Derby City Local Plan Part 1: Core Strategy Examination

Hearing Statement on behalf of:

The Poyser Family (No 1043)

Matter 2: Housing:

Main Issue 2(ii)

March 2015

DPDS Ref - C9842

DPDS CONSULTING

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Clients: Mrs Mackay and Mrs Bick

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Statement for The Poyser Family (1043)

Contents

1.0. Introduction

1.1 This hearing statement is prepared by DPDS Consulting Group on behalf of our clients – Mrs Ann Mackay and Mrs Flora Bick. For the purposes of the Examination they are referred to as the "Poyser Family" as this title is consistent with the previous promotion of the land that they own.

1.2 The Poyser Family have been invited to participate in 2no hearing sessions which are as follows:

- Main Issue 2(ii) –Wednesday 27 April 2016
- Main Issue 2(iii) –Thursday 28 April 2016

1.3 DPDS have prepared a hearing statement for each of the main issues / matters where participation has been allowed. This statement builds upon the themes already contained within The Poyser Family response to the Pre-Submission stage Consultation - October 2015.

1.4 For the purposes of this main issue, it is anticipated that The Poyser Family will be represented by Christopher Lindley BA (Hons) MSc MRTPI of DPDS Consulting Group, Trevor Raybould BSc FRICS of Raybould and Sons and Matthew Harrison BA (Hons) MCIHT MIHE MTPS of Rodgers Leask Consulting Civil and Structural Engineers.

1.5 The word count for the answers to the questions for this matter is 2,914 (excluding tables and appendices).

2.0 Matter 2: Housing
Main Issue 2(ii) – Whether the Local Plan would assist in boosting significantly the supply of housing in terms of both the 5-year housing land supply and sufficient sites to achieve the plan requirement (Policy CP6)

2.1 In respect of the Inspector's published questions, responses to those questions to which The Poyser Family wish to respond are set out below:

a) Does the Local Plan assist in providing a continuous supply of specific deliverable sites sufficient to provide 5 years-worth of housing against the housing requirement with an appropriate buffer? Are the sites identified by the Council viable, are they available now, do they offer a suitable location for development now and are they achievable with a realistic prospect that housing will be delivered within 5 years?

2.2 The Poyser Family submit that the Local Plan in its current form does not demonstrate an adequate 5 year supply of housing as required by paragraph 47 of the NPPF.

2.3 DPDS have on behalf of clients considered the information presented by the Council with regard to housing land supply through documents CD019, CD025, EX002 and EX002(c). In utilising the Council's own supply side data and on the basis of our answer to questions b) and c) below, the "base" position for calculating the Council's 5 year housing land supply is provided overleaf within "table 1".

	Table 1 - Derby City Council "Base" 5 Year Supply Calculation		
	Calculating the Requirement	**No of Dwellings**	*working*
a	Annual requirement	647	
b	Requirement plan period to date (2011-2016)	3,235	*5 x a*
c	Completions plan period to date	1,900	*2011/12 - 2014/15 + estimate for 2015/16*
d	Shortfall / Surplus	1,335	*b - c*
e	Residual (gross requirement +- shortfall/ surplus) next 5 years	4,570	*a x 5 + shortfall*
f	Residual including 20% Buffer for Under Delivery	5,484	e + 20% buffer
g	Annual requirement over next 5 years	1,097	*f / 5 years*
	Calculating the Supply		
	Supply Source	**No of Dwellings**	
	Deliverable Major Sites with Planning Permission	3,018	
	Deliverable Brownfield Sites without Planning Permission	521	
	Deliverable Greenfield Sites without Planning Permission	1,720	
	Deliverable Small Sites with Planning Permission	300	
	Windfall Sites in First Five Years	375	
	Losses In First Five Years	-140	
h	*Sub-Total*	5,794	
	Calculation		
	No of years supply	5.28	*h / g*
	Shortfall / Surplus	310.00	*h-f*

2.4 Assuming that the 11,000 OAN apportionment to Derby City remains unaltered, it is apparent that the Council is able to achieve a 5 year housing land supply. However, our initial view suggests the following:

- There is only "headroom" within this calculation amounting to some 310 dwellings, this suggests that the margin between achieving an adequate supply or not is narrow, and in reality amounts to 3.5 months supply against the stated requirement. Should envisaged completions fail to materialise as we suggest, and without identifying additional deliverable land now, the Council will quickly find its land supply inadequate and housing policies within its new plan out of date;

- The average annual requirement is very optimistic and at 1,097 dwellings equates to a level of housebuilding completions only witnessed during one monitoring year[1] in the last 15. The Council themselves do not envisage exceeding this level of housebuilding completions until 2017/18, some 6 years into the life of the plan and only 11 years from its end date, nor do the Council robustly explain how this level of housebuilding will be achieved;
- A high proportion (some 44%) of the Council's envisaged five year housing land supply is comprised of dwellings which are yet to obtain planning permission or are not yet identified (windfalls), we would suggest that given the requirements of paragraph 47 of the NPPF this proportion is unrealistic; and,
- When taking all of these considerations along with examination of the specific identified components of supply, we consider that the Council's anticipation of an adequate housing land supply is misplaced.

2.5 Footnote 11 to paragraph 47 of the NPPF sets out the circumstances by which sites can be considered "deliverable" for the purposes of a 5 year supply. It states that:

"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 site within five years and in particular that development of the site is viable. Sites with planning permission should be considered deliverable until permission expires, unless there is clear evidence that schemes will not be implemented within five years, for example they will not be viable, there is no longer a demand for the type of units or sites have long term phasing plans" (DPDS emphasis).

2.6 DPDS have also considered the view of Mr Justice Stuart Smith who presided over the case of Wainhomes (South West) Holdings Ltd v The Secretary of State for Communities And Local Government [2013] EWHC 597 (Admin) (25 March 2013). A copy of the judgement with relevant sections highlighted is provided as **Appendix 1**. Paragraph 34 of the Judgement

[1] See EX0022c

analyses an Inspectors judgements on the deliverability of housing sites in the context of footnote 11 of paragraph 47 of the NPPF. We have adopted the methodological principles outlined within points i-v of paragraph 34.

2.7 With regard to the assumed delivery of sites within the 5 year supply, paragraph 6.19 of CD025 states that the Council **"has considered the reality of the sites being delivered and the numbers of dwellings likely to be delivered. In carrying out the assessment, the views and intentions of site developers have been used where possible"**. However in "reality", Planning Inspectors have concluded (see examples at **Appendix 2**) such reliance on the views of those promoting sites is fraught with difficulties[2] and there is no evidence produced to demonstrate the Council has critically or independently appraised aspects such as lead-in times or build out rates associated with the assumed components of supply for specific sites.

2.8 In the absence of information on this from the Council, to enable the assumptions to be tested, DPDS have utilised criteria set out in the table below. These "optimistic" criteria have been based upon prior consultation with the development industry and wider experience on the delivery of development sites nationwide. These criteria should not be seen as absolute and represent a starting point for participation in the discussions anticipated at the hearing sessions. In the absence of comparable information from the Council they are considered to represent a more realistic basis from which to judge the delivery of sites within the projected supply.

[2] See paragraph 24 of Appeal Decision "Land North of Congleton Road, Sandbach" - APP/R0660/A/13/218973 and paragraphs 24 &25 of Appeal Decision "Land Between Iron Acton Way and North Road, Engine Common, Yate" – APP/P0119/A/12/2186546

Guideline Site delivery criteria, lead in and delivery rates:

Site Status		**Site Size / No. of dwellings**		**Notes**
		Less than 50	**More than 50**	
Under Construction	Lead-in	n/a	n/a	Build rate applied to residual capacity
	Build rate (dpa)	30	40	
Full Planning Permission / Reserved Matters	Lead-in	1 years	1.5 years	Lead in time to allow for infrastructure provision and construction start up
	Build rate (dpa)	30	40	
Outline Planning Permission	Lead-in	1.5 years	2 years	Lead in time to allow for Reserved Matters, infrastructure provision and construction start up
	Build rate (dpa)	30	40	
Sites without Planning Permission	Lead-in	2.5 years	3 years	Lead in time to allow for Planning Permission, infrastructure provision and construction start up
	Build rate (dpa)	30	40	

2.9 We have examined some of the Council's six envisaged components of its 5 year housing land supply in detail (1-3) within **Appendix 3** and summarise our findings below:

1. *Deliverable Major Sites with Planning Permission (3,018 dwellings)* ***DPDS Recommendation > Deduct 978 Dwellings and Apply 10% Lapse Rate to Remainder***

   We have examined specific sites within this supply component within **Appendix 3**. Summaries for each site where revisions to the Council's assumed trajectory are also included at **Appendix 3**. Please note, as per the answer to question e) below we have applied a generous 10% lapse rate to this source of supply.

2. *Deliverable Brownfield Sites without Planning Permission (521 dwellings)* ***DPDS Recommendation > Deduct 434 Dwellings and Apply 20% Discount to Remainder***

   We have examined specific sites within this supply component within **Appendix 3**. Summaries for each site where revisions to the Council's assumed trajectory are also

included at **Appendix 3**. Please note, as per the answer to question e) below we have applied a 20% discount rate to this source of supply.

3. *Deliverable Greenfield Sites without Planning Permission (1,720 dwellings)* ***DPDS Recommendation > Deduct 1070 Dwellings and Apply 20% Discount to Remainder***

   We have examined specific sites within this supply component within **Appendix 3**. Summaries for each site where revisions to the Council's assumed trajectory are also included at **Appendix 3**. Please note, as per the answer to question e) below we have applied a 20% discount rate to this source of supply.

4. *Deliverable Small Sites with Planning Permission (300 dwellings) –* ***DPDS Recommendation > No Change (Unless the Council Produces Further Evidence)***

   The Council has not produced a full schedule of the small sites with planning permission that it has included within the five year supply. However, it is already apparent that a sieving exercise has been undertaken by the Council. Paragraph 2.30 to CD025 and page 5 of CD019 indicates that around 38% of the total potential supply has been discounted from the 5 year supply, this is significant. We have been unable to examine this assumption as the Council has not produced the required information. Should that change, we reserve the right to examine this information and update our calculations.

5. *Windfall Sites in First Five Years (375 dwellings) –* ***DPDS Recommendation > No Change***

   Please refer to answer to question d) below.

6. *Losses In First Five Years (-140 dwellings) –* ***DPDS Recommendation > No Change***

   We do not challenge this influence on the housing land supply

2.10 As a result of the findings of our own critical analysis, we submit that the 5 year housing land supply calculation must be re-cast and this is provided below:

	Table 3 - DPDS Revised 5 Year Supply Calculation		
	Calculating the Requirement	**No of Dwellings**	*working*
a	Annual requirement	647	
b	Requirement plan period to date (2011-2016)	3,235	*5 x a*
c	Completions plan period to date	1,900	*2011/12 - 2014/15 + estimate for 2015/16*
d	Shortfall / Surplus	1,335	*b - c*
e	Residual (gross requirement +- shortfall/ surplus) next 5 years	4,570	*a x 5 + shortfall*
f	Residual including 20% Buffer for Under Delivery	5,484	e + 20% buffer
g	Annual requirement over next 5 years	1,097	*f / 5 years*
	Calculating the Supply		
	Supply Source	**No of Dwellings**	
	Deliverable Major Sites with Planning Permission*	1,836	
	Deliverable Brownfield Sites without Planning Permission**	70	
	Deliverable Greenfield Sites without Planning Permission**	520	
	Deliverable Small Sites with Planning Permission	300	
	Windfall Sites in First Five Years	375	
	Losses In First Five Years	-140	
h	*Sub-Total*	2,961	
	Calculation		
	No of years supply	2.70	*h / g*
	Shortfall / Surplus	-2,523.40	*h-f*
	* Includes 10% lapse rate for non-implimentation		
	** Includes 20% discount for non-implimentation		

2.11 Based on this, it is clear that the Council is unable to demonstrate an adequate housing land supply over the next 5 years. In its current form, the Local Plan is unsound and an acute shortfall in housing land supply exists. The only available remedy is to boost the supply side of the calculation with additional deliverable housing sites, which includes our clients land.

b) Is there evidence of persistent under delivery of housing that would justify the buffer being 20% as proposed?

2.12 Yes, there is evidence to suggest that both over the short term of the Local Plan Period (2011 to date) and the longer term (2001 to date), there has been a record of persistent under delivery of housing.

2.13 Table 2 below shows that since 2011, there has been a cumulative shortfall of 1,335 dwellings, this is serious and amounts to some 2.1 years-worth of required housebuilding that simply has not been delivered and is a situation that must be rectified. It is submitted that this is sufficient to justify the application of a 20% buffer (as accepted by the Council) to the housing requirement (and, we suggest also the shortfall) irrespective of longer term trends.

Table 3 - Performance Completions v Requirement HMA

	Monitoring Period	Requirement	Completions	Shortfall / Surplus	Cumulative Shortfall / Surplus
Structure Plan	2001-2002	775	572	-203	-530
	2002-2003	775	488	-287	
	2003-2004	775	622	-153	
	2004-2005	775	780	5	
	2005-2006	775	883	108	
RSS	2006-2007	720	1052	332	69
	2007-2008	720	1104	384	
	2008-2009	720	476	-244	
	2009-2010	720	504	-216	
	2010-2011	720	533	-187	
Local Plan	2011-2012	647	261	-386	-1335
	2012-2013	647	373	-274	
	2013-2014	647	447	-200	
	2014-2015	647	428	-219	
	2015-2016*	647	391	-256	
	Total	10710	8914	-860	
	*estimated completions				

2.14 However the longer term trends from 2001 to present also give little comfort. When judging performance against the three operational sources of requirement since 2001, across 15 years, completions have only exceeded minimum requirements for 4 of those years. Whilst performance within the "Local Plan" era has been examined above, during the Structure Plan era, a shortfall of some 530 dwellings was amassed and completions only exceeded requirements modestly for two of the five years. The RSS era requirement shows a modest surplus against requirement of 69 dwellings, although this is shown to be representative of two boom years with the remaining three years showing a serious slump in completions amounting to a combined shortfall of 647 dwellings for those three years.

2.15 On the basis of the consideration above, The Poyser Family submit that a 20% buffer is plainly justified.

2.16 With regard to the treatment of the buffer, it is submitted that it should be applied to both the housing requirement and the shortfall, for the following reasons:

- In producing guidance on this issue, the Planning Advisory Service (PAS), confirms the appropriate approach is to add the buffer to both the housing requirement and the shortfall[3], the guidance of PAS is widely respected by both the public and private planning sectors.
- This issue has been settled in the examination of Local Plans in the Derby HMA by two experienced Planning Inspectors (notwithstanding the same view has been arrived at by other Planning Inspectors elsewhere in England[4]). Contrary to the views expressed within EX002 there are no special circumstances which apply only to the City of Derby which justify a different approach to the other partner authorities; and,
- The closing submission on behalf of the Council in the recent appeal at **"Land at rear of 122-198 Derby Road and Adjacent Acorn Way, Derby"** confirmed that **"The Council accepts that the 20% buffer should be applied to the shortfall"**[5].

[3] http://www.pas.gov.uk/local-planning/-/journal_content/56/332612/7363780/ARTICLE#17

[4] Example - Paragraphs 85 & 86 of West Dorset, Weymouth & Portland Inspector's Report (14 August 2015)

[5] Appeal Reference APP/C1055/W/15/3132386

c) Should any past shortfall in new housing in the early part of the plan period be addressed in the 5-year housing land supply or be spread over the plan period as a whole?

2.17 The Poyser Family submit that past shortfall in housing should be addressed in the early part of the plan period (i.e. "the Sedgefield Method"). It is submitted that this is consistent with paragraph 3-035 of the PPG and the default position of the NPPF to "boost significantly the supply of housing".

2.18 This approach is also acknowledged as appropriate by the Council at paragraph 2.8 of CD025 which states that:

"The housing strategy seeks to deliver new homes across the whole plan period and in particular increase the supply of housing in the short term. This will mean establishing and maintaining a five year supply of deliverable housing sites, making up past shortfall from the beginning of the plan period in the short term and bringing forward part of the supply from later in the plan period, consistent with the requirements of the NPPF"

d) Have appropriate assumptions been made about the contribution of windfall sites to the 5-year housing land supply?

2.19 At the time of writing, the Poyser Family make no specific comments upon the assumptions of the Council with regard to windfall sites. However it is noted that at the time of writing the Government is consulting upon its intended approach to implementing the measures proposed though the Housing and Planning Bill. This includes proposals for the introduction of "Brownfield Registers" and "Small Sites Registers", both may have implications for the role of windfall sites within assessing 5 year supply. As such, dependent upon whether the Inspector seeks further comments on this matter, we reserve our client's position.

e) Has appropriate allowance been made for some current planning permissions to lapse when calculating the 5-year housing land supply?

2.20 No information has been provided by the Council through documents CD019, CD025, EX002 or EX002(c) that critically appraises or robustly quantifies specific lapse rates on planning permissions within the City.

2.21 It is apparent from considering CD019 and CD025 that with regard to "small site permissions" forming part of the 5 year supply, the Council has discounted some 38% of such sites with permission from the calculation.

2.22 Whilst detailed schedules accounting for these sites have been omitted by the Council it is logical to conclude that a proportion of this discount must be comprised of lapsed planning permissions. The Council themselves acknowledge that small sites are often built out very quickly and therefore it is sensible to conclude that a substantial proportion of the 38% discount must relate to lapses or non-implementation of planning permissions

2.23 The only account on behalf of the Council that lapsed planning permissions on larger sites appears to have been considered can be found at the footnote to Appendix 1 of CD025 where with regard to **"Extant 'Developable' Planning Permissions"** it is stated that:

"Note that the table of planning permissions above excludes permissions where the Council considers that the permission is unlikely to be implemented and excludes planning permissions on sites which are Strategic Allocations in the Core Strategy" (DPDS emphasis)

2.24 Without publishing further information to consider and appraise these permissions and the publication of historic lapse rates within the evidence base it is difficult to apply a lapse rate within the City.

2.25 However, given the potential for a substantial lapse rate to be applied to "small site permissions" (maybe as high as 38%), we have for the purposes of our calculations applied a generous lapse rate of 10% to **"Extant 'Developable' Planning Permissions"**.

2.26 Whilst not directly relating to this question, it is also clear that the Council has not applied a lapse rate to sources of housing land supply without benefit of planning permission. Within **Appendix 3** we have discounted some of these sources of supply in their entirety.

2.27 However, it is also appropriate to consider whether a lapse rate should be applied to these less certain sources of supply which are yet to obtain planning permission. This has been considered previously in a similar situation in West Dorset Weymouth and Portland by an Inspector. In that circumstance, the Inspector saw fit to suggest a 20% discount rate to sources of supply without planning permission[6]. In light of our own suggested lapse rate of 10% for sites already with planning permission, we consider that this would be appropriate in this circumstance too and as such apply a discount of 20% to sources of supply without benefit of planning permission.

2.28 Pending a response from the Council we reserve our position to make further submissions with regard to this issue.

[6] Paragraphs 93 & 94 of West Dorset, Weymouth & Portland Inspector's Report (14 August 2015)

f)	**Is the Local Plan likely to result in an appropriate supply of specific deliverable sites or broad locations for growth in the plan period beyond 5 years? Are the sites in a suitable location with a reasonable prospect that they are available and could be viably developed at the point envisaged?**

2.29 No specific comment in light of the identified deficiencies within the first 5 years.

g) Does the housing trajectory provide an appropriate illustration of the expected rate of housing delivery for the plan period?

2.30 Please refer to answer a) above and **Appendix 3**.

h)	**Is there a clear housing implementation strategy for the full range of housing, describing how the Council will maintain delivery of a 5-year supply of housing land to meet the housing target?**

2.31 Please refer to answer a) above and **Appendix 3**.

i) Is the intention for non-strategic housing allocations to be a matter for the Part 2 Local Plan justified? Is the allowance for this of 1,294 dwellings justified? How does it relate to the separate assumption about windfall sites? Is there reasonable certainty that the Part 2 Local Plan will be able to deliver the sites required?

2.32 The Poyser Family consider that the intention for non-strategic housing allocations to be identified through a "part 2 Local Plan" is not justified and if allowed to proceed may result in unintended consequences for the Local Plan as a whole.

2.33 Paragraph 153 of the NPPF confirms the Government's preferred approach is for each local planning authority to prepare a single Local Plan with additional Local Plans used where clearly justified. It is not considered that clear justification for an additional "Part 2" Local Plan has been demonstrated save perhaps for an impression of further "delay" to the overall process (see paragraph 2.75 CD025).

2.34 There are implications of failing to appropriately respond to the OAN in one single plan. Principally it gives rise to uncertainty that the Council's land supply will be maintained throughout the plan period, particularly if Part 2 of the Plan encounters delays or the sites underpinning supply assumptions in Part 1 are undermined during early years of the plan.

2.35 This perhaps more importantly also relates to the wider issue of the adequacy of the proposed plan period. If indeed the plan is adopted in 2016, 12 years will remain before the end of the plan period. The NPPF recommends a fifteen year plan period (paragraph 157). Whilst some recent Local Plans have been adopted with plan periods of less than 15 years, it is growing increasingly common for these plans to incorporate an early review mechanism to rectify outstanding deficiencies within the plan period at the point of adoption[7] and also wider potential difficulties with delivery of housing[8].

[7] Swindon Local Plan and Dacorum Core Strategy - As referenced within consultation response of HBF 23 October 2015

[8] See Policy 2 The Spatial Strategy – Erewash Core Strategy March 2014

2.36 Notwithstanding the need to rectify the prevailing housing land supply difficulties that we predict within Derby City, it may therefore be prudent to combine the consideration of the proportion of development envisaged within Part 2 of the Plan alongside a more in depth review of the plan as a whole.

Appendix 1: Wainhomes (South West) Holdings Ltd v The Secretary of State for Communities And Local Government [2013] EWHC 597 (Admin) (25 March 2013)

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

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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**

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(Transcript of the Handed Down Judgment of
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165 Fleet Street, London EC4A 2DY
Tel No: 020 7404 1400, Fax No: 020 7831 8838
Official Shorthand Writers to the Court)

- - - - - - - - - - - - - - - - - - - -

David 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

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Judgment
As Approved by the Court

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 precious 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 provided[1].

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 pre-dated 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 sites[2] 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 process[3]. 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 insomuch 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.

<u>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.</u>

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 prejudge 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.

Appendix 2: Appeal Decisions "Land North of Congleton Road, Sandbach" - APP/R0660/A/13/218973 and "Land Between Iron Acton Way and North Road, Engine Common, Yate" - APP/P0119/A/12/2186546

The Planning Inspectorate

Appeal Decision

Inquiry opened on 16 July 2013

Accompanied site visit made on 19 July 2013

by Philip Major BA(Hons) DipTP MRTPI

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

Decision date: 18 October 2013

Appeal Ref: APP/R0660/A/13/2189733
Land north of Congleton Road, Sandbach, Cheshire CW11 1DN.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
- The appeal is made by Taylor Wimpey UK Limited and Seddon Homes Limited against Cheshire East Council.
- The application Ref: 12/1903C, is dated 17 May 2012.
- The development proposed is the erection of up to 160 dwellings[1], including access and associated infrastructure, and the demolition of No 130 Congleton Road.

Preliminary Matters

1. The application is made in outline with all matters except means of access reserved for future determination. I have considered the appeal on that basis, though recognise that the additional information submitted indicates how the Appellants would envisage development being carried out.

2. I carried out an accompanied site visit as noted above, and unaccompanied visits on other occasions before, during and after the close of the inquiry.

3. Had the Council determined the application it would have refused it as an unsustainable development because it involves the use of land within the open countryside contrary to policy, because the Council can demonstrate a 5 year supply of housing land, and because it would be premature to the emerging development strategy. Development Plan Policies PS8 and H6 are cited.

Background

4. I conducted the inquiry into this proposed development immediately prior to another inquiry into a proposal for housing at Sandbach Road North, Alsager (APP/R0660/A/13/2195201). Both of these cases have similarities in that they raise some similar issues and are located in the same local authority area. For that reason some of the evidence I heard was common to both, but each decision has been made in the light of the particular circumstances of the individual case. Nonetheless there are some matters of overlap where, for reasons of efficiency and to speed up decision making, it has been possible to provide text which is common to both.

[1] The application form indicates up to 195 dwellings but this was amended during the time the application was being considered by the Council.

Decision

5. The appeal is allowed and planning permission is granted for the erection of up to 160 dwellings, including access and associated infrastructure, and the demolition of No 130 Congleton Road at land north of Congleton Road, Sandbach, Cheshire CW11 1DN in accordance with the terms of the application, Ref: 12/1903C, dated 17 May 2012, subject to the conditions set out in the attached schedule.

Main Issues

6. There are a number of issues for consideration. These are:
   (a) Whether the Council is able to demonstrate a deliverable five year supply of housing land;
   (b) The impact of the proposed development on the character and appearance of the locality;
   (c) The impact of the proposal on highway safety;
   (d) Whether the loss of best and most versatile agricultural land is justified.

Planning Policy Background

7. It is common ground that the development plan is the Congleton Borough Local Plan and its Review of 2005 (CLP). This plan covers that part of the area of Cheshire East Council (CEC) which incorporates the former Congleton Borough Council. I deal with the relevant policies shortly.

8. There is a draft Local Plan, variously described as the Core Strategy and Development Strategy, which is moving towards a position in which it can be submitted for examination. The Council is seeking to achieve this in late 2013. The current state of the plan is pre submission. It is not disputed that there are many outstanding objections to the plan, and to specific proposals in the plan. Hence it cannot be certain that the submission version of the plan will be published in the timescale anticipated. The plan has already slipped from the intended timetable. In addition there can be no certainty that the plan will be found sound though I do not doubt the Council's intentions to ensure that it is in a form which would be sound, and I acknowledge the work which has gone into the plan over a number of years.

9. Nonetheless I cannot agree that the draft Local Plan should attract considerable weight as suggested by the Council. There are many Secretary of State and Inspector appeal decisions which regard draft plans at a similar stage as carrying less weight. The Council's own plan has been afforded little weight in the earlier months of 2013, and although the plan has moved on to an extent, it has not moved on substantially. For these various reasons I consider that the draft Local Plan can still attract no more than limited weight in this case.

10. I note here that the draft Local Plan preparation has included information from the Sandbach Town Strategy, which is a non statutory document intended to identify options for the future development of the town. The appeal site was a site considered but rejected in that document. It is clear that this document is of importance to local people as an expression of their preferences, but it is less clear that it has any basis beyond that. Whilst not seeking to take away from its significance to local people it is, in essence, an information gathering

mechanism which identifies options and provides evidence which in turn informs the preparation of the Local Plan, but can of itself carry little weight.

11. Of particular note in the CLP is Policy PS4, which deals with Settlement Zone Lines (SZL) around towns, including Sandbach. There was debate at the inquiry about whether this policy can reasonably be said to be related to or is a policy controlling housing land supply, and if so, whether it should be regarded as time expired given that the CLP has an 'end date' of 2011.

12. The 'headlines' of Policy PS4 are that towns are defined by a settlement zone line (SZL) and that there is a presumption in favour of development (subject to criteria) within the SZL. The preceding section of the CLP explains the purposes of the SZLs in paragraph 2.52. It is common ground that there are 2 purposes. These are to define the boundary between built up areas and the rural areas, and to exclude land which requires protection from development either where it contributes to the character of the settlement, or where it is important to retain views of the surrounding countryside.

13. It is clear, though, that the use of SZLs has an effect on where development (including residential development) is located. But the primary purpose of the SZLs is not to identify land for development in a positive sense (such as by making allocations) though the definition of SZLs would inevitably reflect allocations. Any SZL must therefore have taken account of housing land availability at the time it was drawn up, and this is signalled in the explanation at paragraph 2.53 in the CLP. That paragraph clearly indicates that the SZLs reflect the then current circumstances and allocations for the period to 2011.

14. So Policy PS4 takes account of allocations and the identified requirement for housing land at that point in time, but was not intended to do so for a longer period. In setting physical boundaries around settlements which include the land identified for development there is clearly a relationship between SZLs and land identified for development. But I do not accept that the relationship is driven by the requirement for SZLs to identify land to meet a determined supply of housing – rather it is based on the objective to protect open countryside and Green Belt once development land has been identified. Hence it is my judgement that the definition of an SZL is not a housing land supply policy per se, but a reflection of the assessment which took place at the time the CLP was produced in relation to spatial settlement priorities which include both location of development and protection of the environment.

15. I am therefore satisfied that Policy PS4 is not sufficiently directly related to housing land supply that it can be regarded as time expired for that purpose. The policy is primarily aimed at countryside and Green Belt protection, both of which are also aspirations of the National Planning Policy Framework (NPPF). In such circumstances I regard the policy as largely in conformity with the NPPF and attracting significant weight.

16. That said there is no dispute that the proposed development would fall foul of CLP Policies PS8 and H6 which seek, respectively, to restrict development and residential development in the open countryside unless it is for one of a number of specified categories. The proposal does not fall into any of those categories.

17. More generally, there are a number of policies of the CLP which have been brought to my attention. I deal with the relevant policies under the various issues below.

Reasons

Housing Land Supply

18. Both main parties agree that the starting point for the calculation of a 5 year land supply should be the housing requirement set out in the former North West Regional Strategy (RS). Although the RS is no more, the evidence base which underpinned the housing supply figures is the only evidence which has been rigorously tested. Whilst more recent interim housing projections indicate that there may be some refinement of the housing requirement over the draft Local Plan period, there are no tested figures which relate to the whole draft Local Plan period. In addition the housing projection figures would be likely to be only one of a number of indicators and inputs which would be taken into account when setting future housing requirements. The Council has indicated that it intends to update the Strategic Housing Market Assessment alongside publication of the Local Plan, and until that process is completed there are no alternative reliable projections for housing need. I therefore agree that there is currently no sound basis for departing from the tested RS figures[2]. Hence the housing requirement currently stands at 1150 dwellings per annum (dpa) for CEC. This is 5750 over 5 years. Following the advice in the NPPF requires the addition of either a 5% or 20% buffer (a matter I deal with later). The matter of previous underachievement and the subsequent backlog is also material.

19. Until a point early in 2013 it was undisputed that CEC could not demonstrate a 5 year supply of deliverable housing land in the terms set out in the NPPF. However, following the production of the revised Strategic Housing Land Availability Assessment (SHLAA) of March 2013 the Council now believes that it can demonstrate around a 7 year supply.

20. The assessment of land supply is not an exact science, and a measure of professional judgement is always required in order to reach a view on what is realistically achievable in a given period. Additionally the assessment is taking place in a dynamic environment – whenever a planning permission is granted it changes the calculations, and there have been a number of permissions granted in recent months in the CEC area. It is therefore hardly surprising that calculations changed during the inquiry, or that the Council and Appellant have reached different conclusions. It is interesting that the 5 year figure falls about midway between their relative assessments. As is made clear in the NPPF there must be a significant degree of confidence attached to the availability and deliverability of land for it to be included in the 5 year supply. If planning permission does not exist there should be good reason for believing that it would be forthcoming and that housing would be delivered (in whole or part) within the 5 year period.

21. There is some degree of coming together of assessments as a result of information presented during the inquiry, such as the updated position on planning permissions, which the Appellant acknowledges would update the

[2] I am aware of the recent case of *Hunston Properties Ltd v SoS for Communities and Local Government and St Albans City District Council*, but the case before me is distinguishable on its facts and it is pertinent that both parties agreed the relevant figures in this case.

supply position by 397 dwellings on sites for more than 10 dwellings, and 76 dwellings on smaller sites. However, it is necessary to examine the issues where there are remaining disagreements leading to material differences in the assessment of deliverability. Setting aside for the moment the treatment of the backlog and buffer the major differences lie in the assessment of strategic sites and sites without planning permission. Housing land supply assessments cannot deal in absolute certainties, and in estimating numbers it is necessary to take a pragmatic and holistic approach.

22. CEC have postulated that about 4000 homes can be expected to be delivered on strategic sites over 5 years. The Appellants believes it would be about 1100 homes. The sites in question are included in the draft Local Plan and it is not disputed that some are subject to objection. Nonetheless the Council is confident of them coming forward and points out that only 4 strategic sites have been the subject of more than 50 objections. However, it is not the number of objections which is of merit, but the substance, and that is not a matter for me. The very fact that objections have been submitted must temper the confidence that the Council, or indeed I, can legitimately have towards the delivery of the strategic sites in the form currently proposed.

23. Having said that it is apparent that planning permissions are being granted on strategic sites in advance of the examination of the draft Local Plan, though to a limited extent. For example this is the case in respect of 'Sandbach 1' where planning permission has been granted for 50 dwellings, subject to a S106 agreement. Similarly 'Crewe 6' (The Triangle) has planning permission for 360 dwellings subject to a S106. But more generally I share the Appellants' concerns that the Council is being over-optimistic in its assessments for some draft strategic sites.

24. I say that for a number of reasons. First, there is simply not enough evidence to back up some of the claims made. It is to be expected that landowners and potential developers would talk up the likely delivery of housing development in their pre-application discussions and publicity. The Appellant companies do the same in consultation documents. I am also not convinced that the expectation of an early submission of a planning application can be afforded weight; experience shows that all too often expectations do not carry through into timely delivery. This is the position with a number of sites. Delivery claims must therefore be taken cautiously.

25. Secondly, the pattern of some strategic sites across the Borough is relatively concentrated. So although developers may want to 'get in first', it is more than possible that if developments begin to take off in one area, other developers may be reticent in instigating a development start because of potential difficulties with market saturation and competition in the immediate vicinity.

26. This in effect is the same point as the third reason, which is the projected rate of delivery used by the Council. Here it has departed from previous versions of the SHLAA (the updated version of which has been subject to objection in its revised methodology) and assumes higher delivery rates for developments of more than 200 dwellings. This in itself has been criticised as being unrealistic, and I have sympathy with that view. In my judgement it is more proper to take a cautious and conservative approach to delivery rates. The same caution should also apply to lead in times unless there is evidence to suggest otherwise, and I am not satisfied that that is the case here. Whilst there has

been an upturn in the housing market generally it is far from clear that this will be sustained, or that Cheshire East will achieve a quick response and high level of completions as suggested by the Council.

27. Fourthly, some strategic sites are dependent on enabling infrastructure being put in place, and interdependent with it, such as at Basford East. I admire the Council's confidence that all will run well and that infrastructure will be provided on time, but it cannot yet be assured. I recognise that the NPPF, in seeking to ensure that sites identified in the 5 year supply are deliverable cannot require complete certainty, but it does set a high benchmark of realism for the assessment. To be considered deliverable sites must be available now. I do not accept that a site in need of enabling infrastructure such as a link road can reasonably be assessed as being available now even if there is a clear intention to deliver that road in conjunction with housing. It may become available in 2 or 3 years time, but until then it would be unwise to place too much reliance on the potential for delivering housing from such sources. Similarly there is a distinct lack of credible hard evidence that the projections for Leighton West and other sites are achievable or realistic.

28. Underlying these concerns is the uncertainty around the actual delivery of the draft Local Plan. It is notable that at the inquiry local residents made it clear that they did not support the housing numbers proposed on 'Sandbach 1'. They prefer a far smaller number, and this is a matter which has yet to be resolved.

29. For all these reasons the Council's assessment of likely delivery on strategic sites is too great, and it should not be forgotten that if sites are excluded from calculations now, but come forward anyway, the delivery of a greater level of housing is not in itself problematic. There is no cap on numbers.

30. I turn now to the question of the backlog. It is agreed that the housing requirement has not been met for a number of years. The backlog is, cumulatively, some 1266 dwellings between 2003 and 2012, which takes into account the earlier years when there was some exceedence of targets. There is an additional shortfall in the year to March 2013 of about 500 dwellings, bringing a total in the region of 1750 to 1800. It is well known that there are 2 schools of thought on how to deal with a backlog – the so called Liverpool and Sedgefield methods. Liverpool spreads the backlog over the plan period (in this case to 2031 for the draft Local Plan) and Sedgefield over 5 years. There is no expressed preference for either method in the NPPF.

31. In this instance, however, the Council suggests that it would be appropriate to spread the backlog over the period of the RS, to 2021, or 9 years. The reason offered is that the backlog has been calculated by reference to RS figures from its publication, and the performance during the subsequent years has been measured in that light, so that it would be logical to complete the intended RS cycle. I do not agree with that suggestion. The intention of the NPPF is clear – it is to "boost significantly the supply of housing". That aim would not be best served by being too relaxed about the need to recover the backlog. I agree with the Appellant that every effort should be made to deal with the backlog in as short a time as possible. For that reason I subscribe to the Sedgefield method. So any calculation of housing land supply must include the provision of the backlog (at present) of about 1750 dwellings.

32. That leads me to the provision of a buffer. This should be either 5% or 20% in line with the NPPF guidance. There has been much debate about what would constitute persistent under delivery so as to trigger the 20% buffer, and previous decisions take differing approaches. But the purpose of a buffer is clear. It is to assist with the requirement to "boost significantly the supply of housing". The buffer is not extra housing as it is being moved forward in the plan period, and nor is it a penalty. Put simply, the buffer is a mechanism by which extra capacity is brought into the system now to enable housing supply to have a fighting chance of being boosted significantly.

33. There is no dispute that supply of housing has not met targets in the CEC area since the 2008/9 year. Since that time targets have been missed to the extent that the under delivery amounts to well over 2500 dwellings. The fact that there was exceedence of targets in the preceding years is not crucial to the matter of setting an appropriate buffer since none of the targets are ceilings in any event. A modest oversupply is acceptable, but should not be offset against a pattern of subsequent under supply for the purposes of setting a buffer.

34. To persist has been defined in dictionaries as "*to continue steadily or firmly in some state, purpose, or course of action, in spite of opposition or criticism*" and "*to continue steadfastly or obstinately*". That the housing supply numbers have fallen well below targets every year since the last meeting of targets in 2007/8 seems to me to demonstrate a steady course of action, which the Council would no doubt have liked to see remedied. The under delivery has been steadfast and obstinate, and no actions of the Council or others have been able to change its course. I am well aware that the years in question have coincided with the recession, and that under delivery is therefore not entirely surprising. But that fact does not alter the intentions of policy. Where there has been persistent under delivery, as is quite clearly the case here, action is required to seek to redress the situation because the need is not going to disappear. Part of that action is to increase the choice of land available by adding a 20% buffer to the housing land requirement. On balance I consider that 20% is the appropriate buffer.

35. If, therefore the housing land supply figures are re-worked with new assumptions the following situation becomes apparent. The 5 year requirement is 5750. To that must be added the backlog of about 1750, making a total of 7500. Adding the 20% buffer brings a total requirement of some 9000 dwellings over 5 years, or 1800 per annum. The fact that such a figure has rarely been reached in the past is not a reason for suggesting it is an inappropriate target. Significantly boosting supply surely implies that ambitious targets are appropriate.

36. The Council suggests that it can show a supply of something over 9000 dwellings in any event. However, I have already observed above that I consider the Council to be too optimistic. There is uncertainty surrounding the Local Plan itself. A large proportion of its identified supply is on strategic sites, and in my judgement delivery there is unlikely to come forward as quickly as the Council contends. Given that projections are inevitably estimates based on landowners' and developers' current thinking, on the understandable desire to 'talk up' the chances of delivery, and on professional judgement, it would not be a worthwhile exercise to try to deal forensically with every site in this case.

37. Both main parties to this appeal have provided expert assessments and the difference on strategic sites is marked – for the Council a delivery estimate of some 4000 dwellings, and for the Appellants not much more than 1100 dwellings. The outturn is likely to be somewhere between the 2, and I consider that a realistic figure is likely to be closer to the Appellants' figure than the Council's. However, for the purpose of this exercise I propose to allow leeway to the Council and assume a delivery on strategic sites of some 3000 dwellings. That removes about 1000 from their estimated supply, and brings it to about 8000.

38. There are other detailed differences between the Council and the Appellants in relation to the likely delivery from, for example, sites awaiting the signing of S106 agreements. One of these is the former Albion Chemical Works, which has been subject to a resolution to grant planning permission for some years, and has acknowledged delivery difficulties. The Council is optimistic of early delivery, but there is no concrete evidence to back up that optimism. Again it would be an academic and uncertain exercise to seek to examine each site in detail in this instance. Suffice to say that my judgement more closely aligns with that of the Appellants, and these further consequential reductions in likely supply would bring the ultimate total to a lower level. I consider a figure of 7000 to 7500 to be realistic, but at the top end of the scale.

39. I am therefore satisfied of the following:

- There is a housing requirement, including backlog and buffer of some 9000 dwellings over 5 years or 1800 per annum;
- There is currently a demonstrable supply, taking a generous approach to Council estimates, which is likely to be in the region of 7000 to 7500 dwellings at most.
- The demonstrable supply therefore equates to a figure in the region of 3.9 to 4.1 years.

40. As noted in paragraph 49 of the NPPF, therefore, the Council's policies relating to housing supply cannot be considered to be up to date, and there is a requirement to consider applications in the context of a presumption in favour of sustainable development. This is dealt with in more detail in paragraph 14 of the NPPF. It is worth pointing out that even had I applied a 5% buffer (which I do not regard as appropriate) the Council's supply would still fall below 5 years on the optimistic scenario I have used. Before carrying out the balance required by the advice of the NPPF I will turn to the other issues.

Character and Appearance

41. The appeal site is located on the edge of Sandbach, just beyond the SZL in an area of open countryside. The landscape is within the East Lowland Plain character type, but has no special designation. However it is clearly much valued by local residents whose homes overlook the land, and by other local people who use the footpaths which run across and close to it.

42. There are strong boundaries to the south and west, where the site abuts existing urban development and a paddock. The northern boundary is also strong and discernible on the ground, being formed of significant hedgerows backed by the grounds of Sandbach Rugby Club, with its distinctive posts and floodlights. The most open boundary faces east and north-east. Given its

close relationship with the town the development would not be perceived as an obtrusive finger of development extending the urban form in a strident manner. Rather it would be a development paying heed to the surroundings by restricting the land built upon to that which largely abuts existing development of various forms.

43. I saw at my site visits that the land is relatively flat and has most recently been in use to take a hay crop. It is typical of the Cheshire landscape, being pastoral, with intermittent trees and fields defined by hedges. The site is made up of some small scale elements such as the smaller fields closest to the west of the site, and I note that the current plan would be to retain these 'compartments' within the developed site.

44. The definition of the SZL, in being designed to limit the spread of development until 2011, recognised the intrinsic value of the land as part of the wider landscape. This was recognised too in the previous appeal decisions brought to my attention, and in the Local Plan Inspector's report. Previous decisions and reports are of interest and are material, but deal with cases at a time when circumstances were different, including in relation to housing supply. It is clear in this case that SZLs are not inviolable, nor are they intended to be static beyond 2011 where circumstances justify change. That said, there is uncontested conflict with policies PS8 and H6 which protect the countryside for its own sake.

45. There is no doubt that the development could only be realistically seen as detracting from the existing character of the landscape on the edge of Sandbach, simply because it would transform rural fields into a housing development. Dwellings, roads and other urban features on the scale proposed, however well designed, could hardly do otherwise. But I accept that there are mitigating features in this case. For example, the concept design includes significant areas of open space within the development and the retention of the public right of way which crosses the site in a green link. A further, new link to the west, which does not currently exist, would be an advantage. Mitigation could therefore be built in to a detailed design.

46. In addition, when the wider context is considered, the development would be likely to be relatively low key for its size in its overall visual impact. From the footpath which runs to the north-east houses would have a back drop of the existing town and the rugby club on one side. Furthermore, retention of existing trees, and the provision of a green area as currently planned, would offer the opportunity for the development to be assimilated without major disruption to the character of the wider area. Detailed matters would remain in the control of the Council.

47. There would of course be a visual change which would be of locally substantial impact, and moderate to slight impact further afield. But these visual impacts would be relatively self contained. The development would be seen as being well related to existing urban features such as the dwellings fronting Congleton Road, the dwellings and school along Offley Road, and the rugby club.

48. The residents of dwellings which back on to the land would see a significant change. I was able to observe the likely change at my accompanied site visit. I fully acknowledge the depth of concern expressed by those residents. However, no person has a right to a view, and although the view from some properties would be radically altered, I do not agree that living conditions

would be harmed to the extent that it should count against the proposal. The outlook from dwellings would be towards other houses, but the outlook would be likely to be filtered by vegetation. In my judgement there would be no unacceptable loss of privacy (though detail of design would rest with the Council), and no unacceptable disturbance. So even though I accept that some residents would lose a treasured outlook over what is currently open countryside, I do not accept that this can weigh significantly against the proposal.

49. Taking this issue in the round it is my judgement that the adverse impact on the character of the landscape, and the appearance of the area, would vary from substantial when the viewer passes through and is close to the development, to no more than a moderate impact on leaving the development, and only then when the viewer was located in the currently open area to the north and north-east. Even from this direction the backdrop of development and the existing topography, would reduce impact to slight or negligible as the viewer moved away. Additionally, impact on individual residents would not be so severe that it should militate against the development. In relation to the development plan I do not find any conflict other than with those policies noted above.

Highway Safety

50. This is not a matter contested by the Council, but I include it here as it is of concern to local residents. Access to the development would be taken from Congleton Road, and run between Nos 130 and 134. It is clear that adequate visibility would be available in both directions along the main road.

51. Concerns centre around the potential for conflict between residential traffic and school traffic serving the nearby primary school and in relation to the loss of on street parking in the vicinity of the proposed access.

52. I saw at my site visits that the area around the proposed site entrance is used for parking vehicles associated with dropping off and collecting children from school. There are currently no parking restrictions and I observed parking taking place across or close to the proposed access. It is clear that the new access would reduce the availability of parking in an area which is currently well used. But this must be seen in the context of the parking itself. First, it is an occurrence twice a day and is not constant. Secondly, the matter is unlikely to arise during school holidays. Thirdly, it affects a relatively small number of vehicles in the wider traffic situation. For these reasons I do not consider that the proposed access would generate unacceptable inconvenience for existing users of the highway in this respect.

53. Allied to this matter is the possibility of conflict between school children and traffic from the development. If approaching from the east on the northern side of Congleton Road children would be required to cross the access point. However, this would be likely to involve a relatively modest flow of pedestrians, and it is also the case that they could utilise any proposed new link within the development site to the existing footpath adjacent to the school. Overall I do not see this as being an unacceptable hazard.

54. It has been suggested that the development should make provision for displaced parking on Congleton Road by providing parking space within the site. I disagree. That would be a requirement, in effect, to provide a car park

for public use associated with the school. Given the relatively low level of conflict between the proposal and the existing situation I consider that to require such a course of action would be unreasonable.

55. In a wider sense there is concern about the level of traffic generation from the site and the likely exacerbation of existing traffic congestion hereabouts. This is a matter which has been addressed by the Council's highways officers and a contribution towards rectification of the situation has been agreed. This is addressed in the S106 Obligation to which I turn later. More generally, the CEC professional advice is that the proposed access is acceptable, and would provide a safe means of access to, and egress from, the site. I have no substantive evidence to disagree with that view. There is therefore no conflict with development plan policies GR9, 10, 14, 15 and 18 which, taken together, seek to ensure that development is acceptable in highway terms.

Use of Agricultural Land

56. The latest information confirms that about 3.8 hectares (some 60%) of the site is made up of the best and most versatile (BMV) agricultural land. This is a finite resource and the NPPF makes it clear that the economic and other benefits of such land must be weighed in the balance.

57. In this instance the loss of BMV land would be modest at worst. Much of Cheshire is acknowledged to fall into that category and in the light of the acknowledged need for housing it seems inevitable that some land of the higher quality will be required for development. In addition it is self evident that the proposed development would bring some economic benefit during the construction phase and to the town in the longer term, as well as social benefit in the provision of affordable housing. Whilst the loss of some BMV land is a disbenefit, in the context of this proposal the loss is of minor weight.

Other Matters

58. **Sustainability**. The putative reason for refusal indicates the Council's assertion that the site is not sustainable. Sustainability has 3 strands as set out in the NPPF. In environmental terms I have dealt with the impact of the proposal above. It would extend the town into open countryside and would conflict with policies of the development plan. In addition it would use BMV land to an extent, but that is a common necessity in this locality and cannot carry great weight here for the reasons noted earlier.

59. In locational terms the site is well located in relation to Sandbach town centre, which is a walkable distance away. It is also close to educational and other facilities. A bus service passes along the road outside the site. Whilst the railway station is further away, the site has several advantages of location which make it a suitable location, in principle, for residential development.

60. Economically the development would bring short term advantages of jobs and in the longer term would add population to the town and Borough which would be likely to increase prosperity and enhance vitality and viability.

61. The social thread of sustainability would be well served by the provision of 30% affordable housing. This is a matter which should carry significant weight in favour of the proposal given the acknowledged shortfall in affordable housing provision in the Borough. Taken overall I am not persuaded that the site can be regarded as unsustainable. Indeed I am satisfied that it is a sustainable location.

62. **Prematurity**. I do not underestimate the work which has taken place on preparing the draft Local Plan to date. But the submission draft has not yet been published and there are many outstanding objections. It has been made clear in many decisions that a plan at this stage of preparation cannot carry more than limited (or even little) weight. The outcome of examination in due course cannot be predicted.

63. Guidance (both extant and emerging) on this matter is clear. Refusal on the basis of a prematurity argument is rarely justified. This proposal is not so substantial that it would materially prejudice the housing objectives which the Council is seeking to promote through the draft Local Plan.

64. I also do not accept that a decision to grant planning permission in this case would assist any of the other current development proposals around Sandbach or elsewhere except, potentially, in relation to the assessment of housing land supply. But even then each decision must be made in the light of the evidence which is presented, and housing land supply is a dynamic area which changes constantly. Other material considerations will also play an important role on a case by case basis. The single exception to this relates to the land which lies to the west of the appeal site. Here it is likely that granting planning permission on the appeal site could reasonably be expected to have a material bearing on the way in which any application relating to the adjoining paddock would be considered. But even there any decision would have to be made on a site specific basis. Hence I do not consider that a precedent would be set in this case which would impart undue influence on other decision makers in all but a single potential case.

65. **Other decisions**. As is increasingly common I have been provided with many appeal decisions by both main parties which are produced to support their cases. As I have just indicated though, it is rarely the case that appeal decisions on other sites will bring to light parallel situations and material considerations which are so similar as to provide justification for a decision one way or another. That is certainly the case here. I am well aware of the emerging situation in relation to housing land supply, and to the treatment of that issue both in the CEC area and elsewhere. But my decision is based squarely on the evidence put before me. For that reason I do not accept that appeal decisions brought to my attention can have a determinative influence on this case.

66. At the inquiry it was made clear that the Appellants have a degree of control over land to the north east of the appeal site. Whilst I recognise the concerns that granting planning permission may lead to an application on a larger parcel of land this cannot be a significant factor here as I must make my decision based on the evidence before me. Any future application would be determined on its own merits.

Overall Balance

67. I now bring together the determinative matters at issue. In drawing up the overall balance in this case I start from the important finding that this proposal would develop housing on a sustainable site, and that the Council cannot at this stage demonstrate a supply of specific deliverable sites sufficient to provide five years worth of housing against their agreed housing requirements. The development plan is out of date as regards the provision of housing. This is the central and most relevant matter addressed in the appeal and carries

substantial weight. In addition there would be an agreed element of affordable housing provision, which is a further significant benefit.

68. However, there is conflict with the development plan in relation to the harm identified in respect of the adverse impact on the character and appearance of the surrounding landscape. But, paragraph 14 of the NPPF does not indicate that conflict with the development plan should result in planning permission being refused. The requirement of paragraph 14 (and indeed the whole of the NPPF) is that and adverse impacts must be balanced against the benefits. In relation to this development it remains the case that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the NPPF as a whole.

69. The balance in this case is clear to me. The NPPF seeks to boost significantly the supply of housing. The proposal would help to achieve that aim. The addition of affordable housing is a significant added benefit. On balance I find that the relatively moderate overall landscape harm and loss of BMV land are material considerations of lesser weight. I do not find that the identified harm significantly and demonstrably outweighs the identified benefits. Hence the appeal must succeed and planning permission must be granted.

Conditions

70. A list of potential conditions was made available at the inquiry. This was largely agreed. I deal with them in topic areas and have amended or clarified them where necessary.

Conditions which meet the required tests:

71. Reserved Matters. It is reasonable and necessary to require reserved matters approval within standard timescales. It is also necessary to specify a number of matters which should be resolved at reserved matters stage in order to ensure a satisfactory form of development. These include details of boundary treatments and bin storage.

72. Drawings. A condition specifying the approved drawings, in order to clearly define the planning permission is necessary. I note here that the Council has reservations in relation to 2.5 storey dwellings as shown on some illustrative drawings, but this permission would require details of the appearance to be agreed in any event, and that matter can therefore be resolved at a later stage.

73. Drainage. It is reasonable and necessary to require drainage details be agreed at an early stage in order that adequate arrangements are made for sustainable drainage across the site. Unusually in this case, and because of drainage issues which have been experienced in the locality, it is necessary to impose a condition that drainage of foul and surface water should be to separate systems.

74. Construction Management. A scheme defining matters relating to this topic is necessary in order to protect the amenities of nearby residents. This would include matters such as method of piling, hours of working and minimisation of dust.

75. Biodiversity. In order to protect flora and fauna it is necessary to impose conditions requiring details of, for example, pond construction and habitat creation; a badger survey and mitigation; and tree protection.

76. Recreation. I agree that the requirement to submit details of children's play space and public open space is reasonable in this case in order to ensure a satisfactory form of development.

77. Highways. Conditions are necessary in order to ensure that access and traffic issues are resolved and highways safety maintained. These include adherence to the submitted access drawing, traffic management, and the approval of a travel plan.

78. Contamination. There is evidence that part of the site has been used in the past for an industrial process. It is therefore necessary to impose a condition requiring a scheme to investigate and mitigate any residual contamination.

79. Archaeology. In order to preserve and/or record any archaeological remains a condition requiring a programme of archaeological work during construction is reasonable and necessary.

80. Energy Use. The Appellants suggested a condition which would require a reduction in energy usage through a 'building fabric first' approach, rather than the requirement to source a percentage of energy from renewal or low carbon sources. This approach would assist in achieving reductions in energy use and I agree that such a condition would be reasonable and necessary.

Disputed and Unnecessary Proposed Conditions

81. I agree with the Appellants that it is not necessary on a development of this scale to impose a condition requiring a design code for the site. As pointed out by the Appellants this is a matter which remains within the reserved matters control. The Council can negotiate a high quality scheme and the suggested condition would not add to the control, but would simply add a further layer of control.

82. Previously imposed conditions in the Borough requiring the provision of 10% of predicted energy to be from renewable or low carbon sources were predicated on a policy of the revoked Regional Strategy. Notwithstanding that such a condition was imposed even when the revocation of the RS was imminent, I agree that its imposition would not now be reasonable. However, I do consider that the requirement for the reduction in energy usage, as a suggested alternative, is reasonable and necessary, as noted above.

83. I have briefly dealt with the matter of alternative car parking provision above. In my judgement it would not be reasonable or necessary to require the provision of car parking spaces as a 'replacement' for on street parking used by those dropping off and collecting children from the nearby school.

84. I am also not persuaded that it is necessary to impose a condition requiring that the public footpath across the site remains open for use at all times. It must remain open by law and any blockage would be unlawful. Action could be taken if any obstruction occurred. The proposed condition is therefore unnecessary.

Planning Obligation

85. A planning Obligation pursuant to S106 of the 1990 Act has been submitted. It has been duly executed. The Obligation deals with the following matters.

- Public Open Space (POS). POS is to be used for that purpose only, and is to include an equipped children's play area. There is a requirement to prepare a POS management plan and to transfer the POS to a management

company in accordance with the management plan. The illustrative masterplan clearly shows the open space intended to be provided and it would form an important integral part of the development.

- Highways. Two contributions are to be made in relation to highway improvements. The first relates to improvements to be made to the junction of Congleton Road and Old Mill Road. The second relates to the junction of Old Mill Road and The Hill, and at the A535/A534 roundabout, and/or to the public highway realm. These contributions would address capacity, safety and flow issues in locations which would be impacted by traffic from the proposed development.

- Education. Contributions are to be made relating to the provision of primary education (to be used within 2 miles of the site) and secondary education (to be used within 3 miles of the site). These contributions would address capacity and facilities issues at local schools which would result from the expected increase in numbers of pupils arising out of the proposed development.

- Affordable Housing. The Obligation requires the identification of 30% of the dwellings as affordable housing units. 35% of those would be intermediate housing units, and 65% either social rented or affordable rented units. This provision accords with Council policy and the advice of the NPPF.

86. I have considered the Obligation in the light of Regulation 122 of the Community Infrastructure Regulations 2010. I am satisfied that each element of the Obligation is necessary to make the development acceptable in planning terms, is directly related to the development, and is fairly and reasonably related in scale and kind to the development. Each part of the Obligation is also justified by reference to Council policy. I can therefore take the Obligation into account in reaching my decision.

Final Conclusion

87. The Council is unable, on my assessment, to demonstrate a 5 year supply of deliverable housing sites. This is a substantial material consideration in favour of the proposal. In addition the affordable housing to be provided is of significant benefit. There is conflict with the development plan as described above, but the harm identified, to landscape, loss of BMV land, and the loss of outlook for local residents do not amount to significant and demonstrable harm which would outweigh the benefits of the scheme. In this instance there are material considerations which outweigh conflict with the development plan. For the reasons given above I conclude that the appeal should be allowed.

Philip Major

INSPECTOR

SCHEDULE OF 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 the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.

3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.

4) The development hereby approved shall be implemented in accordance with the approved plans unless otherwise agreed in writing with the Local Planning Authority. The approved plans are numbered: 429B.03, 429BA – 05B and 006 – 04.

5) No development shall take place until:
(a) A Phase II contamination investigation has been carried out in accordance with a scheme to be submitted to and approved in writing by the local planning authority;
(b) If the Phase II contamination investigation indicates that remediation is necessary, then a Remediation Statement shall be submitted to the local planning authority for its approval in writing. The remediation scheme in the approved Remediation Statement shall then be carried out.
(c) If remediation is required, a Site Completion Report detailing the conclusions and actions taken at each stage of the works, including validation works, shall be submitted to and approved in writing by the local planning authoritty prior to the first use or occupation of any part of the development hereby approved.

6) No development shall take place until a scheme to limit the surface water run-off generated by the proposed development has been submitted to and approved in writing by the local planning authority. The scheme shall indicate the consideration given to the inclusion of a sustainable urban drainage system within the development as part of this surface water run-off strategy. The development shall be carried out in accordance with the approved details.

7) No development shall take place until such time as a scheme to manage the risk of flooding from overland flow of surface water has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

8) No development shall take place until a programme of archaeological work has been implemented in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority. The work shall be carried out in accordance with the approved scheme.

9) No development shall take place until a Construction Method Plan and Statement has been submitted to and approved in writing by the local planning authority. Construction work shall be undertaken in accordance

with the approved Construction Method Statement which shall include the following details:

(a) Details of the method of any piling used during construction;

(b) The hours of work which shall not exceed the following:

Construction hours and associated deliveries to the site shall be restricted to 0800 to 1800 Monday to Friday, 0900 to 1400 on Saturdays, with no working on Sundays or Bank Jolidays;

Pile driving shall be restricted to 0830 to 1730 Monday to Friday, 0900 to 1300 on Saturdays, with no working on Sundays or Bank Holidays.

(c) Duration of the pile driving operations (expected starting date and completion date);

(d) Prior notification to the occupiers of potentially affected properties;

(e) Details of the responsible person (site manager/office) who can be contacted in the event of a complaint;

(f) A scheme to minimise dust emissions arising from construction activities on the site. The scheme shall include details of dust suppression measures on site and the methods to monitor dust emissions arising from the development. Dust suppression measures shall be retained in a fully functional condition for the duration of the construction phase;

(g) The Construction Management Plan (CMP) shall include details (for each phase of the development) of contractors parking areas and compounds and details of wheel washing facilities;

(h) Details of the fencing to the public rights of way.

Development shall be carried out in accordance with the approved Construction Method Statement.

10) No development shall take place until details of a scheme in respect of pond enhancement and habitat creation and enhancement has been submitted to and approved in writing by the local planning authority. The scheme shall include:

(a) Full details of the enhancement of the pond (in that relevant phase) including sections and landscaping;

(b) Details of proposals to enhance opportunities for bio-diversity in the site to include: proposals for the incorporation of features into the scheme suitable for use by breeding birds (including swifts and house sparrows) and roosting bats, and mitigation proposals for any adverse impacts identified following a survey carried out by a suitably qualified person and approved in writing by the local planning authority;

(c) A detailed survey to check for nesting birds prior to undertaking any works between 1st March and 31st August in any year. Where nests are found in any building, hedgerow, tree or scrub to be removed (or converted or demolished in the case of buildings), a 4m exclusion zone shall be left around the nest until breeding is

complete. Completion of nesting should be confirmed by a suitably qualified person and a report submitted to the Council;

(d) A timetable for the implementation of the agreed measures;

(e) Details of the long-term management and maintenance of these areas within the site.

Thereafter and prior to the commencement of the development a landscape and habitat management plan, including long term design objectives and management responsibilities shall be submitted to and approved in writing by the local planning authority. The management plan shall be implemented as approved and retained thereafter.

11) Any and each reserved matters application shall include an up to date badger survey and mitigation proposals for any adverse impacts identified. The survey shall be carried out by a suitably qualified person and approved in writing by the local planning authority. A minimum provision for a 2m buffer zone free from built development shall be retained along the route of the relevant hedgerows within the site. No development shall take place except in complete accordance with the approved mitigation proposals.

12) No development, including the setting up of compounds, delivery of materials and access by machinery or plant, shall begin until a Tree Removal Plan and Tree Protection Plan have been submitted to and approved in writing by the local planning authority (hereinafter called the approved protection scheme). The approved protection scheme shall show trees and hedges for removal and retention, and be produced according to BS5837:2012. No tree shall be damaged, felled or pruned other than as expressly permitted by the approved protection scheme. No development or other operations shall take place until tree protection fencing and/or temporary ground protection has been installed according to the approved protection scheme. No access or works will be permitted within a protected area unless they are required in fulfilment of an approved Arboricultural Method Statement. The approved tree protection fencing and/or temporary ground protection shall remain intact for the duration of the development phase and shall not be removed or realigned without the prior written permission of the local planning authority or unless required by an approved Arboricultural Method Statement.

13) No development shall take place (including any tree felling, tree pruning, demolition works, soil moving, temporary access construction and/or widening or any operations involving the use of motorised vehicles or construction machinery) until a detailed Arboricultural Method Statement has been submitted to and approved in writing by the Local Planning Authority. No development shall take place except in complete accordance with the approved Method Statement. Such Method Statement shall be based on the Tree Removal Plan and Tree Protection Plan according to BS5837:2012 and shall include the following:

(a) A specification for tree and hedgerow removal and pruning according to BS3998:2010;

(b) A design, specification and methodology for all works that are proposed within a protected area, as defined by the approved Tree Protection Plan and that have the potential to harm any retained

tree or hedgerow, such that all works can be completed without prejudice to the condition or longevity of any such tree/s or hedgerow;

(c) Timing and phasing of arboricultural works in relation to the approved development;

(d) A schedule of supervision, monitoring and sign-off for proposed pruning, felling, installation of tree protection fencing, installation of temporary ground protection and special construction methods.

14) The development hereby permitted shall not be occupied until the access as detailed on Croft Transport Solutions Plan 0006_4 has been constructed in accordance with the approved plan and has been formed and graded to the specification of the local planning authority, which is available from the highway authority, and the visibility splays of 4.5m x 70m have been provided at the main site access in both directions with no obstruction in height above 0.6m.

15) No development shall take place until details of a scheme of traffic management/speed reduction measures and on-street parking controls along Congleton Road has been submitted to and approved in writing by the local planning authority. The approved details and measures shall be implemented in full prior to the occupation of the first dwelling on the site.

16) Prior to the occupation of each and every phase of the development hereby permitted, a Travel Plan for that phase shall be submitted to and approved in writing by the local planning authority. The Travel Plan shall include, inter alia, a timetable for implementation and provision for monitoring and review. No building within the relevant phase of the development hereby permitted shall be occupied until those parts of the approved Travel Plan that are identified as being capable of implementation have been carried out.

17) The reserved matters shall make provision for a minimum total of 3712 sqm of children's play space comprising 2320 sqm of informal play space and a 1392 sqm LEAP with equipment located a minimum of 20m from the closest residential property and with a minimum of 5 pieces of equipment. Full details of the play equipment shall be submitted to the LPA and shall be predominantly of metal construction, as opposed to wood and plastic.

18) The reserved matters shall include detailed locations, design and specifications for public open space, and shall be accompanied by the maintenance schedules to be provided pursuant to the Section 106 Agreement and a timetable of implementation and future maintenance. The open spaces and children's play spaces provided pursuant to condition 17 shall be provided in complete accordance with the approved details and timetable (for each phase of the development as relevant).

19) The reserved matters shall include details of the boundary treatments to each property within each phase of the development to be approved in writing by the local planning authority. No dwelling hereby permitted shall be occupied until the boundary treatment associated with that property has been implemented in accordance with the approved details.

20) The reserved matters shall include details of bin storage for all properties within the phase of development to which the application relates. The

approved storage shall be provided prior to first occupation of the dwellings and shall thereafter be retained.

21) The site shall be drained on a separate system with only foul drainage connected into the foul sewer.

22) The development hereby permitted shall secure a minimum 10% reduction in energy use through a building fabric first approach (enhanced insulation or construction technologies). A report confirming the achievement of specified design fabric shall be submitted to and agreed in writing by the local planning authority prior to the commencement of development. The development shall be implemented in accordance with the approved details.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr R Humphreys	Queens Counsel
He called	
Mr A Fisher BSc(Hons) M.TPl MRTPI	Head of Strategic and Economic Planning, Cheshire East Council

FOR THE APPELLANT:

Mr P Tucker	Queens Counsel
He called	
Mr J Gartland BA BTP MRTPI	Director, Nathaniel Lichfield and Partners
Mrs P Randall BSC(Hons) MALD FLI	Founding Partner, Randall Thorp

INTERESTED PERSONS:

Cllr S Corcoran MA(Oxon) FCA CTA	Local Councillor
Cllr B Moran	Local Councillor
Cllr M Benson	Town Councillor
Mr I Knowlson	Resident and Chairman of the Local Action Group
Mr S Pugh	Congleton Road Action Group
Mr J Keeble	Elworth Hall Action Group
Mr J Minshull	Resident of Wheelock
Mr D Bould	Honorary Alderman of Cheshire
Mr M Kingsley	Resident of Cheshire East
Mr K Halton	Resident of Cheshire East

DOCUMENTS HANDED IN AT THE INQUIRY

From the Council

CEC 1 Letter of notification of the inquiry
CEC 2 Opening statement on behalf of the Council
CEC 3 Settlement Zone Line extract from the CLP Review
CEC 4 Policy PS4 extract from the CLP Review
CEC 5 Land Registry plan showing option land on and adjacent to the appeal site
CEC 6 Copy of objection to the omission of land off Congleton Road from the draft Local Plan strategy
CEC 7 Judgement in *Fox Strategic Land and Property Limited and SoS for CLG and CEC*

CEC 8 Household Interim Projections 2011 – 2021, England
CEC 9 2011-based Interim Household Projections, Quality Report
CEC 10 Spreadsheet of land with planning permission
CEC 11 Response to Mr Gartland's Additional Site Notes on strategic sites
CEC 12 RS Policy L4
CEC 13 CEC note on Taylor Wimpey Planning Statement for East Shavington
CEC 14 CEC note on Housing Market Partnership membership
CEC 15 Extract from the Inspector's report into the Congleton Local Plan
CEC 16 Draft LP Policy SE8
CEC 17 Drawing of proposed alterations to Old Mill Road/The Hill, Sandbach
CEC 18 Drawing of proposed improvement to Old Mill Road/Congleton Road junction
CEC 19 Justification for the S106 highway contributions
CEC 20 Highways Statement of Common Ground
CEC 21 Draft list of conditions
CEC 22 Community Infrastructure Levy Compliance Statement
CEC 23 Closing statement on behalf of the Council

From the Appellants

APP 1 Opening submissions on behalf of the Appellants
APP 2 Committee report relating to land off Hawthorne Drive, Sandbach
APP 3 Appeal decisions relating to Coppice Way, Handforth
APP 4 Judgement in *CEC and SoS CLG, Richborough Estates et al*
APP 5 Judgement in *Wainhomes (SW) Holdings Limited and SoS CLG*
APP 6 Spreadsheet of strategic sites with Appellants' comments
APP 7 Emails relating to comparative analysis of strategic sites
APP 8 Extract of Proof of Evidence of Mr Fisher relating to land off Coppice Way, Handforth
APP 9 Opening statement of the LPA relating to proposed development at Tattenhall
APP 10 Briefing note on agricultural land quality
APP 11 Copy of letter from the Leader of CEC
APP 12 Appeal decision relating to Rope Lane, Shavington
APP 13 Closing submissions for Cheshire West and Chester Council relating to proposed developments at Tattenhall
APP 14 Note of house builder annual delivery rates
APP 15 Bundle of briefing notes on strategic sites
APP 16 Agricultural land classification note, July 2012
APP 17 Appeal decision relating to Queens Drive, Nantwich
APP 18 Note of timeline relating to the Queens Drive, Nantwich proposal
APP 19 Correspondence relating to the Queens Drive, Nantwich proposal
APP 20 Briefing note on 5 year supply
APP 21 Spreadsheet with comments on proposed development sites
APP 22 Table showing 5 year supply calculation
APP 23 Judgement in *Stratford on Avon District Council and SoS CLG and JS Bloor, Hallam Land Management, RASE*
APP 24 Draft S106 Obligation
APP 25 Judgement in *CEC and SoS CLG, Norman Dale, Mildred Dale*
APP 26 Briefing Note, table and calculations of 5 year supply
APP 27 Draft agreed conditions
APP 28 Community Infrastructure Levy note
APP 29 Closing submissions on behalf of the Appellants
APP 30 Executed S106 Obligation

From Other Parties

OP 1 Statement of Cllr Corcoran
OP 2 Statement of Cllr Moran
OP 3 Statement of Cllr Benson
OP 4 Statement of Mr Knowlson
OP 5 Statement of Mr Pugh
OP 6 Statement of Mr Minshull
OP 7 Statement of Mr Bould
OP 8 Statement of Mr Kingsley
OP 9 Email from Mr R Doughty
OP 10 Written statement of MR A Yuille, CPRE Cheshire
OP 11 Letter from Fiona Bruce MP, read out by Cllr Benson
OP 12 Letter from Sandbach Town Mayor to the Prime Minister

The Planning Inspectorate

Appeal Decision

Inquiry held on 5, 6, 11, 12 and 15 March 2013
Site visit made on 14 March 2013

by Neil Pope BA (HONS) MRTPI

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

Decision date: 8 April 2013

Appeal Ref: APP/P0119/A/12/2186546
Land Between Iron Acton Way and North Road, Engine Common, Yate, South Gloucestershire, BS37 7LG.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Bloor Homes Limited and Sydney Freed (Holdings) against South Gloucestershire Council.
- The application Ref. PK12/1751/F, is dated 21 May 2012.
- The development proposed is a mixed use development comprising 210 new homes, including 73 affordable units; 1,329 square metres of new office space (Use Class B1); 1,914 square metres of employment units for light industrial use (Use Class B1c) and/or warehouse and distribution (Use Class B8); a new club house and car park for Yate Town Football Club (totalling 352 square metres); and associated infrastructure.

Decision

1. The appeal is dismissed and planning permission is refused for a mixed use development comprising 210 new homes, including 73 affordable units; 1,329 square metres of new office space (Use Class B1); 1,914 square metres of employment units for light industrial use (Use Class B1c) and/or warehouse and distribution (Use Class B8); a new club house and car park for Yate Town Football Club (totalling 352 square metres); and associated infrastructure.

Procedural Matters

2. Within its Statement of Case the Council informed me that had it been in a position to determine the application, planning permission would have been refused for the following reasons:

   1. The application site falls outside both the Engine Common village and Yate and Chipping Sodbury settlement boundary, as defined on the South Gloucestershire Local Plan Proposals Map, and is not allocated for development within the emerging Core Strategy. As such it lies in the open countryside and therefore is contrary to Policy H3 and Policy E6 of the adopted South Gloucestershire Local Plan. Furthermore, the proposals would result in the expansion of Engine Common, out of scale with the current settlement, and would unacceptably alter the function of Engine Common as a village, and as such the proposals are contrary to the location strategy and spatial development policies CS5 and CS34 of the emerging Core Strategy.

   2. The site lies outside any housing or employment allocations in the emerging Core Strategy, as such, the correct mechanism for consideration of this application should be through the democratic, plan led process, which has now

reached an advanced stage. To grant planning permission now would be premature, contrary to the plan led system and undermine public confidence in that system.

3. The proposal is unacceptable in highway terms as it would result in an over-reliance on outward commuting of cars because of the limited provision of public transport and poor access to higher education and employment. The contributions offered and the limited scale of development would not provide a change in the current public transport provision. As such the proposal is contrary to Policy T12 of the adopted South Gloucestershire Local Plan.

4. The proposed scheme does not accommodate the forecast growth in the area and would result in sub-standard traffic conditions on the adjoining local highway infrastructure, and as such, does not take into account overall changes in patterns of movement in the general area arising from the North Yate New Neighbourhood. As the proposal is contrary to Policy T12 of the South Gloucestershire Local Plan.

5. The proposed scheme would result in a sub-standard highway junction interfering with the safety of all road users and the safe an free flow of traffic and is therefore contrary to Policy T12 of the adopted South Gloucestershire Local Plan. As the proposal is contrary to Policy T12 of the South Gloucestershire Local Plan.

6. The application is not supported by an agreed S106 planning obligation, which requires the provision of affordable housing on site, and in this respect is contrary to Policy H6 of the South Gloucestershire Local Plan.

7. The application is not supported by an agreed S106 obligation which requires the provision of appropriate Category 1 sports facilities and on-site equipped and unequipped play and maintenance thereof and in this respect is contrary to Policy LC8 of the adopted Local Plan.

8. The application is not supported by an agreed S106 obligation which requires provision of community facilities and in this respect is contrary to Policy LC1 of the adopted Local Plan.

9. The application is not supported by an agreed S106 obligation which requires provision of library services and in this respect is contrary to Policy LC1 of the adopted Local Plan.

10. The proposed diversion of footpath LIA21/10 would harm the amenity of this recreational route and in this respect is contrary to Policy LC12 of the adopted Local Plan.

3. The appellants and the Council have agreed a Statement of Common Ground (SCGT) on transport matters. Within this SCGT it is agreed that the scheme would include provision to overcome the Council's 'deemed reasons for refusal' numbered 3, 4 and 5 above. There is also agreement in respect of another Statement of Common Ground (SCG). Appendix B to the SCG includes plan reference 2996-002/C. This shows a revised route for a footpath diversion across the site. Both main parties agree that this revised route would address the Council's tenth 'reason for refusal'. A separate Addendum to the SCG sets out the preferred positions of the main parties regarding housing land supply.

4. At the Inquiry I was presented with a completed planning obligation (agreement) under the provisions of section 106 of the above Act. This obligation includes financial contributions towards the cost of various highway/transport measures, library provision and off-site public open space, as well as a mechanism for delivering some affordable housing on the site. The Council informed me that this agreement[1] would overcome its 'deemed reasons for refusal' Nos. 6, 7, 8 and 9.

5. As part of the appeal the appellants have submitted a number of revised plans[2]. In essence, these relate to amendments to the proposed layout and some of the proposed house types. The appellants have undertaken a process of consultation in respect of these amendments, including statutory consultees and neighbours. I understand that no responses were received in respect of these revised plans. The Council informed me that it had no objection to these amended plans being considered as part of the appeal. I also note from the letters of representation that were made to the Council at 'application stage' that some local residents are concerned by the principle of the proposed development rather than the detailed aspects of the layout and design.

6. Having regard to good practice[3] and the Wheatcroft judgement[4], the scheme is not so altered by the revised plans as to materially change the proposed development. Moreover, the Council, consultees and interested parties have been given adequate opportunity to comment upon the amendments. I have therefore determined the appeal on the basis of the plans considered by the Council at 'application stage' as amended by plan reference 2996-002/C and those plans that comprise Appendix 1 to Mr Richards's proof of evidence.

7. At the start of the Inquiry I was asked to make a ruling in respect of the Council's rebuttal evidence. On the final sitting day I sought the views of both main parties as to whether or not the Inquiry should be closed in writing to allow for the receipt of the Core Strategy Inspector's further findings that were due to be published on 18 March 2013. I agree with the appellant that this would be likely to result in the parties seeking to present further evidence, including recalling witnesses and cross-examination. This would considerably delay the determination of this appeal and create uncertainty regarding other housing appeals in South Gloucestershire. I therefore closed the Inquiry on 15 March 2013, in accordance with the Inquiry timetable.

8. In addition to the above accompanied site visit, I viewed the site and surroundings, on my own, on 4 March 2013.

9. At the Inquiry an application for an award of costs was made by the appellants against the Council. This application is the subject of a separate Decision.

Main Issues

10. The two main issues are: firstly, whether there is a shortfall in the five year supply of housing land within South Gloucestershire and the implications for the adopted and emerging spatial strategy, including public confidence in the plan-led system and; secondly, the effect upon the character and identity of Engine Common.

[1] As the appeal is dismissed on the substantive merits of the case it is not necessary to look at the agreement in more detail as the scheme is unacceptable for other reasons.
[2] Included as Appendix 1 to Mr Richards's proof of evidence
[3] Planning Inspectorate Good Practice Advice Note 09 'Accepting amendments to schemes at appeal'
[4] Bernard Wheatcroft Ltd v SSE [JPL, 1982, P37]

Reasons

11. The development plan includes the Regional Planning Guidance for the South West (RPG10), the Bath and North East Somerset, Bristol, North Somerset, South Gloucestershire Joint Replacement Structure Plan (SP) and the South Gloucestershire Local Plan (LP). All three plans were adopted many years ago and the SP and LP were intended to guide the development and use of land up to 2011. (RPG10 covers the period up to 2016.) No party relies upon the housing requirement figures of the development plan to support its case. (The LP housing requirement covered the period 1996-2011 and was based on household projections from the 1990s.)

12. The appeal site lies outside the settlement boundaries for the village of Engine Common and the town of Yate, as defined in the LP. The most relevant development plan policies to the determination of this appeal are 'saved' SP policy 2 (the locational strategy) and 'saved' LP policies H3 and E6 (residential and employment development in the countryside). The appellants accept that the proposal conflicts with these LP policies. The spatial strategy includes locating new housing and employment facilities within and adjacent to the main urban areas and protecting and enhancing the character of the countryside.

13. The South Gloucestershire Core Strategy (CS) was submitted for Examination in March 2011. The Examination was initially suspended by the CS Inspector to allow for the submission of Post Submission Changes. Hearing sessions were subsequently held in June and July 2012 and the CS Inspector published his Preliminary Findings and Draft Main Modifications in September 2012. The Inspector's initial conclusion is that the Core Strategy is capable of being made 'Sound' subject to a number of Proposed Main Modifications (PMM). The PMM have been subject to a further hearing session that was held on 7 March 2013. The most relevant policies to the determination of this appeal are CS5 (location of new development), CS15 (distribution of housing) and CS34 (rural areas).

14. The CS has reached an advanced stage of preparation. However, there are unresolved objections to the housing requirements, including the means of addressing the shortfall in the delivery of housing that accrued during the LP period. My attention has been drawn to legal opinion, obtained by some house builders, which argues that the housing requirement of the PMM, if adopted, could be susceptible to challenge. Moreover, the CS Inspector has not yet found the CS to be 'Sound'. The CS carries moderate weight in this appeal.

Housing Land/Spatial Strategy/Public Confidence

15. Both main parties agree that within South Gloucestershire there has been a record of persistent under delivery of housing. As a consequence, and in accordance with the Government's objective to boost significantly the supply of housing[5], it is also agreed that a 20% buffer should also be applied to the Council's five year supply of deliverable housing sites. However, there is disagreement between the main parties over the housing requirement for the CS period 2006-2027[6], the means of addressing the housing shortfall up to 2012[7], as well as the deliverability of sites. The Council's preferred position is

[5] Paragraph 47 of the National Planning Policy Framework ('the Framework')
[6] The Council has argued that this should be 28,355 new homes, as set out in the CS Inspector's Draft Main Modifications to CS policy CS15, whereas the appellants argue that the requirement should be 32,800 new homes, as set out in the former Secretary of State's Proposed Changes to the draft Regional Strategy (RS).
[7] The appellants argue that the 'Sedgefield approach', based on research commissioned by the Department of Local Government and Communities and set out in the 'Land Supply Assessment Checks' report 2009, should be

that it has a 5.13 years supply of housing (5.02 years supply if based on the CS Inspector's PMM) whilst the appellant's preferred position is that the Council is only able to demonstrate a 1.58 years supply.

The housing requirement

16. It is by no means certain that the CS will be found sound or that the CS Inspector will reason that 28,355 new homes is sufficient to meet the full, objectively assessed needs for market and affordable housing in the housing market area. The appellants have also drawn my attention to other appeal decisions where the draft RS Proposed Changes housing figure has been preferred. These include two recent Secretary of State decisions in another part of Gloucestershire (Refs. APP/F1610/A/12/2165778 and 2173305). However, the circumstances of these other cases are different to the situation before me. The South Gloucestershire CS is at a more advanced stage and each case must be determined on its own merits. These other decisions do not set a precedent that I must follow.

17. The appellants' housing supply witness agreed that a fair reading of the Note of 10 January 2013[8] was that the CS Inspector appeared to have settled on a housing requirement of 28,355 but had concerns over the Council's ability to provide a five year supply of housing land. If, for the purposes of this appeal, the Council is unable to demonstrate a five year supply against this housing requirement then it follows that it would be unable to demonstrate a five year supply under the draft RS Proposed Changes. It would therefore only be necessary for me to determine the appropriateness of using the appellants' preferred housing requirement or the Government's 2008-based Household Projections if a five year supply exists under the CS PMM requirement for 28,355 new homes.

The means of addressing the housing shortfall up to 2012

18. When assessed under the LP housing requirement, there was a surplus in the supply of new homes in South Gloucestershire during the period 1996-2001. However, since 2001 there has been a deficit. Both main parties agree that over the period 1996-2006 there was a shortfall of 1,150 new homes. It is also agreed that if the above noted CS PMM housing requirement is used for the period 2006-2012, there is a further shortfall of 3,113 new homes. This results in a total shortfall of 4,260 new homes up to 2012.[9]

19. There is no policy document or guidance which advises against a residual ('Liverpool') approach to addressing shortfall rather than the 'Sedgefield approach' of front-loading this within the first five years of housing land supply. However, the Council's 'hybrid' approach, which it argues would involve tackling about 60% of the shortfall within the first five years, appears at odds with the CS Inspector's PMM. This supports the appellants' concerns that the Council is 'cherry picking' the PMM. If the Council's argument for assessing the five year supply of housing land on the requirement for 28,355 new homes is to have credibility then a higher annualised provision is required than contained within its preferred position.

used instead of the Council's 'hybrid' approach whereby 60% of what it considers to be the accrued shortfall would be provided during the next five years.

[8] 'Additional Housing Sites' - matters to be explored at the CS Hearing session on 7 March 2013

[9] The shortfall is very much greater if the draft RS Proposed Changes or the Government's 2008-based Household Projections are used instead

20. There is a greater weight of evidence before me, including the findings of the Inspector who determined a mixed use development in Worcestershire (Ref. APP/H1840/A/12/2171339), to indicate that the 'Sedgefield approach' is more closely aligned with the need to boost significantly the supply of housing and remedy the unsatisfactory consequences that arise from a persistent under delivery of housing. I share the appellants concern that the Council is failing to adequately address the very substantial shortfall that accrued up to 2012.

21. As I have noted above, the Council's figures, based on a higher annualised provision over the first five years, reveal a 5.02 years supply of housing. However, this includes a site at Thornbury, which is the subject of a separate outstanding appeal (Ref. APP/P0119/A/12/2189213). This by itself is an admission that the Council is unable to demonstrate a five year supply against the PMM. Nevertheless, even if this site at Thornbury is included as a deliverable site, the Council's assessment reveals a surplus of only 42 new homes over the five year period. There is very little margin for error or slippage in the Council's predicted delivery rates on the sites it has identified.

The deliverability of sites

22. Paragraph 47 of 'the Framework' requires a supply of specific deliverable sites sufficient to provide five years worth of housing. Footnote 11 of 'the Framework' advises that to be considered deliverable, sites should be available 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. This does not mean that sites without planning permission should be excluded from a calculation of supply figures. Moreover, whilst agreeing with the appellants that a calculation of supply based upon projecting past delivery rates forward could save much time at inquiries, Footnote 11 suggests that analysis of particular sites may be required. However, that is not to say past delivery rates should be ignored as this is evidence of what has been achieved.

23. The Council's 2012 Annual Monitoring Report reveals that the annual delivery rate in South Gloucestershire over the last six years is significantly below the annualised provision in the Council's assessment of the five year supply of housing land under CS policy CS15. The economic downturn occurred in 2008/9 and the Council's Major Sites Team has been in existence since 2008. Whilst this Team works closely with house builders/developers in an attempt to deliver much needed housing, the evidence on past completions suggests that the Council is being very optimistic in the amount of housing it expects to be delivered over the next five years. In this regard, only a very small number of the new homes that were due to be provided on allocated sites within the LP were delivered during the LP period. I also note the appellants argument that a return to a period of strong economic growth is still a long way off.

24. There is much disagreement between the main parties as to the numbers of new homes that are likely to be delivered on some sites during the next five years. In the very competitive house building industry, I would be unsurprised if house builders/developers sought to gain an advantage over a rival by either 'talking up' the delivery rates from an allocated/preferred site in order to retain the support of a Council and/or cast doubt on the predicted delivery rates of a competitor so as make another site in the same area appear 'less deliverable'.

25. The Council appears unquestioning of some of the delivery rates provided by house builders/developers on sites that it has argued would deliver housing

within the next five years. Its predictions make little, if any, allowance for the effects of competition from different sales outlets operating in close proximity to one another. Furthermore, the rates used by the Council in its assessment take no account of a reduction in completions on some sites following an initial 'spike' in sales caused by pent up demand.

26. Nevertheless, assessing deliverability is not an exact science and it would be unfair to be too critical of the Council's endeavours to ascertain delivery rates. Moreover, whilst average build rates from sales outlets of national house builders is an indication of what occurs throughout the country, such figures are unlikely to be representative of local circumstances and therefore likely to be of only limited value. In all likelihood, the delivery rates on most of those sites identified by the Council would probably be somewhere in between the Council's predictions and the appellants.

27. However, for the two sites at Emersons Green (GHQ and Gateway), land south of Douglas Road and land south of Filton Airfield, there is more cogent evidence to support very much lower delivery rates than predicted by the Council. Only outline permission exists for one of the sites at Emersons Green which was allocated for housing many years ago within the LP. There are clearly many obstacles to be overcome before new homes can be delivered on these two sites. There are also contradictory emails from those aiming to develop these sites regarding delivery rates. This strongly suggests to me that the Council's predictions, possibly through no fault of its own, are unduly optimistic.

28. For the land south of Douglas Road (also previously allocated for housing in the LP) a resolution to grant permission was made in 2011, but permission has yet to be issued. A planning obligation has had to be renegotiated on two separate occasions for this scheme, which involves both houses and flats. The evidence indicates that notwithstanding much effort on the part of the Council, viability remains an issue. I share the appellants concerns over the ability of this site to deliver the number of homes predicted by the Council in the next five years.

29. In 2012 the Council resolved to grant outline permission for development on land south of Filton Airfield. However, that application is the subject of a comprehensive holding objection from the Highways Agency. Given the issues raised by that objection, I am very far from convinced that this will only result in *"slight slippage"* and *"not impact upon deliverability"* as argued by the Council. The appellants' delivery figures appear more realistic for this site.

30. With much of the evidence on deliverability tested under cross-examination, I have reached the view that the Council is being overly-optimistic regarding the number of dwellings that it anticipates would be provided within the next five years. The number of new homes that are likely to be delivered would, in all likelihood, be very much lower than the quantum the Council requires under the provisions of the CS PMM. The Council does not therefore have five years worth of housing against its preferred housing requirement. As a consequence, paragraph 49 of 'the Framework' is engaged.

31. The proposed employment development would be located immediately adjacent to the settlement boundary of Yate. Both this and the proposed residential development would have convenient access to the highway network and the wide range of other services and facilities available within Yate. In transport terms, the scheme would comprise a sustainable urban extension to the town of Yate. Whilst the proposal would result in the loss of a number of hectares of

countryside, paragraph 49 of 'the Framework' is clear in stating 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 boundaries of the LP are based on housing requirements for the period up to 2011. In this instance, the conflict with LP policies H3 and E6 and CS policies CS5 and CS34 is outweighed by the need to meet immediate housing need and secure an adequate supply of housing land.

32. I note the concerns of the Council that if the appeal site was released for development it could prejudice the CS and undermine public confidence in the plan-led system. However, the proposal represents less than 1% of the housing requirement of the CS. There is also no evidence to show that it would prejudice the delivery of housing on other sites in South Gloucestershire, including the North Yate New Neighbourhood proposed under CS policy CS31. Furthermore, the Council is releasing other land for development prior to the adoption of the CS. I therefore agree with the appellants that if the appeal scheme were permitted it would not prejudice the CS.

33. Some residents would undoubtedly view an approval as a 'departure' from the plan-led system and at odds with 'Localism'. However, the Secretary of State has made it clear[10] that in putting the power to plan back in the hands of communities there is a responsibility to meet the development and growth needs of communities and to deal quickly and effectively with proposals that will deliver homes, jobs and facilities.

34. I conclude on the first main issue that there is a shortfall in the five year supply of housing land within South Gloucestershire and the conflict with adopted and emerging policies and strategies would be outweighed by the contribution the scheme would make towards remedying this shortfall.

Character and Identity of Engine Common

35. Engine Common is a linear settlement with housing on either side of North Road. In addition to a primary school, post office/convenience store and public houses, the village comprises about 100 homes. Bus services and footways provide links to Yate and the southern limits of the village are separated from the north western edge of the town by the width of a road. Nevertheless, Engine Common has its own separate identity with a distinctive pattern of small rectangular fields, some of which extend up to North Road. The unspoilt open qualities of the fields which comprise the majority of the appeal site form part of the attractive setting to the village and are an integral part of its identity.

36. Unlike Yate, Engine Common has a pleasing rural character. I was able to clearly appreciate this during my visits. As noted by the Inspector who considered objections into the LP in 2004, this village has a somewhat fragile, though none the less valuable character as separate from Yate. This is reflected in some of the representations made to the Council at 'application stage', including those made by Save Engine Common Action Group. It is clear to me that many residents of the village cherish the separate identity of Engine Common and its rural charm. I also note from the representations made by Yate Town Council during the CS Examination that it wishes to maintain the separate identity of this village and is opposed to expanding Yate in the manner proposed by the appellants. In responding to the application, Iron

[10] 'Housing and Growth' Ministerial Statement 6 September 2012

Acton Parish Council also expressed concerns over the *"excessive build numbers in a rural area"*.

37. The proposed residential development would be set back from North Road. Some agricultural land would remain at the rear of some buildings along the western side of North Road and the western boundary of the site would include a landscape buffer. Much of the existing hedgerows would be retained and there would be green spaces around some of the new buildings. However, this would not disguise the introduction of a very sizeable suburban style housing estate within the countryside that would be characterised by a long curved estate road and perimeter block style development with some parking courts. Whilst this type of design/layout can be successful, in this instance, it would have little in common with the linear form of Engine Common or the scale of existing housing that makes up the village.

38. I share the Council's concerns that the scale and layout of the scheme would amount to an inappropriate 'suburban bulge' at odds with the character and identity of the village. The scale of the development would increase the number of new homes in the village by nearly 200%. Whilst the number of new homes would be lower than the scheme considered by the LP Inspector, existing residents would almost certainly feel swamped by such a large increase in population. Furthermore, if the scheme was permitted, there is likely to be future pressure on the Council to allow additional housing on the fields between the eastern edge of the scheme and the properties along the western side of North Road, which would be difficult to resist. This would result in further cumulative harm to the character and identity of Engine Common. The LP Inspector's recognition of the *"advantages"* of development at Engine Common does not convey tacit support for the scheme before me. Moreover, as I have noted above, a much larger mixed-use development is planned for the north of Yate. Unlike the appeal scheme, this new neighbourhood would safeguard the integrity of Engine Common.

39. The Design & Access Statement submitted in support of the scheme states, amongst other things, that the proposal would be designed to enhance the *"civic heart"* of Engine Common. The appellants have also argued that the proposal would *"knit together existing disparate parts of development that make up the north western edge of Yate."* Whilst the appellants' urban designer informed me that the scheme was intended to provide a central focus to Engine Common, the creation of a *"civic heart"* and attempts to bind the appeal site with Yate would markedly erode the rural character of Engine Common. The proposal would blur the distinction between Yate and Engine Common and result in this village being subsumed as part of this neighbouring town. The separate and locally cherished identity of the village would be lost forever and the setting of Engine Common would be seriously compromised.

40. I conclude on the second main issue that the proposals would seriously harm the character and identity of Engine Common.

Other Matters

41. I note the concerns of some residents that during periods of heavy and prolonged rainfall part of the site and some of the surrounding roads experience land drainage problems. However, the site is not at risk of fluvial flooding and the proposed drainage strategy, which would include swales, ponds, below ground storage tanks and a surface water pumping station, would

limit the risk of flooding within the site and in the surrounding area. Neither the Council nor the Environment Agency has raised flood risk objections and this matter could be addressed by way of a suitably worded planning condition.

42. The proposal would change the outlook from some neighbouring properties. However, the buildings would be sited and designed so that they were set back an adequate distance from existing properties, thereby avoiding any serious harm to the living conditions of neighbouring residents.

43. The proposed development would increase the volume of traffic on the local road network. However, the Transport Assessment submitted in support of the application demonstrates that the scheme would not result in any harmful consequences. The development would also include new highway works. The proposals would be unlikely to compromise highway safety interests. Adequate mitigation would also be included to safeguard nature conservation interests.

44. A landownership issue has been raised on behalf of a local resident. However, there is nothing of substance to refute the appellants' argument that the appropriate certificates of landownership were submitted with the application and appeal.

45. The proposal would increase the range and supply of employment premises within South Gloucestershire. This could enhance employment opportunities, including within the construction sector, and would benefit the local economy. In addition, the proposed improvements to the football club would meet the aspirations of some supporters/fans and provide wider community benefits with the clubhouse being available for hire and use by community groups. These matters weigh in favour of an approval.

The Planning Balance/Overall Conclusion

46. I have found above that the Council does not have a five year supply of land available for housing. The scheme would assist in meeting housing needs within South Gloucestershire, including provision for some affordable housing. Jobs and wealth would be created, including within the construction sector, and the improvements to the football club facilities could provide some limited social benefits to the local community. These matters weigh in favour of an approval and it is the Government's priority is to get the economy growing. Nevertheless, this does not override all other considerations.

47. There is an environmental dimension to achieving sustainable development and one of the Core principles of 'the Framework' includes taking account of the different roles and character of different areas. In this instance, the harm that I have identified to the character and identity of Engine Common would significantly and demonstrably outweigh the benefits of the scheme. The scheme does not comprise sustainable development within the context of 'the Framework' and permission should be withheld. I therefore conclude that the appeal should not succeed.

Neil Pope

Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Miss S Ornsby QC	Instructed by Miss G Sinclair, Deputy to the Head of Legal and Democratic Services
She called	
Mr P Conroy BA (Hons), MSc, MRTPI	Strategic Planning Policy and Specialist Advice Team Manager
Miss S Tucker BA (Hons), BTP, MRTPI	Principal Planning Officer, Major Sites Team
Miss L Bowry *(spoke during the discussion in respect of the planning obligations)*	Solicitor, Sharpe Pritchard Solicitors

FOR THE APPELLANTS:

Mr C Young of Counsel	Instructed by Mr J Richards, Associate Director, WYG Planning & Environment
He called	
Mr J B Richards BA (Hons), MTP, MRTPI	WYG Planning & Environment
Mr G S Rider	Director, Tetlow King Ltd
Mr S J Dale Dip LA, CMLI	Director, ACD

INTERESTED PERSONS:

Mrs I Rockliffe	On behalf of Mr T Stone (local resident)
Mr M Keenan *(Mrs Keenan also put questions to some of the appellants' witnesses)*	Save Engine Common Action Group

LIST OF DOCUMENTS SUBMITTED AT THE INQUIRY:

Document 1	Inspector's Ruling
Document 2	Mr Conroy's rebuttal and appendices
Document 3	Miss Tuckers rebuttal and appendices
Document 4	The appellants Opening Submissions
Document 5	The Council's Opening Submissions
Document 6	Schedule of Statements of Common Ground
Document 7	Signed Statement of Common Ground
Document 8	Signed Addendum to Statement of Common Ground
Document 9	Errata Note to Mr Conroy's proof
Document 10	Agenda to Core Strategy Hearing Session on 7 March 2013

Document 11	Appendix 20 to Miss Tucker's proof
Document 12	Updated Appendix 2 to Miss Tucker's proof
Document 13	Notes on the Council's Approach to Determining Applications
Document 14	Appendix JR 28 to Mr Richards's proof
Document 15	Table JRT16 to Mr Richards's proof
Document 16	Drainage note from Mr Gwilliam, WYG Engineering
Document 17	Letter dated 6 March 2013 from Moore Blatch Solicitors
Document 18	Letter dated 6 March 2013 from Osborne Clarke
Document 19	Bundle of missing application plans
Document 20	Contents list to Appendix JR20 of Mr Richards's proof
Document 21	Skeleton of the appellant's costs application
Document 22	Email dated 6/3/13 from Barratt PLC to the Council
Document 23	Decision Ref. PT11/1442/O (Park Farm, Thornbury)
Document 24	Appeal Decision Ref. APP/Q3115/A/11/2145037)
Document 25	Appellant's View of Deliverable Supply
Document 26	Actual Housing Delivery Against Requirements
Document 27	Appeal Decision Ref. APP/X1165/A/11/2165846
Document 28	Local Plan policy H1
Document 29	Exchange of emails between Turley Ass. and Taylor Wimpey
Document 30	Highways Agency letter dated 15/11/12
Document 31	List of suggested planning conditions
Document 32	List of properties to be viewed on accompanied site visit
Document 33	Planning Obligation dated 12/3/13
Document 34	Further drainage note from Mr Gwilliam
Document 35	Methodology/Calculations for the planning obligations
Document 36	The Council's Closing Submissions
Document 37	The appellants' Closing Submissions
Document 38	The Council's response to the appellants' costs application

Matter 2: Housing
Main Issue 2(ii)
Statement for The Poyser Family (1043)

Appendix 3: DPDS Land Supply Assessment & Modified Trajectory

Appendix 3 - DPDS Consulting Housing Trajectory (5 Year Supply)

SHLAA	ADDRESS	ADDRESS	G/F B/F	2016/17 1	2017/18 2	2018/19 3	2019/20 4	2020/21 5	DPDS DELIVERABLE DWELLINGS (5 YEAR SUPPLY)
	MAJOR SITES WITH PLANNING PERMISSION								
	FORMER KEN IVES	MIDDLETON AVE/BURTON RD	B		25	25			50
44	ST JOESPHS CHURCH	MILL HILL LANE	B	14					14
80	FULL STREET	MAGISTRATES COURT AND FORMER POLICE HQ	B	46					46
124	159-167	BAKER STREET	B	12					12
147	PRINCE CHARLES AVENUE	MACKWORTH COLLEGE	B	30					30
162		ST HELENS HOUSE	B				20	29	49
165	CARSINGTON HOUSE	PARK FARM	B					9	9
	440-470	KEDLESTON RD	B	2					2
	LAND AT	SWARKESTONE ROAD	G			7			7
	ORCHARD STREET AND ST HELENS STREET	LAND AT	B	40	15				55
	FORMER	UNIVERSITY CAMPUS	G/B		22				22
	NIGHTINGALE HOUSE	LONDON ROAD	B	13					13
3	MANOR/KINGSWAY HOSPITAL SITE	KINGSWAY	G	40	40	40	40	40	200
89	CASTLEWARD		B	34	34	34	40	40	182
22	WOODLANDS LANE	CHELLASTON	G		30	24			54
160	MACKWORTH COLLEGE	PHASE 2	G	40	40	40	40	40	200
63	CALIFORNIA WORKS	PARLIAMENT STREET	B						0
138		DEVONSHIRE AVENUE	G		13				13
120	FORMER DRI	LONDON ROAD	B	34					34
181	LODGE LANE	WILLOW ROW	B			35			35
176		FELLOW LANDS WAY	G	40	40	40	40	40	200
155		LAND OFF HOMLEIGH WAY	G		20	18			38
179	THE FORMER PUMP HOUSE	SINFIN LANE	G		14				14
	WILLOW HOUSE	WILLOW ROW	B		12				12
104		WRAGLEY WAY PHASE 1	G		40	40	40	10	130
	FORMER SIXT KENNINGS	CATHEDRAL ROAD	B	113					113
16		BROOK FARM, CHADDERSTON	G		40	40	40	40	160
	53 CORONATION AVENUE	ALVASTON	B		15				15
	ASTON ENGINEERING	LONSDALE PLACE	B			11			11
	BRAMBLE BUSINESS CENTRE	BECKETT STREET	B	13					13
36		TANGLEWOOD MILL, COKE STREET	B						0
	FORMER GRANGE HOTEL	INGLEBY AVENUE	B		14				14
	THE ROUNDHOUSE	LONDON ROAD	B	12					12
	FORMER BEACONFIELD CLUB	WILSON STREET	B		14				14
	ST PETER'S HOUSE	GOWER STREET	B			147			147
	ROMAN HOUSE	FRIAR GATE	B				120		120
		TOTAL (with PP)		**483**	**428**	**501**	**380**	**248**	**2040**
	MAJOR BROWNFIELD SITES WITHOUT PLANNING PERMISSION								
4		RIVERSIDE CDLPR ALLOCATION INC. GREENWOOD COURT	B						0
5		BARLOW STREET CAR PARK	B						0
8		ROLLS ROYCE MAIN WORKS	B				40	40	80
49		ABBOTS HILL CHAMBER, GOWER STREET	B						0
134		ELTON ROAD/CROWSHAW STREET	B			7			7
169		THE KNOLL, STENSON ROAD	B						0
174	59	WILKINS DRIVE	B						0
183	BRITANNIA COURT	DUKE STREET	B						0
193	ANACHROME JIGS	MANSFIELD ROAD	B						0
		TOTAL (Brownfield)		**0**	**0**	**7**	**40**	**40**	**87**
	MAJOR GREENFIELD AND MIXED SITES WITHOUT PLANNING PERMISSION								
		RYKNELD ROAD	G				90	120	210
		HACKWOOD FARM	G				40	40	80
		NORTH OF ONSLOW ROAD	G				40	40	80
	SOUTH OF	MANSFIELD ROAD, OAKWOOD	G			40	40	40	120
		WRAGLEY WAY PHASE 2	G						0
		BOULTON MOOR EAST	G				50	50	100
		TECHNOGRAV PHASE 1	G			20	20	20	60
		TOTAL (GF and Mixed)		**0**	**0**	**60**	**280**	**310**	**650**
		SMALL SITE PERMISSIONS		80	60	60	60	40	300
		WINDFALLS		75	75	75	75	75	375
		LOSSES		-28	-28	-28	-28	-28	-140
		TOTAL FIVE YEAR SUPPLY		**483**	**428**	**568**	**700**	**598**	**3312**

Derby Local Plan Examination Matter 2(ii) - DPDS 5 Year Supply Analysis

MAJOR SITES WITH PLANNING PERMISSION

Carsington House, Park Farm **11 Dwellings**

Permission was granted in July 2007 for a Change of Use from Offices (Use Class B1) to eleven flats on first floor (01/07/00199). Permission for an extension of time (a further 3 years) in relation to this application was then granted in August 2010.

Prior Approval was granted for the Change of Use (B1 to C3) for 9 flats on the 6th January 2015 (11/14/01558). It has been observed that this site is being advertised for residential development and therefore will be delivered.

Conclusion: Discount 2 dwelling from Derby City Council 5 Year Housing Trajectory

Manor Kingsway Hospital Site, Kingsway **460 Dwellings**

Phase 2 of the previously approved Outline planning permission (07/08/0181) was granted on 29th October 2014 (07/14/01024) which comprises of 71 dwelling houses and 39 apartments. The site is under construction. However the build rates which have been forecast by Derby City Council do not align with widely accepted build rates within the construction industry. The delivery rates have therefore been adjusted to take account of a build rate of 40 dwellings per annum on sites for 50 dwellings or more with a single developer.

Conclusion: Discount 260 dwellings from Derby City Council 5 Year Housing Trajectory

Castleward **360 Dwellings**

A hybrid planning application was submitted by Compendium Living for up to 840 dwellings and was received by Derby City Council on 9th May 2012. The application sought full planning permission for phase 1 of the development and outline permission for a further 5 phases. This was granted on 8th February 2013.

The first phase of the development consists of 163 dwellings. Information obtained from the submitted planning application has revealed the phasing and anticipated build out rates for the site. This information has been extracted and is presented below. At no point does the anticipated build out rates reach those assumed by the Council in its 5 year land supply trajectory.

Based on the information submitted by Compendium Living and the annual build rates calculated above it is considered necessary to adjust the build rates forecast by Derby City Council accordingly. We have utilised the build rates for phases 2 and 3 within our own trajectory, despite reserved matters approval not yet being achieved for these phases. Therefore even our own envisaged trajectory is perhaps over optimistic with this regard.

Conclusion: Discount 178 dwellings from Derby City Council 5 Year Housing Trajectory

Mackworth College Phase 2 **221 Dwellings**

Outline permission for 221 dwellings was granted on 10th February 2014 (11/12/01333). A reserved matters planning application, subsequently submitted by Strata Homes was granted on 29th August 2014.

A site visit and correspondence with a Strata Homes representative was carried out on 24th March 2016. Information provided by Strata Homes has indicated that 23 dwellings have been completed to date, with the first dwelling being occupied from 29th November 2015. The projected build rates forecast by Derby City Council are not compatible with the widely accepted build rate adopted by the construction industry of 40 dwellings per annum. This has therefore been taken into account and the build rate adjusted accordingly.

Conclusion: Discount 21 dwellings from Derby City Council 5 Year Housing Trajectory

California Works **14 Dwellings**

Full permission was granted for the construction of 24 apartments on 17th November 2005 (06/05/00941). An application was subsequently submitted 4 years later by the same applicant (WW Properties Ltd) for 12 dwellings, which was refused permission (02/09/00153).

An outline planning application was then submitted by WW Properties Ltd for the erection of 8 dwellings and 6 apartments which was granted permission on 10th January 2013. Investigations have identified that this site is currently being marketed by Marble Property Services on their website as 'Off Market (Or Requiring Intro Agreement)' under Reference number 134.

PHASE	PHASE PERIOD	NO. OF YEARS	DWELLINGS PER PHASE	AVG. DWELLINGS PER ANNUM
1	2012 - 2016	4	163	41
2	2016 – 2019	3	103	34
3	2019 – 2023	4	160	40
4	2023 – 2026	3	178	59
5	2026 - 2029	3	236	79
TOTAL		**17**	**840**	**49**

Given the long planning history associated with this site, and that the site is not controlled by a developer, nor is it attracting developer interest, it is considered that the site has no realistic prospect of being delivered within 5 years.

Conclusion: Discount 14 dwellings from Derby City Council 5 Year Housing Trajectory

Former DRI, London Road **400 Dwellings**

Outline permission for a mixed use regeneration scheme (known as the Nightingale Quarter) comprising a convenience goods store, residential (including extra care), offices, café/restaurant/public house with related car parking, access and open space was determined by the Secretary of State (following a public inquiry appeal) on grounds of non-determination and allowed on 29th July 2012 (APP/C1055/A/11/2161815).

Condition 3 of the appeal decision stated that the development of the first zone should commence within five years from the date of permission or 2 years from the approval of the reserved matters application (whichever is sooner). Following this decision, a reserved matters application for Zone 5 of the scheme was approved on 27th November 2015. Information obtained from the submitted planning application shows that this zone comprises a total of 34 dwellings. No other reserved matters applications have been submitted.

Due to the uncertainty surrounding the detailed design of Zones 1-4 of the scheme and the fact that no reserved matters applications have been submitted to date, it is reasonable to state that the only dwellings which will be delivered within the 5 year trajectory will be the 34 dwellings which have been granted under reserved matters. Representations made by the landowners to the Local Plan Part 1 consultation highlights a desire to re plan the site, therefore it is unclear if or when the remaining zones of the site will come forward.

Conclusion: Discount 366 dwellings from Derby City Council 5 Year Housing Trajectory

Brook Farm, Chaddesden **275 Dwellings**

An application for residential development of up to 215 dwellings, 60 extra care units, associated infrastructure and public space was allowed at appeal on 12th March 2015. A subsequent planning application for up to 275 dwellings with associated infrastructure and public open space was subject to a resolution to grant permission using an alternative access (Acorn Way) on 25th February 2016.

Derby City Council have allowed a 1 year lead in time to sign a Section 106 Agreement and determine a reserved matters application. This is considered a realistic timescale. However the build rates forecast by Derby City Council are not consistent with the 40 dwellings per annum rate which is widely accepted within the construction industry and has been adopted for the purpose of this assessment. The build rate from Year 2-5 therefore need to be adjusted to current forecasts.

Conclusion: Discount 115 dwellings from Derby City Council 5 Year Housing Trajectory

Tanglewood Mill, Coke Street **22 Dwellings**

Full planning permission for the conversion of the mill to 22 flats and 5 workstations was granted on 18th April 2007 (10/06/01679) and was valid for a period of 3 years. Permission was then subsequently granted for an application to extend the time period of this permission by a further 3 years (04/10/00433) and was granted on 10th September 2014.

It is considered that based on the lack of developer interest in the site, the conditions attached to the S106 agreement set out above, and that the permission will expire in September 2017, the site has significant viability constraints and is unlikely to come forward.

Conclusion: Discount 22 dwellings from Derby City Council 5 Year Housing Trajectory

MAJOR BROWNFIELD SITES WITHOUT PLANNING PERMISSION

Riverside CDLPR Allocation inc. Greenwood Court **42 Dwellings**

This site has been subject to a previous planning application which was withdrawn due to flood risk issues. It is understood that this site may only potentially be suitable if the flood risk issues can be addressed through the delivery of 'Package 2' of the 'Our River, Our City' Derby City Council project, split into 3 Packages between 2015 and 2023.

Package 1 has been started however it has yet to be completed. Package 2 has obtained outline planning permission however is yet to commence. No funding is yet in place for Package 2.

It is therefore considered that the site is subject to a physical impediment which will prevent development, and as such the site cannot be classified as being "deliverable" in the context of paragraph 47 footnote 11 of the NPPF.

Conclusion: Discount 42 dwellings from Derby City Council 5 Year Housing Trajectory

Barlow Street Car Park **60 Dwellings**

Derby City Council have forecasted that this site will come forward within year 3 of the trajectory. However it has been observed that this car park is still in active use but surplus to requirements following the closure of the Derby Royal Infirmary. The site does not carry any planning permission and is not subject to any pending application. It is therefore considered that the site is subject to both a physical impediment which will prevent development, and as such cannot be classified as being "deliverable" in the context of paragraph 47 footnote 11 of the NPPF.

Conclusion: Discount 60 dwellings from Derby City Council 5 Year Housing Trajectory

Rolls Royce, Main Works **300 Dwellings**

Derby City Council have forecasted that this site will come forward within year 2 of the trajectory at a build rate of 75 dwellings per annum. Investigations have revealed that although the site is clear, no planning application has been submitted to the local authority.

It is therefore considered that an appropriate lead in time to allow for planning permission to be obtained is 3 years, and thereby development will commence in Year 4. A build rate of 40 dwelling per annum which is widely accepted within the construction industry as realistic and has therefore been applied to this assessment.

Conclusion: Discount 220 dwellings from Derby City Council 5 Year Housing Trajectory

Abbots Hall Chamber, Gower Street **25 Dwellings**

Derby City Council have forecasted that this site will come forward for development within the first year of the 5 year housing trajectory. However it has been observed that these office premises are currently being let.

It is therefore considered that the site is subject to a physical impediment which will prevent development, and as such cannot be classified as being "deliverable" in the context of paragraph 47 footnote 11 of the NPPF.

Conclusion: Discount 25 dwellings from 5 year housing trajectory

The Knoll **20 Dwellings**

Derby City Council have forecasted that this site will come forward for development within year 4 of the 5 year housing trajectory. However investigations have highlighted that there is no planning history associated with this site since 1979 and is Council owned. Research has also shown that this site was part of a list of sites which the Council were looking to sell.

There is no firm evidence that this site will deliver housing within the next 5 years.

Conclusion: Discount 20 dwellings from 5 year housing trajectory

Wilkins Drive **13 Dwellings**

Derby City Council forecast that this site will come forward for development within year 2 of the 5 year housing trajectory. An application for the demolition of the bungalow on site and the erection of 20 apartments was granted on 27th April 2009.

Research has shown that this bungalow is still occupied at the time of writing and therefore the site is subject to a physical impediment which will prevent development, and as such cannot be judged as being "deliverable" in the context of paragraph 47 footnote 11 of the NPPF.

Conclusion: Discount 13 dwellings from 5 year housing trajectory

Britannia Court, Duke Street **26 Dwellings**

Derby City Council forecast that this site will come forward for development within year 5 of the 5 year housing trajectory. The site can only come forward once Package 1 of the Council's 'Our River, Our City' flood defence scheme is completed. This work is ongoing and therefore the site is currently subject to a legal or physical impediment which will prevent development, and as such cannot be judged as being "deliverable" in the context of paragraph 47 footnote 11 of the NPPF.

Conclusion: Discount 26 dwellings from 5 year housing trajectory

Anachrome Jigs, Mansfield Road **28 Dwellings**

Derby City Council forecast that this site will come forward for development within year 3 of the 5 year housing trajectory.

A planning application for the demolition of a building and erection of 28 apartments has been submitted by Wheeldons (12/14/01708) and is currently subject to a holding objection from the Environment Agency.

There is no robust evidence available at the time of writing to suggest that this objection can be overcome and as such the site is subject to a physical impediment which will prevent development, and as such cannot be judged as being "deliverable" in the context of paragraph 47 footnote 11 of the NPPF.

Conclusion: Discount 28 dwellings from 5 year housing trajectory

MAJOR GREENFIELD AND MIXED SITES WITHOUT PLANNING PERMISSION

Rykneld Road **450 Dwellings**

Derby City Council forecast that this site will come forward for development within year 2 of the 5 year housing trajectory and will deliver 450 dwellings; 90 in its first year, and rising to a build rate of 120 per year in the three years thereafter.

Although this site has a resolution to grant planning permission subject to a Section 106 Agreement, this resolution dates back to 2013. At present it is unclear when a Section 106 Agreement will be signed which may[1] enable the planning permission to be issued.

On this basis therefore, in line with the assessment criteria we consider that it is more realistic to consider that this site will have a 3 year lead in time and begin delivery in year 4 of 5. Given high confirmed developer interest (with consortium arrangements) in this site we accept the Councils build rates for this site and simply move them to a later start point. This delivery assumption is separate to any potential delivery of housing from the Poyser Family Land which we submit could be realised in a shorter timescale.

Conclusion: Discount 240 dwellings from 5 year housing trajectory

Hackwood Farm **400 Dwellings**

Derby City Council forecast that this site will come forward for development within year 2 of the 5 year housing trajectory and will deliver 100 dwellings per annum.

Two outline planning applications have been submitted by Miller Homes for 370 dwellings (06/15/00846) and 40 dwellings (06/15/00847) respectively. Both applications have a resolution to grant permission subject to a Section 106 agreement being signed.

It is reasonable to consider that the Section 106 agreement will be signed within the next three months. In addition to the Section 106 agreement, it is also necessary to take into account the time that will be taken for the submission and determination of a reserved matters planning application.

This assessment has therefore allowed a lead in time of 3 years to commence development, and applied the widely accepted build out rate of 40 dwellings per annum to adjust the forecast figures put forward by Derby City Council accordingly.

Conclusion: Discount 320 dwellings from 5 year housing trajectory

North of Onslow Road **200 Dwellings**

Derby City Council forecast that this site will come forward for development within year 2 of the 5 year housing trajectory and will deliver 50 dwellings per annum.

The site does not benefit from planning permission and is not currently subject to a planning application. The site is currently controlled by Bloor Homes.

It is considered that when allowing for a lead in time of 3 years for submitting and obtaining full planning permission, development will be likely to commence in the second half of year 4 in the 5 year housing trajectory.

[1] Subject to consideration of any new material considerations that may have arisen since the original resolution in line with R (Kides) v South Cambridgeshire DC [2002] EWCA Civ 1370

The widely accepted base rate of 40 dwellings per annum has also been applied to assessing the delivery of this site as opposed to the 50 dwellings per annum forecast by Derby City Council.

Conclusion: Discount 120 dwellings from 5 year trajectory

South of Mansfield Road, Oakwood **200 dwellings**

Derby City Council forecast that this site will come forward for development within year 2 of the 5 year housing trajectory and will deliver 50 dwellings per annum.

An outline application for residential development of up to 250 dwellings, together with means of access, public open space, drainage attenuation and landscaping (04/15/00449) was granted permission on 21st March 2016.

It is considered that when allowing for a lead in time of 2 years for the submission and determination of the reserved matters application, it is reasonable to propose that development will likely commence at the beginning of year 3.

The widely accepted base rate of 40 dwellings per annum has also been applied to assessing the delivery of this site as opposed to the 50 dwellings per annum forecast by Derby City Council.

Conclusion: Discount 80 dwellings from 5 year trajectory

Wragley Way Phase 2 **50 Dwellings**

Derby City Council forecast that this site will come forward for development within year 4 of the 5 year housing trajectory and will deliver 25 dwellings per annum.

This site does not benefit from any planning permission. No planning application has been submitted at the time of writing.

Boulton Moor East **340 Dwellings**

Derby City Council forecast that this site will come forward for development within year 2 of the 5 year housing trajectory and will deliver 60 dwellings in year 2, 80 dwellings in year 3, and 100 dwellings in both years 4 and 5.

An outline planning application for up to 800 dwellings (04/13/00351) is currently pending.

It is considered that when allowing for a lead in time of 3 years for the submission and determination of this outline application, and the submission and determination of the reserved matters application, it is reasonable to propose that development will likely commence at the beginning of year 4.

Due to the size of this site, it is considered that there will be more than one developer associated with this site, and as such the build rate will be higher. A build rate of 75 dwellings per annum has been applied to the trajectory.

Conclusion: Discount 20 dwellings from 5 year trajectory

Technograv Phase 1 **80 Dwellings**

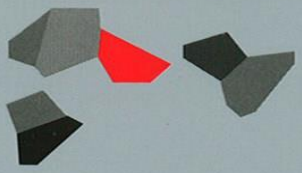
Derby City Council forecast that this site will come forward for development within year 2 of the 5 year housing trajectory and will deliver 20 dwellings per annum thereafter.

Permission was granted to vary a condition on the original planning permission for residential development (02/07/00306) on 20th August 2009. An application to extend the validity of this application by a further 3 years (08/12/01016) was then granted permission on 14th August 2015.

No reserved matters has submitted at the time of writing. By allowing a lead in time of 2.5 years for the submission and determination of the reserved matters application, it is reasonable to propose that development will likely commence in the second half of year 3.

This assessment agrees with the Council's build rate of 20 dwellings per annum

Conclusion: Discount 20 dwellings from 5 year trajectory



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