24] that, although exclusion of all the draft allocations was not appropriate, “full weight cannot be given to the precise numbers put forward by the Council”; but he concluded that it was “reasonable to include these sites in absence of specific evidence that they cannot be delivered.”;
- vii) At [53], reviewing the contents of his table, he concluded that the Council had shown a 5-year housing supply relative to the dRSS Rest of North Wiltshire figures and the eWCS North and West HMA figures but had failed to demonstrate adequate supply for the dRSS North Wiltshire Area. He concluded that the weight to be given both to the dRSS figures and the eWCS figures was “somewhat lessened”, to a similar degree in each case;
- viii) At [54] he stated that he did not rely upon the exact (or raw) figures in his table, but regarded the figures (taken broadly) to demonstrate a 5 year housing supply except in relation to the former North Wiltshire District, where he considered that the 4.3 years, set against an expectation of 5.25 years, did not represent a serious shortfall. As a result, he did not consider that there was an “overwhelming need for development to meet” the specific demand in the former North Wiltshire District. He therefore considered that a 5-year housing supply had been shown.

Discussion

- 34. The issue for the inspector was whether the strategic sites were “deliverable” as defined by Footnote 11 so that they fell within the meaning of [47] and should have been included in the assessment of housing land supply. Footnote 11 is not entirely straightforward, but the following points are relevant to its interpretation:
 - i) It is common ground that planning permission is not a necessary prerequisite to a site being “deliverable”. This must be so because of the second sentence of Footnote 11 and because it would be quite unrealistic and unworkable to suggest that all of the housing land supply for the following five year period will have achieved planning permission at the start of the period;
 - ii) The parties are agreed that a site which is, for example, occupied by a factory which has not been derequisitioned, or which is contaminated so that housing could not be placed upon it, is not “available now” within the meaning of the first sentence of Footnote 11. However, what is meant by “available now” is not explained in Footnote 11 or elsewhere. It is to be read in the context that there are other requirements, which should be assumed to be distinct from the requirement of being “available now”, though there may be a degree of overlap in their application. This suggests that being available now is not a function of (a) being a suitable location for development now or (b) being achievable with a realistic prospect that housing will be delivered on the site within five years and that development of the site is viable. Given the presence of those additional requirements, I would accept Ms Busch’s submission for the Secretary of State: “available now” connotes that, if the site had planning permission now, there would be no other legal or physical impediment integral to the site that would prevent immediate development;

- iii) Questions as to the viability of the proposed development or, for example, whether a developer had been identified or was in a position immediately to start work, would go to the question whether there was a realistic prospect of delivery within five years, but not to the question whether the site was available now. For the same reason, the fact that a site does not “offer a suitable location” does not affect whether or not it is “available now”, suitability of the location being a separate requirement;
 - iv) Where sites without planning permission are subject to objection, the nature and substance of the objections may go to the question whether the site offers a suitable location; and they may also determine whether the development is achievable with a realistic prospect that housing will be delivered on the site within five years. Even if detailed information is available about the site and the objections, prediction of the planning outcome is necessarily uncertain. All that probably need be said in most cases is that where sites do not have planning permission and are known to be subject to objections, the outcome cannot be guaranteed. Accordingly, where there is a body of sites which are known to be subject to objections, significant site specific evidence is likely to be required in order to justify a conclusion that 100% of all those sites offer suitable locations and are achievable with a realistic prospect that they will be delivered within five years;
 - v) For similar reasons, where sites are in contemplation because of being included in an emerging policy document such as the eWCS, and the document is still subject to public examination, that must increase the lack of certainty as to outcome. That is implicitly recognised by [216] of NPPF which requires decision-takers to “give weight to relevant policies in emerging plans according to: the stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given)” and to “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)...” As Inspector Graham pointed out in the Moat House Farm decision, there can be no guarantee that sites included in the current draft will remain in the finished version of the Local Plan. The approach taken by the various inspectors whose decisions have been considered in this case (including Inspector Robins at [22]) is therefore correct: the stage of preparation of the evidence base and the progress of the draft document are important considerations going to the prospects of housing being delivered within five years and therefore being “deliverable” within the meaning of Footnote 11.
35. I would accept as a starting point that inclusion of a site in the eWCS or the AMR is some evidence that the site is deliverable, since it should normally be assumed that inclusion in the AMR is the result of the planning authority’s responsible attempt to comply with the requirement of [47] of the NPPF to identify sites that are deliverable. However, the points identified in [34] above lead to the conclusion that inclusion in the eWCS or the AMR is only a starting point. More importantly, in the absence of site specific evidence, it cannot be either assumed or guaranteed that sites so included are deliverable when they do not have planning permission and are known to be subject to objections. To the contrary, in the absence of site specific evidence, the

only safe assumption is that not all such sites are deliverable. Whether they are or are not in fact deliverable within the meaning of [47] is fact sensitive in each case; and it seems unlikely that evidence available to an inspector will enable him to arrive at an exact determination of the numbers of sites included in a draft plan that are as a matter of fact deliverable or not. Although inclusion by the planning authority is some evidence that they are deliverable, the weight to be attached to that inclusion can only be determined by reference to the quality of the evidence base, the stage of progress that the draft document has reached, and knowledge of the number and nature of objections that may be outstanding. What cannot be assumed simply on the basis of inclusion by the authority in a draft plan is that all such sites are deliverable. Subject to that, the weight to be attached to the quality of the authority's evidence base is a matter of planning judgment for the inspector, and should be afforded all proper respect by the Court.

36. The first limb of the challenge under Ground 1 is that the inspector failed to have regard to the two decisions at Calne. While it is common ground that the inspector had a discretion whether to admit or to refuse to admit the late-submitted material, this limb raises the following questions:
- i) Whether the Calne decisions were material that might have caused him to reach a different conclusion to that he in fact reached without taking them into account; and, if they were
 - ii) Whether the inspector's decision not to consider them was a lawful exercise of his discretion. This second question raises two sub-questions:
 - a) Whether the decision not to consider them could be and was a proper exercise of discretion in the circumstances prevailing; and
 - b) Whether the inspector was obliged to give any or proper reasons for his decision and, if so, whether he did so.
37. The Secretary of State accepts that it would have been open to him to submit evidence providing information about the circumstances in which the inspector decided not to consider the Calne decisions. Ms Busch correctly points out that the submission of such evidence could give rise to a risk of retrospective and unreliable justifications being advanced. That point is well made. However, once the risk is recognised, it can be addressed by the witness and should not be exaggerated; and the decision not to submit evidence covers not merely evidence about any reasoning that may have informed the inspector's decision but also primary factual evidence that may have been relevant. As it is, in the absence of such evidence, nothing is known save that the Calne decisions were submitted and received after the inquiry but nine days before the inspector made his decision on 5 October 2012.
38. Turning to the first question, there can be no real doubt that the Calne decisions were material that might have caused the inspector to reach a different conclusion to that he in fact reached without taking them into account. Ms Busch did not argue the contrary. It is, however, important to identify the features of the Calne decisions that gave them particular significance:

- i) While Inspector Robins already had before him three other decisions that were said to be relevant, they all pre-dated the introduction of the NPPF. The Calne decisions directly addressed the requirements of [47] of the NPPF, as Inspector Robins was required to do. It was therefore a previous decision that was directly in point;
 - ii) Inspector Papworth's Decision Letter identified the possibility of site specific evidence and that there had been none submitted in relation to the strategic sites in his case. His conclusion was that Malmesbury (where there had been site specific evidence) was "an anomaly" and he referred to a decision of the Secretary of State in relation to land at Salisbury going the other way, which does not appear to have featured in the material considered by Inspector Robins in his decision letter;
 - iii) Given its timing and the fact that Calne was also in Wiltshire, Inspector Papworth's decision was doubly relevant. It was relevant geographically since it addressed the same eWCS and other aspects of the Development Plan as applied to the Purton appeal; and it addressed them at the same stage of their progress as applied to the Purton appeal;
 - iv) Inspector Papworth had concluded that there were sufficient doubts remaining over a number of included sites and supply provisions to reduce the number of such sites that should be regarded as deliverable.
39. In these circumstances, there must have been (at least) a real possibility that considering the Calne decisions would have led Inspector Robins to a different conclusion. Although it would have been his decision and he would have been entitled to disagree with Inspector Papworth's conclusion, before doing so he would have been obliged to have regard to the importance of consistency and to give his reasons for departure from Inspector Papworth's decision. Given the features identified above, the result of applying Mann J's practical test would have been that he was disagreeing with a critical aspect of Inspector Papworth's decision, namely the conclusion that, there being no site specific evidence, the stage of progress of the development plan and the Council's evidence base did not justify the inclusion of the strategic sites as deliverable.
40. It would have been obvious to anyone receiving and reading the email (even without reading the attached Calne decisions themselves) that the decisions dealt with the same issues as were central to the Purton inquiry, that the decisions had been issued the previous week (and so could not have been provided earlier), and that, as very recent decisions, they were likely to address the same issues as arose in the Purton inquiry by reference to Wiltshire's Development Plan in its current state of development. Even a cursory review of the Calne decisions would have confirmed that this was so. In particular it would have confirmed that Inspector Papworth had produced a very recent assessment of whether, in the absence of site specific evidence, strategic sites included in the eWCS should be regarded as deliverable within the meaning of [47] of the NPPF.
41. That being so, the principle that a decision maker ought to take into account all matters which might cause him to reach a different conclusion and the obligation to have regard to material considerations up to the time that the decision is made

weighed heavily in favour of Inspector Robins exercising his discretion in favour of admitting the Calne decisions for consideration.

42. In support of her opposition to Ground 1 Ms Busch submitted that the late submission of the Calne decisions was a breach of the 2000 Rules. That submission is rejected. No sensible interpretation of the rules can require the submission of information before it is in existence. Furthermore, Rule 18(2)-(4) of the 2000 Rules expressly contemplates the submission of late information and that it may be admitted by the inspector in accordance with the rules. Reference to The Good Practice Advice Note 10 also weighed in favour of admitting the decisions for consideration. It provided that the inspector would apply his discretion on the basis of:
- i) The relevance of the material to the appeal proposal: the material was highly relevant and potentially decisive in persuading Inspector Robins to find in the appellants' favour on the issue of strategic sites. Had he done so the balance of evidence in favour of a finding that the existence of a 5-year land supply was not shown would shift markedly, as Mr Harris' evidence and the revised tables set out above show;
 - ii) Whether it simply repeats something that is already before the inspector: it did not; and
 - iii) Whether it would have been procedurally fair to all parties if the material were taken into account: even if some modest delay were to be incurred in bringing out the decision (as to which, see below) the admission of the Calne decisions could be handled in a way that was procedurally fair. The Secretary of State has not submitted to the contrary, which is realistic and correct.
43. I would accept that in some cases where information is submitted late there may be a tension between the need for finality and proportionate expense on the one hand and a willingness to admit evidence which has not been submitted in accordance with the normal procedural timetable under the Rules. However, there is no material available to the Court to suggest that there was any significant tension in this case. In particular, there is no evidence to suggest that the Calne decisions, though highly material, would open up any new issues or indicate the need for further evidence or hearings. On the evidence that is available to the Court, it would have been possible for any supplementary submissions to have been made shortly and in writing. It is not realistic to suggest, and it has not been suggested, that it would have been necessary to re-open the inquiry or that significant delay would have been caused by taking the Calne decisions into account. There is therefore no evidential basis upon which it could be said that it was disproportionate or contrary to the wider interests of justice for the Calne decisions to be taken into account.
44. In her oral submissions Ms Busch submitted that there was no obligation upon the inspector to state a reason for his decision not to take the Calne decisions into account because the Rules do not expressly require him to give reasons when exercising his discretion in these circumstances. That submission is rejected. No such implication can be deduced from the silence of the rules. On the contrary, the obligation on a decision maker to give reasons for his decisions (including exercises of discretion) which will or may affect the rights and obligations of parties to legal proceedings over which he is presiding is a general one which covers the exercise of Inspector Robins'

discretion in this case. Reasons were required in accordance with the guidance in *South Buckinghamshire DC*: see [7] above.

45. To the extent that any reason can be said to have been given at all, it was the statement in the email of 2 October 2012: “Thank you for your email below. Unfortunately it was received too late to be considered by the Inspector.” Taken at face value this says that not merely the Calne decisions but Mr Harris’ email were not considered at all by the inspector, but it is plain that the email was read, at least by one or more case-workers. What is neither self-evident nor the subject of evidence is whether the inspector (or anyone to whom he reasonably delegated the task) looked at the Calne decisions themselves before deciding that they would not be taken into account by the inspector for the purposes of reaching his decision.
46. The position confronting the Court when considering this limb of Ground 1 is that there is no evidence to suggest that the inspector (or anyone on his behalf) carried out a reasoned assessment of the materiality of the Calne decisions or whether, applying the approach advocated by Good Practice Advice Note 10 or any other reasonable balancing exercise, the decisions should be admitted and taken into account. For completeness I record that it was not submitted by Ms Busch that he had done so. While she submitted that there was material which could have justified him in reaching a reasoned decision to reject the late submission of the Calne decisions, she did not (and could not in the absence of any reasons being given by the inspector) submit that he in fact did take such a reasoned decision. She concentrated upon the fact that the submission that the information was submitted late and that, as she submitted, no one with knowledge of planning practice would be surprised to see the submission of the Calne decisions rejected on the basis that it was “just too late”.
47. Whether or not competent practitioners in the field would be surprised to see a late submission of information being knocked back on the basis that it is too late should depend upon the circumstances of the particular case, for two reasons. First, lateness is not of itself necessarily or even probably the determinative consideration. Secondly, the determinative considerations should be those that go into the mix of a reasoned assessment which balances those factors that tend in favour admission or rejection on the facts of a particular case. That assessment may be relatively simple or it may be complex; but in either event, the parties concerned are entitled to reasons that are intelligible and adequate to enable the reader to understand why the matter was decided as it was.
48. On the facts of this case, there is no information to support the suggestion that the Calne decisions were received too late to be considered by Inspector Robins and all the available information contradicts the assertion. The decisions were submitted promptly and were received 9 days before he made his decision on 5 October 2012. There is no evidence to suggest that he required that length of time to take them into account, or that his decision had in fact been taken by 29 September 2012, or that 5 October 2012 was an immutable deadline, or that reasonable accommodation could not have been made to ensure procedural fairness if the decisions were taken into account. In the absence of any reason or other material to explain why the date of the receipt of information trumped all other relevant considerations I am driven to the conclusion that the reason given is unsupportable. At its lowest, there was a failure to give adequate reasons so that the reader could know why, if any reasoned balancing exercise was in fact carried out, it led to the exclusion of the Calne decisions.

49. For these reasons, I therefore uphold Ground 1 of the challenge. In summary, his decision to exclude the Calne decisions from consideration should be set aside because:
- i) The inspector failed to exercise his discretion properly. A proper exercise of his discretion would have involved a balancing exercise either in accordance with or similar to that advocated by Good Practice Advice Note 10. Had he carried out such an exercise, he should have concluded that the considerations that weighed in favour of admitting the Calne decisions outweighed those that weighed in favour of excluding them;
 - ii) The reason given by the inspector, namely that the material was submitted too late to be considered by the inspector, was unsustainable;
 - iii) The inspector failed to give adequate reasons for his decision not to take the Calne decisions into account.
50. Given that he did not take the Calne decisions into account, it is somewhat academic to advance as a separate head of challenge that the inspector failed to give reasons for not following the approach taken in them. That said, in accordance with the principles established in *North Wiltshire DC v SoSE and Clover*, if he had taken them into account and decided not to follow them, he should have given his reasons for doing so. This would have been particularly important given the geographical and temporal overlap between the Calne and the Purton decisions.

Ground 2: The inspector failed to correctly interpret the NPPF.

Ground 3: The inspector gave inadequate reasons for the inclusion of strategic sites in the five year housing land supply and/ or the inclusion of the site was irrational.

Ground 4: The inspector failed to take into account material considerations; gave inadequate reasons for concluding a five year housing land supply existed or otherwise behaved irrationally in so concluding.

51. Although these are separate and distinct grounds of challenge, they overlap to the extent that they may be seen as different facets of the same argument, and I shall address them together. These Grounds fall to be considered by reference to the material actually considered by the inspector, without reference to the excluded Calne decisions.
52. Ground 2 is based upon an alleged disparity between the terms of [21] and [24] of the decision letter. In [21] the inspector wrote:

“In order for strategic plans to be put in place to address the housing supply, I consider that allocated sites can be included, including those within emerging plans, subject to the weight that can be given to that plan and its evidence base and the submission of information indicating a reasonable likelihood of them progressing within the five year period.”

In [24] he wrote:

“While full weight cannot be given to the precise numbers put forward by the Council, I consider it reasonable to include these sites in absence of specific evidence that they cannot be delivered.”

53. The Claimant submits that this shows that the inspector failed to apply the test required by [47] of NPPF. It is common ground that the correct test for sites not having planning permission, such as the strategic sites, is that set out in the first sentence of Footnote 11. The Claimant submits that the inspector failed to apply that test. It submits that the inspector has applied a presumption in favour of including sites in the absence of specific evidence that they cannot be delivered and that this is only appropriate in the case of sites having planning permission, where the approach is permitted and mandated by the second sentence of Footnote 11.
54. I have discussed Footnote 11 at [34-35] above. I accept that, for sites which fall to be considered under the first sentence of Footnote 11 to be taken as deliverable, it must be shown that they satisfy the requirements there set out. There is no a priori assumption that sites not having planning permission are deliverable. However, the fact that sites have been included in an emerging policy document or evidence base may (and often will) be a starting point. In other words, inclusion may be evidence in support of a conclusion that the sites so included are deliverable. Once that is accepted, there is no reason in principle or on the proper interpretation of Footnote 11 why the fact that sites are included in the eWCS or the AMR may not be taken as sufficient evidence that they are deliverable in the absence of evidence (specific or otherwise) that they are not. The weight to be attached to the evidence that they are deliverable will vary from case to case and is a matter of planning judgment for the inspector: see [35] above. So too will be the weight to be attached to any evidence that they are not. Evidence that they cannot be delivered can in principle be specific (e.g. site specific evidence that a site is contaminated or in delay) or general (e.g. evidence that all sites are subject to objection, though this evidence may be refined to the extent that the objections to particular sites are identified and capable of being considered).
55. Once [24] is read in its entirety and in context, it appears that the inspector was adopting this approach. Having set out the Footnote 11 test at the commencement of [21], he acknowledged the existence of objections at [22] and identified that it was for him to decide what weight he should attach to the sites having been allocated. At [23] he identified as a reason for including the sites that they had been identified by the Council in the course of the development of the eWCS. He acknowledged the weakness inherent in that process at the start of [24] but came to a planning judgment that sufficient weight could be given to the evidence in favour of inclusion so that the sites could be included in the absence of other, specific, evidence that they could not be included. Seen in this light, it is apparent that he did not misinterpret Footnote 11 in the way suggested by the Claimant. While other inspectors may have given different weight to particular aspects of the evidence, that does not cast doubt on the interpretation adopted.
56. Two further questions need to be considered. The first is the significance or otherwise of the cited passage from [21] of the Decision Letter. Bearing in mind the

obligation on the Court to read the Decision Letter in good faith and as a whole, construing it in a practical manner, the cited passage does not subvert the conclusion that the inspector did not misinterpret Footnote 11. If anything it states too demanding a test, since it suggests that the plan and evidence base can never be enough to support a finding that sites are deliverable in the absence of additional information indicating a reasonable likelihood of them progressing within the five year period. However, the passage should not be taken in isolation and, viewed overall, it appears that the inspector applied the correct test.

57. The second question is how an inspector should deal with the fact that, as Inspector Robins acknowledged, the housing supply from the sites could not be guaranteed. The logical consequence of this lack of certainty at first blush appears to be that the raw numbers should be discounted for the probability or certainty that not all included sites are in fact deliverable. Inspector Robins dealt with this in terms of weight, both at [21]-[24] and when tying his findings together at [51-54]. On a fair reading, at [54] he carried out a balancing exercise which started with the express recognition that “the exact numbers cannot be relied upon.” Prudently, in my judgment, he did not try to apply a precise numerical discount to reflect the uncertainty that he had identified. Instead, having acknowledged the uncertainty and after rehearsing the context in which the raw figures were generated, he reached the conclusion that the Council had demonstrated a 5-year housing supply. On a detailed semantic analysis, his reference to 4.3 years set against an expectation of 5.25 years not representing a serious shortfall may be criticised on two grounds. First, it suggests that, despite his balancing exercise, he is still adhering to the raw and exact figure of 4.3 years. Second, it may fairly be pointed out that the issue was whether there was adequate provision and, on the basis of a finding of 4.3 years supply, there was not. However, while it might have been preferable for the inspector to have inserted a qualification to show that he was not “sticking” at 4.3 years, a fair reading of the relevant paragraphs as a whole shows that he did in fact recognise the weakness of the raw figures and was not committed to them; and the thrust of the sentence was that no overwhelming need for development had been shown, which was a conclusion that was open to him on his findings.
58. In summary, I would accept that the inspector could have included an additional sentence or two which would have made [54] more transparent; but in my judgment, fair reflection upon [54] shows that he has carried out a balancing exercise to reflect the lack of certainty he had identified.
59. In support of Ground 3 of the challenge, the Claimant criticises [23] of the Decision Letter. The first criticism, as advanced in the Claimant’s skeleton argument, is that the inspector failed to engage with the issue whether Malmesbury inspector’s approach was still valid in the light of the NFFP and the fact that it was designed to address economic stagnation and boost the housing land supply. At the hearing, however, although the Claimant again pointed out the broad economic purpose of the NPPF, its focus on the Malmesbury decision was different: it is now alleged that the significance of the Malmesbury decision is that there was site specific evidence justifying the inclusion of the sites. That observation is correct, but does not advance the criticism that had been advanced in the Skeleton Argument. In my judgment, while there is no sign that Inspector Robins identified the distinguishing feature that there had been site specific evidence available to the Malmesbury inspector in relation

to strategic sites, that does not vitiate his decision. Furthermore, there is substance in the Secretary of State's submission that the thrust of the second half of [23], including the reference to the Malmesbury decision, was to support the undoubtedly correct view that the weight to be attached to an emerging plan and its evidence base depended upon the stage of progress it had achieved.

60. The Claimant's second criticism under Ground 3 is that [24] is opaque. If the Decision Letter had been a statute, it might have been profitable to observe that it could have been more detailed and precise; but it is not a statute. Having had the opportunity to reflect again upon the Decision Letter as a whole, I conclude that the inspector gave adequate reasons which were well capable of being understood by the parties. His reasons were not irrational, though other inspectors may have given different weight to the materials which he considered. On the contrary, having interpreted Footnote 11 correctly, he was entitled to reach the conclusions he did on the materials he considered and for the reasons he gave. The Court should in those circumstances be slow to interfere and I am not persuaded to do so.
61. Ground 4 is supported by a direct challenge to [54], which is said to be opaque. I reject that criticism. The Claimant points specifically to the words "...within the context of a strategic approach focussing sites on larger settlements or a housing market area that responds to the existing settlement pattern rather than political boundaries ...". When read fairly and in context those words are identifying the source and provenance of the "exact" figures that the inspector had set out in his table at [52] and which he had just acknowledged could not be relied on as such. Identifying the source and provenance of the figures served a useful and not unduly opaque purpose by giving some qualitative colour to the figures that he was balancing in that paragraph. Once again, the Court should be slow to interfere, and I am not persuaded to do so.
62. For these reasons I reject Grounds 2, 3 and 4 of the challenge. In summary, when read fairly, it appears that the inspector did not misinterpret Footnote 11, his reasons were adequate and rational and, on the basis of the materials that he considered, reflected planning judgments with which the Court should not interfere.

Ground 5: The inspector failed to take into account material considerations; gave inadequate reasons for concluding a five year housing land supply existed or otherwise behaved irrationally in so concluding.

63. This challenge relates to [58] of the Decision Letter where the inspector stated that the appropriateness of Purton's settlement boundaries had been considered as part of the eWCS. He therefore concluded that the boundaries were up to date. On the evidence of Mr Harris, this was not based on any evidence and was wrong. It is alleged that this caused him to place more than limited weight on Policy H4 of the Local Plan which provided that New Dwellings in the Countryside outside the Framework boundaries will be permitted in strictly limited circumstances w were not applicable to the Purton proposals.
64. In my judgment there is no substance in this ground of challenge. Although his belief that the settlement boundaries had been considered as part of the eWCS was incorrect, the central fact was that the boundaries remained and were not changed by the eWCS.

He was therefore entitled to conclude that the Policy H4 was not out of date and conformed to the Framework.

65. Ground 5 of the challenge is therefore rejected.

Conclusion

66. For the reasons set out above, Ground 1 of the grounds of challenge is established. Grounds 2, 3, 4, and 5 are rejected.

Annexe A
RELEVANT EXTRACTS FROM DECISION
LETTER
DATED 5 OCTOBER 2012

Background

...

11. In terms of housing supply both main parties accepted that the data and projections found in the adopted development plan are out of date. In this respect revised housing requirements were promoted during the development of the draft Regional Spatial Strategy, (dRSS). This was subject to Examination in Public, incorporation of proposed changes and a version was published for consultation in July 2008. Although reaching an advanced stage, the likelihood of this plan being adopted is considered extremely low in light of the Secretary of State's avowed intention to revoke Regional Strategies, and the enactment of the Localism Act, which prevents further Regional Strategies from being created.

12. In response to the Government's position on Regional Strategies, the Council indicated that they moved to reconsider the housing requirements for Wiltshire to inform an emerging Core Strategy, (eWCS). This document has now reached a relatively advanced stage with a resolution by the Council and its submission for examination. The Council's ambitions for this plan to be adopted by the end of 2012 or early 2013 may, however, be questioned in light of recent concerns and a need to re-consult.

13. Notwithstanding this the Council point to an extensive consultation process involved in the development of evidence base and suggest that the eWCS is preferable, both in terms of the housing requirement and the strategic approach to delivery, to either the out of date WSSP or the figures promotes in the dRSS.

14. The appellant raised concerns over the weight that should be afforded to the eWCS in light of the objections to the proposed housing numbers, declaring a preference for the publicly tested dRSS. However, the appellant goes further, suggesting an additional proposition that irrespective of the housing land supply position, the proposal represents a sustainable development. As such it would benefit from the Frameworks' presumption in its favour, in light of a contention that the development plan policies are out of date.

...

Sites

...

19. Thus the appellant suggests a difference between the Council's housing supply and their own of some 4,045 dwellings, made up in part by site specific differences and in part by a disagreement over which elements should be included. Some 80% of the difference relates to the strategic sites, the Vision Sites, windfalls and previously discounted sites.

20. The Council refer to paragraph 47 of the Framework and its footnote regarding the inclusion of strategic sites, specifically allocations in the eWCS.

This paragraph seeks to significantly boost the supply of housing and requires that local planning authorities should use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area". It specifically includes "key sites critical to the delivery of the strategy over the plan period".

21. The footnote sets out a definition for specific, deliverable sites: that they should be available now, offer a stable location for development now, and be achievable with a realistic prospect of delivery within five years. While on the face of it the requirement for sites to be available now would appear to preclude sites without permission, the definition continues by addressing permitted sites directly. In order for strategic plans to be put in place to address the housing supply, I consider that allocated sites can be included, including those within emerging plans, subject to the weight that can be given to that plan and its evidence base and the submission of information indicating a reasonable likelihood of them progressing within the five year period.

22. I accept that where there are outstanding objections to sites, such matters need to be addressed and resolved, however, it is not for me to prejudge the outcome of the eWCS examination. I must decide on what weight I can give to the Council's assertion that these allocations should be included. In doing this it is necessary to separate the weight that can be given to the emerging plan from that associated with the evidence base associated with that plan. While I have been given examples from East Northampton and from Preston where draft allocations have not been included, the relevant weight must be ascribed based on the specific stage of preparation of the evidence base and the evidence supporting deliverability.

23. In this case I consider that exclusion of all the draft allocations is not appropriate. The Council have identified the sites following public consultation and they report that they have been subject to a Sustainability Appraisal. The sites are included within the AMR. While I note the appellant's concern over the recent appeal decision in Malmsbury the Inspector in that case also accepted the principle of including strategic sites. The Council relied on this decision to support their position that the sites were available and deliverable. The appellant referred me to a slightly earlier decision by the same Inspector which discounted draft Local Plan sites, however, it strikes me that this differs in the progress of the emerging plan and the evidence therefore available to the Inspector. The decision clearly refers to the need for consultation and representations on the emerging plan.

24. I accept that until planning permission is secured and the sites are built out, the housing supply from the sites cannot be guaranteed. Nonetheless to exclude such sites risks Councils having to plan to meet housing supply in a dynamic market on the basis of only sites with planning permission or from relatively old plans. This would risk devaluing the process of strategic planning. While full weight cannot be given to the precise numbers put forward by the Council, I consider it reasonable to include these sites in absence of specific evidence that they cannot be delivered.

25. Turning to Vision Sites similar arguments apply, albeit that they are not formally proposed as allocations. They are included in the AMR and the eWCS sets out a specific policy for their delivery. The Council presented evidence that two sites, Foundary Lane and Hygrade Factory, while not currently having permission, are likely to be delivered within the five year period. While there may be some matters to be resolved on these sites, and the appellant points to part of the Foundary Lane site and the Hygrade site as being still partly occupied, this does not mean they cannot be delivered. On balance I consider that the dwellings associated with these sites can be included.

...

Housing Requirements

39. This is not therefore, as the Council set out, a simple case of “a stark choice” between the dRSS and the eWCS. Although I favour the RSS figures at this stage, which furthermore provide a conservative approach to ensuring adequate provision of housing, I must give some weight to the emerging evidence base in light of its more up to date projections and the extent of more local engagement in assessment of needs.

...

Conclusions on the 5-Year Housing Supply

51. It has been necessary to carefully consider the housing requirement and supply situation in Wiltshire as a result of the changes being introduced at both national and local level. My conclusions are by necessity based on the evidence put before me and can in no way prejudice the outcome of the eWCS Examination in Public which may take place later in this year or early 2013.

52. I consider that the principal assessment should be made between the housing requirement for the RoNW and the housing supply presented by the Council, amended in response to the evidence provided at the Inquiry. This must be further considered in light of the housing demand across North Wiltshire and the emerging strategic approach for the North and West HMA. I have summarised this in the following table:

| Plan/Policy | Housing Requirement | 5-year Housing Requirement | Housing Supply | Assessment (years)* |
|------------------------------|---------------------|----------------------------|----------------|---------------------|
| dRSS Rest of North Wiltshire | 3,024 | 1,008 | 1,522 | 7.5 |
| dRSS North Wiltshire | 10,684 | 3,549 | 3,052 | 4.3 |
| eWCS North and West HMA | 15,249 | 5,083 | 6,292 | 6.2 |

*5.25 years required to meet the 5% buffer

53. This indicates that the appellant’s proposition that even using the eWCS figures the Council cannot demonstrate a 5-year housing supply is not well founded. The Council have shown a 5-year housing supply relative to the RoNW

dRSS figures and the eWCS North and West HMA, but have failed to demonstrate adequate supply for the dRSS North Wiltshire area. As set out above, I consider that the weight that can be given to the dRSS figures is somewhat lessened by the length of time since their preparation and examination, but also that the weight I can give to the emerging figures is similarly limited.

54. Nonetheless, although the exact numbers cannot be relied on, I am satisfied that the resulting figures indicate that within the context of a strategic approach focussing sites on larger settlements or a housing market area that responds to the existing settlement pattern rather than political boundaries, the Council have demonstrated a 5-year housing supply. Furthermore I do not consider that the 4.3 years, set against an expectation of 5.25 years, represent a serious shortfall in the former North Wiltshire District, such that there is an overwhelming need for development to meet the specific demand.

55. In such circumstances I consider that there is sufficient evidence to support that, for this location, a 5-year housing supply has been shown.

...

58. My reading of the previous appeal decision on this site suggests that the boundaries were considered in both the preparation and Examination of the Local Plan in 2006, and while they do not appear to have been assessed against the significant increase in supply sought by the dRSS, they have been against the large increase currently promoted in the eWCS. This process has not led to a redrawing of the boundaries, consequently I do not consider that Policy H4, which they inform, is out of date or fails to conform with the Framework.

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