

Rebuttal Evidence of Colin James Robinson

BA(Hons) MTP(Dist) MRTPI MIED

**Land to The North of Thorrington Road, Great Bentley &
Land to the West of Plough Road, Great Bentley, Tendring &
Land to The South of Thorrington Road, Great Bentley, Essex**

Appellant: City & Country

Planning Inspectorate No. Appeals: APP/P1560/W/17/3183626, 3183678 &
3183695

Tendring District Council Application References:

17/01096/OUT, 17/01097/OUT & 17/01098/OUT,

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Introduction

- 1.1 This rebuttal evidence responds to the proof of evidence of Mr Neil McDonald submitted on behalf of Tendring District Council (“the Council”). It has been prepared in response to Mr McDonald’s evidence on objectively assessed housing need [OAHN] in Tendring District, which he concludes is 480 dwellings per annum [dpa] over the period 2013-37. In contrast, I consider the OAHN range to equate to between 570 dpa to 670 dpa, and that for the purposes of this appeal a mid-point of 620 dpa should be adopted as the OAHN.
- 1.2 It should be read alongside my Proof of Evidence dated 21st November 2017 upon which I continue to rely and which remains relevant. I do not respond to every point of disagreement with Mr McDonald’s evidence, but I consider it may be helpful to have a written response on specific points in advance of the Inquiry.
- 1.3 It highlights the key areas of dispute which I believe to be responsible for the difference in the OAHN figures that we have both identified. As per the agreed Statement of Common Ground on Tendring’s Objectively Assessed Need for Housing, these include:
- 1 Re-basing the household projections to incorporate the 2016 Mid-Year Population Estimates (2016 MYE);
 - 2 The partial adjustment of the CLG’s 2014-based household formation rates;
 - 3 Mr McDonald’s incorporation of the ONS’s future mortality rates from the 2016-based National Population Projections [NPP] into the Tendring projections;
 - 4 The extent to which historic migration flow errors have contributed to the substantial 10,533 UPC error in Tendring;

- 5 Disagreements concerning the approach to alternative migration inputs in the scenarios;
- 6 The extent to which Mr McDonald's 480 dpa figure addresses the full affordable housing need; and,
- 7 The extent to which Mr McDonald's 480 dpa figure aligns with economic growth requirements.

1.4 It is important to re-iterate the starting point in the Government's Planning Practice Guidance¹ which states (at ID 2a-017) in its section on Housing and Economic Development Needs Assessments, that the projections published by DCLG are "*statistically robust*" and "*based on nationally consistent assumptions*". Whilst it identifies that "*sensitivity testing*" may be undertaken, based on alternative assumptions around demographic projections and household formation rates, it is very clear that any local changes would need to be clearly explained and robustly justified. The Practice Guidance states that account should also be taken of the most recent population estimates. I consider that the approach in Mr McDonald's document, of fundamentally departing from the statistically robust and nationally consistent assumptions, does not readily fall into the description of "*sensitivity testing*" and risks significantly under-estimating Tendring District's housing need as a result. I comment further as necessary on his approach as per points 1-7 above.

¹ 2a-017-20140306 (CD 9/8)

2.0 **Re-Basing the SNPP to the 2016 MYE**

2.1 Mr McDonald contends that the error in Tendring's migration flow estimates that he considers has occurred between 2001 and 2011, has continued at approximately the same rate since 2011. Paragraph 67 of his proof seeks to justify this argument on the basis that there were only 1,190 homes added to Tendring District's housing stock over the period 2011 to 2016 (equivalent to 1,125 households). However, the household formation rates from the 2014-based SNHP, when applied to the 2016 MYE, suggest that household growth has been 2,266 since 2011, a difference of 1,140. He considers that this implies that the 2016 MYE over-estimated the population by 2,520, or 504 people a year between 2011 and 2016, and that this is similar to the error in migration flow estimates prior to 2001.

2.2 I consider that these assumptions are erroneous for a number of reasons, and that it is entirely appropriate to incorporate the 2016 MYE into the OAHN calculations for Tendring District.

Quality of the 2016 MYE data for Tendring

2.3 Firstly, it is important to note that the quality of the mid-year population estimates are consistently monitored by ONS. This includes quality assurance of the administrative and survey data sources that are used to calculate the estimates to ensure that they are suitable for this purpose.

2.4 Population estimates are produced using a well-established demographic approach called the cohort component method:

“This involves combining information from a number of data sources including the previous census, survey data and administrative registers. The data sources used are the best that are available on a nationally consistent basis down to local authority level, but the estimates are subject to the coverage and error associated with these sources. Information from

administrative registers such as the numbers of births and deaths are considered to be very reliable.”²

- 2.5 Uncertainty Estimates have been created by ONS to give users additional information of the quality of these estimates. At the time of drafting my Proof, measures of statistical uncertainty were available for the years mid-2012 to mid-2015.
- 2.6 As I set out in my Proof, these showed how the principal measure of uncertainty had changed over time. Essentially, this tool indicated that the level of certainty that could be attributed to the accuracy of Tendring’s MYEs for 2012-2015 was high. Indeed, out of all 348 districts in England and Wales, only 5 had a lower uncertainty measure than Tendring District as a percentage of its population.
- 2.7 On 30th November 2017 ONS updated its Uncertainty Estimates, and included data relating to the 2016 MYEs. Tendring’s figures have been revised downwards slightly, suggesting that the level of certainty regarding Tendring’s Mid-Year Estimates post 2011 is even higher than the ONS had previously concluded. Furthermore, only 3 authorities in England and Wales have a lower level of uncertainty regarding their 2016 MYEs than Tendring District’s figure of 0.62. This suggests that ONS considers that the certainty that can be attached to Tendring’s MYE post 2011 is very high indeed when compared to other Districts nationally.

² Annual mid-year population estimates QMI, page 8 (Appendix 1)

Table 2.1 Statistical measure of uncertainty for local authority MYEs from 2012 to 2016:
Essex Authorities

| | Uncertainty measure (% population) 2012 | Uncertainty measure (% population) 2013 | Uncertainty measure (% population) 2014 | Uncertainty measure (% population) 2015 | Uncertainty measure (% population) 2016 |
|-----------------|---|---|---|---|---|
| Basildon | 0.66 | 0.98 | 1.43 | 1.98 | 2.54 |
| Braintree | 0.49 | 0.53 | 0.59 | 0.69 | 0.80 |
| Brentwood | 1.12 | 1.89 | 2.69 | 3.73 | 4.78 |
| Castle Point | 0.91 | 0.93 | 0.99 | 1.07 | 1.19 |
| Chelmsford | 0.68 | 1.04 | 1.48 | 2.03 | 2.54 |
| Colchester | 0.73 | 1.17 | 1.51 | 1.86 | 2.36 |
| Epping Forest | 0.71 | 1.13 | 1.61 | 2.27 | 2.96 |
| Harlow | 0.64 | 0.77 | 0.90 | 1.14 | 1.46 |
| Maldon | 0.95 | 0.98 | 1.02 | 1.16 | 1.25 |
| Rochford | 1.04 | 1.22 | 1.40 | 1.72 | 2.03 |
| Tendring | 0.44 | 0.48 | 0.52 | 0.56 | 0.62 |
| Uttlesford | 0.88 | 1.06 | 1.29 | 1.66 | 2.05 |

Source: ONS (November 2017): Research-based statistical measure of uncertainty for local authority mid-year population estimates from 2012 to 2016 for England and Wales

NHS Patient Register Evidence

2.8 Secondly, the robustness of the 2016 MYE can be established through the ONS's Mid-Year Estimate comparator tool Quality Assurance pack. This Quality Assurance Pack was released alongside the 2016 MYE by the ONS and provides estimates of the usual resident population at mid-year 2016 (30th June) and various comparators used in the quality assurance process. It provides a range of comparative data from other administrative sources³. One of these sources is the NHS Patient Register, which shows how many new patients have registered in a year.

2.9 The Patient Register does not provide an exact measurement of population growth as it is reliant on GPs managing their lists adequately and also of newcomers registering with a new GP promptly, and close to their new home. However, with this caveat in mind, it remains a useful indicator for population growth, and Mr McDonald's own Proof examines GP lists to support his view

³ 2016 Mid-year estimates comparator tool (QA pack) and 2011 Census Quality Assurance Pack data tables www.ons.gov.uk (Excerpt in Appendix 2)

that the Census population in 2001 was too high by between 10% and 54% (page 18).

2.10 What can be seen from the data (Table 2.2) is that between 2011 and 2016, the Mid-Year Estimates suggest that Tendring District’s population increased by around 4,500 residents (rounded). The Patient Register (which tends to be slightly higher than the actual population of a particular area), suggests that the actually population grew by 4,680, a difference of just 180 from the MYE.

Table 2.2 Data Comparison for Tendring 2011-2016

| Age | Net Population Growth 2011 MYE – 2016 MYE | Net Population Growth PR 2011 – PR 2016 | Difference between MYE Growth & PR Growth |
|--------------|---|---|---|
| 0 | -50 | -90 | 40 |
| 1 - 4 | 520 | 270 | 250 |
| 5 - 9 | 1,010 | 950 | 60 |
| 10 - 14 | -520 | -700 | 180 |
| 15 - 19 | -490 | -480 | -10 |
| 20 - 24 | 30 | 30 | 0 |
| 25 - 29 | 970 | 1,110 | -140 |
| 30 - 34 | 160 | 350 | -190 |
| 35 - 39 | -700 | -600 | -100 |
| 40 - 44 | -1,490 | -1,510 | 20 |
| 45 - 49 | -210 | -110 | -100 |
| 50 - 54 | 1,200 | 1,320 | -120 |
| 55 - 59 | 1,040 | 1,140 | -100 |
| 60 - 64 | -1,440 | -1,650 | 210 |
| 65 - 69 | 1,800 | 1,790 | 10 |
| 70 - 74 | 1,870 | 1,760 | 110 |
| 75 - 79 | 540 | 690 | -150 |
| 80 - 84 | 150 | 230 | -80 |
| 85 - 89 | 110 | 180 | -70 |
| Total | 4,500 | 4,680 | -180 |

Source: ONS 2016 MYE Quality Assurance Pack / 2016 MYE / Patient Register data 2016.

Note: MYE Figures rounded. Excerpt in Appendix 2.

2.11 This does not support Mr McDonald’s view that the population only grew by 2,016 over the five years, instead of c.4,500 (4,536 unrounded). This suggests that the level of population growth expected by ONS to 2016, and on which the household projections are based, remains a reasonable starting point. Moving

away from this point on very limited evidence risks under-estimating housing needs within the District, and significantly so.

Alignment of Households with Dwellings

- 2.12 Thirdly, there are clear dangers of aligning household growth with dwelling growth over short time periods, particularly when the wider context has not been taken into account.
- 2.13 To take one example, over the period Mr McDonald is querying (2011-2016), 893,960 net additional dwelling completions were delivered across England, at an average rate of 148,993. In contrast, based on the Mid-Year Population Estimates for England, and incorporating 2014-based SNHP household formation rates, there has been a net increase of 1,333,362 households, or 222,227 annually. Adjusting this figure by 3.6% to reflect the national second homes/vacancy rate (taken from Council Tax Base data) increases this latter figure to 1,383,156 dwellings, a difference of almost half a million homes from the number that was actually completed.

Table 2.3 Completions vs. Household Growth for England 2011-2016

| | 1) Net Additional Dwelling Completions | 2) Net Household Growth | 3) Net Dwelling Growth (incorporating 3.6% vacancy rate) | Difference 3) minus 1) |
|--------------|---|--------------------------------|---|-------------------------------|
| 2010/11 | 137,390 | 184,853 | 191,756 | +54,366 |
| 2011/12 | 134,900 | 202,312 | 209,867 | +74,967 |
| 2012/13 | 124,720 | 201,361 | 208,881 | +84,161 |
| 2013/14 | 136,610 | 238,936 | 247,859 | +111,249 |
| 2014/15 | 170,690 | 240,689* | 249,678 | +78,988 |
| 2015/16 | 189,650 | 265,211* | 275,115 | +85,465 |
| Total | 893,960 | 1,333,362 | 1,383,156 | +489,196 |

Source: CLG: Housing supply (Appendix 3); net additional dwellings, England: 2016-17 / 2014-based Household Projections / Lichfields Analysis

*Estimate, based on 2015/2016 MYE and 2014-based SNHP Average Household size for those years

- 2.14 On a national level this demonstrates the flaw in Mr McDonald's reasoning by seeking to directly relate net housing growth to net population growth for any given year.

- 2.15 Taking a longer view, rather than a 5 year extract, it is likely that the figures would be a closer match. Furthermore, it is entirely possible that what is happening post 2011 for Tendring is that household size is not declining at the rate anticipated.
- 2.16 In particular, Mr McDonald erroneously focuses only on the net completions/household growth, whereas the current national housing crisis affects all residents (to a greater or lesser extent) living in the District. If we examine Tendring District as a whole, in 2011 the Mid-Year household population was 135,881, rising to 140,345 by 2016⁴. The number of household spaces with residents totalled 62,105 in 2011; increasing this by 1,125 households based on new completions in Tendring, as Mr McDonald suggests, would result in a total of 63,230 house spaces with usual residents in 2016. Dividing one from the other suggests that the average household size in 2011 in Tendring was 2.19, rising very slightly to 2.22 in 2016. This may be expected in an area with strong population growth and persistent housing under-delivery, as has been the case in Tendring.
- 2.17 Net completions over a short period in a particular area do not necessarily tally exactly with the net population increase in that period especially if there is a rise in concealed households/families, increases in shared households, reductions in vacancy rates/second homes, etc.
- 2.18 Furthermore, Mr McDonald has not undertaken an analysis of the type and size of properties that have come forward in the past five years. Clearly, if larger 3, 4 and 5 bedroomed homes have been delivered (as I understand has been the case on several sites in the District), then it is likely that the number of people living in these larger properties will be higher than the District-wide average of 2.19 in 2011.

⁴ The 2016 Household population is an estimate, taking the 142,598 2016 MYE figure and adjusting it by 1.6% to reflect the percentage of residents in communal establishments

- 2.19 As a further example of this, Tendring District Council has only delivered 26 affordable dwellings in the past 3 years for which data is available, out of a total of 716 net housing completions – a rate of just 4%⁵. In my experience, affordable housing tends to be smaller, with fewer bedrooms, than typical family housing provided by the volume housebuilders, partly in response to demand and the under-occupation penalty. For example, 15 of the affordable units delivered in 2014/15 in Tendring District relate to one development on land adjacent to 142 Harwich Road, Mistley (11/00037/FUL), which delivered two 1-bed properties, ten 2 bedroom properties and three 3 bed properties⁶. The fact that 97% of recent housing delivery in the District related to market housing also leads me to the view that these homes are likely to be accommodating more than the 2.2 average residents than Mr McDonald suggests.
- 2.20 New properties also tend to have lower vacancy/second home rates, hence the 5.7% figure applied by Mr McDonald is also likely to result in an under-estimate of the actual population growth in the District.
- 2.21 To summarise, I consider that the fact that the number of dwellings completed in Tendring District over the past five years has out-paced the household projections does not undermine the reliability of the 2016 MYE. The projections are subject to robust quality assurance procedures by ONS and have concluded that the margin of uncertainty for Tendring District's MYEs is amongst the lowest in the country, a point seemingly validated by the latest GP lists.
- 2.22 ONS does not sensitivity test its MYEs against housing completions which suggests that this is not a reliable approach (when compared with, for example, GP Registers, school census, state pension data, etc).

⁵ AMR Excerpts, Appendix 4

⁶ Appendix 5 – excerpt from Committee Report

3.0 **Adjustments to household formation rates**

3.1 In his modelling, Mr McDonald has applied the unadjusted household formation rates for Tendring District from the 2014-based SNHP. He has not explored whether these rates have been suppressed, or whether an adjustment is necessary. Such an approach does not reflect the expectation of the Practice Guidance that *“formation rates may have been suppressed historically by under-supply and worsening affordability of housing. The assessment will therefore need to reflect the consequences of past under delivery of housing”*.

3.2 I deal with the fact that the 2014-based rates are suppressed in Tendring District in paragraphs 5.18 to 5.27 of my Proof. In order to address this and to avoid future suppression, I consider that it is important to make an adjustment to the actual household formation rates. This is precisely the approach that I have taken.

3.3 The approach of adjusting household formation rates to reflect a movement towards the longer term trend is well established. It has been accepted repeatedly by Inspectors at Local Plan Examination and at s.78 appeals⁸. For example, the Inspector into the South Worcestershire Development Plan Examination⁹ stated at paragraph 44 that:

“Thus I must ask the Councils to undertake some further analysis in order to derive an objective assessment of housing need over the Plan period. From what is said above, it should be clear that in my view the demographic stage of that analysis should be carried out using the latest available official population projections, combined with NLP’s “index” approach to translate those projections into future household numbers. The “index” approach uses

⁷ ID 2a-015 20140306 (CD 9/11)

⁸ Including Land off Sadberge Road, Middleton St George, Darlington, County Durham (APP/N1350/A/14/2217552) 12 January 2015; Land at Southwell Road, Farnsfield, Nottinghamshire (APP/B3030/W/15/3006252) 7 January 2016 (both Appendix 8). Land to the North West of Boorley Green, Winchester Road, Boorley Green, Eastleigh (APP/W1715/W/15/3130073) 30 November 2016 (Appendix 9)

⁹ See Appendix 3 of my Proof of Evidence

HRR drawn from the 2011-based household projections for the period 2011-2021, and an index of HRR drawn from the 2008-based household projections for the rest of the Plan period.”

3.4 Similarly, the Eastleigh Local Plan Examination Inspector¹⁰ stated at paragraph 24 that:

“The JGC Study carried out a more detailed analysis than the SHMA on the local reasons behind the slowing of the trend of household formation (headship rates) revealed in the 2011 Census. In the light of this analysis, it recommends a part return to the underlying long term trend to reach 73% of the 2008-based rate by the end of the projection period. I consider that this is a well-informed analysis consistent with the evidence and with other Inspectors' conclusions on this issue”.

3.5 This issue was also considered in a recent appeal in Eastleigh¹¹. Paragraph 12.12 of the Inspector's report notes that:

“The LP Inspector accepted that there is evidence that household formation rates have been suppressed by the economic downturn and that an adjustment (based on a partial catch-up for the younger age cohorts) is not unreasonable. The Council allowed an addition of 11dpa but this would do very little to correct the situation. By looking at a partial catch up only, the appellants' figure of 37 is more likely to reflect the real needs and is consistent with advice in the PPG”.

3.6 The Inspector's recommendation was accepted by the Secretary of State.

¹⁰See Appendix 3 of my Proof of Evidence

¹¹ Land to the North West of Boorley Green, Winchester Road, Boorley Green, Eastleigh (APP/W1715/W/15/3130073) 30 November 2016. Appendix 9

4.0 Mortality Rates

4.1 Mr McDonald reports that the ONS released its 2016-based National Population Projections [NPP] on 26th October, and that the latest figures increased mortality rates. Mr McDonald has adjusted the mortality rates used in projecting Tendring's population by scaling the 2014-based SNPP rates to reflect the ratio of the 2016 NPP rates to the 2014 NPP rates. This assumption appears to have a significant (suppressive) impact on Mr McDonald's OAHN, of around 50 dwellings (see Figure 1 of the OAHN Statement of Common Ground).

4.2 I consider that there are significant dangers in this approach. Mr McDonald is assuming that the *relationship* between Tendring and the National mortality rates remains the same for both the 2014-based and 2016-based projections. This may be true but ultimately until the 2016-based SNPP are released, we do not know for sure. This is important as ONS' methodology for calculating death rates (as set out in the 2014-based methodology document¹²) states:

"The projections model calculates local authority-level Age Specific Mortality Rates [ASMRs] in a similar method to that used for the fertility rates. ASMRs are created for each of the past 5 years using number of deaths occurring between mid-year points by age and sex and the population at the end of the year. National-level ASMRs are calculated in a similar way using the total number of deaths in a year and the total population at the end of the year. The sum of the 5 local ASMRs is then divided by the sum of the 5 national ASMRs to create an average differential for each local authority. The differentials are then applied to the national ASMRs from the first year of the national population projections in order to calculate local ASMRs." (my emphasis)

¹²ONS (May 25th 2016): Methodology used to produce the 2014-based subnational population projections for England (Appendix 6)

- 4.3 So the process is clearly more complex than simply taking the new 2016-based NPP and applying it to Tendring's projection from the 2014-based SNPP, as Mr McDonald considers appropriate.
- 4.4 I consider that it would be wrong to apply the 2016-based NPP mortality rates unless we have strong evidence that the relationship between England and Tendring is the same in 2011-2016 as it was in 2009-2014.
- 4.5 For these reasons I consider that it would be prudent to await the 2016-based SNPP before extracting certain aspects of the 2016-based NNP and applying them to Tendring District's 2014-based SNPP.

5.0 UPC Adjustments

Introduction

- 5.1 In my Proof I accept that the level of UPC for Tendring District is high, and that the population estimate rolled forward from 2001 was 10,533 higher than the 2011 Census based population estimate. However, I consider that the approach taken by the Council's housing consultants to adjust the likely impact of UPC on the ONS's SNPP has been consistently over-stated, and that Mr McDonald continues to over-state the degree of potential error for Tendring in his latest evidence.
- 5.2 In particular, I consider that insufficient weight has been accorded by Mr McDonald to the ONS's 2017 Note on Tendring's Population Estimates (CD 8/28). In this note, ONS concludes that around 4,500 of the UPC discrepancy is due to the 2001 Census base. Some of the remaining difference may also be due to sampling error relating to the 2011 Census. Therefore 'at most' the remaining 5-6,000 of the discrepancy is likely to be due to migration (page 3).
- 5.3 This UPC issue was examined in detail at the recent Sladbury's Lane Inquiry¹³, with the Inspector concluding that "*the ONS view must be treated with importance as it is the Government body responsible for population estimates and processing the data*" [paragraph 29]. I agree entirely with the Inspector in this regard.
- 5.4 However, in Section 4.0 of Mr McDonald's Proof he examines a range of alternative statistics that leads him to conclude that the 47%-57% UPC range attributable to migration as recommended by ONS is incorrect, that 50-65% is due to errors in the migration statistics and that within this range 55% is the most likely figure.

¹³ Planning Inspectorate Reference: APP/P1560/W/17/3169220 Tendring District Council Reference: 15/01351/OUT (CD 4/5)

- 5.5 I consider that Mr McDonald's interpretation of the data is flawed, and that the ONS's view that the maximum amount of UPC attributable to migration is between 47% and 57% (i.e. 5,000-6,000 of the 10,533 adjustment) should be given substantial weight.
- 5.6 I comment on the main evidence raised by Mr McDonald to justify his 55% adjustment below.

ONS Census error margins

- 5.7 Mr McDonald examines the ONS's 95% confidence intervals for its census population data in Tendring, and concludes that if the 2001 Census were too high by its 95% interval and the 2011 figure too low by the same margin, then this would result in 25% of the UPC discrepancy (paragraph 28). However, in Figure 4 (page 21) of his proof, he suggests that the estimate of the proportion of UPC due to Census errors based on the ONS confidence intervals ranges from zero to 25%.
- 5.8 I consider that it is highly likely that the 2001 Census in particular has significantly over-estimated Tendring's population at that point in time, and that the ONS's 2017 note (CD 8/28) clearly indicates that to consider that the Census was entirely accurate (i.e. contributing zero to the UPC error) is not a tenable position, based on Patient Register data and the even spread of the discrepancy across all age groups (including older age groups who have a lower propensity to move).
- 5.9 This leads me to conclude that errors in the Census 2001 population estimate for Tendring must be at least partly to blame for the UPC error, and that the bottom end of the range at 0% is not tenable and can be discounted entirely.

Cohort Analysis

- 5.10 Mr McDonald disaggregates the UPC by age cohort and suggests that for some age groups UPC is large compared with the 95% confidence limits. However, he concludes that "*it is not possible to produce an overall maximum figure*

from this analysis” (paragraph 32). I agree with this view, and hence apart from demonstrating further that there is considerable uncertainty in the extent of the UPC, it is unhelpful in framing the extent of UPC errors.

Comparison with census migration statistics

5.11 The 2011 Census collected data on respondent’s addresses one year previously. Mr McDonald contends (paragraph 33) that it gives an alternative source for migration flows which can be compared with the MYE figures. His analysis states that the 2011 Census suggests a net migration flow into Tendring that is around 500 people less than the MYE figures:

“As UPC is 10,533 over the 10 years between the census, the average annual discrepancy is 1,053. The census data suggesting a difference of 500 people therefore tends to corroborate the view that around half of UPC is due to the migration flows” (paragraph 34).

5.12 The correct figure based on his calculations is actually 47% (500/1,053) rather than 50% of UPC as being attributable to migration errors. This would corroborate the lower end of ONS’s 47%-57% range and does not support Mr McDonald’s preferred figure of 55%.

Housebuilding and council tax data

5.13 Mr McDonald compares the data for housebuilding, council tax valuation lists and Census household spaces. By making assumptions about the number of empty and second homes and the number of people per household, he draws conclusions regarding the change in population implied by the change in the number of homes (paragraph 38). He models three scenarios:

- a Using the valuations list data and the census figures for empty and second homes suggests that the census error was 35% of UPC;
- b Using the completions data instead of the valuations list gives a census error equal to 42% of UPC; and

- c Using the valuation list data and the council tax base estimate of empty and second homes (6.51%) rather than the higher Census figure (7.36%) suggests that the census error may have been 48% of UPC.

5.14 On this basis he implies that between 35% and 48% of UPC was due to census errors. However, there is a logical fourth scenario which he has not modelled – namely using the completions data and the council tax base estimate of empty and second homes (6.51%) rather than the higher Census figure (7.36%). This would generate a Census error higher than the 48% in Scenario c).

GP Lists

5.15 Mr McDonald state that if Tendring's GP list inflation was in line with the England average, the Census population estimate was around 5,700 too high, or 54% of UPC (i.e. 46% is attributable to migration errors). This does not appear an unreasonable assumption, and again lends weight to the lower end of the ONS's 47%-57% range.

Electoral Roll

5.16 McDonald's comparison of the number of people on the electoral rolls in Tendring District compared to the population estimates from the MYE suggests that the 2001 Census may have over-estimated the population by between 42% and 57% of the UPC, although he considers this to be a relatively weak indicator of the error in the Census. Again, this is broadly consistent with the ONS's range.

Summary

5.17 On the basis of the evidence set out above, I consider that McDonald's own evidence does not support a 50%-65% range, as a departure from ONS's view, and certainly not a 55% UPC figure as being attributable to migration errors. Presumably in undertaking its own analysis, ONS examined many of these same statistics, and came to the view that the 47%-57% range was robust.

Indeed, the weight of his evidence, and particularly the GP lists and comparison with the Census migration statistics, would suggest that the lower, rather than upper, end of the range would be appropriate.

6.0 **Alternative Migration Scenarios**

Introduction

- 6.1 Mr McDonald's models three main scenarios in his proof, two of which depart significantly from the ONS's approach of applying age specific flow rates over the plan period and instead keep the actual level of internal migration constant at either the 10 year average or the 15 year average excluding the downturn. The other assumes that inflows are mid-way between the latter scenario and the ONS method, using 10-year trends. Mr McDonald acknowledges that the first two scenarios '*depart from the ONS standard methodology*' (paragraph 85). I consider that Mr McDonald is wrong to move away from the ONS's approach, for the following reasons.

Discrepancies with the Standard ONS Approach

- 6.2 The ONS's methodology used to produce the 2014-based SNPP¹⁴ sets out that adjustments for the expected number of people entering and leaving a local authority by age and sex are done separately for internal, cross-border and international migration using different methodologies. For internal migration, ONS state the following:

"The proportion of people moving from one local authority is calculated by dividing the number of people moving out of the area by the number of people living there. This is calculated separately for males and females by single year of age for each of the trend years individually and then a five-year average is calculated to produce rates of out-migration by age and sex. In some local authorities with small numbers of moves and/or populations, this can lead to atypical rates which produce unrealistic results in the projected population. To overcome this, adjustments are sometimes made to smooth the data. These can take the form of upper limits (or caps) on

¹⁴ ONS (25th May 2016): *Methodology used to produce the 2014-based subnational population projections for England* (Appendix 6)

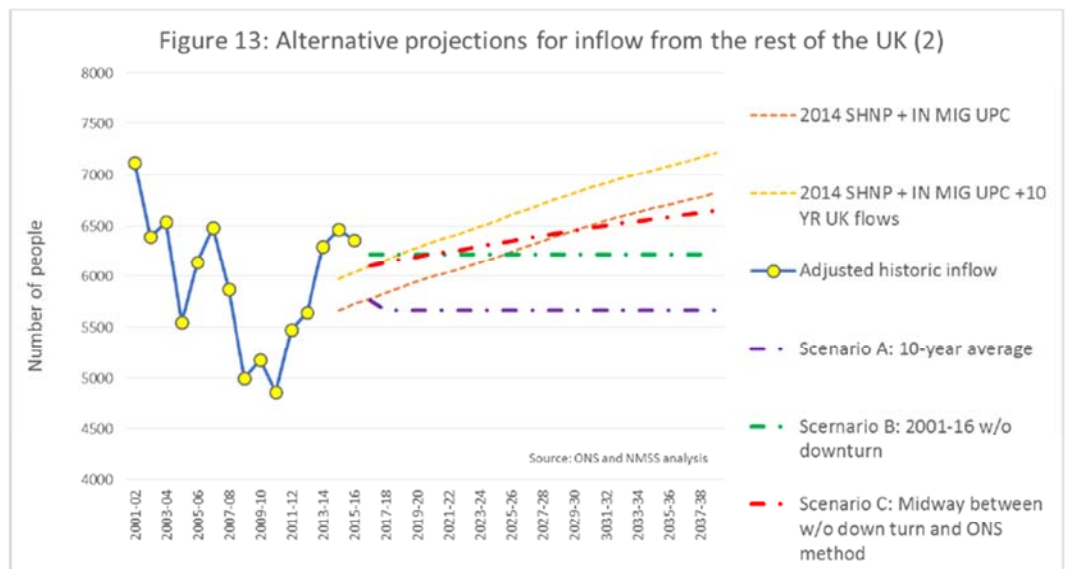
migration rates, or the replacement of rates with appropriate alternatives.

[page 7]

6.3 Some caps are then applied where numbers might be anomalous (to Chiltern, the Isles of Scilly, Oadby & Wigston and Rutland) but Tendring is not affected.

6.4 Mr McDonald has moved away from this approach, and has effectively kept inflows constant (as can be seen on Figure 13 of his Proof, below). Scenarios A and B simply average out inflows at a constant rate. Mr McDonald suggests that this is appropriate because flow rates into Tendring have fallen since the turn of the Century and it is unlikely “to expect the trend to suddenly turn into a rising line”.

6.5 However, as can be seen from Mr McDonald’s own evidence (Figure 13), there has been a strong increase in inflows since 2010/11, with a ‘rising line’ for 4 out of the 5 years since then. Furthermore, Mr McDonald’s approach appears to result in a situation whereby Scenarios A and B have levels of inflow that are significantly lower than has been the case since 2013/14.



Proof of Evidence by Neil McDonald (NMSS) on behalf of Tendring District Council

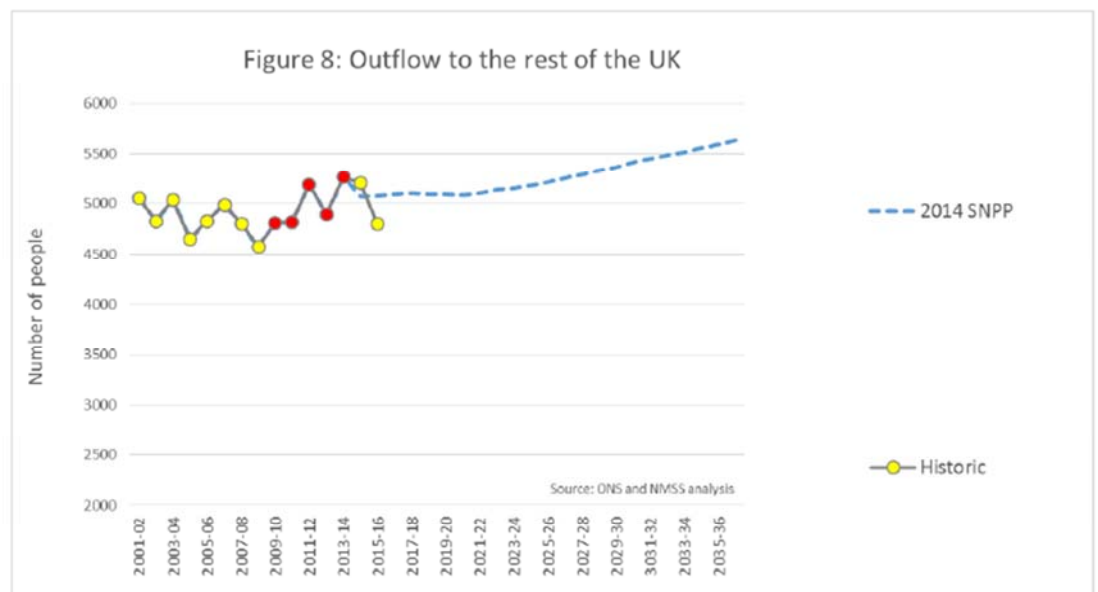
6.6 Moreover, Mr McDonald’s Scenarios only consider Tendring District in isolation. They do not take into account the impact on other local authorities

in the vicinity. Even setting aside the issue of UPC, which forms a separate component of Mr McDonald's analysis, he is effectively assuming that by keeping inflows to Tendring constant and not increasing them gradually as the ONS 2014-based SNPP suggests, fewer people will be moving into the District from elsewhere in the HMA - such as Colchester and Braintree - than ONS anticipates.

- 6.7 However, no comparable adjustment has been made for these other authorities to reflect Mr McDonald's approach. As set out in Table 9.1 of the PBA November 2016 Update (CD 8/24), Braintree's OAHN is 716 dpa, which equates to the 2014-based SNPP plus a 15% market signals uplift; Chelmsford's OAHN is for 805 dpa, also based on the 2014-based SNPP plus a 20% uplift; Colchester's OAHN is 920 dpa, which is based on an economic growth scenario (also equivalent to the 2014-based SNPP plus a very modest market signals uplift of 6%).
- 6.8 All are seeking to meet their own needs within their own area, and PBA does not appear to have modelled the implications of a reduction of outward migration into Tendring from these authorities. This would presumably result in an increase in demand for housing in these three areas (and beyond), given that they are basing their requirements on the 2014-based SNPP. No comparable upward adjustment has been made to the housing requirement for these three areas. This is a clear example of the dangers of incorporating inconsistent modelling assumptions within an HMA that depart from the nationally consistent ONS methodology.
- 6.9 Furthermore, Mr McDonald's method assumes that there is no change in the demographic make up of either Tendring or the surrounding areas over time. This is clearly incorrect given that Tendring has a comparatively high propensity to attract older migrants as a place to retire, due to its attractive environment and coastline. As the demographic profile of adjoining

authorities is ageing¹⁵, it is not unreasonable to expect inflows to Tendring to gradually increase over time. To ignore this would undermine the housing strategies of adjoining areas that are relying on the unadjusted 2014-based SNPP to underpin their OAHN.

6.10 Finally, Figure 8 of Mr McDonald’s proof also illustrates an inconsistent approach to the 2014-based SNPP. His adjustments as set out in Figure 13 (above) appear to relate entirely to migration inflows. Regarding migration outflows from Tendring, paragraph 74 of his Proof states that “*they are all much less variable and the projections are broadly consistent with the historic data. They will not be discussed further*”. I take from this that he has retained the outflows from Tendring from the 2014-based SNPP.



6.11 As a result, Mr McDonald’s modelling appears to assume that in-migration levels will remain constant, whilst out-migration levels will increase – thus resulting in a reduction in net inward migration over time.

¹⁵ Figure 2.5 of PBA’s November 2016 OAHNS Update (CD 8/24) indicates that in 2011 inflows into Tendring were highest from Colchester and Braintree. The 2014-based SNPP suggests that between 2014 and 2037, Colchester will see a 58.5% increase in the number of residents aged 65 and over, compared to a 14.2% increase in residents aged under 65. Similarly in Braintree, the 2014-based SNPP suggests that between 2014 and 2037, there will be a 73.9% increase in the number of residents aged 65 and over, compared to a 2.8% increase in residents aged under 65.

6.12 In summary, I consider that whilst a suitable UPC adjustment is necessary to address historic migration errors, Mr McDonald is wrong to further adjust the inflows, as his approach is internally inconsistent, departs significantly from the ONS's standardised approach, does not allow for changing demographic and social trends and risks undermining the housing strategies of adjoining authorities in the HMA.

7.0 Affordable Housing Needs

- 7.1 As I set out in paragraphs 6.20 to 6.22 of my Proof, affordable housing needs are a component part of the OAHN for an HMA, with the Framework setting out in paragraph 47 that LPAs should ensure “*the full, objectively assessed needs for market and affordable housing in the housing market area*” (my emphasis) are met as far as is consistent with the Framework. This principle has also been established in recent case law: see the High Court judgments in *Satnam* and *Kings Lynn*, as cited in my main proof of evidence.¹⁶
- 7.2 As I set out in my Proof, taking the evidence contained in Tendring Council’s latest OAHN Study Update (November 2016, CD 8/24) at face value indicates a net affordable housing need totalling **160 dpa** within Tendring District. Paragraph 7.7 of the November 2016 OAHN Study Update clarifies that when setting policy requirements (targets) in Local Plans, the councils should have additional regard to affordable housing need as assessed in the SHMA. The Council seeks to ensure that a minimum of 30% affordable housing is achieved on all sites involving the creation of 10 or more (net) homes (Tendring District Council Local Plan – Publication Draft Final, Policy LP5 CD8/2). At this rate of delivery, the 160 dpa target would equate to 27% of the Council’s 550 dpa target. I therefore concluded that no further uplift would be required.
- 7.3 However, taking Mr McDonald’s figure of 480 dpa into account, this could only deliver 144 affordable units in the (unlikely) event that 30% of all housing units coming forward in Tendring District were affordable.
- 7.4 TDC has only delivered 7 affordable homes in 2015/16 (3% of 245 net completions); 16 in 2014/15 (6% of 267 net completions); and 3 affordable home in 2013/14 (1.5% of 204 net completions)¹⁷. On the face of it delivering even 144 affordable dwellings would therefore be challenging. Nevertheless,

¹⁶ ‘Satnam Millennium Limited and Warrington Borough Council [2015] EWHC 370’ referred to as “Satnam” (Appendix 7); and ‘Kings Lynn and West Norfolk Borough Council v (i) Secretary of State for Communities and Local Government and (ii) Elm Park Holdings [2015] EWHC 1958’ referred to as “Kings Lynn” (Appendix 7)

¹⁷ AMR Excerpts, Appendix 4

Mr McDonald has not considered whether an uplift over and above 480 dpa would be appropriate to address the affordable housing need in full.

8.0 **Alignment with Economic Growth Requirements**

Economic Growth

8.1 As I set out in Section 6.0 of my Proof, the Practice Guidance sets out that plan makers should take into account employment trends by making an assessment of the likely change in job numbers based on past trends and/or forecasts and also having regard to the growth of working age population in the HMA¹⁸.

8.2 Mr McDonald has not undertaken any such analysis in his evidence when coming to an OAHN of 480 dpa.

8.3 In my proof I chose not to model the Experian projections as a scenario for Tendring District, as Experian incorporates demographic inputs from the SNPP which may have been distorted by UPC issues. However, I raised concerns with PBA's earlier economic analysis using a bespoke Experian model and the extent to which it produced illogical levels of population growth compared to dwelling change (paragraphs 6.17-6.18 of my Proof).

8.4 As this issue has not been addressed by Mr McDonald, I have now obtained the latest Cambridge Econometrics [CE] data for Tendring District. The CE projections differ from those produced by Experian in that there is no explicit assumption for population in CE's employment projections:

"[CE's projections] assume that economic growth in the local area is not constrained by supply-side factors, such as population and the supply of labour. Therefore, no explicit assumptions for population, activity rates and unemployment rates are made in the projections. They assume that there will be enough labour (either locally or through commuting) with the right skills to fill the jobs. If, in reality, the labour supply is not there to meet projected growth in employment, growth could be slower." (page 1)

¹⁸ 2a-019-201403060 (CD 9/8)

- 8.5 As such, an over-estimation in the Mid-Year Population Estimates or the 2014-based SNPP would not have an impact on the employment projections for Tendring for OAHN modelling purposes.
- 8.6 The Cambridge Econometrics November 2016 projection indicates that net employment is likely to increase by around 2,100 over the plan period 2013-2037 (88 annually). It should be borne in mind that according to CE's historic data, the average annual job growth over the period 2001 to 2016 in Tendring District has been reasonably strong, at around 312 annually (c.4,700 in total), hence the CE forecasts should be considered as a very conservative, policy off, set of projections. Moreover the publication draft Tendring Local Plan 2013-2033 and Beyond (2017, CD 8/2) sets out a job target of 490 jobs annually in Policy SP4 and claims that this been set on the basis of reconciling jobs and housing demand.
- 8.7 Therefore I have modelled these CE past trends and employment projections for Tendring District in PopGroup to assess whether they represent a reasonable basis for projecting future job growth and housing needs. I have assumed that commuting ratios remain constant post 2016; that unemployment gradually falls back to the District's post-recession average by 2020 and then remains constant; and applied economic activity rates from the Office for Budget Responsibility's [OBR's] January 2017 projections.
- 8.8 The results are set out in Table 8.1. They indicate that, depending upon the assumptions applied to the UPC adjustment, the dwelling need could range from between 579 dpa and 589 dpa based on the CE job growth projections, and between 744 dpa and 753 dpa based on CE's past job growth levels projected forward (incorporating PCU headship rates).

Table 8.1 Tendring Economic Modelling Scenarios 2013-2037

| | | G) CE Job Growth (47% UPC) | H) CE Job Growth (57% UPC) | I) Past Job Growth (47% UPC) | J) Past Job Growth (57% UPC) |
|---------------------------------|------------|----------------------------|----------------------------|------------------------------|------------------------------|
| Population Change | | 21,089 | 20,845 | 29,483 | 29,247 |
| 2014-based SNHP Headship Rates | Households | 12,979 | 12,764 | 16,647 | 16,437 |
| | Dwellings | 13,892 | 13,661 | 17,817 | 17,593 |
| | Dpa | 579 | 569 | 742 | 733 |
| Partial Catch Up Headship Rates | Households | 13,207 | 12,991 | 16,890 | 16,681 |
| | Dwellings | 14,136 | 13,905 | 18,078 | 17,854 |
| | Dpa | 589 | 579 | 753 | 744 |
| Jobs | | 2,056 | 2,056 | 4,897 | 4,897 |

Source: Lichfields using PopGroup

8.9 The employment-led OAHN range based on the (conservative) CE projections therefore equates to between 579 dpa and 589 dpa depending upon whether the 47% or 57% adjustment is applied, incorporating accelerated headship rates. It is important to note that this range lies well below the level of housing growth likely to sustain the 490 annual job growth target set out in the Council's emerging Local Plan, as this is higher even than the level of net job growth that has been achieved over the past 15 years (at 312 jobs annually to 2016) and does not therefore accord with the Council's own economic growth aspirations. If I had applied long term migration rates (adjusted for UPC) as per Scenarios E and F, the range would be even higher.

8.10 Mr McDonald has made no attempt to assess how the provision of 480 dpa would deliver even this level of economic growth to address Tendring District's needs over the coming years.

9.0 **Conclusion**

9.1 My review of the key areas of dispute in this Rebuttal Evidence reinforces the robustness of the findings in my main Proof of Evidence. That is:

- 1 a rounded OAHN range of between 570 dpa and 670 dpa would be appropriate for Tendring District; and
- 2 within this range, and given the prevailing uncertainty regarding the UPC issue, the mid-point of my range, 620 dpa, should be adopted as the OAHN for this appeal.

Appendix 1: ONS (2017): Annual Mid-Year Population Estimates QMI

Annual mid-year population estimates QMI

Contact:


Release date:
28 November 2017

Next release:
To be announced

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1 . Methodology background

| | |
|----------------------------|---|
| National Statistic |  |
| Frequency | Annual |
| How compiled | Based on third party data |
| Geographic coverage | UK |
| Last revised | 23 June 2016 |

2 . Overview

- relate to the usually resident population on 30 June of each year
- a number of data sources are used to compile the population estimates, including the General Register Office (GRO), the International Passenger Survey (IPS), the Higher Education Statistics Agency (HESA), the National Health Service Central Register (NHSCR) and the Ministry of Justice
- estimates for Scotland and Northern Ireland are produced by the National Records Scotland (NRS) and the Northern Ireland Statistics and Research Agency (NISRA) respectively
- annually published estimates available from 1981 onwards

The [mid-year population estimates](#) are the official set of population estimates for the UK and its constituent countries, the regions of England and Wales and local authorities.

The estimates account for long-term international migrants (people who change their country of usual residence for a period of 12 months or more), but do not account for short-term migrants (people who come to or leave the country for a period of less than 12 months). A combination of registration, survey and administrative data are used to estimate the different components of population change.

The mid-year population estimates are an essential building block for a wide range of National Statistics. They are used directly as a base for other secondary population statistics, such as population projections, population estimates for the very old and population estimates for small geographical areas. They are also used for weighting survey estimates, such as the [Labour Force Survey \(LFS\)](#) and other social surveys to ensure that they are representative of the total population.

External users of the estimates include central and local government and the health sector, where they are used for planning and monitoring service delivery, resource allocation and managing the economy. Other users include commercial companies (for market research), special interest groups and academia.

We quality assure the administrative data used for these statistics to ensure that they are suitable for this purpose. To gain further insight on data quality issues and the impact on statistics, please see [Quality Assurance of Administrative Data](#):

- [Births](#)
- [Deaths](#)
- [UK Armed Forces](#)
- [US Armed Forces](#)
- [Patient Register](#)
- [Higher Education Statistics Agency](#)
- [Prisoners](#)
- [National Health Service Central Register](#)
- [Northern Ireland Internal Migration](#)
- [International Migration data for Scotland](#)
- [International Migration data for Northern Ireland](#)
- [Migrant Workers Scan](#)
- [Asylum Seeker Data and Non Asylum Enforced Removals](#)
- [Home Office Immigration](#)
- [Asylum Seekers Support](#)

3 . Executive summary

The mid-year estimates refer to the population on 30 June of the reference year and are published annually. They are the official set of population estimates for the UK and its constituent countries, the regions of England and Wales and local authorities. The Office for National Statistics (ONS) compile and publish [population estimates for the UK](#) using estimates for England and Wales (also produced by ONS), [estimates for Scotland](#) produced by National Records of Scotland (NRS) and [estimates for Northern Ireland](#) produced by the Northern Ireland Statistics and Research Agency (NISRA). With the exception of the description of the published tables in the About the output section, this document relates to the estimates for England and Wales only.

Mid-year population estimates relate to the usually resident population. They account for long-term international migrants (people who change their country of usual residence for a period of 12 months or more) but do not account for short-term migrants (people who come to or leave the country for a period of less than 12 months). A combination of registration, survey and administrative data are used to estimate the different components of population change.

The mid-year population estimates are essential building blocks for a wide range of [National Statistics](#). They are used directly as a base for other secondary population statistics, such as [population projections](#), [population estimates for the very old](#) and [population estimates for small geographical areas](#). They are used for weighting survey estimates such as the [Labour Force Survey](#) and other social surveys to ensure that they are representative of the total population, and they are used as denominators for rates or ratios, for example, in health and economic indicators.

They are an important input for a wide number of economic and social statistics. Main users include central and local government and the health sector, where they are used for planning and monitoring service delivery, resource allocation and managing the economy. Additionally, they are used by a wider range of organisations such as commercial companies (for market research), special interest groups and academia as well as being of interest to the general public.

Further information on population estimates across the UK including methodology, quality and data sources is available in an [information note](#).

This report contains the following sections:

- Output quality
- About the output
- How the output is created
- Validation and quality assurance
- Concepts and definitions
- Other information, relating to quality trade-offs and user needs
- Sources for further information or advice

4 . Output quality

This report provides a range of information that describes the quality of the data and details any points that should be noted when using the output.

We have developed [Guidelines for Measuring Statistical Quality](#); these are based upon the five European Statistical System (ESS) Quality Dimensions. This report addresses these quality dimensions and other important quality characteristics, which are:

- relevance
- timeliness and punctuality
- coherence and comparability
- accuracy
- output quality trade-offs
- assessment of user needs and perceptions
- accessibility and clarity

More information is provided about these quality dimensions in the following sections.

5 . About the output

Relevance

(The degree to which statistical outputs meet users' needs.)

This product is the official set of population estimates for the UK and constituent countries, consisting of annual published estimates from 1981 onwards. The published estimates meet the known users' needs as described in this section. The accuracy of the estimates is limited to the quality of the data sources used to compile the estimates, as discussed in the Accuracy section.

The estimates refer to the mid-year (30 June), usually resident population and are available at the following geographies and population subgroups:

- UK, Great Britain, England, Wales, Scotland and Northern Ireland
- regions, counties, unitary authorities and local government districts in England; council areas in Scotland, unitary authorities in Wales and district council areas in Northern Ireland

The standard tables are published using unformatted data, which provide unrounded data to aid further analysis for users. However, the unrounded estimates cannot be guaranteed to be as exact as the level of detail implied by unit-level data. This is due to levels of uncertainty around the unrounded estimates (also see the Accuracy section).

Additional supporting data published with the population estimates comprises components of population change, which provides information on population events (births, deaths, internal migration within the UK, international migration, and other changes) between the reference year and previous mid-year population estimate. The components of population change are available as totals for the following geographies:

- UK, Great Britain, England, Wales, Scotland and Northern Ireland
- regions, counties, unitary authorities and local government districts in England; council areas in Scotland, unitary authorities in Wales and district council areas in Northern Ireland

The components of population change are available by sex and single year of age for the following geographies:

- England and Wales
- regions, counties, unitary authorities and local government districts in England and unitary authorities in Wales

The published mid-year population estimates data tables and supporting documentation can be found on our [population estimates pages](#).

For geographical levels that are smaller than local authority district, estimates are published as a separate output and have their own specific quality information: the [Quality and Methodology Information for small area population estimates](#).

Mid-year population estimates have a wide variety of uses within central government as well as being used by local authorities and health bodies, other public bodies, commercial companies and individuals in the private and academic sector (see the Assessment of user needs and perceptions section). These uses can be categorised into two broad groups:

- uses where the absolute numbers are important – this may be in terms of allocating financial resources from central government, planning services or grossing up survey results; some of the main central government uses are concerned with resource allocation and are carried out by the [Department for Communities and Local Government \(DCLG\)](#) for England and the [Welsh government \(WG\)](#)
- uses where the population figures are used as denominators, for example, in the calculation of social and economic indicators

In addition to 2011 Census data the main data sources used in the compilation of the mid-year population estimates down to local authority level are:

- Birth and death registrations from the [General Register Office \(GRO\)](#)
- [International Passenger Survey \(IPS\)](#) data, [Higher Education Statistics Agency \(HESA\)](#) data, Migrant Worker Scan (MWS) data, GP Patient Register Data System (PRDS) data, [Home Office Visa](#) data, [Labour Force Survey \(LFS\)](#) data used to estimate international migration moves
- National Health Service Central Register (NHSCR), the GP Patient Register Data System (PRDS) and [Higher Education Statistics Agency \(HESA\)](#) data used to estimate internal migration moves
- [Ministry of Defence](#) data and [United States Air Force \(USAF\)](#) data used to estimate the change in the home and foreign armed forces population
- [Ministry of Justice](#) data used to estimate the number of prisoners

Timeliness and punctuality

(Timeliness refers to the lapse of time between publication and the period to which the data refer. Punctuality refers to the gap between planned and actual publication dates.)

Population estimates for the UK and for England and Wales are normally published annually in June. For a particular mid-year (30 June) they are available about 12 months after the reference date. This time lag reflects the availability of the data sources that measure the components of population change over the year preceding the estimate and the time required to process the data and calculate the estimates.

The publication of mid-year population estimates would be later than the planned date only if essential data used to calculate the estimates were not available, for example, if estimates of international migration were not received or delays were encountered in the supply of administrative data from third parties. In previous years the planned publication date, as entered into the [Release calendar](#), has always been met, though in 2013 the UK estimates were published 6 weeks after the estimates for England and Wales due to the timetable for the publication of the estimates for Scotland.

For more details on related releases, the [GOV.UK release calendar](#) provides 12 months' advance notice of release dates. In the unlikely event of a change to the pre-announced release schedule, public attention will be drawn to the change and the reasons for the change will be explained fully at the same time, as set out in the [Code of Practice for Official Statistics](#).

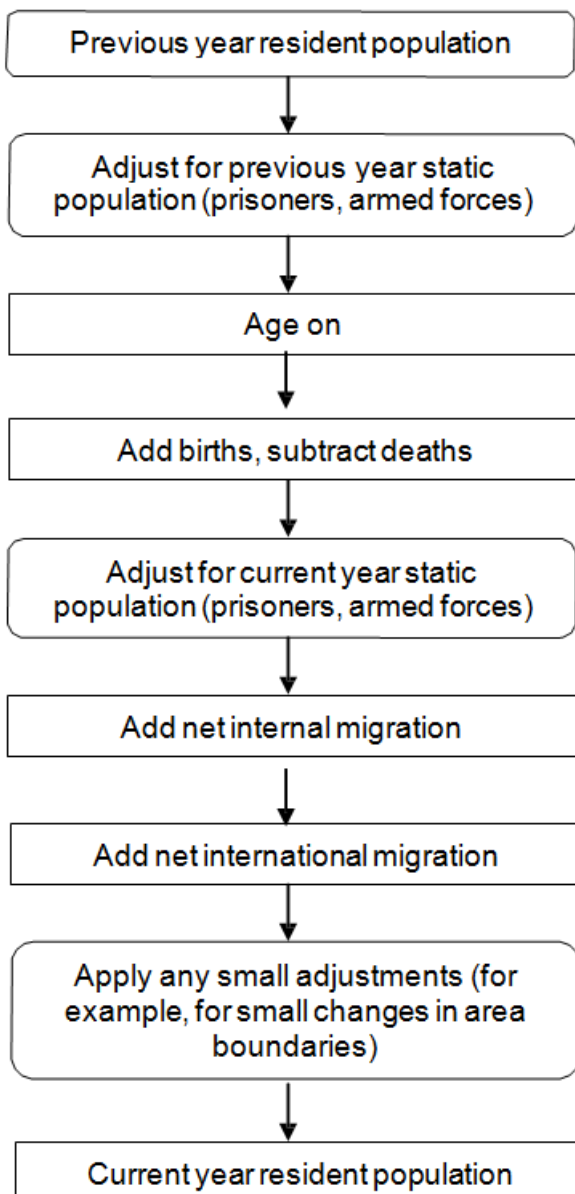
6 . How the output is created

Population estimates down to local authority level are calculated using the cohort component method. This is a standard demographic method that uses information on the components of population change to update a population base such as the census estimate. The resident population, by single year of age, on 30 June of the year prior to the reference year is aged by 1 year, those born during the 12-month period prior to the mid-year point are added on to the population and those who have died during the 12-month period are removed.

Other factors taken into account are the movement of people into and out of the UK (international migration) and, for estimating the population for different areas within the UK, movements between areas of the UK (internal migration). Internal migration includes both cross-border moves between the four constituent countries of the UK and moves between local areas within each part of the UK.

Some population subgroups such as prisoners and armed forces (UK and foreign) are estimated separately from the rest of the population (this is because internal or international migration moves of these groups are not captured using the standard data sources). Figures for the previous year are removed from the population prior to the estimation process and then figures for the current year are added back in for the final compilation. The cohort component method used for the mid- year population estimates is illustrated in Figure 1.

Figure 1: Cohort component method



For census years the population is aged by the period of time between the census and 30 June (in 2001 this was 9 weeks and in 2011 it was 14 weeks). Similarly, the components only need account for change during this period. For each component, this is established by the availability of data for the period between census day and 30 June and the amount of change expected. Further details of how this was done in 2001 can be found in [Population Trends 109](#). Details of the methods used in 2011 can be found in Methods Guide for census-based Mid-2011 Population Estimates.

After the results of a new census are known, the population estimates over the previous decade are subsequently revised to ensure a consistent time series. In light of the 2011 Census results, the mid-2002 to mid-2010 population estimates were revised at national and subnational level. The methodology for revising the population estimates involved identifying parts of the population estimates that were under- or over-estimated between 2002 and 2010, using 2011 Census data and other sources. Further details of the methods used to revise the mid-2002 to mid-2010 population estimates at national level can be found in the [methodology guide for the national back series](#) and at subnational level in the [methodology guide for the subnational back series](#).

The subnational mid-year population estimates for England and Wales are calculated first. The national estimates are produced by aggregating the subnational estimates. A different method is used to produce population estimates for smaller areas, for example, national parks and wards. Details of the [methods used to produce population estimates for small areas](#) are available.

A number of data sources are used to compile the population estimates. Where possible, we ensure that definitions are consistent between data sources. For example, following the 2011 Census, the population estimates definition for prisoners has been changed from those having served 6 months or more in prison to those who have been sentenced to serve 6 months or more, to be as consistent as possible with the 2011 Census prisoners definition.

The estimates are produced using a variety of data sources and statistical models, including some statistical disclosure control methods, and small estimates should not be taken to refer to particular individuals.

Full details of the [methodology used to produce the population estimates](#) are available.

7 . Validation and quality assurance

Accuracy

(The degree of closeness between an estimate and the true value.)

Population estimates are produced using a well-established demographic approach called the cohort component method (refer to the How the output is created section). This involves combining information from a number of data sources including the previous census, survey data and administrative registers. The data sources used are the best that are available on a nationally consistent basis down to local authority level, but the estimates are subject to the coverage and error associated with these sources. Information from administrative registers such as the numbers of births and deaths are considered to be very reliable.

Uncertainty Estimates have been created to give users additional information of the quality of these estimates. Measures of statistical uncertainty are available for the years mid-2012 to mid-2015.

Several products providing information on the likely accuracy of the estimates are planned or already available:

- a set of [Quality Indicators](#), which provide a high-level indication of the likely reliability of the estimates for each local authority, are published alongside each release (from the estimates for 2013 onwards)
- a [Data Comparator tool \(QA pack\)](#), allowing easy comparison of the population estimates with counts from administrative sources, is also published alongside each release (again from the estimates for 2013 onwards)
- statistical measures of the reliability of the 2011 Census estimates – on which the population estimates are based – are published in the [Confidence Intervals for the 2011 Census report](#)
- further products are being developed for publication to help users understand the reliability of the estimates
- information is also available, on the likely accuracy of the migration estimates, which are used in updating the population estimates each year

One source of potential inaccuracy in the estimates is the use of sample surveys in the derivation of the 2011 Census estimates (where the Census Coverage Survey is used to adjust for estimated non-response) used as the base population, and the International Passenger Survey (IPS)-based estimates of international migration.

Sampling error from those sources allows the derivation of an estimated confidence interval of plus or minus 0.2%. This means that if the census and IPS were repeated many times, with a new sample for the related surveys selected each time, we would expect the true value to be within 0.2% of the estimated value 95% of the time. Note that this confidence interval does not include error arising from other components, nor does it provide a measure of bias in either the census, mid-year estimates or other components. This confidence interval has been derived from published information available from the [Confidence Intervals for the 2011 Census report](#) for the England and Wales census, [Confidence Intervals for Scotland's Census](#) and the [2011 Census for Northern Ireland Quality Assurance Report](#) and from the [Migration Statistics Quarterly Report](#).

Estimates of international migration are obtained from the [International Passenger Survey \(IPS\)](#) and are therefore subject to sampling and other types of error. Although national figures have relatively small levels of uncertainty, at local levels the sample counts in the IPS are small and it is necessary to combine data across years and distribute figures using other administrative data sources. Further information on how we estimate international immigration to local level is available at [Improved Methodology for Estimating Immigration to Local Authorities in England and Wales](#).

At this level, individual migration estimates are subject to greater levels of uncertainty. However, the impact of uncertainty associated with net migration flows is small as a percentage of the local authority mid-year estimate. We are currently undertaking research to investigate the feasibility of providing specific measures of uncertainty for the population estimates at local authority level.

[Measures of uncertainty for the mid-2012, mid-2013, mid-2014, and mid-2015 population estimates](#) were published in 2016.

Further information on estimates of [international migration](#) is available and a detailed description of the quality associated with international migration estimates for national, UK constituent country and the regions of England is provided in the [Quality and Methodology Information for Long-term International Migration](#).

At the level of geographic detail at which population estimates are required, the use of administrative registers is essential to account for internal migration. Although NHS patient registers provide the best fit to usually resident populations, they have recognised limitations in relation to their timeliness and coverage, and methods have been improved by combining patient register data with [Higher Education Statistics Agency](#) data.

Delays in re-registering with a GP when moving between local authorities are prevalent amongst young men, for example. These delays can cause inaccuracies when estimating internal migration for these young men. An example of this is Oadby and Wigston, where the detailed age distribution for males is likely to underestimate the number of 23 to 27 year olds and overestimate the number of 21 to 22 year olds. Further information is available on estimates of [internal migration](#) and a detailed description of the quality associated with the estimates of internal migration is provided in the [Quality and Methodology Information for Internal Migration Estimates](#).

We have undertaken a substantial and long-term programme of work to improve our population and migration statistics. The scope for improving migration and population statistics was addressed in the conclusions and recommendations of the National Statistician's Task Force on Migration Statistics. The Task Force report was published in December 2006 and made recommendations for improvements between 2008 and 2012. These recommendations were taken forward as part of the [Migration Statistics Improvement Programme \(MSIP\)](#) of work in conjunction with other government departments.

Further work undertaken as part of Phase Two of the MSIP included using administrative data sources in the development of plausibility ranges around population estimates, quality indicators and measures of uncertainty in the population estimates and delivering potential statistical benefits of e-borders on the estimation of international migration. The MSIP delivered Phase Two in March 2012, completing the programme a year ahead of schedule.

Following the publication of results from the 2011 Census, work has been undertaken to understand the reasons for the difference between the population estimates rolled forward from 2001 and those based on the 2011 data. The results of this reconciliation exercise have been used to inform revisions to the population estimates for mid-2002 to mid-2010 to ensure the availability of a consistent time series of population estimates.

We are continuing research into internal migration, in particular looking at further improving the estimation of students' destinations when they move after leaving study; estimating moves of armed forces and prisoner populations; better estimating moves within the year of people who are not present at the start (or the end) of the year and into updating the model used for estimating emigration at the local authority level. We expect to use the new methods in 2018 when producing the mid-2017 population estimates and will also look to provide a revised series of consistent estimates back to 2011 at that time.

We welcome comments on our research priorities and the proposed publication plan.

The strategy for population statistics is available at [Improving our Population and Migration Statistics](#).

Revisions

Estimates affected by the revisions described in this section remain on the ONS website but are superseded by the latest release.

Details of minor corrections are made available alongside affected tables.

Note about revised mid-2012 to mid-2014 estimates following an error in the age distribution of the mid-year estimates for Scotland

The data presented in the [Population Estimates for UK, England and Wales, Scotland and Northern Ireland, revised: mid-2012, mid-2013 and mid-2014](#) release published on 28 April 2016 include corrected 2012, 2013 and 2014 estimates that address the previously announced error in the age distribution of the mid-year population estimates for Scotland for the years 2002 to 2014. These errors only affected areas within Scotland; population estimates for England, Wales and Northern Ireland were unaffected. Whilst the estimated age distribution of the UK population was affected for the period, the total estimates of the UK population remained valid.

For subnational areas of Scotland the errors had only a very small effect on the total population estimates for council and NHS board areas. The errors in the (total) council area populations were less than 0.10% in all council areas. In percentage terms, the largest underestimate was 0.07% in Angus and the largest overestimate was 0.09% in Dundee City, both in 2014. In absolute terms, all errors were generally very small; the largest was an overestimate of 130 people for Dundee City.

The errors affected the age distribution of the estimated population in Scotland and thus also the age distribution of estimates provided for Great Britain and UK populations. The errors affected the age distribution of the population, particularly in the age range 17 to 25. In percentage terms the largest underestimate in the total estimated population of Scotland for mid-2014 was 1.28% at age 21 and the largest overestimate was 2.28% at age 18. At UK level in percentage terms these resulted in a largest underestimate in the total estimated population for mid-2014 of 0.11% at age 21 and a largest overestimate of 0.18% at age 18.

The [Population](#) section of the National Records of Scotland (NRS) website has further information on the causes of the errors, their impact and how NRS reached the decision for the approach taken. This includes tables showing the cumulative net impact of the errors for the 2012, 2013 and 2014 mid-year estimates at Scotland, council and NHS board area level by sex and age.

Note about revised mid-2013 estimates following an error in the distribution of the foreign armed forces

The data presented in the [Population Estimates for UK, England and Wales, Scotland and Northern Ireland, Mid-2013 and Mid-2014](#) release published on 25 June 2015 include corrected 2013 estimates that address the previously announced error in the distribution of the foreign armed forces (FAF) special population presented in the earlier release of 26 June 2014. The original error had the largest impact on the estimate for Forest Heath, with smaller impacts in other affected local authorities in England. Note that the national population estimates of the UK and its constituent countries have not been revised and remain valid.

Table 1 presents those local authorities and higher geographies that have revised estimates for mid-2013 that are in the absolute range of 50 or above.

Table 1: Local authorities and higher geographies in England that have revised population estimates for mid-2013 in the absolute range of 50 or above

| Code | Name | Error (Published 26 June 2014 - correct) | Corrected 2013 estimate (published 25 June 2015) | Error as percentage of correct estimate |
|-----------|------------------------------|--|--|---|
| E07000201 | Forest Heath | 2,000 | 61,200 | 3.3 |
| E07000155 | South Northamptonshire | 200 | 87,200 | 0.2 |
| E10000029 | Suffolk | 1,400 | 734,500 | 0.2 |
| E07000139 | North Kesteven | 100 | 109,800 | 0.1 |
| E07000011 | Huntingdonshire | 100 | 172,000 | 0.1 |
| E10000021 | Northamptonshire | 200 | 706,400 | 0.0 |
| E10000019 | Lincolnshire | 100 | 724,400 | 0.0 |
| E12000004 | EAST MIDLANDS | 300 | 4,598,400 | 0.0 |
| E12000008 | SOUTH EAST | -100 | 8,792,800 | 0.0 |
| E12000006 | EAST | -100 | 5,954,300 | 0.0 |
| E10000025 | Oxfordshire | -100 | 666,200 | 0.0 |
| E07000177 | Cherwell | -100 | 143,800 | -0.1 |
| E10000020 | Norfolk | -900 | 871,000 | -0.1 |
| E10000003 | Cambridgeshire | -700 | 632,800 | -0.1 |
| E07000008 | Cambridge | -200 | 126,700 | -0.2 |
| E07000143 | Breckland | -400 | 132,900 | -0.3 |
| E07000146 | King's Lynn and West Norfolk | -500 | 149,300 | -0.3 |
| E07000204 | St Edmundsbury | -500 | 111,800 | -0.4 |
| E07000009 | East Cambridgeshire | -500 | 85,900 | -0.6 |

Source: Office for National Statistics

Of the other affected local authorities and higher geographies that have revised estimates for mid- 2013, there were seven local authorities and one county with absolute revisions in the range 10 to 49, with 28 local authorities and four counties having absolute revisions in the range 1 to 9. The remaining 304 local authorities in England and Wales (and all local authorities elsewhere in the UK) were unaffected by this revision. The full list of affected geographies is available on request.

The revised estimates relate to a special population and as such have been restricted to ages in the range 18 to 59 with the great majority of revision being for males rather than females.

When we identified the error we sought users' views on the preferred approach to correcting the estimates. We did this through direct contact with the most affected users, Local Insight Reference Panel events, posts on Stats Usernet and by publicising the error in our published outputs.

Taking into account the responses we received we have:

- kept the affected 2013 estimates on the website but marked them as superseded
- published the corrected 2013 estimates alongside the 2014 estimates released on 25 June 2015

Coherence and comparability

(Coherence is the degree to which data that are derived from different sources or methods, but refer to the same topic, are similar. Comparability is the degree to which data can be compared over time and domain, for example, geographic level.)

The Office for National Statistics (ONS) compiles and publishes population estimates for the UK using estimates for England and Wales (also produced by ONS), estimates for Scotland produced by [National Records of Scotland](#) and estimates for Northern Ireland produced by the [Northern Ireland Statistics and Research Agency](#). Population estimates for each of the UK constituent countries are compiled using a common methodological approach and aim to be as consistent as possible. More information on comparisons between UK constituent countries can be found in [Consistency of methods used for population statistics across UK countries](#).

Where very substantial changes in methods are implemented, we seek to publish a consistent back series of estimates to the year of the previous census. So, the rebasing of estimates to the results of the 2011 Census was accompanied by the publication of [a full set of comparable estimates back to 2002](#).

Further information about recent changes to methodology for local authority population estimates can be found on the [Migration Statistics Improvement Programme](#) pages. As noted in the previous section, the next substantial change in methods is provisionally scheduled for implementation in 2018, at which point a back-series to 2011 would be expected to be produced. This provisional plan will be the subject of consultation with users before finalising.

The mid-year population estimates provide data on components of population change that have overlap with other ONS topic outputs. The coherence of these data can be affected by both reporting periods and context.

The comparability of migration statistics used to calculate the population estimates are described in the [Quality and Methodology Information for Long-Term International Migration \(LTIM\)](#) and the [Quality and Methodology Information for Internal Migration Estimates](#). The LTIM estimates cited for a year may be different to the international migration component of change in the population estimates for two reasons.

Firstly, the LTIM estimates are available on a quarterly rolling-year basis and the estimates for, say, 2014, would conventionally be taken as relating to the calendar year, whilst the population estimates component of change necessarily relates to the period between mid-years. Secondly, even when comparing estimates for the same period, the estimates used to calculate the population estimates are based partly on provisional LTIM data rather than final (also see the Other information section) and will therefore not tally exactly with the final year-to-end-June figures published in the Long-Term International Migration series.

Estimates of births and deaths used to calculate the population estimates are based on births and deaths that occur during the year to the mid-year reference point, irrespective of when registered. This definition is different to that used in other ONS outputs on births and deaths that use alternative reporting periods (for example, calendar year) and measure birth and death registrations rather than occurrences and figures quoted from the components of change in the population estimates will therefore be slightly different from the standard ONS outputs related to these events.

The mid-year population estimates are used both within and outside government as the definitive set of population figures for the UK, constituent countries and subnational geographies to local authority level. They are used for calculating other official population statistics such as population projections, small area population estimates, population estimates by marital status and estimates of the very old population. These outputs are consistent with the current series of mid-year population estimates, though there is inevitably a lag between population estimates for a particular year being published and this being reflected in the derived products.

In addition to the official mid-year population estimates, alternative population estimates are supplied to [Eurostat](#) that are produced using different methods and reference dates. These estimates are produced for the UK and subnational nomenclature of territorial units for statistics (NUTS) geographies. They are used by Eurostat for calculating European demographic indicators. These estimates are not consistent with the current series of mid-year population estimates given the alternative methods used in their production and dissimilar reference dates.

Users often compare population estimates for individual local authorities to other data sources, for example, administrative records or anecdotal evidence. Comparisons between datasets should be treated with caution, as there are always definitional differences in the data collected (for example, whether the data differentiate between long-term or short-term migration, or whether they account for individuals who have left the country or authority). Also, other data sources may cover only a subset of the population.

8 . Concepts and definitions

(Concepts and definitions describe the legislation governing the output and a description of the classifications used in the output.)

Although the population estimates are not explicitly required by law, they would seem to be consistent with our duty under Section 5 of the [Census Act 1920](#) to collect and publish “any available statistical information” with respect to the number and condition of the population between censuses.

A [conceptual framework for population and migration statistics](#) (including the population estimates) is available.

The mid-year population estimates are consistent with the standard UN definition for population estimates, which is based upon the concept of usual residence and includes people who reside, or intend to reside, in the country for at least 12 months, whatever their nationality. Visitors and short-term migrants (who enter or leave the UK for less than 12 months) are not included.

Members of Her Majesty's armed forces stationed in England and Wales are included at their place of residence but those stationed outside England and Wales are excluded. Members of the US armed forces stationed in England and Wales are included. Students are taken to be resident at their term-time address. Prior to 2011, prisoners had been regarded as usually resident at an institution if they have served 6 months or more of a custodial sentence; however, from 2011 onwards this definition has changed to those who have been sentenced to serve 6 months or more, which is consistent with the definition used in the 2011 Census. The figures for the UK do not include the population of the Channel Islands or the Isle of Man, which are Crown Dependencies rather than part of the UK.

For some people, the concept of usual residence is more complicated. People with no usual residence are counted in the census as being usually resident in the area in which they were staying on census day.

“Visitor switchers” (people who enter a country intending to visit but end up staying and becoming a usual resident) and “migrant switchers” (people who enter a country intending to become a usual resident but leave before that happens) are adjusted for at the time of their move into or out of the country rather than the precise point that they change their intentions or reach the 12-month threshold. This adjustment is made by applying multiplying factors to the estimates of visitors and migrants as described in the [Long-Term Migration Estimates methodology](#).

Although usual residence is the recognised definition for population estimates, use of a single definitional base does not meet the needs of all users. The usually resident population does not always coincide with the number of persons to be found in an area at a particular time of day or year. The daytime populations of cities and the summertime populations of holiday resorts, for example, will normally be larger than their usually resident populations.

We have developed and published national estimates of short-term migrants to supplement the mid-year population estimates. These estimates refer to the flows of short-term migrants to and from England and Wales for each year since mid-2004. As part of the [Migration Statistics Improvement Programme](#), methods for producing short-term migration estimates at local authority level have been developed. Further information about these estimates can be found in the [Short-Term Migration Estimates methodology](#).

Population estimates are produced with a standard reference date of 30 June – that is, mid-year. This is consistent with previous releases and with other statistics, such as the population projections, and also provides a simple estimate of the “population at risk” for data collected on a calendar year basis.

9 . Other information

Output quality trade-offs

(Trade-offs are the extent to which different dimensions of quality are balanced against each other.)

In order to maintain the timeliness of the publication of the population estimates at national and local authority level, the data sources used are the best available at the time of production. However, these may not be final or published sources. Some provisional International Passenger Survey (IPS) data are used in the international migration component and information on the differences between these and final data are reported in the [Long-Term International Migration QMI](#).

Note about availability of Migrant Worker Scan data for estimating international migration at local authority level in the mid-2015 estimates

At the time of production of the mid-2015 population estimates, 2015 data for the Migrant Worker Scan (MWS) was not available. The MWS provides number of National Insurance Numbers (NINos) allocated to new migrants and is linked to both Patient Register and Higher Education Statistics Agency data to provide the distribution of international in-migrants at local authority level. Due to the unavailability of the 2015 MWS data, the distribution of international in-migrants at local authority level in the mid-2015 population estimates was instead based on the average of the local authority distributions of international in-migrants used in the mid-2012 to mid-2014 population estimates. This is in line with our commitment to use the best available data sources at the time of production.

The MWS is also one of the inputs to the local authority level emigration model. In place of 2015 MWS data here, the average of the equivalent information used in the mid-2012 to mid-2014 emigration model was used.

This change to the information used to estimate international migration affects:

- local authority estimates of international migration
- local authority population estimates

The size of the impact on the mid-2015 population estimates is not yet clear. Once data are available to make meaningful comparisons with the published estimates, and the size of the impact is understood, any necessary revisions will be considered in line with the [Population Statistics revisions policy](#).

Assessment of user needs and perceptions

(The processes for finding out about uses and users, and their views on the statistical products.)

Information on users' needs for, and perceptions of, the population estimates is collected in a number of ways:

- user groups, for example, the [Central and Local Information Partnership](#); and the [Population and Migration Statistics Inter-Departmental Strategy Group](#) - allowing main users to comment on existing plans and to put forward changes in their requirements
- user events, such as the [Local Insight Reference Panels](#): open to a range of users and held in different parts of the country to encourage discussion on plans and existing products
- contact with individual users – drawing on the evidence provided by the thousands of users who contact the Population Estimates Unit each year with requests for, or queries on, the estimates

Evidence existing in 2013 was combined with our existing research on user personas to produce a User Requirements Report, setting out the priorities for outputs and the requirements to meet the needs of each type of user.

From 2014 onwards, evidence collected through these methods is brought together in November of each year to inform an update of the Population Estimates User Requirements report, with a view to implementing any required changes in the following year's release, where possible.

10 . Sources for further information or advice

Accessibility and clarity

(Accessibility is the ease with which users are able to access the data, also reflecting the format in which the data are available and the availability of supporting information. Clarity refers to the quality and sufficiency of the release details, illustrations and accompanying advice.)

Our recommended format for accessible content is a combination of HTML web pages for narrative, charts and graphs, with data being provided in usable formats such as CSV and Excel. The Office for National Statistics website also offers users the option to download the narrative in PDF format. In some instances other software may be used, or may be available on request. Available formats for content published on the ONS website but not produced by ONS, or referenced on the ONS website but stored elsewhere, may vary. For further information please refer to the contact details at the beginning of this report..

For information regarding conditions of access to data, please refer to the following links:

- [Terms and conditions](#) (for data on the website)
- [Copyright and reuse of published data](#)

[Accessibility](#)

The population estimates release consists of a combination of HTML web pages for narrative, charts and graphs (brought together in a statistical bulletin), with data being provided in usable formats such as CSV and Excel. The bulletin can also be downloaded in PDF format.

As statistical disclosure control methods are applied to each component of the estimates, the standard outputs now include the most detailed (single year of age and sex) estimates at the local authority level and there is no requirement for Data Access agreements to use the estimates at any level of detail. Alternative presentations of the data – in response to a [user requested data query](#) or a [Freedom of Information request](#) – are made available on the ONS website simultaneously with provision to the requester under the principle of equal access.

A list of those people having pre-release access to the estimates for briefing purposes is linked in to the main release page for each set of estimates.

In addition to a summary table, providing the main results on one page, detailed unformatted tables can be downloaded free of charge in Microsoft Excel format. These provide unrounded data, which

are published to promote further analysis for users. A note provided with these detailed tables states that the estimates should not be taken to be accurate to the level of detail provided. An [Analysis Tool](#) (in Excel) is also published to help users easily manipulate the data.

Any additional enquires regarding the mid-year population estimates can be made via email pop.info@ons.gov.uk or telephone on +44 (0)1329 444661.

Advance notice of any forthcoming major changes in methodology will be announced on the ONS website.

Useful links

[Mid-year population estimates methods guide](#)

[Further research on population statistics](#)

[Population estimates by marital status](#)

[National population projections](#)

[Local area migration indicators](#)

[Quality and Methodology Information](#)

[2011 Census](#)

**Appendix 2: 2016 Mid-year estimates
Comparator tool (QA Pack) Tending
Excerpt**

Introduction

This Quality Assurance Pack was released alongside the 2016 mid-year estimates produced by the Office for National Statistics (ONS). It provides estimates of the usually resident population at mid-year 2016 (30 June) and various comparators used in the quality assurance process. This is a summary version of the information used during quality assurance of the estimates.

Information is provided on the population at national, regional, county and constituent Local Authority District and Unitary Authority level, by age and sex. The mid-year estimates are provided by five year age bands. Data contained within the pack are rounded to the nearest 10. There may be inconsistencies with comparator data published elsewhere because of rounding and disclosure control.

Selecting an area from the drop down menu at the top of the "analysis 1" page will provide you with information on your chosen area.

Guidance

To ensure the tool works correctly please enable macros.

Chart 1 - Data comparison

This provides access to mid-year estimate and administrative data by quinary age and sex, including sex-ratios. You can toggle data series on and off using the check boxes to the right of the chart and toggle between males, females, all persons and sex-ratios using the drop down menu at the top of the screen. Data for 2016, 2011 and for 2011 aged on to 2016 (enabling direct cohort comparison) are available. Descriptive commentary on each age group and the relationship between each administrative data source and the mid-year estimates is displayed below the chart.

Data for 2011 are provided as this gives the clearest picture of the strengths and weaknesses of administrative data, this is because mid-year estimates for this year are almost entirely determined by the 2011 Census.

Chart 2 - Percentage difference between administrative source and Mid Year Estimates (MYEs)

This interactive scatterplot provides the user with the relationship between each administrative source and the mid-year estimates for each age group in 2011 together with the position of the local authority selected by the user in 2011 and 2016.

The purpose of this is to highlight when the administrative source is likely to be a strong or weak indicator of the real population and to show any overriding biases in the administrative sources.

This information is vital when interpreting the differences between administrative sources and mid-year estimates in 2016. If sex-ratios are selected the chart shows the distribution of sex-ratios in 2011 against those in 2016.

Chart 2a - Comparison of percentage change between 2011 and 2016 shown by administrative sources and MYEs

This interactive scatterplot provides the user a comparison of the percentage change between 2011 and 2016 shown by a selected administrative data source and the MYEs for local authorities across England and Wales.

Chart 3 - Comparison of sex-ratios by age in 2011 and 2016

Sex-ratios (males/females *100) provide a useful indication of the quality of the mid-year estimates. This chart shows the distribution of sex-ratios by for the 2011 mid-year estimates, this provides a useful guide to the range in which we would normally expect the sex-ratios for each age group to fall. Alongside this it presents the sex-ratios for the local authority selected for 2011 and for 2016 on a consistent cohort basis. Excessive change in the sex-ratios and sex-ratios outside of the "normal" range indicated by the 2011 MYEs may indicate problems with the MYEs. High sex-ratios can be legitimate in some areas, for example, if they have high proportions of armed forces.

Chart 4 - Total fertility rates

Total fertility rates (TFRs) are a useful diagnostic tool in assessing the validity of the mid-year estimates, as the mid-year estimates move away from their initial Census base they accrue various discrepancies. The accumulation of these discrepancies causes the distribution of the TFRs based on the mid-year estimates to spread. This scatter plot shows the 2011 TFRs plotted against the 2016 TFRs for each local authority in England and Wales.

The version of this tool released on the 22nd June does not include this analysis. The tool will be re-released following the release of the Births Summary publication at which point it will include data on fertility.

Chart 5,6 & 7 - Uncertainty around 2011 census based mid-year estimates

The 2011 Census underpins the mid-year estimate series. The estimates based on the census are subject to sampling error for which estimates are available.

Chart 8 & 9 - Difference between MYEs between 2011 and 2016

These charts show the change between 2011 and 2016 on a cohort basis for each sex age group, chart 7 shows the change for the MYEs and chart 8 for the patient register.

The use of cohort analysis

Where practical this tool attempts to provide analysis on a cohort basis, that is comparing the same group of people in two years rather than comparing the same age group in two years.

The use of automatic text

Italicised text in this tool is automated, changes to menus will change the information displayed.

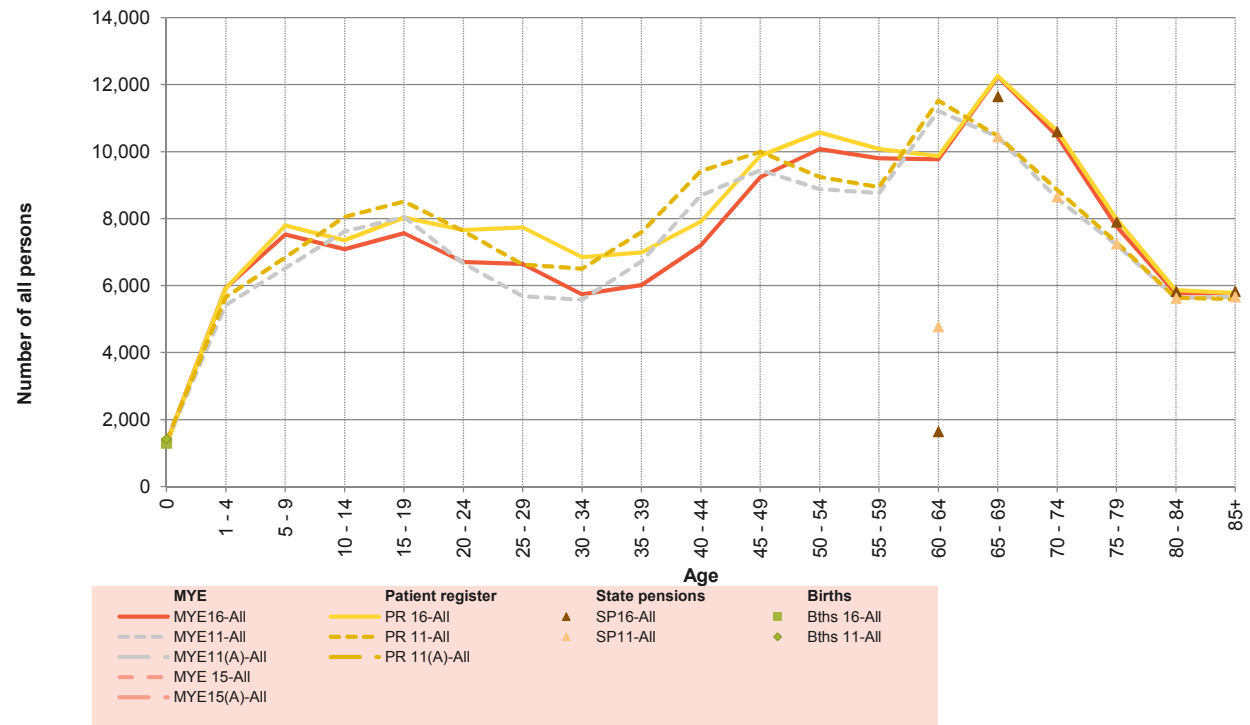
1. Select area.....

Tendring

2. Select males/females/all persons/sex-ratios

All persons

Chart 1, Data comparison for Tendring, All persons



3. Select Data Series

- Mid-year estimate 2016
- Patient register 2016
- State Pension 2016
- Births 2016
- Mid-year estimate 2015
- Mid-year estimate 2015 (aged on)
- Mid-year estimate 2011
- Patient register 2011
- State Pension 2011
- Births 2011
- Mid-year estimate 2011 (aged on)
- Patient register 2011 (aged on)

Note: This chart provides access to data for the current year as well as for 2011. Data for 2011 is available on both a period and cohort basis. Data on a period basis is useful when looking at estimates for local authorities which have some fixed age structures that we would expect to persist over time, for example, if they have universities or armed forces bases. Data on a cohort basis is more useful in most other circumstances as they directly compare the same group of people in two years.

Note: Lines joining five year age points are for illustrative purposes only.

**Appendix 3: CLG Housing Supply, Net
Additional Dwellings, England
(Excerpt)**



Department for
Communities and
Local Government

Housing supply; net additional dwellings, England: 2016-17



Housing *Statistical Release*

16 November 2017

- Annual housing supply in England amounted to 217,350 net additional dwellings in 2016-17, up 15% on 2015-16.
- The 217,350 net additions in 2016-17 resulted from 183,570 new build homes, 37,190 gains from change of use between non-domestic and residential, 5,680 from conversions between houses and flats and 720 other gains (caravans, house boats etc.), offset by 9,820 demolitions.
- 18,887 of the net additions from change of use were through 'permitted development rights' (full planning permission not required). These comprised 17,751 additional dwellings from former offices, 330 from agricultural or forestry buildings, 106 from storage buildings and 700 from other non-domestic buildings

| | |
|---|----|
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| National trends in net additional dwellings | 2 |
| Components of net additional dwellings | 4 |
| Sub-national trends | 7 |
| Communal accommodation | 8 |
| Definitions | 13 |
| Technical notes | 14 |
| Enquiries | 20 |

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newsdesk@communities.gsi.gov.uk

Date of next publication:

November 2018

Table 1: Annual housing supply; net additional dwellings, England: 1991-92 to 2016-17¹

| Financial Year | Net additional dwellings | Change from previous year (percentage change) |
|-----------------------|---------------------------------|--|
| 1991-92 | 165,000 | .. |
| 1992-93 | 151,000 | -8% |
| 1993-94 | 152,000 | 1% |
| 1994-95 | 166,000 | 9% |
| 1995-96 | 163,000 | -2% |
| 1996-97 | 154,000 | -6% |
| 1997-98 | 156,000 | 1% |
| 1998-99 | 149,000 | -4% |
| 1999-00 | 148,000 | -1% |
| 2000-01 | 132,000 | -11% |
| 2001-02 | 146,700 | 11% |
| 2002-03 | 159,870 | 9% |
| 2003-04 | 170,970 | 7% |
| 2004-05 | 185,550 | 9% |
| 2005-06 | 202,650 | 9% |
| 2006-07 | 214,940 | 6% |
| 2007-08 | 223,530 | 4% |
| 2008-09 | 182,770 | -18% |
| 2009-10 | 144,870 | -21% |
| 2010-11 | 137,390 | -5% |
| 2011-12 | P 134,900 | -2% |
| 2012-13 | P 124,720 | -8% |
| 2013-14 | P 136,610 | 10% |
| 2014-15 | P 170,690 | 25% |
| 2015-16 | P 189,650 | 11% |
| 2016-17 | P 217,350 | 15% |

1. The dwelling counts from the 2001 and 2011 Census were previously used to revise the estimates from 1991-92 to 2010-11. See the 'Scheduled revisions' section for further information.

2. In 2000-01 a new data collection system was introduced to improve estimates of housing supply and collect information on the components of supply. See the 'notes' section for further information.

^P Figure provisional and subject to revision.

Appendix 4: AMR Affordable Housing Excerpts

Tendring
District Council



Authorities Monitoring Report
1st April 2015-March 2016

Gross affordable housing completions

| | |
|---|---|
| <p>Purpose:</p> | <p>To show affordable housing delivery.</p> |
| <p>Definition:</p> | <p>Social rented, affordable rented and intermediate housing, provided to eligible households whose needs are not met by the market. Eligibility is determined regarding local incomes and local house prices. Affordable housing should include provisions to remain at an affordable price for future eligible households or for the subsidy to be recycled for alternative affordable housing provision. Affordable housing is measured in gross terms i.e. the number of dwellings completed, through new build, acquisitions and conversions. This does not take account of losses through sales of affordable housing and demolitions.</p> <p>Social rented housing is owned by local authorities and private registered providers, for which guideline target rents are determined through the national rent regime. It may also be owned by other persons and provided under equivalent rental arrangements to the above, as agreed with the local authority or with the Homes and Communities Agency.</p> <p>Affordable rented housing is let by local authorities or private registered providers of social housing to households who are eligible for social rented housing. Affordable Rent is subject to rent controls that require a rent of no more than 80% of the local market rent (including service charges, where applicable).</p> <p>Intermediate housing is homes for sale and rent provided at a cost above social rent, but below market levels subject to the criteria in the Affordable Housing definition above. These can include shared equity (shared ownership and equity loans), other low cost homes for sale and intermediate rent, but not affordable rented housing.</p> |
| <p>Result:</p> | <p>Gross affordable housing completions 2015/16 = 7</p> <p>Ken Gatward Close, Wittonwood Road, Frinton-on-Sea – 3 x 3BH (1 affordable rent and 2 shared ownership)</p> <p>Mendlesham Close, Clacton-on-Sea – 4 x 1BH (all affordable rent)</p> |
| <p>Commentary:</p> | <p>The Strategic Housing Market Assessment Affordable Housing Needs Study of January 2016 identified an annual need of 165 affordable homes each year for Tendring District. This 165 can form part of the 550 homes required each year under the Objectively Assessed Housing Needs report dated November 2016.</p> |
| <p>Implication for the future:</p> | <p>There is an overwhelming need for affordable housing in Tendring, as identified in the Strategic Housing Market Assessment Affordable Housing Needs Study of January 2016. The current rate of affordable housing delivery does not meet this need and so a major priority for the Council is to adopt its new Local Plan that aims to help bring about economic growth and job opportunities whilst delivering a mix of new homes, including a viable level of affordable housing.</p> |
| <p>Data sources:</p> | <p>Building Control Completion Certificates.</p> |



Tendring
District Council



Authorities Monitoring Report
1st April 2014 to 31st March 2015
Position Statement

| Gross affordable housing completions | |
|---|--|
| Purpose: | To show affordable housing delivery. |
| Definition: | <p>Social rented, affordable rented and intermediate housing, provided to eligible households whose needs are not met by the market. Eligibility is determined with regard to local incomes and local house prices. Affordable housing should include provisions to remain at an affordable price for future eligible households or for the subsidy to be recycled for alternative affordable housing provision. Affordable housing is measured in gross terms i.e. the number of dwellings completed, through new build, acquisitions and conversions. This does not take account of losses through sales of affordable housing and demolitions.</p> <p>Social rented housing is owned by local authorities and private registered providers, for which guideline target rents are determined through the national rent regime. It may also be owned by other persons and provided under equivalent rental arrangements to the above, as agreed with the local authority or with the Homes and Communities Agency.</p> <p>Affordable rented housing is let by local authorities or private registered providers of social housing to households who are eligible for social rented housing. Affordable Rent is subject to rent controls that require a rent of no more than 80% of the local market rent (including service charges, where applicable).</p> <p>Intermediate housing is homes for sale and rent provided at a cost above social rent, but below market levels subject to the criteria in the Affordable Housing definition above. These can include shared equity (shared ownership and equity loans), other low cost homes for sale and intermediate rent, but not affordable rented housing.</p> |
| Result: | Gross affordable housing completions 2014/15 = 16 |
| Commentary: | The 16 new affordable housing dwellings built in 2014/15 are: 11/00037/FUL – Land Adj.142 Harwich Road, Mistley |
| Implication for the future: | There is an overwhelming need for affordable housing in Tendring, as identified in the Strategic Housing Market Assessment (SHMA) (last updated in 2013 but under review as of January 2016). The current rate of affordable housing delivery does not meet this need and so a major priority for the Council is to adopt its new Local Plan that aims to help bring about economic growth and job opportunities whilst delivering a mix of new homes, including a viable level of affordable housing. |
| Data sources: | Residential Land Availability Survey 2015 & Building Control Completion Certificates. |



**Annual Monitoring Report
1 April 2013 to 31 March 2014**

Position Statement

February 2015

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| | <p>The above decisions have therefore had the effect of increasing the supply of land for gypsies and travellers by 6 pitches i.e. 6 of the 10 pitches needed up to 2033, thus reducing the residual requirement to 4. Therefore, at the time of writing, the Local Plan only needs to identify sufficient land to deliver an additional 4 pitches.</p> |
| <p>Implication for the future:</p> | <p>The government's Planning Policy for Traveller Sites (PPTS) requires Councils to use robust evidence to establish the projected accommodation needs of gypsies and travellers and to use this evidence to set 'pitch targets' in their Local Plans and to allocate specific sites to meet this requirement.</p> <p>The 'Essex Gypsy and Traveller and Travelling Showpeople Accommodation Assessment on behalf of Essex Planning Officers Association (hereafter the 'Gypsy and Traveller Accommodation Assessment' or 'GTAA') was published in July 2014. This assessment provides projections for the number of permanent gypsy and traveller pitches needed in each local authority in Essex for the 20-year period 2013-2033.</p> <p>For Tendring, the projected requirement is 10 additional pitches between 2013 and 2033 which is one of the lowest requirements in Essex. However, since the base date of the GTAA in July 2013, there have been a number of planning decisions that have helped to address part of this requirement. These decisions have reduced the number of additional pitches that the Council needs to plan for, through specific allocations in the Local Plan, to just 5.</p> <p>Through the new Local Plan, the Council will need to identify sufficient land to deliver this requirement and will also need to include a 'criteria-based' policy that will be used to judge any applications for additional gypsy and traveller pitches.</p> |
| <p>Data sources:</p> | <p>The Council's planning records and the Gypsy and Traveller Accommodation Assessment.</p> |

Gross affordable housing completions

| | |
|---------------------------|--|
| <p>Purpose:</p> | <p>To show affordable housing delivery.</p> |
| <p>Definition:</p> | <p>Social rented, affordable rented and intermediate housing, provided to eligible households whose needs are not met by the market. Eligibility is determined with regard to local incomes and local house prices. Affordable housing should include provisions to remain at an affordable price for future eligible households or for the subsidy to be recycled for alternative affordable housing provision. Affordable housing is measured in gross terms i.e. the number of dwellings completed, through new build, acquisitions and conversions. This does not take account of losses through sales of affordable housing and demolitions.</p> <p>Social rented housing is owned by local authorities and private registered providers, for which guideline target rents are determined through the national rent regime. It may also be owned by other persons and provided under equivalent rental arrangements to the above, as agreed with the local authority or with the Homes and Communities Agency.</p> <p>Affordable rented housing is let by local authorities or private registered providers of social housing to households who are eligible for social rented housing. Affordable Rent is subject to rent controls that require a rent of no more than 80% of the local market rent (including service charges, where applicable).</p> |

| | |
|------------------------------------|--|
| | Intermediate housing is homes for sale and rent provided at a cost above social rent, but below market levels subject to the criteria in the Affordable Housing definition above. These can include shared equity (shared ownership and equity loans), other low cost homes for sale and intermediate rent, but not affordable rented housing. |
| Result: | Gross affordable housing completions 2013/14 = 3 |
| Commentary: | The 3 new affordable housing dwellings built in 2013/14 represent part of a redevelopment scheme in Harwich. |
| Implication for the future: | There is an overwhelming need for affordable housing in Tendring, as identified in the Strategic Housing Market Assessment (SHMA) (last updated in 2013). The current rate of affordable housing delivery does not meet this need and so a major priority for the Council is to adopt its new Local Plan that aims to help bring about economic growth and job opportunities whilst delivering a mix of new homes, including a viable level of affordable housing. |
| Data sources: | Residential Land Availability Survey 2014. |

Appendix 5: Land Adj. 142 Harwich Road Committee Report (Excerpt)

| | | |
|---------------------|--|--|
| Application: | 11/00037/FUL | Town / Parish: Mistley Parish Council |
| Applicant: | English Rural Housing Association | |
| Address: | Land Adj. 142 Harwich Road Mistley Essex | |
| Development: | Construction of 15 affordable rural dwellings with associated parking, carports, cycle stores, and new vehicular access. | |

1. Executive Summary

- 1.1 This application is for the construction of 15 affordable dwellings with associated parking, carports, cycle stores and new vehicular access. The application is to be assessed as a 'Rural Exception Site' and as such falls to be considered under the criteria of Policy HG5 of the adopted Tendring District Local Plan (2007).
- 1.2 The proposed development meets the criteria for an 'exception site' as the site abuts the defined development boundary of Mistley. Furthermore, a housing needs survey, that has been carried out in conjunction with Mistley Parish Council, identifies a clear need for affordable rural housing in this location and secure arrangements are in place to ensure the dwellings remain exclusively for local need for the lifetime of the development.
- 1.3 The design, layout and scale of the proposed development would contribute to the character of the area and the development would not adversely impact upon highway safety, ecology or residential amenity in the locality.
- 1.4 It is recommended that this application is approved subject to the prior completion of a Section 106 to provide a financial contribution for public open space and arrangements are in place to ensure the dwellings remain exclusively for local need for the lifetime of the development.
- 1.5 The application was deferred at the Planning Committee of the 2nd June to enable members to undertake a site visit on the 21st June.

Recommendation: Approve

That the Temporary Head of Planning (or equivalent authorised officer) be authorised to grant outline planning permission for the development subject to:-

- (a) Within 2 months of the date of the Committee's resolution to approve, the completion of a legal agreement under the provisions of section 106 of the Town and Country Planning Act 1990 dealing with the following matters
 - Public Open Space Provision; and
 - Dwellings remain for local need.
- (b) Planning conditions in accordance with those set out below (but with such amendments and additions, if any, to the detailed wording thereof as the Temporary Head of Planning (or the equivalent authorised officer) in their discretion considers appropriate) and with the reason for approval set out in (i) below.

- Landscaping/Environmental Considerations
- Highways/Parking

Context

6.1 The application site is located on the southern side of Harwich Road adjacent to the defined development boundary for Mistley. The site is currently an arable field margin with dead wood and trees. To the site frontage is a hedgerow that is located on a raised bank. To the south and east of the site is arable farmland and to the north and west is post-war residential development mainly comprising of semi-detached properties set on relatively large plots. The site measures approximately 54m in depth and has a frontage onto Harwich Road of 97m.

Proposal

6.2 Erection of 15 affordable homes with associated sheds, parking and landscaping, and construction of new vehicular access and internal access road. The scheme will include public open space and off-street car-parking to serve the 15 new units. The 15 units will include: 2 x 1 bedroom units, 10 x 2 bedroom units, and 3 x 3 bedroom units. The tenure of the properties is split with 12 dwellings to be offered for rent and 3 dwellings for shared ownership.

Policy Context

- 6.3 PPS3 makes provision for exceptional circumstances when housing can be provided on land outside, but abutting, a settlement boundary where it can be demonstrated that housing is required for a justified local need.
- 6.4 It is an indisputable fact that this site abuts an existing settlement boundary and therefore this element of the policy requirement is satisfied. Various other sites were considered in the pre-application stage and were dismissed due to; protective landscape designations, the presence of important trees and lack of availability. In terms of assessing appropriate location, the identified site is not considered to raise any specific concerns in respect of impact on the character of the countryside. Obviously the introduction of built form will have a significant impact on the open character of the immediate area, although that is a consequence of such exception sites, emphasising the importance of securing a well designed scheme (addressed below). The land in question is within a coastal protection belt, but is not subject of any other special landscape or nature protection designations. Therefore, with reference to the other sites assessed this site is the preferred choice in terms of its suitability as a rural exception site.
- 6.5 This application proposes such an 'exception' site and must be considered against the specific criteria as identified within PPS3 and the relevant adopted local plan policy HG5. Policy HG5 states that proposals will need to:- provide evidence of local need; have secure arrangements in place to ensure that the dwellings remain exclusively for local need in perpetuity; shall cater exclusively for local needs and shall have no material adverse impact upon the landscape, residential amenity, highway safety or the form and character of the settlement to which it adjoins.

Identified Local Need

6.6 Following surveys of local need carried out in conjunction with Mistley Parish Council, the application has been made identifying a requirement for 15 new homes, the tenure of the

properties is split with 12 dwellings (4 flats and 8 houses) being offered for rent and 3 dwellings for shared ownership. The methodology that was applied to the survey is considered appropriate and the resulting findings acceptable. Furthermore the Council's Housing Department has stated that the council's housing needs survey has identified a significant housing shortfall and whilst most of the housing need emanates from the urban centres a clear need has been identified for affordable homes for local people in more rural settlements. Local market housing in many rural areas is priced at a level, which is out of reach for many local people, and if rural communities are to remain sustainable it is essential that more affordable rural housing is delivered. Accordingly, it is considered that an appropriate local need has been demonstrated, thereby satisfying the first criterion in respect of rural exception sites.

Secure Arrangements – Section 106

- 6.7 A further criterion is that secure arrangements are put in place to ensure that the dwellings constructed remain exclusively for local need throughout the lifetime of the development. This can be done through the imposition of a legal agreement thereby satisfying this requirement. It is proposed that three of the units would be 'shared ownership', and 12 units for rent. The scheme does not propose a 'mixed' development incorporating private housing. Officers at the Council's Development Team have considered the appropriate level of contribution under policy COM6 for a public open space contribution and agreed a figure of £10,000 having regard to the policy and recent government guidance. The Section 106 has been requested and is awaiting completion.

Design/Impact

- 6.8 In design terms, the estate proposed is considered to create an attractive environment in its own right. The use of a mix of narrow and wider frontage properties and a good mixture of materials provide visual interest throughout the scheme and assist in breaking up the built form. The development ensures that the street scene fronting Harwich Road has been suitably addressed by providing a continuous built form set to the rear of a proposed hedgerow behind the required visibility splay. To the rear of the Harwich Road frontage are detached houses and a 'barn style' building accommodating flats that would reflect the former agricultural use of the site. A landscaped open area has been incorporated into the layout adjacent to the proposed flats. This area will also accommodate a soak-away to deal with surface water drainage.
- 6.9 The development would be located adjacent to the end of the built form along the southern side of Harwich Road, however as the built form continues along the north of Harwich Road the proposed development would not appear as an intrusive extension in the countryside but as a continuation of residential development to reflect the northern side of Harwich Road.

Residential Amenity

- 6.10 Due to the close relationship of the units to the rear and of those addressing Harwich Road careful consideration has been given to the fenestration. Window locations have been arranged and detailed to maximise views of the proposed landscape areas and countryside views to the south, whilst retaining the privacy and natural surveillance of the street and parking areas. The first floors of plots 1-5 have been designed to prevent the overlooking of the rear gardens of the properties in Rigby Avenue due to the orientation of the dwellings, the windows not serving main habitable rooms and the degree of separation involved.

Appendix 6: Methodology used to produce the 2014-based SNPP for England

Methodology used to produce the 2014-based subnational population projections for England

This report documents the methodology and data used in producing the 2014-based subnational population projections for England published on 25 May 2016 and lists the changes from previous projections. It also discusses the impact that the methodology or data used may have had on assumptions made and the resulting projections.

Contact:

Release date:
25 May 2016

Next release:
To be announced

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1 . Introduction

This report documents the methodology and data used in producing the [2014-based subnational population projections](#) for England published on 25 May 2016. It also discusses the impact that the methodology or data used may have had on assumptions made and the resulting projections. There have been changes to the methodology used for the subnational population projections over time. These are summarised in Annex A.

The 2014-based subnational population projections for England provide an indication of the possible size and structure of the future population, based on the continuation of recent demographic trends and are produced on a consistent basis across all local authorities in England. Population projections for English regions, counties and clinical commissioning groups (CCGs) are produced from the local authority projections.

Subnational projections are usually published every 2 years by the Office for National Statistics (ONS), although [interim 2011-based projections](#) were published on 28 September 2012 to fulfil a specific user requirement for projections based on the 2011 Census results. The [2012-based subnational population projections](#) were subsequently published on 29 May 2014.

The projections are trend-based, making assumptions about future fertility, mortality and migration levels based on trends in recent estimates, usually over a five-year reference period. They give an indication of what the future population size and age and sex structure might be if recent trends continued. They are not forecasts and generally take no account of policy nor development aims that have not yet had an impact on observed trends.

The Department for Communities and Local Government uses projections as an input into producing household projections. The projections are also used by the Department for Health for healthcare planning, by central and local government for modelling and longer term planning purposes, and by various other groups for planning and research purposes.

The subnational population projections usually have a consultation period. For the 2014-based projections ONS consulted all users about what they need from the projections and related outputs. Additionally English local authority and county council representatives were invited to see and comment on the provisional projections for their area. [ONS's response to the consultation](#) has been published.

2 . Overview of methodology

The subnational population projections use the internationally accepted cohort component methodology. These 2014-based projections take the local authority [2014 mid-year population estimates](#) as their starting point. Change in population is calculated by modelling trends. Data for up to 6 preceding years are used, so for the 2014-based projections trends were based on data from the years 2009 to 2014. The projections based on these trends are constrained to the assumptions made for the principal [2014-based national population projection](#) for England.

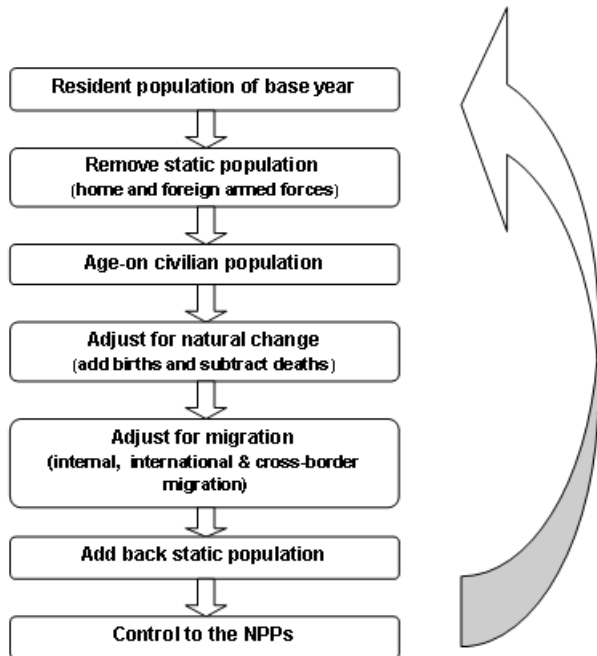
The projections model splits population between the armed forces and civilian population and treats them differently. The population of armed forces are treated as a 'static population' whose size and age and sex structure does not change over the projection period.

The projections for each year are calculated by first removing this static population to produce a civilian population. The civilian population from the previous year is then aged-on, local fertility and mortality rates are applied to calculate projected numbers of births and deaths, and the population is adjusted for internal (movement between areas within England), cross-border (movements between England and the other countries of the UK), and international (movements between England and countries outside of the UK) migration. For example, for the first year of these projections, the mid-2014 to 2015 change is applied to the mid-2014 base to produce the new mid-2015 population estimate.

Each component (except internal migration) is constrained to its respective total in the 2014-based national population projection for England. Similarly, once the static population has been added back, the projected population is controlled to the 2014-based England principal population projection. This process is repeated for each year of the projection period.

This diagram below illustrates the projection process.

Projection process



The population at the end of each cycle becomes the base population of the next cycle. The process in each stage is discussed in more detail in later sections of this report.

Projections for CCGs are not produced directly using this method but are based on the projections created for local authorities. In many cases CCG areas are coterminous with local authorities or aggregations of local authorities, in which case projections for these areas would be calculated by aggregating the appropriate local authority projections. Where areas are not coterminous, CCG projections will be produced by apportioning local authority level projections, based on [estimates of CCG populations](#), by age and sex at June 2014.

3 . Base population, static population and ageing on

The [2014 mid-year population estimates](#), rolled forward from the 2011 Census and published on 25 June 2015, provide the starting point as the base data for these projections. These estimates refer to the population at their usual place of residence. This includes all those temporarily away from home (for 6 months or less) and excludes visitors. Armed forces stationed outside England are not included, but those stationed inside England are included. Asylum seekers and visitor switchers (people who enter a country intending to visit, but stay 12 months or more to become usual residents) now residing in England are included. Students are taken to be resident at their term-time address.

The resident population is divided into 2 types for the purposes of projection:

- the civilian population
- armed forces (both home and foreign)

The civilian population refers to the usually resident population excluding home and foreign armed forces who are also usually resident. Home and foreign armed forces constitute a separate population type and are treated as a static population in that their size and age and sex structures are assumed to remain constant over the projection period in the local area they reside at 30 June 2014. See the discussion in the international migration section for information about how the armed forces returning from Germany assumed in the national projections have been treated in the subnational projections.

Data on UK armed forces are supplied by the Defence Statistics, Ministry of Defence and data on foreign armed forces originate mainly from US Air Force statistics. They will include numbers of home and foreign armed forces usually resident in an area. They do not include armed forces dependants; these are included in the civilian population.

Resident armed forces are removed from the usually resident population to create the civilian population at the start of processing each projection year. The civilian population is then aged-on 1 year to become the appropriate age in the following year of the projection. For example 17-year-olds in Birmingham in one year will become the basis for the 18-year-olds in Birmingham for the next year. The population is then adjusted for births, deaths and migration, and in the final stage the resident armed forces are added back in.

4 . Births

Projected numbers of births are calculated by applying assumed local authority age-specific fertility rates (ASFRs) to the population to derive a number of births, by age of mother. It is then further assumed that for every 100 girls born there will be 105 boys born. This is the same ratio as used in the national projections. These births figures for local authorities are then constrained to add up to the number of births projected in the 2014-based national population projections for England, and finally these are added to the aged-on population.

Data used

Birth data come from registered births collected by the General Register Office by local authority, age of mother (ages 15 to 44 inclusive) and sex of child. The [population estimates](#) used to calculate fertility rates are the latest available based on the mid-2014 population estimates and the revised back series of population estimates which include the results of the 2011 Census.

Detailed methodology

The projections model calculates local authority-level ASFRs for each of the past 5 years using births between mid-year points by age of mother and the population at the end of that period. National-level ASFRs are calculated in a similar way using the total number of births in a year and the total population at the end of the year. The sum of the 5 local ASFRs is then divided by the sum of the 5 national ASFRs to create an average differential for each local authority. The differentials are then applied to the national ASFRs from the first year of the national population projections in order to calculate local ASFRs.

The projected number of births is then calculated for each year by multiplying the local level ASFRs by the number of women of the corresponding age, local authority and year. Projected total births are then split by sex of child using a fixed national sex ratio at birth (105 boys to every 100 girls).

The total number of births is controlled to the national projected total of births by dividing the national birth data by the aggregated local authority birth data for each combination of age of mother against sex of child. This gives a scaling factor for each age/sex combination, which are then applied to the local authority level data. This method ensures that the component, in this case births, sums to the national total.

The following adjustments were made in the 2014-based subnational projections to improve the projections of births in local areas:

- fertility rates are capped to be no greater than 5 times the national fertility rate. No areas were affected by this capping for the 2014-based projections.
- For the Isles of Scilly, fertility rates were replaced by the assumed fertility rates used in the national population projections for England. This is because fertility rates for this area are highly volatile due to its small population size.
- Where fertility rates for a single year of age were zero, these were replaced by the projected national rates. The ASFRs for 15 and 16 year old women in City of London, 15 year old women in Ribble Valley and 15 year old women in West Somerset were replaced by the national rates. As fertility rates for these ages are very low the impact of this adjustment on the projected number of births for these areas was minimal.

These births then become the infants for the year being projected.

5 . Deaths

Projected numbers of deaths are calculated by applying assumed local authority-level age/sex-specific mortality rates (ASMRs) to derive numbers of deaths, by age and sex. These are then controlled to add up to the number of deaths projected in the national population projections for England, and finally these are subtracted from the aged-on population.

Data used

Death data come from registered deaths collected by the General Register Office by local authority, age and sex. The [population estimates](#) used to calculate mortality rates are the mid-2014 population estimates and the revised back series of population estimates which include the results of the 2011 Census.

Detailed methodology

The projections model calculates local authority-level ASMRs in a similar method to that used for the fertility rates. ASMRs are created for each of the past 5 years using number of deaths occurring between mid-year points by age and sex and the population at the end of the year. National-level ASMRs are calculated in a similar way using the total number of deaths in a year and the total population at the end of the year. The sum of the 5 local ASMRs is then divided by the sum of the 5 national ASMRs to create an average differential for each local authority. The differentials are then applied to the national ASMRs from the first year of the national population projections in order to calculate local ASMRs.

The projected number of deaths is then calculated for each year by multiplying the local-level ASMRs by the population for each age and sex in each local authority.

The total number of deaths at that age and sex is controlled to the national projected total of deaths by dividing the national death data by the local authority death data. This gives scaling factors by age and sex which are applied to the local authority level data. This method ensures that the number of deaths sums to the national total.

The following adjustment was made in the 2014-based subnational projections to improve the projections of deaths in local areas:

- mortality rates are capped to be no greater than 5 times the national mortality rate. No areas were affected by this capping for the 2014-based projections.
- for the Isles of Scilly and the City of London, mortality rates were replaced by the assumed mortality rates used in the national population projections for England. This is because mortality rates for these areas are highly volatile due to their small population size.
- where mortality rates were zero for an individual age/sex for an area these were replaced by the projected national rate for that age/sex. Most local authorities were affected by this adjustment.

These deaths are then subtracted from the aged-on population.

6 . Internal migration

Adjusting for the expected number of people entering and leaving a local authority by age and sex is done separately for internal, cross-border and international migration using different methodologies. This section describes the data sources and methods for internal migration.

An internal migrant is defined as someone who changes their local authority of residence between one year and the next. In the subnational population projections, internal migration is defined as migration between areas within England only. For some other uses internal migration is defined as including migrant flows between England and Wales, Scotland and Northern Ireland, but in the subnational projections these are referred to as cross-border flows. This is because the methodology used to project internal migration requires a full matrix of flows into and out of each local authority by single year of age and sex. This level of detail is not required to project cross-border migration and it is therefore treated separately.

Internal migration estimates produced by ONS provide an origin-destination matrix which provides information on moves from each local authority to every other local authority by sex and single year of age. To project internal migration moves, five-year trend data from 2009/10 to 2013/14 are used to estimate the average proportion of the population at that age and sex that has left a particular local authority and where they have moved to. By applying these proportions to the population figures, estimates of internal migration flows between areas are calculated. By adding up the estimated number of outflows of internal migrants from every other authority into a particular authority, the inflows into that authority are calculated. The population is then adjusted for these internal moves between areas and at the end of this step we have a temporary population which has been adjusted for internal migration.

Data used

Migration is recognised as the most difficult component of population change to estimate as there is no compulsory system within the UK to record movements of the population. At present ONS uses a combination of 3 administrative data sources as a proxy for internal migration within England and Wales: the National Health Service Central Register (NHSCR), the Patient Register Data Service (PRDS) and Higher Education Statistics Agency (HESA) data. ONS uses these data sources to calculate the internal migration component of the mid-year population estimates, which forms the basis upon which projected internal migration is calculated.

The published population estimates series data for internal migration are used to calculate the trends in the 2014-based subnational population projections. The methodology used to create the internal migration estimates changed with the 2011/12 estimates. Further information on the [methodology used to estimate internal migration between 2007 and 2011](#) and the [current methodology](#) is available.

The [population estimates](#) used to calculate internal migration rates are the mid-2010 to mid-2014 population estimates.

Detailed methodology

The proportion of people moving from one local authority is calculated by dividing the number of people moving out of the area by the number of people living there. This is calculated separately for males and females by single year of age for each of the trend years individually and then a five-year average is calculated to produce rates of out-migration by age and sex. In some local authorities with small numbers of moves and/or populations, this can lead to atypical rates which produce unrealistic results in the projected population. To overcome this, adjustments are sometimes made to smooth the data. These can take the form of upper limits (or caps) on migration rates, or the replacement of rates with appropriate alternatives. The following adjustment was applied in the 2014-based projections:

- the assumed proportion of people of any individual age and sex group moving out of an area was capped at a maximum rate of 0.75. Four local authorities have been affected by this capping; Chiltern, Isles of Scilly, Oadby and Wigston, and Rutland
- for Oadby and Wigston, the internal out migration probabilities for males were replaced by those for females for ages 19 to 25. This was to overcome a known issue in the population estimates regarding a first year University of Leicester student hall of residence situated in Oadby and Wigston. More detail relating to this adjustment is available in the 2014-based subnational population projections [quality and methodology information report](#).

No other specific local authority adjustments have been made to the internal migration assumptions for the 2014-based projections.

The out-migration rates are applied to the aged-on civilian population (after adjusting for births and deaths) in each authority in order to estimate the number of internal out-migrants for the projected year.

To distribute the projected out-migrants to a destination local authority, the origin-destination matrix is used. The probability of a person moving from local authority A to local authority B given that they are moving from local authority A is calculated by dividing the number of people moving from A to B by the total number moving out of A using 5 years' trend data.

The total inflow for each authority is calculated by adding the outflows from every other authority into this particular authority.

The net internal migration adjustment for each local authority, by age and sex, is calculated by subtracting outflows from inflows. The total net internal migration adjustment across all local authorities in England must sum to zero, as these are movements within the country, not between countries.

The population is then adjusted for these internal moves between areas and at the end of this step we have a temporary population which has been adjusted for internal migration

Impacts of methodology and data used

In 2013 we extended the method used to estimate internal migration for the population estimates and projections to better reflect moves of students, both to and from their place of study. A [paper](#) outlining this work was published on the ONS website. We are continuing research into internal migration, in particular looking at further improving the estimation of students' destinations when they move after leaving study; estimating moves of armed forces and prisoner populations; and better estimating moves within the year of people who are not present at the start (or the end) of the year. We plan to publish an update on this work later in 2016.

The internal migration assumptions are set in terms of the probability of moving out of an area. For the majority of areas and most ages, the calculated probabilities are realistic even though there are delays in some people registering with a GP after moving. This is because either, there are no material delays in GP registration for that age group, this would be expected for families and older people, or the delays cancel out. For example, any estimate of 22 year old movers will include those who moved in the year the estimates refer to, while they were 22, and re-registered with a new GP. It will also include some people who moved in previous years, when they were younger (for example aged 20 or 21) but who delayed re-registering with a new GP until the year the estimate refers to, by which time they had turned 22. However, the estimate will also miss 22 year olds who did move during the reference period but who have not yet changed their GP registration. When these individuals do re-register in future, they will contribute to estimates referring to a different year, and for an older age group depending on their age by that point (for example estimates of 23 or 24 year olds). If the additional 22 year olds in an estimate are similar to the missed 22 year olds, errors will cancel out and the estimated out migration probabilities used in the projections model would still be realistic.

However, for some age groups in some areas, there are reasons why they may not be similar. These areas are more likely to be those with large student populations. The impact of this will be an over estimation of the migration rates at some ages and an under estimation at other ages. We plan to review this issue prior to the next round of population projections.

Overall ONS believes that the projections for the total population in an area to be robust. However, users are advised to take this into account when interpreting the projected figures by age.

7 . Cross-border migration

Adjusting for the expected number of people entering and leaving a local authority by age and sex is done separately for internal, cross-border and international migration using different methodologies. This section describes the data sources and methods used to create the cross-border migration. Cross-border migration is the moves made by people between England and the rest of the UK.

Data used

Cross-border migration between England and the rest of the UK is captured in a similar way to internal migration flows. Flows between England and Wales are produced using the same data sources as for internal migration.

Information on moves in to, and out of, Scotland and Northern Ireland are collected and treated differently from moves within England and Wales, by using data from National Records of Scotland and the Northern Ireland Statistics Research Agency. Further information is available in the [internal migration estimates methodology guide](#).

Detailed methodology

To calculate cross-border moves, an average of 5 years' cross-border estimates data from 2009/10 to 2013/14 has been used to give an average count of moves between local authorities in England and the other countries of the UK (Wales, Scotland and Northern Ireland).

The assumption is that this average remains constant for the whole projection period; however, this is not strictly accurate, as with the other components, the cross-border migration is controlled to the national population projections, by age and sex for each year, so the local authority level figures may be scaled up or down according to the national projected cross-border moves. In the 2014-based national population projections, cross border moves were set as rates rather than as a fixed number of migrants for the first time. The constrained local authority projections therefore reflect this change to the method. For technical reasons, there is a small discrepancy (approximately 200) between the NPP cross-border flows for England and the total of the SNPP flows for 2022 onwards: however consistency between NPPs and SNPPs is maintained through the final constraining process.

The population is then adjusted for these cross-border moves and at the end of this step we have a temporary population which has been adjusted for cross-border migration.

8 . International migration

Adjusting for the expected number of people entering and leaving a local authority by age and sex is done separately for internal, cross-border and international migration using different methodologies. This section describes the data sources and methods for international migration.

The national projections international migration assumptions are made in terms of in and out flows of international migrants (including adjustments for visitor and migrant switchers) and asylum seekers into England. These streams are used in the subnational population projections with the inflows (immigration), outflows (emigration) and asylum seekers modelled separately. The data sources and methods are described for each stream below.

The outflows from each stream are subtracted from their respective inflows to calculate the net flow for each stream by local authority, age and sex. These net flows are then added to the temporary population, which was created in the preceding migration step.

Data used

The main source of information on international migration is the International Passenger Survey (IPS). This is a voluntary sample survey of passengers travelling through airports, seaports and the Channel Tunnel. It provides information on the number of people intending to stay in, or leave, the UK for 12 months or more. Adjustments are made to account for people who enter or leave the country initially for a short stay but subsequently decide to remain for a year or more ("visitor switchers") and people who originally intend to be migrants but in reality stay in the UK or abroad for less than 1 year ("migrant switchers").

The 2014-based subnational population projections use the published international migration component of population change as used in the published population estimates series. Estimates from mid-2006 to mid-2011 include the adjustments for additional EU8 migrants identified when the population estimates were revised after the 2011 Census. Details about this can be found in the report [Methods used to revise the subnational population estimates 2002 to 2010](#). The 2014-based subnational projections use an average of international migration estimates for year ending mid-2009 to year ending mid-2014.

Local authority estimates for immigration are created by distributing migration estimates directly from the national to local authority level using administrative data sources. Details about this methodology were first published with the [indicative mid-year population estimates](#) in November 2011. Estimates of emigration for local authorities are created by using a statistical model which uses the IPS and other data sources to create a more robust estimate of emigration at local authority level. Details about this methodology were published with the [improvements to the mid-2008 population estimates](#) in November 2009.

The 2014-based subnational projections trend data for international migrants are already adjusted for visitor and migrant switchers so they are being modelled as part of the international migration flows.

Detailed methodology

For immigration (international inflows) an average of 6 years' historic trend data from year ending mid-2009 to year ending mid-2014 has been used to give an average count of moves of international migrants into local authorities in England. The assumption is that this average remains constant for the whole projection period; however, as with the other components, this inflow is controlled to the national population projections, by age and sex for each year, so according to the national projected immigration the local authority level figures may be scaled up or down. See section discussing some impacts of constraining to the national population projections.

The method used for calculating emigration (international outflows) in the 2014-based subnational population projections remains unchanged. For consistency with previous projections, 6 years of historic trend data are used. To ensure that each year's trend data is not more heavily weighted than any other, the 6 years of trend data are averaged using weights based on data at a national and regional level to create an average count of moves of international migrants out of local authorities. Within this process the assumption is that this average remains constant for the whole projection period; however, as with the other components, this outflow is controlled to the national population projections, by age and sex for each year, so according to national projected emigration the local authority level figures may be scaled up or down.

Some impacts of constraining to the national population projections

As already mentioned controlling to the 2014-based national population projections migration assumptions will entail scaling of the local trends calculated. Therefore there may be a step change between recent trends locally and the assumptions used in the subnational population projections. Six years' data are used to create the local trends in the subnational projections, however, the national projections use different models and a much longer time series in setting the national long term assumptions. Therefore it is not unusual for the assumptions made for international migration to be at a different level to a simple average of the latest local data.

For the 2014-based national projections, a linear trend from the mid-2014 international migration estimate to the long-term migration assumption was applied to the inflow and outflow data to derive the short-term assumptions. In the first year of the projection a further adjustment was made to the projected immigration assumption for all countries of the UK based on provisional migration data available for the first 6 months of the year. The international migration assumptions for England therefore show a rise in immigration in 2014 to 2015 from the mid-2014 estimate followed by a decline to the long-term assumption which is constant from 2020 to 2021 onwards. For emigration there is a very small gradual rise from the mid-2014 estimate to the long term assumption. Due to constraining it is common for the international migration projections for a local authority to mirror these England-assumed trends.

The 2014-based national population projections made allowance in the international migration assumptions for planned returning armed forces personnel and their dependants from Germany between the year ending mid-2016 and the year ending mid-2018. The standard subnational population projection methodology distributes these according to the international migration flows and not where armed forces are currently based in England. Local authorities where there are large numbers of armed forces need to be aware of this and make allowance for these separately in their planning if they have specific information about this. However, in the case of Wiltshire, a specific adjustment was made for the anticipated return of armed forces to the area. More detail relating to this adjustment is available in the 2014-based subnational population projections [quality and methodology information report](#).

9 . Asylum seekers

Data on asylum seekers and their dependants are provided by the Home Office and the National Asylum Support Service. Applications for asylum (excluding an estimate of those removed from the UK within 1 year and a small number of asylum seekers captured by the IPS) provide the basis for estimated inflows of asylum seekers. Data on removals, refusals, withdrawals and appeals for principal applicants and dependants are used to estimate outflows of asylum seekers leaving the UK after 12 months or more without being captured by the IPS.

Only the most recent year of data is used, and the numbers are assumed to remain constant through the projection period. Asylum seeker data at local authority level are controlled to the national projections to produce the assumptions.

10 . Final constraining stage

At the England level, the subnational population projections are consistent with the [2014-based national population projections](#) for England. The underlying assumptions used in the national projections are agreed in liaison with the devolved administrations following consultation with key stakeholders and after seeking expert advice. 2014-based national population projections data and supporting documentation are available on the ONS website.

After adjusting for natural change and migration, the home and foreign armed forces populations are added back to the adjusted civilian population, and a final constraining stage for the population figures is undertaken.

The birth, death and migration components have all been controlled to the corresponding England data at the end of each projection year. However, the subnational projections components of change do not always fully explain the change in total population between one year and the next. This is due to a difference in the processing order and way mortality and fertility rates are applied in the national population projections and the subnational population projections. Consequently a final controlling step takes place to ensure that the subnational population projections add up to the national population projections by both age and sex. This is done as the last process in the cycle of producing the projection for a year which then forms the base population for the next year's calculation. This process is repeated to produce each year's subnational population projections and is why the components of change in the subnational population projections do not necessarily fully equal the population change between one year and the next in the projections.

11 . Annex A – Changes to subnational population projections methodology

Table 1: Changes to subnational population projections methodology

| Methodology changed | Description | Projections round change first implemented |
|-------------------------|--|--|
| Cross-border migration | National population projections cross-border migration assumptions set as rates rather than numbers of migrants. Although subnational migration methodology is not directly changed, figures are constrained to national flows calculated on the new basis. | 2014-based |
| International migration | Visitor switchers are no longer being modelled separately because data for visitor switchers are now included with the main international migration data and are therefore modelled with these flows. | 2012-based |
| Internal migration | Capping of the proportion of people of any individual age and sex group moving out of an area to another area within England was changed to 0.75 (was 0.80 in 2010-based projections) | 2012-based |
| International migration | Up to mid-2008, estimates of migration from the Republic of Ireland were made separately from IPS flows and were therefore treated separately in the subnational population projections methodology. They are now included in IPS flow data so are projected along with other international migration flows. | 2010-based |
| International migration | Projections are based on the migration estimates from the indicative mid-year estimates which used new methods to distribute in-migrants to local authorities. These were based on distributing migration estimates directly from the national to local authority level using administrative data sources. | 2010-based |

Source: Office for National Statistics

Appendix 7: High Court Decisions on Affordable Housing Needs

Case No: CO/4055/2014

Neutral Citation Number: [2015] EWHC 370 (Admin)

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
PLANNING COURT

Manchester Civil Justice Centre
Strand, London, WC2A 2LL

Date: 19/02/2015

Before:

MR JUSTICE STEWART

Between:

Satnam Millennium Limited
- and -
Warrington Borough Council

Claimant

Defendant

Christopher Lockhart-Mummery QC (instructed by **King & Wood Mallesons**) for the
Claimant

David Manley QC (instructed by **DLA Piper**) for the **Defendant**

Hearing dates: 03 & 04 February 2015

Judgment

Mr Justice Stewart:

1. The Claimant is a developer and owns some 65 hectares of land known as Peel Hall Farm (“Peel Hall”) in the designated suburban area of Warrington. The land is annotated on the Key Diagram of the adopted Local Plan.
2. The Claimant’s application is under section 113 of the Planning and Compulsory Purchase Act 2004 (the 2004 Act). The Claimant seeks to quash/remit parts of the Local Plan Core Strategy (Local Plan) for Warrington. Depending upon my rulings on the Grounds of challenge, the parties have agreed to try to resolve precisely which parts of the Local Plan would be quashed and remitted. The Local Plan was adopted by the Defendant on 21 July 2014.
3. An outline chronology of relevant events in relation to the Local Plan is as follows:

| | |
|-------------------|--|
| Nov-Dec 2011 | public consultation on the Council’s Pre-Publication Draft Core Strategy, |
| May 2012: | publication of the Council’s Submission Draft Core Strategy, |
| September 2012: | submission of the Submission Draft Core Strategy to the Secretary of State for Communities and Local Government for examination, |
| 11 December 2012: | the Examination Inspector (“the Inspector”) holds an exploratory meeting, |
| June 2013: | the examination hearings take place, |
| August 2013: | consultation on proposed modifications to the draft Local Plan, |
| January 2014: | further period of consultation on proposed modifications to the draft Local Plan, |
| 5 March 2014: | further examination hearing, |
| 12 May 2014: | the Inspector issues his report, |
| 21 July 2014: | adoption of the Local Plan, |
| 28 August 2014: | this claim issued. |
4. The Claimant, who has for some years promoted Peel Hall for residential/mixed use development, made representations throughout the evolution of the Local Plan. Their aim was that the Local Plan should provide what they submit is an appropriate level of housing development, and having Peel Hall allocated for primarily residential development or, at least, to have the status of a “Strategic Location”.
5. The summary criticisms of the Local Plan are:

- (i) That it fails to provide an appropriate level of housing development in Warrington over the plan period of 2006 – 2027.
- (ii) It does not allocate Peel Hall for residential development – at a late stage in the process it allocated the Omega site as a Strategic Location for the development of 1100 dwellings.
- (iii) It abandons previous policy CS9 which gave Peel Hall and other locations the status of Strategic Locations.

Statutory and Policy Materials

6. The main relevant statutory policy and guidance materials are set out in Appendix 1 to this judgment.

Ground 1: Relevant Case Law

7. Before I address the challenge under Ground 1 I shall mention certain principles which have emerged from the cases. A section 113 challenge can be brought on the basis of conventional public law principles – see Blyth Valley Borough Council v Persimmon Homes (North East) Limited¹; Solihull MBC v Gallagher Estates Limited and Lioncourt Homes (“Gallagher”)².
8. If a Local Planning Authority (LPA)/an Inspector do not properly reflect the requirements of National Policy and Guidance, then the Local Plan is open to a section 113 challenge.
9. In Gallagher the Court of Appeal upheld the High Court’s decision remitting the LPA’s Local Plan because the process failed to provide an objective assessment of full housing needs (OAN). This meant that the Inspector’s approach in relation to housing provision was neither correct nor lawful.
10. Paragraph 47 NPPF provides:

“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”.

In relation to this requirement the Court of Appeal had previously stated³:

“That qualification contained in the last clause quoted is not qualifying housing needs. It is qualifying the extent to which the Local Plan should go to meet those needs. The needs assessment, objectively arrived at, is not affected in advance of the production of the Local Plan, which will then set the requirement figure.”

¹ [2008] EWCA Civ. 861

² [2014] EWCA Civ. 1610

³ City and District Council of St Albans v Hunston Properties Limited [2013] EWCA Civ. 1610

11. In Gallagher the Court of Appeal stated:

(Paragraph 10) "... the making of the OAN is an exercise which is prior to, and separate from, the application to that assessment of the impact of other relevant NPPF policies: the phrase "as far as is consistent with the policy set out in this Framework" "is not qualifying housing needs. It is qualifying the extent to which the Local Plan should go to meet those needs"...."

(Paragraph 16) "...The NPPF indeed effected a radical change. It consisted in the two-step approach which paragraph 47 enjoined. The previous policy's methodology was essentially the striking of a balance. By contrast paragraph 47 required the OAN to be made first, and to be given effect in the Local Plan save only to the extent that that would be inconsistent with other NPPF policies...The two-step approach is by no means barren or technical. It means that housing need is clearly and cleanly ascertained.... "[h]ere, numbers matter; because the larger the need, the more pressure will or might be applied to [impinge] on other inconsistent policies."

In paragraph 18 the Court of Appeal said that the two step approach was mandatory.

Ground 1

12. The Claimant summarised this Ground in the Skeleton Argument in this way:

"The Defendant and the Inspector misdirected themselves in law and policy, by failing to meet the critical requirement that the Local Plan should identify and address the full, objectively assessed needs for market and affordable housing ("OAN") in Warrington. The Defendant, aided and abetted by the Inspector, failed to have proper regard to national guidance in the National Planning Policy Framework ("NPPF") and the National Planning Policy Guidance ("PPG") in that it failed to identify the OAN for housing, including affordable housing, whether in Warrington or the housing market area."

13. In order to set the scene, it is necessary to have a little historical background:

- (i) In 2004 RPG13 (Regional Planning Guidance for the North West) became part of the statutory development plan for the area. Policy SD2 stated "In Warrington the focus should be on achieving regeneration and restructuring of the older areas and not allowing further significant outward expansion of the settlement onto open land beyond existing commitments..." Policy UR7 sought to "minimise the amount of land needed for new housing..." RPG13 had a rate of housing growth for Warrington as 380 dpa (dwellings per annum). This figure had been based on 1996 projections.

- (ii) In 2006 the Warrington Unitary Development Plan (UDP) was adopted with Policy HOU1 providing for 380 dpa in the period 2002 – 2016 with no housing development on greenfield sites; Policy HOU2 required that housing development that did not contribute to the regeneration of inner urban areas was to be refused.
- (iii) The Defendant published a Strategic Housing Market Assessment in 2007. This identified a total annual shortfall in Warrington of 1313 dpa stating “the results are driven by demand and are not constrained by any supply limitation, such as that in the draft RSS”.
- (iv) The RSS (Regional Spatial Strategy for the North West) superseded RPG13 in 2008. Policy RDF1 of the RSS said that in locations such as Warrington “development should be focused in and around the centres of the towns and cities. Development elsewhere maybe acceptable if it satisfies other policies...emphasis should be placed on addressing regeneration and housing market renewal and restructuring.”
- (v) In 2010 the DCLG (Department for Communities and Local Government) published 2008 based household projections for 2008 – 2028. The growth in households in Warrington was 840 households per annum.
- (vi) In October 2011 the Mid Mersey Strategic Housing Market Assessment (SHMA) was published. This was in respect of the boroughs of Halton, St Helens and Warrington. Applying the DCLG household projections for 2010 – 2026 a growth in households of 13,800 was projected i.e. 862 dpa. That report also identified a net annual need for affordable housing in Warrington of 477 dpa.
- (vii) In late 2011 the Defendant consulted on Proposed Policy CS2 which provided for housing growth at the rate of 500 dpa (net of clearance) between 2006 and 2027.
- (viii) In May 2012 the Defendant published its proposed Submission Draft Core Strategy, the planned provision for housing being the same as in Proposed Policy CS2. This was two months after publication of NPPF. A Housing Background Paper was also published in May 2012.

Matters appear from the Housing Background Paper which are of importance:

- (a) referring specifically to the NPPF requiring Local Plans to be informed by robust evidence and a SHMA to be used to clarify housing need and demand, and to provide an understanding of how the local housing market works, the Defendant refers back to the November 2007 study (updated in 2009) and states:

“A balanced housing market assessment resulted in a figure of 1313 dwellings per annum being required – this assessment looks at the imbalance in terms of mix and type of housing between supply and demand if the

market was totally unconstrained by Policy and local considerations and assuming all demand should be met” (paragraph 3.3).

- (b) In paragraph 3.8 reference is made to the SHMA “in the collective sense” identifying national household projections of 1560 dpa with Halton pursuing 500 dpa, St Helens 570 dpa and Warrington 500 dpa. It is said “this equates to a collective 1570 which aligns well with the national projections for the sub region.”
- (c) Three options were then considered. Option 2 was “prioritising development of Inner Warrington brownfield sites with selective release of other sites.” (para 5.12).
- (d) In para 5.17 and 5.18 the Paper says that option 2 would equate to an annualised average of 458 dwellings which would “fall slightly short of the requirement from an economic perspective (497 pa) and those set out in the SHMA which relate to national household projections (730 pa) and a completely unconstrained balancing the housing market assessment (1313 pa). *cf* Also para 5.24.
- (e) Finally, before selecting option 2 as the most appropriate option, para 5.33 states:

“Whilst the baseline option 2 position would result in an annualised average which would fall short of meeting projected housing needs, option 2 does allow for the selective release of additional sites within the plan period....a figure of 500 dwellings pa more closely aligns with projected housing needs; would meet more than “native growth”; and would align with the aspired level of new homes set out in the sub regional economic strategy.”

- (ix) In May 2012 the Defendants also published the Strategic Background Paper. That contained references to the RSS which was subsequently revoked in 2013. Amongst other matters it is stated:

- “The Core Strategy broadly continues the strategy established in the UDP, though there are some adjustments to it”⁴
- “The housing land requirement taken forward in the Preferred Option reflects the regional distribution established in the approved RSS...The Core Strategy continues to respect the priority afforded to regeneration in

⁴ Paragraph 2.18

the region and the associated strategic distribution of the development that at this point in time remains part of the approved development plan”⁵

- “The preferred option for the Core Strategy (Strategic Option 2) largely continues the regeneration emphasis of development established within RSS and the adopted Unitary Development Plan”⁶
- (x) In October 2012 the Core Strategy (Local Plan) for St Helens was adopted.
- (xi) The Inspector held an exploratory meeting for the purposes of the examination on 11 December 2012. In January 2013 the Defendant issued a paper⁷ which said that as at 1 April 2012, 5075 of the total planned provision of 10,500 had been delivered, leaving a residual target of some 5425 new homes to be planned for between 2012 and 2027, equating to an annualised average of 362 dpa across the remaining 15 years of the plan period.
- (xii) In January 2013 the Defendant issued Appendix A, Housing Scale and Distribution, saying that the housing provision of 500 dpa had also been derived by reference to the approach advocated by former PPS3 (paras 32 – 33). This document also stated as a Core Assumption:

“Regional priorities for investment and development in the associated distribution of housing need and demand established in RPG/RSS will be maintained as a key factor in establishing the Borough’s housing requirements.”
- (xiii) In March 2013 the Defendant issued a further Response Paper which acknowledged that Warrington’s needs were not to be considered in isolation⁸.
- (xiv) In April 2013 the DCLG issued its 2011 based interim⁹ household projections for the period 2011 – 2021. The projected growth in households for Warrington was 1040 per annum.
- (xv) In April 2013 the Core Strategy (Local Plan) for Halton was adopted.
- (xvi) Otherwise, the brief chronology is set out in paragraph 3 of this judgment.

14.1 The Inspector made the following findings:

- (i) That the Mid Mersey HMA and the SHMA were “critical to the soundness of the Plan” (para 50).
- (ii) “...the Plan provision of 500 dpa would ensure that Warrington played its part in meeting the objectively assessed housing needs across the Mid Mersey sub regional housing market from 2006 to 2026” (para 61).

⁵ Paragraph 3.8

⁶ Paragraph 5.8

⁷ Examination Clarification, Housing Scale and Distribution

⁸ See issue 1.8, paragraph 4; also paragraph 10

⁹ Because population projections had not been determined

- (iii) “The spatial framework of the Plan takes on board the NWRSS regeneration agenda, which aligns itself with a number of the core principles in the Framework...” (para 63).
- (iv) “It is accepted that the Plan under provides housing in relation to both 2008 and the latest (2011) interim household projections, when taken in isolation. However, for the reasons already stated, I consider that Warrington’s housing provision should be assessed in relation to the projected need for the HMA as a whole”. (Para 65).
- (v) “The objective needs assessment for the HMA as a whole would be met by the provision of 500 dpa in Warrington” (para 71).
- (vi) “Although the vision of the Plan and its strategic objectives were prepared under the strategic direction and priorities of the NWRSS, it accords with the Framework (paragraph 47), which refers to meeting the housing needs in the housing market area (HMA), which for the reasons stated is the Mid Mersey sub region” (para 78).
- (vii) “The appropriate geographical unit or “building block” for assessing Warrington’s housing requirements is the Mid Mersey HMA, which has been defined objectively. It includes the Boroughs of Halton, St Helens and Warrington. The needs of the Mid Mersey HMA are some 1600 dpa over the plan period, of which Warrington should supply 500 dpa. Therefore the Plan, subject to the proposed main modifications, is consistent with meeting the full housing needs of Warrington over the plan period...” (para 86).
- (viii) “...I consider that the objectively assessed need for housing for Warrington has been considered as part of the Mid Mersey HMA; that the only permanent constraint has been the Green Belt; and that part of the support of the two neighbouring authorities in Mid Mersey HMA for a suppressed total within Warrington is predicated on the close relationship between jobs and housing within the HMA and the dominance of Warrington as the main employment area, which attracts in – commuters from the other two authorities.” (para 88).
- (ix) “The Hunston Court of Appeal Judgment stated, in essence, that Inspectors are not entitled to use a housing requirement figure derived from a revoked plan, which of course means that Local Plans cannot rely on the constrained housing requirement set out in URS. In fact, the submitted plans breached the RS housing figures by a significant margin, and at no point during examination has the Council’s housing provision case relied on the RS, either directly or as a proxy, as was the case in the Hunston judgments. In conclusion I consider that the Hunston judgments have not necessitated a radical rethink of the planned housing provision...” (paras 89 and 90).

14.2 The issue is whether the Inspector’s Report is in accordance with the law and with policy. The Claimant breaks that down into five separate issues, namely:

- Issue 1 – Does the statutory framework require a local plan to identify the social and development needs arising in its area, and plan for the same?
- Issue 2 – Do National Policy and Guidance require a Local Plan to identify the social and development needs arising in the area of the Local Planning Authority, and plan for the same?
- Issue 3 – Did the Defendant/Inspector direct themselves properly to national policy and guidance and identify full OAN at all (i.e. even in relation to the HMA)?
- Issue 4 – Did the Defendant/Inspector misdirect themselves in assuming that the housing needs of Warrington could or would be met in Halton and/or St Helens?
- Issue 5 – Did the Defendant/Inspector identify affordable housing need as part of the full OAN?

Ground 1 – Issue 1

15. The central findings of the Inspector are his conclusions on Housing requirement as set out in paragraphs 86, 88 – 90 above.
- 16.1 The Claimant relies upon section 13(1), 15, 17(3)(6), 19(1A) 28, 38(3)(b) and 38(6) of the 2004 Act. They particularly emphasise:
- (i) The duties of the LPA in respect of matters affecting/relating to the development/use of land “in their area”¹⁰.
 - (ii) The requirement to specify if there are any development plan documents to be prepared jointly with any other LPAs, and the power of two or more LPAs to agree to prepare one or more joint local development documents (section 15 and 28).

Based upon this, the Claimant points out that the LPA must understand the needs of its area and plan to meet those needs. There is no joint plan or agreement to prepare a joint plan between Warrington/Halton/St Helens. On this basis, the Claimant submits that the Defendant/Inspector did not conform to the statutory framework.

- 16.2 Mention should also be made of section 19(2)(a) which requires the LPA in preparing a Local Plan to have regard to national policies and advice contained in guidance issued by the Secretary of State; also by section 20(5), the purpose of the independent examination by the Inspector is to determine whether a Local Plan is “sound”. As to this there is no further definition of “sound” and one has to have regard to paragraph 182 NPPF (see below).

¹⁰ *cf* also regulations 2(1), 6(1), 14(26) and 48(4) and (5)(a) and Regulation 48(6) and (7) of the Town and Country Planning (Local Development) (England) Regulations 2004; these were superseded by the 2012 Regulations: Regulation 2(1), Regulation 5, Regulation 6, Regulation 9, Regulation 18(2)(c), Regulation 34 and Regulation 35(1).

17. Before dealing with Issue 1, I will consider Issue 2.

Ground 1 – Issue 2

18. In terms of the NPPF, reference is made to paragraphs 14, 17, 47, 153, 156, 157, 159 and 182. Paragraph 14 under the heading “Plan Making” requires LPAs positively to seek opportunities to meet the development needs “of their area”. The Claimant points throughout these paragraphs to words such as “their area”, “its area” (LPA’s area) etc.
19. Also account must be taken of paragraph 17 NPPF which requires every effort to be made objectively to identify and then meet housing development needs of an area and paragraph 47 which requires LPAs to boost significantly the supply of housing. LPAs 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 Policy set out in this Framework....”
20. NPPF paragraph 159, requires LPAs to have a clear understanding of housing needs in their area and to “prepare a Strategic Housing Market Assessment to assess their full housing needs, working with neighbouring authorities where the housing market areas cross administrative boundaries...” The SHMA has to identify the scale and needs of housing and the range of tenures that the local population is likely to need over the planned period which: “...addresses the need for all types of housing, including affordable housing....”
21. Finally paragraph 182 requires the LPA to submit a plan which it considers “sound” namely, “positively prepared - ...based on a strategy which seeks to meet objectively assessed development and infrastructure requirements, including unmet requirements from neighbouring authorities where it is reasonable to do so and consistent with achieving sustainable development...”
22. Reference is also made by the parties to the Guidance under the PPG, relevant extracts from which are set out at Appendix 1.

Ground 1: Issues 1 & 2 – Discussion

23. The relevant HMA in the present case covers the Warrington/Halton/St Helens areas. Therefore, the HMA, not unusually, does not coincide with administrative boundaries¹¹. These three areas comprise the Mid Mersey sub regional housing market, a grouping established since the days of the North West RSS and reaffirmed most recently through the Mid Mersey SHMA (October 2011).
24. According to the Defendant’s documents, paragraph 47 NPPF makes clear that the OAN for housing is to be identified by reference to the relevant HMA.¹² The Claimant, on the other hand, points to the statutory references to the LPA’s “area” together with other references to the LPA’s area in the PPG¹³. As to the references to

¹¹ See the Defendant’s Hearing Statement WBC – C (S10 – LDF118) in response to the Inspector’s issue 1.7; also paragraph 12 of the statement of Michael Bell dated 3 October 2014

¹² The Defendant relies also in this regard to the NPPG’s references to the HMA in the section “Housing and Economic Development Needs Assessment” paragraph 003 – 007 and paragraph 008.

¹³ See NPPG “local plans” paragraph 002 and 003

the HMA the Claimant says (i) that National Policy and Guidance recognises that most administrative areas are not self contained in relation to their development needs and those needs are sensibly considered in the context of the needs and development capacity of proximate administrative areas. (ii) Re paragraph 47 NPPF that an LPA has to assess the needs in its own area, but then has to use its evidence base to ensure that Local Plan meets the full OAN in the housing market area, which may/may not cross administrative boundaries. (iii) In relation to paragraph 159 NPPF, that the SHMA is to assess “their” (ie. the LPA’s) full housing needs, working with the neighbouring authorities where HMAs cross boundaries. This, they say, is consistent with their general proposition. The Claimant contends that the Defendant’s submission, based on certain Policy extracts, that approaching development needs solely on the basis of a HMA which crosses the administrative boundaries, contravenes the statutory framework.

25. The authorities do not yet deal with whether the OAN must be of the individual LPA or the HMA, if the HMA crosses administrative boundaries. In my judgment, as a matter of principle, the law in relation to Issue 1 and Issue 2 ie. the Statutory Framework and the National Policy and Guidance can be distilled in this way:

- (i) The 2004 Act, in relation to the sections cited, refers to the LPA’s “area”. The LPA’s statutory duty is and must be in relation to their area. Thus, the primary duty of the LPA is, to assess the needs of the LPA area. The question remains as to how this is achieved.
- (ii) Para 47 NPPF requires the Local Plan to meet the full OAN in the HMA. That much is clear.
- (iii) Paragraph 159 NPPF is helpful in clarifying this. It is to be noted that it deals particularly with housing. It begins by requiring LPAs to have a clear understanding of housing needs “in their area”. It then proceeds to require LPAs to prepare a SHMA to assess their full housing needs, working with neighbouring authorities where housing market areas cross administrative boundaries. In other words, the LPA has to have the clear understanding of their area housing needs, but in assessing these needs, is required to prepare an SHMA which may cross boundaries.
- (iv) The PPG Local Plan provisions, paragraphs 002 and 003, refer to the LPA’s “area” and do not sit easily with this analysis. Nor do they sit easily, however, with the specific Housing etc needs assessment PPG paragraphs, 003, 007 and 008, which emphasise the needs assessment in the context of the HMA; this part of the PPG states on its face that the related Policy is paragraph 159 NPPF.
- (v) Insofar as the general provisions in paragraph 14 and the plan making provisions in paragraphs 153 and 157 NPPF refer to the “area”, that is to be read as above.
- (vi) Under section 28 of the 2004 Act, two or more LPAs may agree to prepare one or more joint Local Development documents. Para 179 NPPF requires LPAs to work collaboratively with other bodies. The Local Planning section of the NPPG (paragraph 007) reemphasises the duty to cooperate between LPAs and other public bodies when preparing the plan “where there are matters that would

have a significant impact on the areas of two or more authorities.” Paragraph 007 points out that the joint Local Plan “is one means of achieving this”, stating “Less formal mechanisms can also be used.”¹⁴

Ground 1: Issue 3

26. Against that Statutory/Policy/Guidance background, what is the actual position in the present case? Issue 3 is in two parts. I shall deal firstly with the second part, namely whether the Defendant/Inspector identified a full OAN at all, even in relation to the HMA.
27. The starting point for the assessment of OAN is the publication by DCLG of its household projections.¹⁵ These are prepared by reference to administrative areas.
28. I have already stated that LPAs should have a clear understanding of housing needs in their own area. Did the Defendant have such a “clear understanding”? The Defendant’s submission is that they did and that that figure was 862 dpa. The Claimant contests this and says that this figure was never assessed by the Defendant (nor by the Inspector). I find that it was so assessed by the Defendant and by the Inspector. In summary:
 - (i) It was assessed as an integral part of the SHMA. Paragraph 4.24 of that document relies on the 2008 DCLG projections. Figure 4.14 then provides a figure for all three Boroughs. The figure for Warrington equates to the 862 dpa. The figure for the Mid Mersey region equates to 1560 dpa.
 - (ii) In the March 2013 Response Paper “Issues: 1.8 Housing Requirements” the Defendant referred to the Housing Background Paper (May 2012) which identified varying levels of annualised needs ranging between 434 and 1313 and continued (paragraph 8) that the Defendant considered an appropriate benchmark for objectively assessed housing need was provided by way of the 2008 DCLG Household projections. This is clearly adopting the same benchmark as in the SHMA, namely 862¹⁶
 - (iii) In January 2013 Appendix A, Housing Scale and Distribution document, reference is made to the fact that St Helens and Halton Core Strategies had been examined and found sound. Figure 4.14 SHMA is reproduced with the following statement “The Warrington element of the total planned requirement for the Mid Mersey area is less than indicated by the LA based Household projection as indicated in figure 4.14 – Warrington’s need is in the region of c860.” This again clearly adopts a Warrington needs figure of around 862 dpa while commenting that their residual delivery under the SHMA, taking into account St Helens and Halton’s contribution, was 490 dpa.
 - (iv) The Claimant relies heavily on the Housing Background Paper of May 2012. That Paper refers to the SHMAs without highlighting the 862 dpa figure. It

¹⁴ I do not read para 010 if the Housing etc part of the NPPF as stating that a joint plan is the only permissible way to prepare an OAN across boundaries.

¹⁵ *cf* the Gallagher case in the High Court [2014] EWHC 1283 (Admin) para 37(ii).

¹⁶ In fact the DCLG figure was 840 but that is within reasonable tolerance levels

refers to the 1313 dpa being the figure “If the market was totally unconstrained with Policy and local considerations and assuming all demand should be met. The assessment took no account of future additions to the stock from new build”¹⁷ This Paper discusses household projections and promotes option 2 by reference to its consistency with the residual figure of some 500 dpa. It does not of itself specifically identify the 862 dpa for Warrington, before taking into account the affect of the other Boroughs.

(v) Turning to the Inspector’s report, paragraphs 61 – 79 are under the heading “Has Warrington’s Full Housing Requirements Been Identified?” He specifically notes¹⁸ the 2008 DCLG Household projections indicating Warrington’s figure of 850 dpa. In paragraph 65 he points out that it is accepted that the Plan under provides housing in relation to that figure.¹⁹ It is clear at this point that he appreciates from the 2008 figures there will be under provision but says that he considers that Warrington’s housing provision should be assessed in relation the projected need for the HMA as a whole. In his conclusion on the housing requirement he says in paragraph 86 “The needs of Mid Mersey HMA are some 1600 dpa over the planned period, of which Warrington should supply 500 dpa.” This figure i.e. the 1600 is specifically stated to be from the SHMA. It is clearly a reference to figure 4.14, the breakdown of which shows 862 dpa for Warrington.

(vi) Therefore the Inspector said that the needs for the Mid Mersey HMA were some 1600 dpa over the plan period. This, with its analysis to be found in the Mid Mersey HMA, was the OAN of the HMA. This, though it could have been more clearly stated, was in my judgment sufficient compliance with the Statute/Policy/Guidance and with the requirement to assess fully and objectively the housing need.²⁰

29. The remaining issue remaining part of Issue 3 is whether the Defendant/Inspector failed to direct themselves properly to national policy and guidance. Criticism is levelled against the Defendant and the Inspector on the basis that the figure of 500 dpa first appeared in November/December 2011 and was never changed. This is factually accurate. It is also true that this was originally determined by reference to now revoked policies and guidance in the UDP, the RSS and PPS3. The Claimant’s case is that it remained contaminated by these policies which progressively became out of date, at the latest by May 2013.

30. It is unsurprising given the timeframe that the outdated policies were part of the evolving process. I do not accept the Claimant’s criticism. The Inspector clearly took it on board as a point in paragraphs 89 and 90 of his Report. He rejected it. It is correct that in the earlier document of January 2013, namely Appendix A, Housing Scale and Distribution, reference was made to the fact that the figure of 500 dpa “has also been derived by way of reference to the other considerations listed and hence approach advocated by the former PPS3”. Nevertheless, this was the secondary basis.

¹⁷ Paragraph 3.3;

¹⁸ Sub paragraph 64(i)

¹⁹ He also recognises the 2011 interim household projections which were higher but which he determines to be unreliable in paragraphs 67 – 69 of the Report.

²⁰ cf Gallagher [2014] EWHC 1283 (Admin), para 99; Gallagher Court of Appeal paragraphs 10 and 16.

Totally independently and in my judgment lawfully, the earlier part of the document referred to the SHMA, referred to the HMA's need as 1560 dpa and to Warrington's need being in the region of 860 dpa, and adopted the approach of the St Helens and Halton Core Strategies having been found sound and, on their housing requirement provision figures, leaving a residual 490 units for Warrington to deliver.

31. I do not find any criticism of the Defendant or the Inspector on this Ground to be valid. It was consistent with Policy to reduce the starting figure of 862 for Warrington to reflect the SHMA provision as a whole as part of the OAN process. As paragraph 88 of the Inspector's report makes abundantly clear the OAN for housing for Warrington, considered as part of the Mid Mersey HMA, was then reduced to a "suppressed total" "predicated on the close relationship between jobs and housing within the HMA and the dominance of Warrington as the main employment area, which attracts in-commuters from the other two authorities."
- 32.1 The Claimant also submitted that there was no evidence that the 1560 dpa for the HMA is an NPPF compliant figure. However there was no specific development of this theme in the argument. I note in this regard that the Halton and St Helens plans have been adopted and have been found to be sound. That finding, in conjunction with the Inspector's Report which I am considering, is sufficient to dispose of that criticism.
- 32.2 The PPG²¹ requires that the starting point number i.e. that suggested by household projections, should be adjusted to reflect appropriate market signals. These are set out in full in Appendix 1. The Claimant says that the Inspector's Report is silent on the topic and therefore there was an unlawful failure to have regard to the material considerations in the Guidance which is made in relation to NPPF, paragraph 17. The difficulty with this submission is that on the basis of the evidence before the Court, it is wholly unclear that any party to the process, including the Claimant and other developers, suggested market signals might modify the DCLG housing projections. In an ideal world the Defendant and the Inspector should have specifically noted this, but there was nothing before the Court to suggest that the outcome would have been in any way affected. In any event, in the circumstances it would seem to be a pointless exercise to remit on this basis.

Ground 1: Issue 4

33. The Claimant further says that there was a mis-direction by assuming that Warrington's needs could/would be met by Halton/St Helens.
34. The Inspector states in paragraph 66 of his report:
- "It is clear from the SHMA and the evidence provided by the Halton and St Helens Councils, that there is an understanding between the three Mid Mersey Local Authorities that the HMA growth of 1560 dpa is intended to meet the needs of all three authorities, despite the lack of formal agreement to this effect, and that there is a need to ensure a consistent approach across the Mid Mersey HMA..."

²¹ Housing and Economic Development Needs Assessment, paragraphs 019 And 020

35. The Claimant says that not only is there no agreement, there is not even a memorandum of understanding; the Local Plan for St Helens says the provision of 570 dpa is in order to meet “its growth aspirations” and the adopted Local Plan for Halton states that the provision of the 500 dpa meet the need of Halton.
36. Nevertheless, the evidence is clear that the Inspector was right that there is an understanding between the three local authorities. In particular the first joint statement by Halton BC and St Helens Council, at paragraph 1.7 under the SHMA heading, references to the fact that “Para 4.25 of the Mid Mersey SHMA states that taking account of the 570 in St Helens and 500 in HBC, there is a residual 490 dwellings left over for Warrington to meet the 2008 based HH projections for the entire Mid Mersey HMA of 1560 dwellings pa.” It is also stated “we consider that an approach where Warrington seeks solely to have regard to its geographic area alone without any regard to the wider housing market area is similarly not supported by the evidence base raising questions of soundness.”
37. I do not regard the wording of the Local Plans for St Helens/Halton to be in conflict with this.
38. For those reasons I do not consider there is any illegality in the approach of the Defendants/the Inspector on issue 4.

Ground 1: Issue 5

39. Paragraphs 47 and 159 NPPF require respectively that the Local Plan meets the full OAN for affordable housing in the HMA and that the SHMA addresses the need for all types of housing, including affordable housing.
40. The Claimant submits:
- (i) That the assessed need for affordable housing is 477 dpa
 - (ii) The Defendant/Inspector unlawfully failed to identify this need
 - (iii) The NPPF requires full affordable housing needs to be identified as part of the OAN so that the figure can be subject, if appropriate, to the paragraph 14 NPPF constraints.
41. In his report the Inspector said:
- “Affordable Housing
- 102 Policy SN2 sets the framework for securing a mix of housing type. It requires all developments of five or more dwellings to 20% provision for affordable housing (AH), with the proportion rising to 30% on developments of 15 or more dwellings on sites outside the town centre and Inner Warrington, and 30% on all Greenfield sites. The policy was tested by a *Viability Assessment* in September 2010 and an *Additional Note* in January 2013 in response to my request for clarification. The *Additional Note* included sensitivity testing

of a wide range of development scenarios, covering schemes from 5 – 100 dwellings, with varying dwelling mixes, a range of AH proportions (10 – 40%), and the application of these scenarios to indicative locations within the borough.

103. This viability work supports Policy SN2's AH target and demonstrates that the Plans requirements as a whole do not threaten the deliverability of the Plans AH provisions. The potential number of AH units could be exceeded on certain sites, such as those with low existing use values and/or where grant contributions would be forthcoming. The Policy requires demonstration of lack of viability where developers claim that the proportion of AH sought by the Council would not be achievable, and it gives a clear steer on the proportion of social rented and intermediate housing being sought by the Council.

104. The Council's Housing Service supports the AH targets and thresholds in Policy SN2, whilst stressing the importance of negotiation and ensuring a reasonable ongoing provision rather than placing an undue focus on trying to meet the same fixed parameters on every site. The Council's main modification to clarify the need for flexibility in negotiating precise dwelling types on a site by site basis, linked to locally identified needs with reference to the most up to date SHMA..., is required on the grounds of effectiveness.”

42. Mr Bell's statement deals with the affordable housing need at paragraph 23 – 27. He points out that the 2011 SHMA identified a net annual need for affordable housing in Warrington of 477 dpa and 2593 dpa across the sub region. He said that the resulting numbers in calculating affordable housing will typically exceed what can realistically be delivered in practice and therefore, in accordance with paragraph 47 NPPF, total affordable housing need should be considered in the context of its likely delivery as a proportion of mixed market and affordable housing development. He also points to Policy SN2 of the Local Plan which sets out means whereby the Defendant will seek positively to maximise the supply of affordable housing through the planning system consistent with NPPF.
43. The question is whether there has been compliance with Policy. I find that there has not been compliance. The reasons are as follows:
- (i) The assessed need for affordable housing was 477 dpa.
 - (ii) This assessed need was never expressed or included as part of the OAN.
 - (iii) Under the “Housing Requirements” section of the Report the Inspector does not deal with affordable housing. Paragraphs 102 – 104 set out above is under a section entitled “Other Housing Needs”. This is in the context

of Policy SN2 which relates to the percentage of housing developments that should incorporate affordable housing.

- (iv) No is there anything in Mr Bell's statement which suggests that the proper exercise was undertaken. This exercise is:
 - (a) having identified the OAN for affordable housing, that should then be considered in the context of its likely delivery as a proportion of mixed market/affordable housing development; an increase in the total housing figures included in the local plan should be considered where it could help deliver the required number of affordable homes²²;
 - (b) the Local Plan should then meet the OAN for affordable housing, subject only to the constraints referred to in NPPF, paragraphs 14 and 47.

Ground 2 and 3

- 44. Ground 2 is that the Defendant failed to carry out Strategic Environmental Assessment/Sustainability Appraisal (SEA/SA)²³ in accordance with the requirements of European and Domestic Law.
- 45. Ground 3 is that the Defendant and the Inspector unlawfully predetermined the outcome of the Local Plan process prior to proper and systematic SEA/SA.
- 46. After setting out some background, I will deal first with Ground 3.
- 47. SEA Directive 2001/42/EC requires SEA to be undertaken at every stage of the preparation of the Local Plan. The Directive is transposed into English law in the Environmental Assessment of Plans and Programmes Regulations 2004 ("the 2004 Regulations"). It is common ground that:
 - (a) the SEA must be carried out at all stages of the production of a Development Plan Document;
 - (b) all reasonable alternatives under consideration must be assessed;
 - (c) defects in the process can be rectified but not as a bolt-on consideration of an already chosen preference.²⁴ In this regard Beatson LJ in Chalfont St Peter Parish Council v Chiltern DC etc²⁵ said "It is clear from the Directive and the Regulations that a sustainability appraisal must be carried out at each stage of the development of the Core Strategy and... that "reasonable alternatives to the challenged policies be identified, described and evaluated before the choice [is] made"."

²² PPG Housing and Economic Development Needs Assessments, paragraph 029

²³ The only reference in statute to the SA is in S19(5) of the 2004. In reality the challenge is re the SEA.

²⁴ See Cogent Land LLP v Rochford DC [2012] EWHC 2542 (Admin)

²⁵ [2014] EWCA Civ. 1393 (para 75)

48. It is agreed that prior to the SA Report Addendum January 2014 the proposed modifications had not been prepared in the light of an SEA assessment that dealt with reasonable alternatives. The Defendant published for consultation Post Submission Proposed Modifications on 19 August 2013, including modification reference MMO5 with regard to an identified level of housing provision at a particular strategic site (Omega), allocated under Policy CS7 of the Local Plan and modification MM08 deleting draft policy CS9. The Defendant concedes that the August 2013 document did not include a consideration of reasonable alternatives²⁶. Therefore, the further exercise in sustainability appraisal had to be performed. URS Environment and Infrastructure UK Ltd (URS) were commissioned as external consultants to undertake this exercise and their report, dated January 2014, is the SA Report Addendum.
49. The Inspector's report recommended a strategic housing proposal at Omega and Lingleymere (Omega) and the deletion of the CS9 sites which included Peel Hall. The Claimant's case is that there is no clearer example of the later SEA being a "bolt-on consideration of an already chosen preference". In support of that the Claimant refers to the following:
- (i) By 30 July 2013 the Inspector issued his report to the Defendant for fact check purposes. Paragraph 56 of that report mirrors paragraph 92 of final May 2014 Report in recommending the Omega allocation and the deletion of the CS9 sites²⁷.
 - (ii) In an email dated 7 August 2013 the Defendant's planning officer indicated the proposal to subject Policy CS7 (Omega) and other policies to SEA. He wrote "we do not consider that the modifications result in a departure from the overarching strategic option pursued, and see no reason to reassess options at a strategic level. At the more localised policy level however, we are proposing to reassess the impact of policies CS7...upon the SA objectives, but initial work suggests the changes would result in further positive effects only..." This approach was endorsed by the Inspector in an email dated 8 August 2013.
 - (iii) On 19 August 2013 the Defendant published its Post Submission Proposed Modifications to the Local Plan Core Strategy. In a sustainability appraisal update report is the incorrect statement that it "had incorporated the statutory requirements to undertake a Strategic Environmental Assessment (SEA).
50. In addition to the above the Claimant relies upon the Defendant's Officer (a) on 18 October 2013 stating that Defendant Council saw no need to consider reasonable alternatives before asking URS for the "independent option" and (b) on 12 November 2013 referring to the fact that the Defendant has resolved to progress with "remedial" SA work in accordance with the recommendations provided by URS. Therefore, according to the Claimant, the Defendant and

²⁶ This is despite the document stating on its face that it "has incorporated the statutory requirements to undertake a Strategic Environmental Assessment (SEA)"

²⁷ The Claimant had suspected that this was the case and sought unsuccessfully over a number of months to obtain the earlier Inspector's report. It was finally released by the Inspectorate pursuant to an application under CPR 31.17.

Inspector had predetermined their position in relation to Omega/Peel Hall by August 2013 without lawful consideration of reasonable alternatives; the SEA process commenced some months later was in effect a “bolt on”.

51. There is a witness statement from Ian McCluskey dated 4 October 2014. Mr McCluskey is a Senior Consultant working for URS. He sets out the background to the Defendant undertaking SA and then responds to the Claimant’s points.
52. As regards the allegation that there was a bolt on exercise to justify a predetermined strategy, he accepts²⁸ that although in the period of June to August 2013 the Defendant considered there were no reasonable alternative approaches to the proposed modifications that needed to be assessed as part of the process of updating the Report, the Defendant did not make its rationale in these matters clear in the Report of August 2013. Therefore, at that stage the proposed modifications had not been prepared in the light of a transparent assessment of any reasonable alternatives. He says that when URS were commissioned in late 2013 by the Defendant, they were not made aware of the July 2013 Inspector’s Fact Check report and that report formed no part of their assessment of the SEA work that the Defendant had undertaken or the subsequent discussion of reasonable alternatives in the SA Report Addendum Report that URS produced.²⁹ The Inspector requested details of the Defendant commissioning instructions to URS to be submitted to the EiP at the time of the final hearing session in March 2014³⁰. For these reasons his witness statement, signed with a statement of truth, says that the URS work was undertaken independently and without bias and was not a bolt-on consideration of an already chosen preference. This was accepted by the Inspector. The Claimant does not challenge Mr McCluskey’s *bona fides*.
53. I pause at this stage to assess and determine the position at August 2013 and whether, in accordance with ground 3, what finally emerged was essentially a bolt-on justifying a predetermined strategy. My decision is that as of August 2013, had nothing further taken place, then the proposed modifications had not been prepared in the light of a lawful SEA. The Inspector in the Final Report held that the URS initiative and subsequent developments in early 2014 were not confirming a predetermined position. Although one can understand the Claimant’s scepticism and their request to invite the court to “reflect on the reality”, I do not accept their submissions. I am impressed by the evidence of Mr McCluskey and the detail which he sets out in his statement as to the lack of awareness by URS of the Inspector’s Fact Check report of July 2013 and that the URS work was undertaken independently and without bias.
54. I appreciate that the Claimant says that the determination was made by the Defendant Council and the Inspector, both of whom reached essentially the same decision as at July 2013. I also appreciate that there is no evidence from the Officers of the Defendant Council. Nevertheless, I am not persuaded that Ground 3 is made out.

²⁸ Paragraph 9

²⁹ Paragraph 14

³⁰ Paragraph 16

55. That leaves Ground 2. The Claimant alleges that the SEA in the January 2014 Addendum still failed to comply with European and Domestic Law. The simplest way into this issue is via the 2004 Regulations. By Regulations 5, 8(2), 8(3)(a) and 12(1) – (3) a report has to contain the matters in schedule 2. These Regulations and schedule 2 (the relevant paragraphs) are to be found in Appendix 1. Certain key matters are agreed, namely: there was no compliance by the Defendant with paragraphs 4, 7, 9 and 10. As to paragraphs 6(b), (d), (e), (j) and (m), the Defendant accepts that there were omissions. In relation to the paragraph 6 omissions, the Defendant submits that they were covered by page 46 of the URS Report which stated:

“Where Policies and amendments would have no impact on a particular sustainability theme, then these are not included in the discussion and it should be assumed that the impact is negligible.”³¹

56. The Guidance under Directive 2001/42 requires that each 10 paragraphs of the Annex, which is reproduced in Appendix 2 to the 2004 Regulations, is to be examined in the light of the requirements in Article 5. (Paragraph 5.19). Paragraph 5.30 of the Guidance makes it clear that the purpose of the non-technical summary is to make the key issues and findings of the Environmental Report accessible and easily understood by the general public as well as by the decision makers.

57. My finding is that there was substantial non-compliance with the requirements of schedule 2 to the 2004 Regulations in respect of all the paragraphs which I have set out above. I do not accept that the conclusions on page 55 of the URS Report can be said to be a mere procedural defect. The Defendant submitted that the deficiencies were more of form than substance. Therefore, that I should exercise my discretion not to quash on these grounds. In relation to this submission, I have considered the principles in Walton v Scottish Ministers [2012] UKSC 44³² and the case of Seaport Investments Ltd.³³ I determine that it would be wholly wrong to exercise my discretion to refuse to quash on those grounds.

58. For completeness I briefly deal with the final issue under Ground 2, namely was it lawful for the Defendant/Inspector to fail to consider alternative options for housing growth in Warrington reflecting the needs of Warrington on the basis that “I do not consider options for Warrington in isolation to be reasonable alternatives for the SA to appraise.” The Defendant concedes that if it lost on Ground 1 then it must fail on this basis also. The converse was not accepted by the Claimant who submitted that the starting point according to Government Guidance, namely the DCLG projections, must be a reasonable alternative; in addition, one then factors in the alternative housing figures. Therefore, according to the Claimant, the Defendant had to consider figures in the region of

³¹ Further, the Defendant says that although some of the particular headings in paragraph 6 were not specifically followed, they were incorporated under different generic headings in subsequent pages of the URS Report and in Appendix 2 to that Report.

³² Paras 125, 126, 129 – 140

³³ [2007] NIQB 62, paras 27, 34

862 – 1040 dpa. The Claimant's response was based on Ashdown Forest Economic Development LLP v Secretary of State for Communities and Local Government and others³⁴. In paragraph 90 the judge said that the LPA has a substantial area of discretion as to the extent of the enquiries which need to be carried out to identify the reasonable alternatives which should then be examined in greater detail. I do not need to determine this point in the light of the fact that I have decided that Ground 2 is made out by the Claimant in any event.

Summary

59. Under Ground 1, the Claim succeeds on Issue 5 only.

- The Claim succeeds on Ground 2
- The Claim fails on Ground 3.

³⁴ [2014] EWHC 406 (Admin)

APPENDIX 1

Planning and Compulsory Purchase Act 2004

13 Survey of area

This sectionnoteType=Explanatory Notes has no associated

(1) The local planning authority must keep under review the matters which may be expected to affect the development of their area or the planning of its development

(2) These matters include—

(a) the principal physical, economic, social and environmental characteristics of the area of the authority;

(b) the principal purposes for which land is used in the area;

(c) the size, composition and distribution of the population of the area;

(d) the communications, transport system and traffic of the area;

(e) any other considerations which may be expected to affect those matters;

(f) such other matters as may be prescribed or as the Secretary of State (in a particular case) may direct....

15 Local development scheme

This sectionnoteType=Explanatory Notes has no associated

(1) The local planning authority must prepare and maintain a scheme to be known as their local development scheme.

(2) The scheme must specify—

(a) the documents which are to be local development documents;

(b) the subject matter and geographical area to which each document is to relate;

(c) which documents are to be development plan documents;

(d) which documents (if any) are to be prepared jointly with one or more other local planning authorities;

(e) any matter or area in respect of which the authority have agreed (or propose to agree) to the constitution of a joint committee under section 29....

17 Local development documents

This sectionnoteType=Explanatory Notes has no associated

(1) Documents which must be specified in the local development scheme as local development documents are—

(a) documents of such descriptions as are prescribed;

(b) the local planning authority's statement of community involvement.

(2) The local planning authority may also specify in the scheme such other documents as they think are appropriate.

(3) The local development documents must (taken as a whole) set out the authority's policies (however expressed) relating to the development and use of land in their area....

(6) The authority must keep under review their local development documents having regard to the results of any review carried out under section 13 or 14.

(7) Regulations under this section may prescribe—

(a) which descriptions of local development documents are development plan documents;

(b) the form and content of the local development documents;

(c) the time at which any step in the preparation of any such document must be taken.

19 Preparation of local development documents

.....This sectionnoteType=Explanatory Notes has no associated

.....
(1A) Development plan documents must (taken as a whole) include policies designed to secure that the development and use of land in the local planning authority's area contribute to the mitigation of, and adaptation to, climate change....

(2) In preparing a local development document the local planning authority must have regard to—

(a) national policies and advice contained in guidance issued by the Secretary of State;

.....
(f) the community strategy prepared by the authority;

(5) The local planning authority must also—

(a) carry out an appraisal of the sustainability of the proposals in each document;

(b) prepare a report of the findings of the appraisal.

20 Independent examination

This sectionnoteType=Explanatory Notes has no associated

(1) The local planning authority must submit every development plan document to the Secretary of State for independent examination.....

(5) The purpose of an independent examination is to determine in respect of the development plan document—

(a) whether it satisfies the requirements of sections 19 and 24(1), regulations under section 17(7) and any regulations under section 36 relating to the preparation of development plan documents;

(b) whether it is sound.

28 Joint local development documents

This sectionnoteType=Explanatory Notes has no associated

(1) Two or more local planning authorities may agree to prepare one or more joint local development documents.

(2) This Part applies for the purposes of any step which may be or is required to be taken in relation to a joint local development document as it applies for the purposes of any step which may be or is required to be taken in relation to a local development document

(3) For the purposes of subsection (2) anything which must be done by or in relation to a local planning authority in connection with a local development document must be done by or in relation to each of the authorities mentioned in subsection (1) in connection with a joint local development document.

33A Duty to co-operate in relation to planning of sustainable development

(1) Each person who is—

(a) a local planning authority,

(b) a county council in England that is not a local planning authority, or

(c) a body, or other person, that is prescribed or of a prescribed description,

must co-operate with every other person who is within paragraph (a), (b) or (c) or subsection (9) in maximising the effectiveness with which activities within subsection (3) are undertaken.

(2) In particular, the duty imposed on a person by subsection (1) requires the person—

(a) to engage constructively, actively and on an ongoing basis in any process by means of which activities within subsection (3) are undertaken, and

(b) to have regard to activities of a person within subsection (9) so far as they are relevant to activities within subsection (3).

(3) The activities within this subsection are—

(a) the preparation of development plan documents.....

37 Interpretation

This section note Type=Explanatory Notes has no associated

.....

(3) A development plan document is a document which—

(a) is a local development document, and

(b) forms part of the development plan.....

38 Development plan

....

This section note Type=Explanatory Notes has no associated

..... (3) For the purposes of any other area in England the development plan is—

.....

(b) the development plan documents (taken as a whole) which have been adopted or approved in relation to that area.

.....

(6) If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.

113 Validity of strategies, plans and documents

This section note Type=Explanatory Notes has no associated

(1) This section applies to—

.....

(c) a development plan document;

.....

and anything falling within paragraphs (a) to (g) is referred to in this section as a relevant document.

.....

(3) A person aggrieved by a relevant document may make an application to the High Court on the ground that—

(a) the document is not within the appropriate power;

(b) a procedural requirement has not been complied with.

.....

(7) The High Court may quash the relevant document—

(a) wholly or in part;

(b) generally or as it affects the property of the applicant.

(7A) If the High Court remits the relevant document under subsection (7)(b) it may give directions as to the action to be taken in relation to the document.

(7B) Directions under subsection (7A) may in particular—

(a) require the relevant document to be treated (generally or for specified purposes) as not having been approved or adopted;

(b) require specified steps in the process that has resulted in the approval or adoption of the relevant document to be treated (generally or for specified purposes) as having been taken or as not having been taken;

(c) require action to be taken by a person or body with a function relating to the preparation, publication, adoption or approval of the document (whether or not the person or body to which the document is remitted);

(d) require action to be taken by one person or body to depend on what action has been taken by another person or body.

(7C) The High Court's powers under subsections (7) and (7A) are exercisable in relation to the relevant document—

(a) wholly or in part;

(b) generally or as it affects the property of the applicant

(8) An interim order has effect until the proceedings are finally determined.

(9) The appropriate power is—

(a) Part 1 of this Act in the case of a revision of the regional spatial strategy;

(b) section 60 above in the case of the Wales Spatial Plan or any revision of it;

(c) Part 2 of this Act in the case of a development plan document or any revision of it;

(d) sections 62 to 78 above in the case of a local development plan or any revision of it;

(e) sections 334 to 343 of the Greater London Authority Act 1999 (c. 29) in the case of the spatial development strategy or any alteration or replacement of it.

(10) A procedural requirement is a requirement under the appropriate power or contained in regulations or an order made under that power which relates to the adoption, publication or approval of a relevant document.

.....

National Planning Policy Framework

14. At the heart of the National Planning Policy Framework is a **presumption in favour of sustainable development**, which should be seen as a golden thread running through both plan-making and decision-taking.

For **plan-making** this means that:

- local planning authorities should positively seek opportunities to meet the development needs of their area;

- Local Plans should meet objectively assessed needs, with sufficient flexibility to adapt to rapid change, unless:

- any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this

- Framework taken as a whole; or

- specific policies in this Framework indicate development should be restricted.....

Core planning principles

17. Within the overarching roles that the planning system ought to play, a set of core land-use planning principles should underpin both plan-making and decision-taking. These 12 principles are that planning should:

- be genuinely plan-led, empowering local people to shape their surroundings, with succinct local and neighbourhood plans setting out a positive vision for the future of the area. Plans should be kept up-to-date, and be based on joint working and co-operation to address larger than local issues. They should provide a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency;.....
- proactively drive and support sustainable economic development to deliver the homes, business and industrial units, infrastructure and thriving local places that the country needs. Every effort should be made objectively to identify and then meet the housing, business and other development needs of an area, and respond positively to wider opportunities for growth. Plans should take account of market signals, such as land prices and housing affordability, and set out a clear strategy for allocating sufficient land which is suitable for development in their area, taking account of the needs of the residential and business communities;.....

6. Delivering a wide choice of high quality homes

47. 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 plan period
- identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements with an additional buffer of 5% (moved forward from later in the plan period) to ensure choice and competition in the market for land. Where there has been a record of persistent under delivery of housing, local planning authorities should increase the buffer to 20% (moved forward from later in the plan period) to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land;
- identify a supply of specific, developable sites or broad locations for growth, for years 6-10 and, where possible, for years 11-15;

Plan-making

Local Plans

153. Each local planning authority should produce a Local Plan for its area....

.....

156. Local planning authorities should set out the **strategic priorities** for the area in the Local Plan. This should include strategic policies to deliver:

- the homes and jobs needed in the area;...

157. Crucially, Local Plans should:

- plan positively for the development and infrastructure required in the area to meet the objectives, principles and policies of this Framework;

.....

indicate broad locations for strategic development on a key diagram and land-use designations on a proposals map;.....

Housing

159. Local planning authorities should have a clear understanding of housing needs in their area. They should:

- prepare a Strategic Housing Market Assessment to assess their full housing needs, working with neighbouring authorities where housing market areas cross administrative boundaries. The Strategic Housing Market Assessment should identify the scale and mix of housing and the range of tenures that the local population is likely to need over the plan period which:
 - meets household and population projections, taking account of migration and demographic change;
 - addresses the need for all types of housing, including affordable housing and the needs of different groups in the community (such as, but not limited to, families with children, older people, people with disabilities, service families and people wishing to build their own homes); and
 - caters for housing demand and the scale of housing supply necessary to meet this demand;.....

Planning strategically across local boundaries

178. Public bodies have a duty to cooperate on planning issues that cross administrative boundaries, particularly those which relate to the **strategic priorities** set out in paragraph 156. The Government expects joint working on areas of common interest to be diligently undertaken for the mutual benefit of neighbouring authorities.

179. Local planning authorities should work collaboratively with other bodies to ensure that strategic priorities across local boundaries are properly coordinated and clearly reflected in individual Local Plans. Joint working should enable local planning authorities to work together to meet development requirements which cannot wholly be met within their own areas – for instance, because of a lack of physical capacity or because to do

so would cause significant harm to the principles and policies of this Framework. As part of this process, they should consider producing joint planning policies on strategic matters and informal strategies such as joint infrastructure and investment plans.

Examining Local Plans

182. The Local Plan will be examined by an independent inspector whose role is to assess whether the plan has been prepared in accordance with the Duty to Cooperate, legal and procedural requirements, and whether it is sound. A local planning authority should submit a plan for examination which it considers is “sound” – namely that it is:

- **Positively prepared** – the plan should be prepared based on a strategy which seeks to meet objectively assessed development and infrastructure requirements, including unmet requirements from neighbouring authorities where it is reasonable to do so and consistent with achieving sustainable development;.....

NPPG

Housing and economic development needs assessments

The approach to assessing need

.....

Paragraph: 003 Reference ID: 2a-003-20140306

What is the definition of need?

Need for housing in the context of the guidance refers to the scale and mix of housing and the range of tenures that is likely to be needed in the housing market area over the plan period – and should cater for the housing demand of the area and identify the scale of housing supply necessary to meet that demand.....

Assessing development needs should be proportionate and does not require local councils to consider purely hypothetical future scenarios, only future scenarios that could be reasonably expected to occur.

Paragraph: 004 Reference ID: 2a-004-20140306

Can local planning authorities apply constraints to the assessment of development needs?

The assessment of development needs is an objective assessment of need based on facts and unbiased evidence. Plan makers should not apply constraints to the overall assessment of need, such as limitations imposed by the supply of land for new development, historic under performance, viability, infrastructure or environmental constraints. However, these considerations will need to be addressed when bringing evidence bases together to identify specific policies within development plans.

.....

Paragraph: 007 Reference ID: 2a-007-20140306

With whom do local planning authorities need to work?

Local planning authorities should assess their development needs working with the other local authorities in the relevant housing market area or functional economic market area in line with the [duty to cooperate](#). This is because such needs are rarely constrained precisely by local authority administrative boundaries.....

.....

Scope of assessments

Paragraph: 008 Reference ID: 2a-008-20140306

What areas should be assessed?

Needs should be assessed in relation to the relevant functional area, ie housing market area, functional economic area in relation to economic uses, or area of trade draw in relation to main [town centre](#) uses.....

Paragraph: 010 Reference ID: 2a-010-20140306

What is a housing market area?

.....

Where there is a joint plan, housing requirements and the need to identify a five year supply of sites can apply across the joint plan area. The approach being taken should be set out clearly in the plan.

.....

Paragraph: 015 Reference ID: 2a-015-20140306

What is the starting point to establish the need for housing?

Household projections published by the Department for Communities and Local Government should provide the starting point estimate of overall housing need.

The household projections are produced by applying projected household representative rates to the population projections published by the Office for National Statistics. Projected household representative rates are based on trends observed in Census and Labour Force Survey data.

The household projections are trend based, ie they provide the household levels and structures that would result if the assumptions based on previous demographic trends in the population and rates of household formation were to be realised in practice. They do not attempt to predict the impact that future government policies, changing economic circumstances or other factors might have on demographic behaviour.

The household projection-based estimate of housing need may require adjustment to reflect factors affecting local demography and household formation rates which are not captured in past trends.

Paragraph: 015 Reference ID: 2a-015-20140306

What is the starting point to establish the need for housing?

.....

The household projection-based estimate of housing need may require adjustment to reflect factors affecting local demography and household formation rates which are not captured in past trends.....

Paragraph: 019 Reference ID: 2a-019-20140306

How should market signals be taken into account?

The housing need number suggested by household projections (the starting point) should be adjusted to reflect appropriate market signals, as well as other market indicators of the balance between the demand for and supply of dwellings. Prices or rents rising faster than the national/local average may well indicate particular market undersupply relative to demand. Relevant signals may include the following:

- **Land Prices** Land values are determined by the demand for land in particular uses, relative to the supply of land in those uses. The allocation of land supply designated for each different use, independently of price, can result in substantial price discontinuities for adjoining parcels of land (or land with otherwise similar characteristics). Price premiums provide direct information on the shortage of land in any locality for any particular use.
- **House Prices** Mix adjusted house prices (adjusted to allow for the different types of houses sold in each period) measure inflation in house prices. Longer

term changes may indicate an imbalance between the demand for and the supply of housing. The Office for National Statistics publishes a monthly House Price Index at regional level. The Land Registry also publishes a House Price Index and Price Paid data at local authority level.

- **Rents** Rents provide an indication of the cost of consuming housing in a market area. Mixed adjusted rent information (adjusted to allow for the different types of properties rented in each period) shows changes in housing costs over time. Longer term changes may indicate an imbalance between demand for and supply of housing. The Office for National Statistics publishes a monthly Private Rental Index.
- **Affordability** Assessing affordability involves comparing house costs against the ability to pay. The ratio between lower quartile house prices and the lower quartile income or earnings can be used to assess the relative affordability of housing. The Department for Communities and Local Government publishes quarterly the ratio of lower quartile house price to lower quartile earnings by local authority district.
- **Rate of Development** Local planning authorities monitor the stock and flows of land allocated, permissions granted, and take-up of those permissions in terms of completions. Supply indicators may include the flow of new permissions expressed as a number of units per year relative to the planned number and the flow of actual completions per year relative to the planned number. A meaningful period should be used to measure supply. If the historic rate of development shows that actual supply falls below planned supply, future supply should be increased to reflect the likelihood of under-delivery of a plan. The Department for Communities and Local Government publishes quarterly planning application statistics.
- **Overcrowding** Indicators on overcrowding, concealed and sharing households, homelessness and the numbers in temporary accommodation demonstrate un-met need for housing. Longer term increase in the number of such households may be a signal to consider increasing planned housing numbers. The number of households accepted as homeless and in temporary accommodation is published in the quarterly Statutory Homelessness release.

Revision date: 06 03 2014

Paragraph: 020 Reference ID: 2a-020-20140306

How should plan makers respond to market signals?

Appropriate comparisons of indicators should be made. This includes comparison with longer term trends (both in absolute levels and rates of change) in the: housing

market area; similar demographic and economic areas; and nationally. A worsening trend in any of these indicators will require upward adjustment to planned housing numbers compared to ones based solely on household projections. Volatility in some indicators requires care to be taken: in these cases rolling average comparisons may be helpful to identify persistent changes and trends.

In areas where an upward adjustment is required, plan makers should set this adjustment at a level that is reasonable. The more significant the affordability constraints (as reflected in rising prices and rents, and worsening affordability ratio) and the stronger other indicators of high demand (eg the differential between land prices), the larger the improvement in affordability needed and, therefore, the larger the additional supply response should be.

Market signals are affected by a number of economic factors, and plan makers should not attempt to estimate the precise impact of an increase in housing supply. Rather they should increase planned supply by an amount that, on reasonable assumptions and consistent with principles of sustainable development, could be expected to improve affordability, and monitor the response of the market over the plan period.

The list of indicators above is not exhaustive. Other indicators, including those at lower spatial levels, are available and may be useful in coming to a full assessment of prevailing market conditions. In broad terms, the assessment should take account both of indicators relating to price (such as house prices, rents, affordability ratios) and quantity (such as overcrowding and rates of development).

Revision date: 06 03 2014

Paragraph: 029 Reference ID: 2a-029-20140306

What is the total need for affordable housing?

The total need for affordable housing should be converted into annual flows by calculating the total net need (subtract total available stock from total gross need) and converting total net need into an annual flow.

The total affordable housing need should then be considered in the context of its likely delivery as a proportion of mixed market and affordable housing developments, given the probable percentage of affordable housing to be delivered by market housing led developments. An increase in the total housing figures included in the local plan should be considered where it could help deliver the required number of affordable homes.

<http://planningguidance.planningportal.gov.uk/blog/guidance/housing-and-economic-development-needs-assessments/methodology-assessing-housing-need/> - paragraph_029
Revision date: 06 03 2014

Local Plans

Local Plans – Key Issues

.....

Paragraph: 002 Reference ID: 12-002-20140306

What should a Local Plan contain?

.....

The Local Plan should aim to meet the objectively assessed development and infrastructure needs of the area, including unmet needs of neighbouring areas where this is consistent with policies in the National Planning Policy Framework as a whole. Local Plans should recognise the contribution that Neighbourhood Plans can make in planning to meet development and infrastructure needs.

Paragraph: 003 Reference ID: 12-003-20140306

How is a Local Plan produced?

Local planning authorities develop a Local Plan by assessing the future needs and opportunities of their area, developing options for addressing these and then identifying a preferred approach.....

Paragraph: 007 Reference ID: 12-007-20140306

Can a local planning authority produce a joint Local Plan with another authority or authorities?

Section 28 of the [Planning and Compulsory Purchase Act 2004](#) enables two or more local planning authorities to agree to prepare a joint Local Plan, which can be an effective means of addressing cross-boundary issues, sharing specialist resources and reducing costs (e.g. through the formation of a joint planning unit).

The [duty to cooperate](#) requires local planning authorities and certain other public bodies to cooperate with each other in preparing a Local Plan, where there are matters that would have a significant impact on the areas of two or more authorities. A joint Local Plan is one means of achieving this [and those preparing Joint Plans will wish to consider a joint evidence base and assessment of development needs](#). Less formal mechanisms can also be used. In particular, local

planning authorities should consider the opportunities for aligning plan timetables and policies, as well as for sharing plan-making resources.

The Environmental Assessment of Plans and Programmes Regulations 2004

.....

PART 2

ENVIRONMENTAL ASSESSMENT FOR PLANS AND PROGRAMMES

Environmental assessment for plans and programmes: first formal preparatory act on or after 21st July 2004

5.—(1) Subject to paragraphs (5) and (6) and regulation 7, where—

- (a) the first formal preparatory act of a plan or programme is on or after 21st July 2004; and
- (b) the plan or programme is of the description set out in either paragraph (2) or paragraph (3), the responsible authority shall carry out, or secure the carrying out of, an environmental assessment, in accordance with Part 3 of these Regulations, during the preparation of that plan or programme and before its adoption or submission to the legislative procedure.....

Restriction on adoption or submission of plans, programmes and modifications

8

.....

(2) A plan or programme for which an environmental assessment is required by any provision of this Part shall not be adopted or submitted to the legislative procedure for the purpose of its adoption before—

.....

(b) in any other case, the requirements of paragraph (3) below, and such requirements of Part 3 as apply in relation to the plan or programme, have been met.

(3) The requirements of this paragraph are that account shall be taken of—

- (a) the environmental report for the plan or programme;.....

.....

PART 3

ENVIRONMENTAL REPORTS AND CONSULTATION PROCEDURES

Preparation of environmental report

12.—(1) Where an environmental assessment is required by any provision of Part 2 of these Regulations, the responsible authority shall prepare, or secure the preparation of, an environmental report in accordance with paragraphs (2) and (3) of this regulation.

(2) The report shall identify, describe and evaluate the likely significant effects on the environment of—

- (a) implementing the plan or programme; and
- (b) reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme.

(3) The report shall include such of the information referred to in Schedule 2 to these

Regulations as may reasonably be required, taking account of—

- (a) current knowledge and methods of assessment;
- (b) the contents and level of detail in the plan or programme;
- (c) the stage of the plan or programme in the decision-making process; and
- (d) the extent to which certain matters are more appropriately assessed at different levels in that process in order to avoid duplication of the assessment.

.....

SCHEDULE 2

Regulation 12(3)

INFORMATION FOR ENVIRONMENTAL REPORTS

.....

4. Any existing environmental problems which are relevant to the plan or programme including, in particular, those relating to any areas of a particular environmental importance, such as areas designated pursuant to Council Directive 79/409/EEC on the conservation of wild birds and the Habitats Directive.

.....

[http://planningguidance.planningportal.gov.uk/blog/guidance/local-plans/preparing-a-local-plan/ - paragraph_007](http://planningguidance.planningportal.gov.uk/blog/guidance/local-plans/preparing-a-local-plan/-paragraph_007)

6. The likely significant effects on the environment, including short, medium and long-term effects, permanent and temporary effects, positive and negative effects, and secondary, cumulative and synergistic effects, on issues such as—

- (a) biodiversity;
- (b) population;
- (c) human health;
- (d) fauna;
- (e) flora;
- (f) soil;
- (g) water;
- (h) air;
- (i) climatic factors;
- (j) material assets;
- (k) cultural heritage, including architectural and archaeological heritage;
- (l) landscape; and
- (m) the inter-relationship between the issues referred to in sub-paragraphs (a) to (l).

7. The measures envisaged to prevent, reduce and as fully as possible offset any significant adverse effects on the environment of implementing the plan or programme.

.....

9. A description of the measures envisaged concerning monitoring in accordance with regulation 17.

10. A non-technical summary of the information provided under paragraphs 1 to 9.

**Borough Council of Kings Lynn and West Norfolk v Secretary of State for
Communities and Local Government, ELM Park Holdings Ltd**

CO/914/2015

High Court of Justice Queen's Bench Division the Administrative Court

9 July 2015

[2015] EWHC 2464 (Admin)

2015 WL 4938258

Before: Mr Justice Dove

Thursday, 9 July 2015

Representation

Timothy Leader (Marc Samuels for judgment only)(instructed by Borough Council of Kings Lynn) appeared on behalf of the Claimant.

Zack Simons (instructed by Government Legal Department) appeared on behalf of the Defendant.

James Corbet Burcher (Nina Pindham for judgment only) (instructed) appeared on behalf of the Second Defendant.

Judgment

Mr Justice Dove:

1 Clenchwarton is a village to the west of King's Lynn. In the July 2011 Core Strategy published and adopted by the claimant, it is identified as a key rural service centre which is suitable for local scale development. The claimant is the local planning authority for the area concerned and the second defendant is the owner of the Foster's Sports Ground, Main Road in Clenchwarton. It is a site towards the western end of the settlement within land designated countryside in the proposals map of the 1998 King's Lynn and West Norfolk local plan.

2 On the 2 November 2011 the second defendant applied for outline planning permission for 75 dwellings which was refused by the claimant and there was an appeal to the first defendant. That appeal was dismissed on 12 November 2012. The issues which were included in the determination of that appeal were whether or not the claimant could demonstrate a five-year supply of housing land. The Inspector in determining that appeal concluded as follows:

i. "8. Taking account of the housing completions between 2001 and 2011, there is a total five year housing requirement for 3,275 dwellings. Adding an additional 5% buffer, in accordance with paragraph 47 of the National Planning Policy Framework (framework). The 5 year requirement rises to 3,439 dwellings, which is equivalent to 688 dwellings per annum.

ii. 9. The Council's Annual Monitoring Report, December 2011, published in April 2012, identifies a supply of sites for 3,276 which equates to some 4.76 years' supply. However, paragraph 48 of the Framework permits making an allowance for windfall sites within the 5 year supply where Councils have compelling evidence that such sites have consistently become available in the local area and will continue to provide a reliable source of supply. Given the Council's experience of the contribution of windfall sites to

the housing supply over an 11 year period, together with the unusually large geographical area of the Borough and the high number of settlements within the Borough, I accept that the Council's suggested allowances for windfall sites based on 70% of past rates, is realistic in this instance. On this basis, there is a deliverable housing land supply of around 6.03 years."

3 Following that decision, the second defendant reconsidered its position. It amended its proposal to 40 dwellings to respond to criticisms raised by the Inspector in respect of landscape impact. On 12 December 2013 the Court of Appeal decision in the case of [*City and District Council of St Albans v Hunston Properties Limited and the Secretary of State \[2013\] EWCA Civ 1610*](#) was handed down with its implications in relation to the interpretation of paragraph 47 of the NPPF (hereafter "the Framework") to the housing requirement when calculating a five-year supply of housing. It is worthwhile at this stage to set out the relevant provisions of the Framework in paragraph 47 which are as follows:

i. "47. 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 planned period;
- identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements with an additional buffer of 5% (moved forward from later in the plan period) to ensure choice and competition in the market for land. Where there has been a record of persistent under delivery of housing, local planning authorities should increase the buffer to 20% (moved forward from later in the plan period) to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land..."

4 On 27 July 2013 the second defendant applied for outline planning permission for 40 dwellings. The application was refused on 22 November 2013 by the claimant and the second defendant appealed. The appeal was determined by one of the first defendant's Inspectors using the hearing mode of appeal determination. The procedures in relation to the hearing evolved in the following manner. Firstly, the second defendant's statement of case prepared in May 2014 arrived with the claimant in early June. Secondly, on 12 September 2014, the claimant prepared and submitted a response to that document. Thirdly, on 28 November 2014, the second defendant responded to the claimant's case in relation to housing land supply. Fourthly, on the 2 December 2014, the planning Inspectorate on behalf of the first defendant requested that the claimant clarify its position on the housing land supply evidence provided by the second defendant in a further submission due by 5 December 2014. Fifthly and finally, on 5 December 2014, the claimant submitted (in accordance with the request which had been made by the Planning Inspectorate) further documentation in support of its position in relation to housing land supply.

5 As will be evident from that chronology, once again the question of whether or not the claimant enjoyed a five year supply of housing land was in issue. A number of the ingredients of the calculation were, in particular, at odds between the claimant and the second defendant so far as is relevant to this case. They were as follows:

- (a) The requirement. The claimant still relied upon the requirement from its Core Strategy as representing their Full Objectively Assessed Need for housing (FOAN) reliant on the Core Strategy housing figure of 660 dwellings per annum. They had taken into account work which they had commissioned as a Strategic Housing Market Assessment (SHMA) and considered that it corroborated the figure which was in their Core Strategy. This SHMA exercise which was prepared as part of the evidence base for the emerging local plan showed a FOAN of 690 dwellings per annum. The second defendant's consultants contended that the SHMA analysis was incomplete and did not account for either existing unmet need (which had been deduced from the SHMA as standing at around 1500

dwellings at the time of the second defendant's analysis), or the rate of vacancies at a rate of 3 per cent derived from the 2011 census, or second homes together with the vacancies at a rate of 14.9 per cent (again derived from the figure for household spaces with no usual residents which was provided by the 2011 census data). Adding vacancies alone gave (in the second defendant's analysis) an annual figure of 711 dwellings per annum; adding vacancies and second homes gave a figure of 793 dwellings per annum and finally, adding an element of unmet need together with vacancies and second homes, gave a total figure of 872 dwellings per annum.

ii. (b) The buffer. The second issue was whether the claimant was a five per cent or a 20 per cent authority. Although initially the second defendant's consultants had accepted that the claimant was a five per cent authority, they subsequently contended for 20 per cent on the basis that in the previous 6 years the claimant had not met the Core Strategy requirement of 660 dwellings per annum, and that since 2001 the annual average of completions had been 622 dwellings per annum, again below the Core Strategy target. The claimant responded by pointing out that the 622 dwellings per annum figure covered a period of economic recession and further argued that development rates were rising as a result of the production of a site allocation document which was about to proceed to its pre-submission stage. A graph was produced by the claimant illustrating the broad correlation between completion rates and the Core Strategy requirements.

iii. (c) The question of windfalls. By the time of the hearing, the differences between the claimant and the second defendant were as follows. The claimant, based on past trends, relied upon a supply from large windfalls of 670 dwellings and the second defendant allowed for none. In relation to small windfalls, again based on past trends, the claimant included 470 dwellings within their five-year supply and the second defendant, who had vacillated between a number of positions on this issue, finally decided to include 268 dwellings.

iv. (d) Allocations emerging in the pre-submission Site Allocations and Development Management Document. These were also the subject of contention. They were contained in a document which had been approved for consultation by the claimant on 27 November 2014. That consultation was due to occur in January and February 2015. The claimant included some 2,303 dwellings from this source of supply in their five-year calculation. The second defendant allowed none.

6 The hearing was allocated two days. At the hearing the Inspector led a discussion of the issues following an agenda which he had constructed for this purpose. The third issue on that agenda was housing land supply. When the claimant came to present its case following the submissions on behalf of the second defendant, it became clear that owing to computer problems the claimant's submissions of 5 December 2012 together with the supporting documentation had not in fact been received by the Inspector and he had not seen them. Copies were provided to him at the hearing. The Inspector chose to press on without adjourning to read the documentation. Mr Jermay who was not leading the counsel's case (which was in fact led by the case officer for the application, Mrs Wood-Handy) but who was its expert on housing land supply, records his concerns in relation to what occurred in a witness statement as follows:

i. "I felt at a disadvantage trying to pick out relevant parts of my statement, without reading it in full, while knowing that Inspector had not had a chance to read it and had not had a chance to understand and review the supporting documents in advance and to properly question me and Hannah [Mrs Wood-Handy] about them."

7 It is apparent from a contemporaneous note provided by one of the second defendant's team at the hearing, that the discussion ranged over each of the disputed elements which I have set out above. In relation to the emerging allocations, reference was made during the course of the discussion to the case of *Wainhomes (South West) Holdings Limited v Secretary of State* [2013]

EWHC 597 to which I shall turn shortly. In relation to the appropriate FOAN for consideration in calculating the five-year housing supply, mention was made of the case of Hunston Properties .

8 On 2 January 2015 the decision on the appeal was published and the appeal was allowed. The Inspector's conclusions on housing land supply were set out as follows.

i. "6. The Council considers the CS figure of 16,500 dwellings in the period 2001 to 2026 (660 dwellings per annum) to be the correct requirement and claims that the 2013 Strategic Housing Market Assessment (SHMA) update still supports that as a realistic figure. The Council's methodology was used in the previous appeal relating to 75 dwellings and was not challenged in the High Court. However, the CS is based on what are now old household projections. Indeed the Council notes that the Framework 'makes reference to keeping plans up to date and therefore under review' and the Inspector in the previous appeal states at paragraph 12 of her decision, issued in November 2012, that 'The Council will need to re-visit its housing provision in the light of more recent household projections and to keep its housing supply in line with the evidence base in the future'. That is the approach adopted by the appellant in this case.

ii. 7. Indeed, the SHMA explains that there would be a requirement of 690 households per annum. Households do not equate to dwellings and allowance should be made for vacancies and second homes. The 2011 census records that King's Lynn has 14.9% vacancies and second homes, which would give a full objectively assessed need (FOAN) of 793 dwellings a year. If, as a minimum, only vacancies are considered, it is generally recognised that a figure of 3% should be used giving a requirement of 711 dwellings per annum. A minimum of 51 additional dwellings a year, and possibly as many as 133, over and above the CS requirement of 660 does not suggest that the CS requirement is still realistic. Indeed, over a 15 year period that equates to a minimum need for in excess of 750 additional dwellings.

9 Considering the appropriate buffer to be applied, Framework paragraph 47 indicates that a 5% buffer should be added 'to ensure choice and competition.' However, where there has been a record of persistent under delivery, the buffer should be increased to 20%. The Guidance confirms that there is no universal test for persistent under delivery and sets out that the assessment of local delivery is likely to be more robust if a longer term view is taken.

10 In each of the last 6 years the Council has failed to achieve its requirement of 660 dwellings per annum and has only averaged 447 dwellings a year. The Council notes that the trend from 2011 to 2014, which includes the recession between 2008 and 2013, is running at 622 dwellings per annum. Although development rates are rising, and the Council published its Pre-Submission Site Allocations and Development Management Document in October, which it is acknowledged would release the full plan provision of new sites, the long term trend is behind the target of 660 dwellings per annum with a shortfall of some 487 dwellings in the period to date. This indicates that the Council has persistently under provided and so a 20% buffer should be applied....

11 In relation to windfalls, paragraph 48 of the Framework states that an allowance can be made in the five year supply if there is compelling evidence that such sites have consistently become available in the local area, and will continue to provide a reliable source. Between 2001 and 2014, 49% of total completions in the Borough were from windfall sites, and 59% of those were from large sites of more than 10 dwellings. Given that the Council is seeking to adopt a new policy to allow infilling in the smaller villages and hamlets, small sites are likely to continue to provide a reliable source of windfalls. However, given the publication of the Pre-Submission Site Allocations and Development Management Document releasing the full plan provision of new sites, it is likely that the majority of large sites would come from allocations. Rather than there being compelling evidence, as the Framework requires, there is at best only a possibility that some completions would come from large site windfalls and these should therefore be discounted.

12 The appellant raised three queries relating to permissions. Whilst 302 dwellings are under construction at Hillingdon Square, the net result of development is the loss of 17 units. The Council accepts this and -17 is now included in the Housing Trajectory. Secondly, in respect of the Nar Ouse Regeneration Area (NORA), the appellant considers that only 300 of the 554 with outline planning permission are likely to be completed in the 5 year period. Whilst Reserved

Matters permissions were granted for a further 185 on 1 December 2014, and a preferred bidder has been approved to deliver 600 units by 2020 on Council and Homes and Community Agency land, there is little evidence to counteract the appellant's view. Finally, permission on a site north of Gaywood River, King's Lynn has lapsed and an application for 95 dwellings was subsequently refused although a revised application has just been submitted with the applicant claiming to have overcome the outstanding reason for refusal from appeal.

- i. The parties disagree on the figures but again the appellant's are more robust, despite the Council's view that the Guidance on what are deliverable sites, would give greater flexibility and add to the potential 5 year supply of sites.

13 Given the conclusions above, the appellant's calculations are preferred and show that rather than having a 7.51 year supply (based on CS and 5% buffer) as the Council maintains, there would only be a 1.91 year housing supply (based on 2011 housing projections and a 20% buffer). Notwithstanding the Council's view that the policies in CS are consistent with the Framework, as there is no 5 year supply the housing policies, including policies defining settlement boundaries cannot be regarded as up-to-date. Housing applications should, therefore, be considered in the context of the presumption in favour of sustainable development, in accordance with the aims of the Framework."

14 Having considered all of the other matters raised in the context of the appeal, the Inspector concluded that the balance should be struck in support of the grant of planning permission subject to conditions.

Procedural Issues and the Grounds in Brief.

15 Before the hearing of this case commenced, I advised the parties that two of the consultants who had advised and appeared for the second defendants in this case were people with whom I had worked on numerous occasions whilst I was still at the Bar and one of whom I knew well personally. None of the parties raised any objection to this and the view appeared to be taken that given the nature of the practice which I had at the bar and, therefore, the knowledge of people who worked within the planning profession, together with the fact that these individuals were providing independent advice and were not the parties themselves, there were no grounds upon which to express any concern in relation to me hearing the case.

16 At the hearing of the case, there was an application by Mr Leader who appeared on behalf of the claimant to amend the pleadings. No one objected to that course being taken and I granted permission. In fact, as the argument evolved during the course of the case, the claimant's claim crystallised into three grounds.

17 The first ground was that in accepting the second defendant's adjustments to the FOAN for vacancies and second homes, the Inspector had unlawfully misapplied paragraph 47 of the framework, in that this adjustment was contended to be a policy adjustment which was illegitimate when identifying the FOAN for the purpose of calculating the five-year housing land supply. It was submitted that such an allowance was not to be found in the Planning Practice Guidance which accompanies the framework as a legitimate adjustment: in fact that document only regarded vacancies as a potential source of supply.

18 The second ground was that in a number of respects, the Inspector's reasons were inadequate. This ground focused in particular on four matters. Firstly, the Inspector's reasons in relation to the FOAN and whether he had concluded it was 793 dwellings per annum or 872 dwellings per annum. Secondly, small site windfalls and the reasons provided by the Inspector as to whether they were a legitimate source of supply were said to be inadequate. Thirdly, the draft allocated sites which were emerging and why the Inspector had discounted them were not the subject of any reasons provided by him. Fourthly, and lastly, it was submitted that the reasons which had been provided to explain why the claimant was a 20 per cent buffer authority, when in 2012 they had been found to be a five per cent authority, were also not legally adequate.

19 The third ground was that bearing in mind the Inspector's inquisitorial role and his responsibility to use the hearing as a process to test the evidence and delve into the issues to assist the decision making process, it was unfair and inconsistent with that duty for him not to

have taken time to read and absorb the council's most recent material (which it was accepted he had not received) and then to reflect upon whether his plan for the discussion actually required revision and whether there were other questions which he ought to have posed.

The law

20 Planning application are determined under [section 70 of the Town and Country Planning Act 1990](#) and [section 38\(6\) of the Planning and Compulsory Purchase Act 2004](#). National planning policy is a material consideration for the purposes of the exercise of this discretion. Interpretation of planning policy, including national policy, is a matter of law (see [Tesco Stores v Dundee City Council \[2012\] UKSC 13](#)). As I have set out above, paragraph 47 of the Framework was the subject of interpretation in the Hunston Properties case, in particular in relation to how determination of the requirement for the five-year housing land supply was to be approached a development control decision. The context of that case was that it was a Green Belt case and the Inspector had concluded that the best available figure for use in the five-year supply calculations was that which was derived from the revoked Regional Strategy. That figure was the most recent independently tested housing figure which reflected amongst other things the Green Belt policy constraint in the local authority's area. By contrast the developer and appellant argued that a figure representing "full objectively assessed needs" for housing should be used in the absence of any figure derived from any element of the development plan. In giving the leading judgment of the Court of Appeal, Sir David Keene observed as follows:

i. "25. ...I am not persuaded that the inspector was entitled to use a housing requirement figure derived from a revoked plan, even as a proxy for what the local plan process may produce eventually. The words in paragraph 47(1), "as far as is consistent with the policies set out in this Framework" remind one that the Framework is to be read as a whole, but their specific role in that sub-paragraph seems to me to be related to the approach to be adopted in producing the Local Plan. If one looks at what is said in that sub-paragraph, it is advising local planning authorities:

ii. "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."

iii. That qualification contained in the last clause quoted is not qualifying housing needs. It is qualifying the extent to which the Local Plan should go to meet those needs. The needs assessment, objectively arrived at, is not affected in advance of the production of the Local Plan, which will then set the requirement figure.

iv. 26. Moreover, I accept Mr Stinchcombe QC's submissions for Hunston that it is not for an inspector on a [Section 78](#) appeal to seek to carry out some sort of local plan process as part of determining the appeal, so as to arrive at a constrained housing requirement figure. An inspector in that situation is not in a position to carry out such an exercise in a proper fashion, since it is impossible for any rounded assessment similar to the local plan process to be done. That process is an elaborate one involving many parties who are not present at or involved in the [Section 78](#) appeal. I appreciate that the inspector here was indeed using the figure from the revoked East of England Plan merely as a proxy, but the government has expressly moved away from a "top-down" approach of the kind which led to the figure of 360 housing units required per annum. I have some sympathy for the inspector, who was seeking to interpret policies which were at best ambiguous when dealing with the situation which existed here, but it seems to me to have been mistaken to use a figure for housing requirements below the full objectively assessed needs figure until such time as the Local Plan process came up with a constrained figure.

v. 27. It follows from this that I agree with the judge below that the inspector erred by adopting such a constrained figure for housing need. It led her to find that there was no shortfall in housing land supply in the district. She should have concluded, using the correct policy approach, that there was such a short fall. The supply fell below the objectively assessed five year requirement.

vi. 28. However, that is not the end of the matter. The crucial question for an inspector in such a case is not: is there a shortfall in housing land supply? It is: have very special circumstances been demonstrated to outweigh the Green Belt objection? As Mr Stinchcombe recognised in the course of the hearing, such circumstances are not automatically demonstrated simply because there is a less than five year supply of housing land. The judge in the court below acknowledged as much at paragraph 30 of his judgment. Self-evidently, one of the considerations to be reflected in the decision on “very special circumstances” is likely to be the scale of the shortfall.

vii. 29. But there may be other factors as well. One of those is the planning context in which that shortfall is to be seen. The context may be that the district in question is subject on a considerable scale to policies protecting much or most of the undeveloped land from development except in exceptional or very special circumstances, where because such land is an Area of Outstanding Natural Beauty, National Park or Green Belt. If that is the case, then it may be wholly unsurprising that there is not a five year supply of housing land when measured simply against the unvarnished figures of household projections. A decision-maker would then be entitled to conclude, if such were the planning judgment, that some degree of shortfall in housing land supply, as measured simply by household formation rates, was inevitable. That may well affect the weight to be attached to the shortfall.”

21 That construction of the policy in paragraph 47 of the Framework was reflected by the Court of Appeal in the plan making context in [Solihull Metropolitan Borough Council v Gallagher Estates \[2014\] EWCA Civ 1610](#) . What the construction does not conclude upon, because the point did not arise, is what the “varnish” is that is applied to the FOAN in order to reach the Framework compliant housing requirement. Alternatively, what are the ingredients that are involved in making the FOAN? In the context of this case, do they include vacancies and second homes? Those are the questions which arise in Ground 1.

22 In respect of Ground 2, a number of essentially uncontroversial legal propositions are in play. The first is the content of the duty to give reasons which is well-known and set out in the [South Bucks v Porter no 2 \[2004\] UKHL 33](#) in the speech of Lord Brown at paragraph 36 in which he observed as follows.

i. “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 “principle 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 the 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 is genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision.”

23 In relation to consistency in decision making, the now classic formulation of that principle in a planning context was given in the judgment of Mann LJ in the case of [North Wiltshire District Council v the Secretary of State for the Environment and Clover 65 P & C R 137](#) at page 145 as follows:

i. “In this case the asserted material consideration is a previous appeal decision. It was not disputed in argument that a previous appeal decision is capable of being a material

consideration. The proposition is in my judgment indisputable. One important reason why previous decisions are capable of being material is that like cases should be decided in a like manner so that there is consistency in the appellate process. Consistency is self-evidently important to both developers and development control authorities. But it is also important for the purpose of securing public confidence in the operation of the development control system. I do not suggest and it would be wrong to do so, that like cases must be decided alike. 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. To state that like cases should be decided alike presupposes that the earlier case is alike and is not distinguishable in some relevant respect. If it is distinguishable then it usually will lack materiality by reference to consistency although it may be material in some other way. Where it is indistinguishable, then ordinarily it must be a material consideration. A practical test for the Inspector is to ask himself whether, if I decide this case in a particular way am I necessarily agreeing or disagreeing with some critical aspect of the decision in the previous case? The areas for possible agreement or disagreement cannot be defined but they would include interpretation of policies, aesthetic judgments and assessment of need. Where there is disagreement then the inspector must weigh the previous decision and give his reasons for departure from it. These can on occasion be short, for example in the case of disagreement on aesthetics. On other occasions they may have to be elaborate.”

24 Consideration was given to the materiality of emerging allocations in a consultative version of a local plan by Stewart-Smith J in the case of *Wainhomes (South West) Holdings Limited v Secretary of State* [2013] EWHC 597 . The framework provides an understanding of the definition “deliverable” in footnote 11 as follows:

- i. “11. To be considered deliverable, sites should
- ii. 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 would not be viable, there is no longer a demand for the type of units or sites have long term phasing plans.”

25 Having set out some parameters for the interpretation of the question of whether a site was deliverable, Stewart-Smith J went on to set out his conclusions in respect of emerging allocations as follows:

- i. “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 sites 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 number of sites included in a draft plan but 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 process 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."

26 Ground 3 relates to the role of the Inspector at a hearing. The leading case in relation to this issue is the case of *Dyason v Secretary of State* 75 P&CR 506 . In giving the leading judgment of the Court of Appeal Pill LJ stated at page 512 as follows:

i. "It is clear that at a hearing there is to be no formal cross-examination and that a hearing is the suitable procedure where "there is no likelihood that formal cross-examination will be needed to test the opposing cases". The intention is to make the procedure "less daunting for unrepresented parties." It is intended "eliminate or reduce the formalities of the traditional local inquiry."

ii. Planning permission having been refused, conflicting propositions and evidence will often be placed before an inspector on appeal. Whatever procedure is followed, the strength of the case can be determined only upon an understanding of that case and by testing it with reference to propositions in the opposing case. At a public local enquiry the Inspector, in performing that task, usually has the benefit of cross-examination on behalf of the other party. If cross-examination disappears, the need to examine propositions in that way does not disappear with it. Further, the statutory right to be heard is nullified unless, in some way, the strength of what one party says is not only listened to by the tribunal but assessed for its own worth and in relation to opposing contentions. There is a danger, upon the procedure now followed by the Secretary of State for observing the right to be heard by holding a "hearing", that the need for such consideration is forgotten. The danger is that the "more relaxed" atmosphere could lead not to a "full and fair" hearing but to a less than thorough examination of the issues. A relaxed hearing is not necessarily a fair hearing. The hearing must not become so relaxed that the rigorous examination essential to the determination of difficult questions may be diluted. The absence of an accusatorial procedure places an inquisitorial burden upon an Inspector."

Conclusions

27 As set out above, the allegation in Ground 1 is that the Inspector should not have included an allowance for vacancies and second homes in the setting the FOAN. This involves considering what material is relevant to establishing a FOAN. Firstly, to follow the interpretation of paragraph 47 of the Framework set out above, a FOAN is not the figure for a housing requirement following the application of the policies in the Framework. It is a figure for the assessment of housing needs prior to the application of policy.

28 So what is the nature of a policy which may in a forward-planning context lead to the adjustment of the housing needs assessment figure? Whilst Sir David Keene referred to a "constrained figure for housing need" for example in paragraph 27 of *Hunston* , when a housing figure passes through the lens of policy it may increase as well as decrease. It may decrease as a result of the application of policies of constraint such as Green Belt or as a consequence of environmental designations such as an Area of Outstanding Natural Beauty or designated European habitats; see for example footnote 9 to the framework. Housing figures may also increase, for example, as a result of factors such as the desire to foster regeneration led by residential development, or the intention to establish a growth area (as has occurred over the years in some parts of the country). All these policies are environmental or socio-economic in their nature and they are policies which are not associated with the calculation of the FOAN. They influence the figure for the housing requirement to be determined in the forward planning process and thereby create a figure "consistent with the policies set out in this Framework."

29 How then is the FOAN to be arrived at? It is important to read the Framework's paragraph 47 requiring the local plan to meet "the full objectively assessed needs for market and affordable housing in the housing market area" alongside paragraph 159 of the Framework which describes the means of identifying the FOAN, namely the SHMA. It is appropriate, therefore, at this stage to

note the terms of paragraph 159 which goes hand in hand with paragraph 47. It provides as follows:

- i. “159 Local planning authorities should have a clear understanding of housing needs in their area. They should:
- prepare a Strategic Housing Market Assessment to assess their full housing needs, working with neighbouring authorities where housing market areas cross administrative boundaries. The Strategic Housing Market Assessment should identify the scale and mix of housing and the range of tenures that the local population is likely to need over the planned period which:
 - meets household and population projections, taking account of migration and demographic change;
 - addresses the needs for all types of housing, including affordable housing and the needs of different groups in the community (such as but not limited to, families with children, older people, people with disabilities, service families and people wishing to build their only homes); and
 - caters for housing demand on the scale of housing supply necessary to meet this demand.”

30 This is clearly not a comprehensive description and further guidance is provided by the first defendant in the Planning Practice Guidance, and in particular in this respect, in paragraphs with reference ID 2a-001–20140306 to 2a-029–20140306.

31 In terms of the first element of the assessment in the first of the sub-bullet points in paragraph 159, namely meeting household and population projections taking account of migration and demographic change, the PPG illustrates that this is a statistical exercise involving a range of relevant data for which there is no one set methodology, but which will involve elements of judgment about trends and the interpretation and application of the empirical material available. These judgments will arise for instance in relation to whether, for example, adjustments for local demography or household formation rates are required (see paragraph ID 2a-014–20140306), and the extent and nature of adjustments for market signals (see paragraph ID 2aa-018–20140306). Judgment will further be involved in taking account of economic projections in undertaking this exercise.

32 At the second stage described by the second sub-bullet point in paragraph 159, the needs for types and tenures of housing should be addressed. That includes the assessment of the need for affordable housing as well as different forms of housing required to meet the needs of all parts of the community. Again, the PPG provides guidance as to how this stage of the assessment should be conducted, including in some detail how the gross unmet need for affordable housing should be calculated. The Framework makes clear these needs should be addressed in determining the FOAN, but neither the Framework nor the PPG suggest that they have to be met in full when determining that FOAN. This is no doubt because in practice very often the calculation of unmet affordable housing need will produce a figure which the planning authority has little or no prospect of delivering in practice. That is because the vast majority of delivery will occur as a proportion of open-market schemes and is therefore dependent for its delivery upon market housing being developed. It is no doubt for this reason that the PPG observes at paragraph ID 2a-208–20140306 as follows:

- i. “The total affordable housing need should then be considered in the context of its likely delivery as a proportion of mixed market and affordable housing developments, given the probable percentage of affordable housing to be delivered by market housing led developments. An increase in total housing figures included in the local plan should be considered where it could help deliver the required number of affordable homes.”

33 This consideration of an increase to help deliver the required number of affordable homes,

rather than an instruction that the requirement be met in total, is consistent with the policy in paragraph 159 of the Framework requiring that the SHMA “addresses” these needs in determining the FOAN. They should have an important influence increasing the derived FOAN since they are significant factors in providing for housing needs within an area.

34 Insofar as Hickinbottom J in the case of *Oadby and Wigston Borough Council v Secretary of State* [2015] EWHC 1879 might be taken in paragraph 34(ii) of his judgment to be suggesting that in determining the FOAN, the total need for affordable housing must be met in full by its inclusion in the FOAN I would respectfully disagree. Such a suggestion is not warranted by the Framework or the PPG for the reasons which I have just set out. As Hickinbottom J found at paragraph 42 of that judgment, what the Inspector did in that case was to exercise his planning judgment, firstly, to conclude that the FOAN was higher than the council's figure and secondly, (again deploying planning judgment) to arrive pragmatically at a figure for the FOAN in order for it to be used to assess the five-year housing land supply. The council's figure was regarded by the Inspector in that case as being short because it failed to properly take account of factors which should have been included in the FOAN, including considering affordable housing need. Understood in this way, references to “policy on” and “policy off” become a red herring. The appropriate figure was for the Inspector's judgment to determine taking account of all the matters involved in finding the FOAN.

35 Thus, when paragraph 47 of the Framework requires the local plan to meet “the full objectively assessed needs for market and affordable housing,” that is the figure determined by the SHMA required by the paragraph 159 of the Framework for the purpose of identifying the FOAN. That process, guided by the PPG, seeks to meet household and population projections (taking account of migration and demographic change), and to address the need for types of housing including affordable housing. When a planning authority has undertaken or commissioned a SHMA, that will obviously be an important piece of evidence, but it is not in and of itself conclusive. It will be debated and tested at the local plan examination or (as in the present case) in appeals within the development control process.

36 This is all background to answering the question of whether or not the Inspector was correct to include second homes and vacancies in his assessment of the FOAN in this case. I am satisfied that he was. These elements were empirically based from the 2011 census and indicated a trend whereby a certain portion of the housing in the district was not in fact being used by the indigenous population, and therefore was not available to meet housing need. He was therefore entitled to form the view as a matter of judgment based on the empirical material that an allowance should be made for the prospect of that trend continuing. It is true that this involves a judgment about applying the census-based figure as a trend, but that in my view is precisely the kind of statistical judgment which is involved in determining the FOAN and the Inspector was right to countenance it.

37 Mr Leader contended that it was in reality the application of a policy, namely the perpetuation of the existing quantum of existing homes and vacancies in the housing stock, and therefore as the implementation of a policy it was not a legitimate exercise pursuant to paragraph 47. That argument is ingenious but in my view clearly puts the matter the wrong way round. In the two-stage process envisaged by paragraph 47, (that is to say in summary, firstly, determining the FOAN and secondly applying policy to it), it will be entirely open to the claimant to impose a policy in the second stage to arrest or reverse the number of vacancies or affordable homes in their planned housing stock and that could potentially lead to a reduction in housing requirements. But taking account of the existing extent of vacancy and second homes and projecting it forwards is clearly part of the statistical assessment of housing needs and part and parcel of the FOAN equation at the first stage.

38 The PPG does not provide any specific guidance on this point related to vacancies and second homes. That is to my mind unsurprising, as it could not begin to address every conceivable point which might arise in this exercise. However, I have no doubt that the inclusion of vacancies and second homes is an adjustment based on statistical data of a kind similar to those which are contemplated in the PPG. The absence of this issue from the PPG does not therefore dissuade me from the view which I have reached.

39 As I have indicated above, my attention was drawn to the fact that the PPG in paragraphs reference ID3–012–20140306 and 3–039–20140306 does address the question of vacancies but in the context of them forming an element of potential supply. It permits an allowance for bringing

homes back into use if that is supported by robust evidence from the planning authority. The existence of that guidance does not however assist in answering the question which arises in this case. Simply because a reduction in vacant homes has the potential to provide an element of supply does not render it illegitimate or inadmissible to account for the existing trend of vacant or second homes as a factor influencing the statistical exercise of determining the FOAN before supply questions arise.

40 As I have indicated, the elements of the PPG which address the question of the calculation of the FOAN support the interpretation that finding the FOAN requires an analysis of the relevant statistical and econometric data and trends. Against that background, there is no difficulty in concluding that census data about vacancies and second homes are a species of the data to be taken into account in the calculation. Ground 1 therefore fails.

41 That has implications for the remainder of the case. At the hearing of the appeal, the second defendant produced a table setting out the various figures which were candidates for the five-year supply calculation. The figure including second homes and vacancies for the five-year requirement as found by the Inspector (and upheld under Ground 1) was 5,836 homes with a five per cent buffer and 6,670 homes with a 20 per cent buffer. Even if the claimant's supply figure was to be preferred in total, the claimant could only demonstrate a five-year supply if the buffer was five per cent and not 20 per cent. In short, therefore, the claimant would have to succeed on all other issues before the court in order to succeed in showing they had a five-year supply once it is determined as I have that the Inspector made the correct conclusion as to the appropriate figure for the FOAN.

42 Turning to Ground 2, it is convenient, therefore, to look first at the complaint which is raised about the Inspector's reasoning in relation to the appropriate buffer. The context of that complaint is the 2012 Inspector's decision. The concern raised is that the decision that the claimant was a 20 per cent authority is not adequately reasoned or explained in circumstances where the 2012 Inspector found them to be a five per cent authority. How could it be that with such a short intervening period and little by way of additional annual monitoring data that the outcome could be so different?

43 True it is that the Inspector did not directly address the conclusion of his colleague in 2012 but the point appears in her decision, as will be seen from the quotation I have provided above, uncontentiously and without explanation. As is clear from the North Wiltshire case, the Inspector was not bound by it. In paragraph 9 of his decision letter, the Inspector sets out fully the reasons for his judgment that the claimant has been responsible for persistent under delivery. That is in the form of the claimant's failure to achieve the Core Strategy average for the past six years with an overall average which was well below it. The Inspector notes the claimant's arguments about the long term trend but observes that that long term trend is still behind the target with an accumulated shortfall to date. In my view his reasons are absolutely clear. Since the 2012 Inspector provided no reasons for her conclusions, nothing further was required in my view to explain why the Inspector had decided as he did.

44 The other reasons arguments within Ground 2 must start from the understanding that in paragraph 13 of the decision letter the Inspector accepted in entirety the calculation of the five-year housing land supply undertaken by the second defendant and that there was but a 1.91 year housing land supply. In that this figure was based upon the requirement figure employing the allowance for second homes and vacancies as well as the backlog, there is no substance in the claimant's complaint that it is not clear what figure the Inspector concluded upon. The derivation of the figures was clearly set out in the evidence and did not in my view require setting out further in the decision letter as they were well-known to the informed reader of the decision. The reasons for the conclusions which the Inspector reached on the FOAN are fully set out in paragraph 7 of the decision letter, where he makes clear that second homes and vacancies should be accounted for as part of the exercise of turning household figures into dwelling numbers. In my view clear and sufficient reasoning was provided for his decision.

45 To some extent the same analysis can be deployed in relation to the question of small windfalls. There were two competing figures and in concluding that the supply was 1.91 years, the Inspector accepted the second defendant's figure. In paragraph 11 of the decision letter he explains he is unpersuaded that large site windfalls should be allowed for on the basis that the allocation process should identify most of that type of site. He does not however, discount small site windfalls, and he includes the lower figure adopted by the second defendant. As the hearing

note discloses, the 268 figure was derived from a five to ten year average of small site windfalls and the derivation of the figure was therefore known.

46 There is some concern, however, in my view, about what is absent from the reasoning. What is absent is an explanation for the choice between the figures for small site windfalls which in my view could and should have been provided, albeit briefly. That said, however, this was a dispute over but 202 dwellings which would not have affected the overall and critical conclusion as to whether or not a five-year supply actually existed and therefore I am not persuaded that the claimant suffered any substantial prejudice as a result of the absence of an explanation.

47 Finally in respect of Ground 2, the question arises as to the emerging site allocations. Here again, in my view, the claimant has legitimate cause for concern since the Inspector's conclusions inferentially reject their inclusion by his acceptance of the second defendant's calculation, but the reasons are entirely silent as to why that is the case. The hearing note from the second defendant's consultant records that there was discussion at the hearing about this element of housing supply, but there does not appear any conclusion at all in the Inspector's decision as to why they were excluded. Perhaps in the light of *Wainhomes* case, and given the very embryonic nature of the allocations in a plan which had yet to be consulted upon and about which objections were unknown, it is possible to hazard a guess as to why the Inspector would have afforded them no weight and excluded them. But that would be speculation and in my view it was a matter which required some, albeit brief, explanation. Again this was a failing in the reasoning but again it did not cause any genuine or substantial prejudice to the claimant as in the light of earlier matters even including this source of housing would not have affected the important and determinative question of whether or not the claimant had provided for a five-year housing land supply. In those circumstances ground 2 must fail.

48 Turning to Ground 3, it is important to separate off what Ground 3 is not about at the outset. At one point before the hearing and in the written arguments it appeared to be suggested that this ground might be about whether the claimant, and in particular Mr Jermay, should have asked for an adjournment. It is not about that issue and in my view no possible criticism could be raised in relation to Mr Jermay's approach to the hearing. Indeed it is fair to recall that Mr Simons, who appeared on behalf of the first defendant, endorsed that approach and was rightly keen during the course of his submissions to point out that there was no criticism of Mr Jermay's conduct or participation at the hearing.

49 The point is this. At the hearing the Inspector is in charge, and the purpose of the hearing is for the Inspector to test and explore the evidence with the assistance of the parties and by means of a structured discussion of the issues. This is the substance of his inquisitorial role identified in the case of *Dyason*. It is of course open to the parties if they feel disadvantaged, or that an event has occurred in the procedure which renders it unfair, to ask for an adjournment or for some other suitable relief from the Inspector. But at all times it is for the Inspector to be on top of matters and ultimately if he cannot discharge his inquisitorial duty because of late material, then he must adjourn or regulate the procedure accordingly. There is a sense in which that analysis of the approach and involvement of the Inspector at the hearing is an answer to the claimant's complaint. They may well feel (and others might agree) that it would have been prudent for the Inspector to take a little time to read the material which he had only just received and to give consideration to whether or not the agenda or the questions he wish to explore needed to be adjusted, but ultimately that was a matter for his judgment. He clearly considered that he could explore the issues and get what he needed from the debate without doing so.

50 There is a risk in not taking time to assimilate the material and that risk is obvious. It may be that on mature reflection the material may not have been properly or fully understood which may lead to proceedings needing to be reopened. Worse still, it may lead to erroneous decisions or decisions that are based on a misconception about the evidence. However, those risks did not materialize in this case. I am not prepared to accept that the absence of reasoning which I have set out above is evidence of that failure or evidence of an unfair procedure and a failure to properly discharge the inquisitorial burden. Those failures are rather simply the failure to provide fuller explanation of conclusions in relation to issues which there is no doubt the Inspector fully understood. Thus there was no unfairness in the procedure nor did the Inspector fail to discharge his inquisitorial role in undertaking the hearing adopting the procedure which he did.

51 For reasons which I have set out above, each of the three grounds on which this claim has been advanced by the claimant must be dismissed.

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Appendix 8: Appeal Decision Excerpts



Appeal Decision

Inquiry held between 11 and 14 November 2014

Site visit made on 13 November 2014

by M Middleton BA (Econ) DipTP Dip Mgmt MRTPI

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

Decision date: 12 January 2015

Appeal Ref: APP/N1350/A/14/2217552

Land off Sadberge Road, Middleton St George, Darlington, County Durham, DL2 1JT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Gladman Developments Ltd against the decision of Darlington Borough Council.
 - The application Ref 13/00940/OUT, dated 18 November 2013, was refused by notice dated 4 March 2014.
 - The development proposed is residential development, up to 250 dwellings, landscape, open space, highway improvements and associated works.
-

Decision

1. The appeal is allowed and planning permission is granted for residential development, up to 250 dwellings, landscape, open space, highway improvements and associated works on land off Sadberge Road, Middleton St George, Darlington, County Durham, DL2 1JT in accordance with the terms of the application, Ref 13/00940/OUT, dated 18 November 2013, and the plans submitted with it, subject to the conditions in the attached schedule.

Procedural matters

2. The application is in outline with all matters apart from the access to Sadberge Road reserved for subsequent approval. It is accompanied by a Design and Access Statement and a Development Framework Plan (Drawing No. 5632-L-02-G, dated November 2013). This shows development details on a notional layout that includes four housing areas, separated by hedges/landscaped belts and areas of open space. It also outlines a road network that indicates a method of internal circulation and the proposed access to the site. It is agreed that the development would be carried out in general accordance with the details shown on this plan and the planning permission could be conditioned to that effect.
3. The configuration of the access to Sadberge Road is shown on a separate plan (Drawing No. 1356/10/A, dated February 2014). There are no objections to these details, which are agreed with the Council's Highway Engineers. This aspect of the development was not discussed at the Inquiry and apart from in the conditions, I do not refer to it any further in my decision.
4. The Appellant submitted a signed Agreement made under Section 106 of the Town and Country Planning Act 1990 between itself, the land owners and

Darlington Borough Council. In this document the Appellant and the land owners agree, if planning permission is granted, to make financial contributions towards the provision of improvements to local education facilities, off-site highway works, a pedestrian/cycle route and local sports pitches, as well as to offer to fund the purchase of a bus pass for the owner of each dwelling. They also agree to provide and manage public open space in accordance with details to be approved and to establish a management company to be responsible for the future maintenance of this open space.

5. I discuss the details of the matters proposed in the Agreement and their appropriateness, in the body of my decision letter. The Deed includes a clause that says that the covenants and obligations shall not apply or be enforceable, if I state in the decision letter that such obligations are incompatible with or otherwise fail to meet the relevant statutory tests. However, I am satisfied that the measures, as set out and commented on below, comply with the provisions of Paragraph 204 of the Framework, are necessary to make the development acceptable in planning terms and meet Regulation 122 of the *Community Infrastructure Levy Regulations (CIL) 2010*.

Planning Policy

6. The Development Plan (DP) for the area now consists of the Darlington Local Development Framework Core Strategy (CS), which was adopted in May 2011 and the saved policies of the Darlington Local Plan (LP) 1997, which was adopted following alterations in 2001. The CS seeks to meet the Borough's housing and employment needs up to 2026.
7. The Locational Strategy, as set out in Policy CS1 and elsewhere, seeks to encourage growth in sustainable locations within the main urban area, on a sequential basis, in order to achieve a more sustainable community. The overall thrust of the development policies, in the context of housing provision, seeks to concentrate most new residential development within or on the edge of Darlington town, particularly in two strategic locations on the urban fringe.
8. Outside of the main urban area, development that supports the vitality and viability of villages is to be supported within the defined limits of development. Middleton St George is specifically referred to in this context. However the appeal site is outside of the development limits, as defined under LP Policy E2, and is technically within the open countryside. The proposal is not for any of the exceptions allowable in the open countryside under LP Policies H7 and H10 or for other identified rural needs allowed under Policy CS1. I therefore conclude that the proposal is contrary to Policy CS1 and LP Policies E2 and H7 and is not supported by LP Policy H10.
9. Nevertheless, in order to support vitality and viability, the CS at Policy CS1 does anticipate some development in larger villages such as Middleton St George. Under Policy CS10 it also envisages development adjacent to such settlements in circumstances where the development strategy is delivering 80% or less of the average proposed net additions to the existing stock. Darlington has not achieved 80% of its proposed net additions since the strategy was adopted in 2011 and the Council has already begun a process of releasing appropriate land at the urban fringe to boost supply.
10. Whilst the appeal site is outside of the defined development limits, as these were defined for the purpose of accommodating housing development up to

2006 and they have not been subsequently reviewed, they cannot be considered to be up to date in 2014. As they are not up to date, I consider Policy CS1 and LP Policies E2 and H7, in as much as they prevent development adjacent to the existing settlements, to be out of date.

11. However, as LP paragraph 3.11 explains, the Development Limits were also defined to protect the Borough's unspoilt countryside and to safeguard its character and appearance. Additionally LP paragraph 4.31 says that development outside of the development limits is strictly controlled in order to make the best use of existing infrastructure and community provision and to minimise essential travel requirements. The thrust of LP Policies E2 and H7 is consequently to protect the countryside from unnecessary development and to promote sustainable development, which is expressly recognised in the Framework at paragraph 17.
12. I therefore consider those aspects of the policies to be in conformity with the Framework and capable of attracting some weight. However, given the acceptance that greenfield land is required for future development, it is clearly inappropriate to rigidly apply LP Policies E2 and H7 to every part of the countryside, as previously defined. This particularly applies to land that is adjacent to the existing settlement limits. To refuse planning permission for all proposals within this area, just because they do not meet the criteria in these policies, is inappropriate. Nevertheless, even in a period when the housing supply policies are not up-to-date, the degree of harm to the countryside's character and appearance, the importance of affected views of and from the countryside and the impact of a particular proposal on its character, need to be assessed and weighed in the balance when considering the appropriateness of sites for development.
13. Paragraph 14 of the National Planning Policy Framework (Framework) says that where the relevant DP Policies are out of date, planning permission should be granted for sustainable development unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole or specific policies in the Framework indicate that development should be restricted. The DP Policies that regulate the supply and location of housing within the Borough of Darlington are time expired and/or out of date. Paragraph 14 of the Framework is consequently engaged in the context of this appeal.

Main Issues

14. Draft issues were circulated before the Inquiry and were discussed at its beginning. In the above context and from all that I have read, heard and seen I consider the main issues to be:
 - a) Whether Darlington now has a five year housing land supply;
 - b) Whether the proposal is sustainable development within the meaning of the National Planning Policy Framework and if so
 - c) Whether the benefits of the proposal are significantly and demonstrably outweighed by any harm to the character and appearance of the local countryside and any other harm attributable to the development such that the presumption in paragraph 14 of the Framework to favourably consider applications for sustainable development is outweighed.

Reasons

15. The site is a somewhat rectangular arable field. Its longer, southern boundary abuts the course of the former Stockton and Darlington Railway, which is now a local heritage trail and a part of the national cycle network. Beyond this lies the urban part of Middleton St George. Most of the area close to the appeal site was developed in recent decades and I was told at the Inquiry that much of the land, which the dwellings on these sites occupy, was previously developed land. To the north, the site is adjacent to the A67, which is a fast road linking Darlington with Stockton. To the west, beyond Sadberge Road, are allotment gardens and to the east the Whinneys, a local nature reserve.

Housing land supply

16. Housing land supply is made up of two components, the overall housing need and the supply of available land on which to meet that need at a specific point in time. The Framework, whilst encouraging Local Planning Authorities to boost significantly the supply of housing in paragraph 48, also says that their local plans should meet the fully objectively assessed needs (FOAN) for housing and affordable housing in the Housing Market Area (HMA). The National Planning Practice Guidance NPPG gives further advice on how a FOAN analysis should be undertaken. Darlington Borough is the major part of an HMA that probably extends into adjacent parts of North Yorkshire, as well as County Durham. Nevertheless, a high proportion of the population of this area live within the Borough so, for Darlington's purposes, it is reasonable to base any assessment of housing need on the population of the Borough.

17. The Housing requirement for Darlington in the CS is derived from the North East Regional Plan, which has now been revoked. That requirement included a significant element of planned population redistribution, in favour of the inner parts of the North East's conurbations, to support regeneration and the redevelopment of brown field sites. Darlington's medium and long term targets were consequently constrained. Regardless of the appropriateness of the housing targets in the CS, at the time of their production, they were a top down imposed housing requirement and never an objective assessment of the needs of the area. They significantly fell short of the likely FOAN of the HMA at the time of their imposition and their context has totally changed following the repeal of the Regional Plan, the adoption of the Framework as National Planning Policy and the publication of its daughter document the National Planning Policy Guidance (NPPG). They are consequently not an appropriate basis for the housing requirement element of housing land supply in 2014, particularly as Darlington has no cooperative arrangements with the Teesside authorities, to promote the diversion of some of its growth to that area, as envisaged in the Regional Plan.

18. Unfortunately the Council did not make an assessment of the Borough's FOAN at the time that it prepared the CS and has not done so since. The Framework requires local planning authorities to identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of housing against their housing requirements with an additional buffer. Without an objective assessment of their housing requirements, as a starting point, they are unable to do this and demonstrate a five years supply of deliverable housing sites, regardless of the amount and quality of the data on the supply side. Paragraph 49 of the Framework is consequently once again engaged.

19. The Council commissioned a Strategic Housing Market Assessment in 2012 that suggested a corrected growth in households of 422 per annum. However, it now considers this to be optimistically too high because it was based on 2008 data, which is out of date. That analysis, however, only represents the first part of the three stage process to establish FOAN as outlined in the NPPG. It does not adjust the household projections to allow for economic growth rates or assess that result in the context of market signals. The CS seeks to facilitate sustainable economic growth by promoting a range and continuous supply of employment development opportunities. Furthermore, the indigenous working age population is forecasted to decline. In such circumstances, it is reasonable to expect there to be net inward migration and for the additional households that this would bring to Darlington, to require the provision of additional dwellings.
20. Such employment led inward migration clearly occurred at Darlington in the decade that preceded the onset of the recession in 2008. In such circumstances it is not unreasonable for the Appellant to suggest that there is likely to be a return to such trends in the future. The Council has a responsibility to plan properly for this, particularly when it is clearly promoting a growth agenda itself, as evidenced by its commitment to encourage growth in Policy CS1.
21. The Appellant has commissioned the preparation of a FOAN that follows the guidance in the NPPG. It finds that the FOAN for the period 2011-26 is 505 dwellings per annum (dpa). The Council were critical of this work, particularly the levels of inward migration and the calculation of the number of additional households that would result. In closing it suggested a reworked figure of 388 dpa, pointing out that this is extremely close to the Council's CS figure (350). I do not consider a figure that is more than 10% higher to be extremely close.
22. It is not a part of the function of a Section 78 appeal to establish the FOAN of a housing market area. That should be done through a thorough rigorous testing at a DP examination. Nevertheless, whilst I share some of the Council's concerns in the context of the levels of inward migration and headship rates contained in the Appellant's analysis, given the spectrum of supporting evidence that is before me I would be surprised if the FOAN was not significantly above 400 dpa when it is eventually established following appropriate testing.
23. As well as a rate of house-building based on FOAN, the Framework requires local planning authorities to add a buffer to the five years supply to ensure choice and competition in the market for land. It has also become established practice, now reinforced by guidance in the NPPG, to add any previous under-delivery during the plan period into the equation.
24. Before the onset of the recession in 2008, Darlington only once failed to meet its housing target in the previous 10 years. Overall there was a very healthy surplus of dwellings during this period. Although the CS housing targets have not been met since 2008 that is not untypical. The building industry has been in recession, largely because of the financial situation and the shortage of mortgages that resulted, as well as the prudence of some potential home owners in a period of financial austerity. In such circumstances and in the absence of any evidence to suggest that low completion rates have been a

product of housing land shortages, I am not persuaded that it is appropriate to apply a buffer greater than 5%.

25. In its assessment the Council has deferred the provision of the under-delivered dwellings to the latter part of the plan period. The NPPG suggests that any back-log should be added into the first five years where possible. This backlog has resulted from an under provision in the recent past for the reasons discussed above. That has not removed the need for the dwellings and once the market is functioning normally again, unless there are good reasons not to do so, they should be provided as soon as possible and not in five or ten years' time. The Framework specifically says at paragraph 47 that local planning authorities should boost significantly the supply of housing.
26. The only circumstances that I can foresee overriding this are where there is clear evidence of incapacity in the local building industry to achieve the amount of development required to meet the uplifted targets. In the period 2005-08, the house building industry in Darlington delivered more than 530 dpa. In Darlington's case it is agreed that the shortfall is only to be calculated over a three year period so it is not overly large. Unless the front loading of all of the previous under provision would result in this delivery rate being exceeded, then I can see no justification for not following the 'Sedgefield' method and seeking to make up for the shortfall within the first five years.
27. If the figure of 388 dpa, latterly advanced by the Council, is used as the basis for establishing need and allowing for a 5% buffer and the making up of the short-fall within the first five years, then there would be a requirement to supply in excess of 2,600 dwellings.
28. The Council originally put forward a supply of 1,942 dwellings, which was endorsed by the Darlington Strategic Housing Land Availability Steering Group (DSHLASG) in 2013 and agreed by the Appellant in the Statement of Common Ground. In its proof of evidence this figure was increased to 2,805. In discussion with the Appellant during the course of the Inquiry, this was reduced to 2,725. The Appellant's assessment suggests that there is only a potential supply of 2,006.
29. The Council's uplift includes additional dwellings from committed sites and a significant increase in the numbers provided from windfalls and other identified sites. A number of these relate to Council owned land where a resolution to dispose has now been obtained. The Appellant was very critical of the ability of some of the new sites to deliver the numbers of new dwellings forecasted by the Council, if any.
30. It is not the purpose of a Section 78 appeal to undertake a forensic site by site analysis of the Council's alleged housing land supply. Nevertheless, about 40% of the houses that are assumed to be delivered within five years do not have planning permission. These dwellings would be built at emerging sites, suitable, available and deliverable sites and windfalls. I accept that there is evidence that justifies the inclusion of additional windfalls in later years. Although some development may be achieved on emerging sites, if the Council takes a liberal view in granting planning permission in advance of the adoption of its Making and Growing Places DPD, their early development is by no means a certainty. Given the level of historic objections to some of them, legal challenges cannot be ruled out and significant infrastructure requirements will undoubtedly cause delays at some sites.

31. There was a distinct lack of credible hard evidence to justify the projections for some of these sites and consequently it would be unwise to place too much reliance on the potential for delivering a significant amount of the housing requirement from such sources. Matters such as environmental impact, contamination, protected species and traffic assessments have still to be determined at some of the sites, notwithstanding the need to relocate existing occupiers from more than one of the sites, including a cattle market. Over 20% of the identified dwellings are meant to come from the emerging sites. I am not persuaded that the evidence confirms that such optimism is justified.
32. The 2013 analysis was prepared in full consultation with the development industry. It appears to have been far less involved, if at all, with the more recent analysis. DSHLASG has not approved the revised figures and does not appear to have been formally consulted about the additional sites. The NPPG says that the advice of developers and local agents will be important in assessing lead-in-times and build-out rates by year. This further undermines the confidence that I can have in the findings.
33. Among other concerns, the Appellant specifically pointed out that there are potentially unstable gypsum deposits beneath Neasham Road. As a result, the proposed residential development at this site and the relocation of the cattle market to it seems unlikely in the short term. These two sites were meant to contribute 172 dwellings to the supply. Their exclusion alone would reduce the Council's supply total to about 2,550, which is appreciably less than a supply in excess of 2,600 that would be required if the Council's suggested annual need of 388 dpa were to be used as the basis for the housing need calculations.
34. I conclude that the Council has not demonstrated a five year supply of deliverable housing sites. Paragraph 49 of the Framework says that in such circumstances relevant policies for the supply of housing should not be considered up-to-date. The presumption in favour of sustainable development in paragraph 14 therefore applies.

Sustainable development

35. At paragraph 14 the Framework says that at its heart there is a presumption in favour of sustainable development. At paragraph 6 it points out that the policies in paragraphs 18 to 219, taken as a whole, constitute the Government's view of what sustainable development means for the planning system. It further points out at paragraph 7 that there are three dimensions to sustainable development: economic, social and environmental. The three roles are mutually dependent and should not be taken in isolation (paragraph 8). The considerations that can contribute to sustainable development, within the meaning of the Framework, go far beyond the narrow meaning of locational sustainability. As portrayed, sustainable development is thus a multi-faceted, broad based concept. The factors involved are not always positive and it is often necessary to weigh relevant attributes against one another in order to arrive at a balanced position. The situation at the appeal site in this respect is no exception.

Economic role

36. Economic growth contributes to the building of a strong and competitive economy, which leads to prosperity. Development creates local jobs in the construction industry, as well as business for and jobs in the building supply

industry. These support sustainable economic development to deliver the homes, business and infrastructure that the country needs. This is particularly important in times of economic austerity and is emphasised in paragraphs 17 and 18 of the Framework. Whilst such jobs and business could be generated by development anywhere and in the context of Darlington there may well be locations that are more locationally sustainable than the appeal site that is not the issue. At the present time this Borough appears to be falling short of its requirements in terms of housing construction. In such circumstances, the availability of any site that could contribute to house building and economic development, in the short term, should attract some weight.

37. The appeal site is available. There is evidence that at least one well-established building company, with a track record of delivering new dwellings, is interested in acquiring the site to undertake a development in the short term. A condition could ensure that reserved matters are expedited without undue delay so that development could commence at an early date and thereby make a positive contribution to the need to boost the supply of housing now.
38. Shopping and community provision in Middleton St George is good for a settlement of its size, there being a number of shops, including a chemist as well as a variety of services that include a health centre and a dentist. Additional population, residing in the appeal development, would undoubtedly generate more expenditure to support these types of business, which in many rural communities are under threat.
39. There would be benefits to the local economy through increased expenditure in the form of wages and material purchases during the construction period. An unspecified number of jobs would be created for the duration of the development but not all of these would be based or recruited locally. Nevertheless, these economic benefits of the development, as discussed above, weigh in favour of the proposal in the sustainability balance and I find that the proposal would contribute positively to the economic dimension of sustainability. These considerations attract moderate weight in the overall sustainability balance.

Social Role

40. The proposal would contribute to the supply of housing at a time when there is an urgent need to increase the supply. Through a condition it would provide 20% of the dwellings as affordable housing, which is in accordance with Policy CS11. The Council through a proactive engagement with the Homes and Communities Agency appears to have been very successful in attracting funding from that source to meet some of the Borough's identified need. Nevertheless, the provision at the appeal site would contribute further to the meeting of this need and at a time when the means to create affordable housing on a large scale are limited. Despite the Borough's success, this undoubtedly weighs in favour of the proposal.
41. The Section 106 Agreement would provide funding to extend the local primary school, improve local sports pitch provision and secure the extension and improvement of a pedestrian cycle route between the appeal site and the centre of the village. Whilst these aspects of the proposal would primarily meet need generated by the new residents and are necessary to enable the development to be acceptable in planning terms, they would also improve



Appeal Decision

Inquiry held on 3, 4, 5 and 6 November 2015

Site visit made on 6 November 2015

by Anne Napier BA(Hons) MRTPI AIEMA

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

Decision date: 07/01/2016

Appeal Ref: APP/B3030/W/15/3006252

Land at Southwell Road, Farnsfield, Nottinghamshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Hollins Strategic Land LLP against the decision of Newark & Sherwood District Council.
 - The application Ref 14/01469/OUTM, dated 14 August 2014, was refused by notice dated 14 November 2014.
 - The development proposed is the erection of up to 48 dwellings (access only).
-

Decision

1. The appeal is allowed and planning permission is granted for the erection of up to 48 dwellings (access only) at Land at Southwell Road, Farnsfield, Nottinghamshire in accordance with the terms of the application, Ref 14/01469/OUTM, dated 14 August 2014, subject to the conditions in the attached Annex.

Preliminary Matters

2. The planning application that is the subject of this appeal was submitted in outline, with all matters except access reserved. A plan showing the position of the proposed access and visibility splays, Ref 0618-F01, was submitted as part of the application process and was taken into consideration by the Council in its determination of the proposal. I shall do the same. In addition, a masterplan showing a site layout and a plan of site sections, Refs (0-)A001 and (0-)A003, formed part of the application but were confirmed to be indicative only. I intend to consider the appeal on this basis.
3. During the Inquiry, a further plan was submitted, showing the proposed access in relation to trees on the site and providing an indication of the number and type of trees that would be removed, together with the extent and type of mitigation that could be provided. Whilst the plan provides some detail in this respect, it is marked 'for information only' and matters regarding landscaping are reserved. I am satisfied that my intention to consider this plan as indicative in relation to this appeal would not be prejudicial to any party.
4. It also became apparent, during the Inquiry, that the originally submitted completed planning obligation, dated 2 November 2015, contained typographical issues with regards to the areas of amenity open space and children's play area specified. A revised version of this legal agreement, dated 10 November 2015, has subsequently been submitted to resolve these issues.

Given the very limited nature of the changes involved, I am satisfied that my intention to accept this revised version of the planning obligation as part of the appeal submissions would not be prejudicial to any party.

Main Issues

5. The main issues in this appeal are:

- whether or not the relevant policies of the development plan are out-of-date, having regard to whether the Council can demonstrate a five year supply of deliverable housing land; and
- whether or not the appeal site would be appropriate for housing, having particular regard to the principles of sustainable development in the National Planning Policy Framework (the Framework) and local development plan policies.

Reasons

Development plan policy

Spatial strategy for housing development

6. The appeal site is located on the edge of Farnsfield, on land adjacent to but outside the defined village envelope and it is not disputed that, as such, the site is located within the countryside. The *Newark and Sherwood Allocations and Development Management Development Plan Document 2013* (DPD) Policy DM8 generally seeks to restrict development within such locations, unless the proposal meets one of a number of specified exceptions. Cumulatively, the *Newark and Sherwood Core Strategy Development Plan Document 2011* (CS) Policies SP1 and SP2 define a hierarchy of settlements within the area and specify how development should be distributed between those settlements. DPD Policy DM1 supports appropriate development within these settlements. CS Policy SP3, amongst other matters, seeks to protect the countryside, increase biodiversity and enhance the landscape. The submitted Statement of Common Ground confirms that it is a matter of agreement between the parties that these policies are relevant to this appeal and I see no reason to disagree with this view.
7. It is also a matter of common ground that the level of housing provision within the CS was in accordance with that identified in the East Midlands Regional Strategy and specifies a requirement for 740 dwellings per annum (dpa) within Newark and Sherwood (N&S). However, since the adoption of the CS, this Regional Strategy has been revoked and, in any event, it is not disputed that the specified housing requirement for N&S within the CS was not derived to meet the full objectively assessed needs (FOAN) for market and affordable housing within the housing market area (HMA). As such, it is not consistent with paragraph 47 of the Framework. On this basis, I concur with the views of the main parties that the identified housing requirement within the CS of 740 dpa is out-of-date.
8. Furthermore, I am mindful that the current extent and location of growth identified within the specific allocations and housing supply policies of the CS and DPD stems from and reflects the CS housing requirement. Accordingly, I am not satisfied that the relevant policies identified above and the overall distribution of housing growth within the settlement hierarchy can be

considered as up-to-date. Moreover, the definition of the village envelope forms an important part of this overall policy strategy for the supply of housing within the district. Accordingly, within this context and insofar as it restricts the supply of housing in accordance with this strategy, I find that the village envelope for Farnsfield is also out-of-date.

9. At the Inquiry, the Parish Council referred to the relatively recently adopted DPD and the resulting two allocated sites for Farnsfield that followed from this process. These matters were also raised in a number of submitted written representations. However, whilst these allocations provide for a level of housing provision that is somewhat above that specified in the CS, it is not disputed that the figures referred to within the CS in this respect are minimum numbers. In any event, this matter does not address my findings above, that the housing policies within the CS and DPD are out of date.
10. A need for a review of the development plan has been identified and the Council has recently produced, with others, a final draft of the *Nottingham Outer Strategic Housing Market Assessment October 2015 (SHMA)* and an *Issues Report*, which contribute to this process. Identifying the overall location and distribution of housing growth within N&S are matters for the local plan process and are not before me as part of this appeal. Furthermore, the *Issues Report* is at a very early stage of the process, which considerably limits the weight that I give to it, in accordance with paragraph 216 of the Framework.
11. Nonetheless, whilst recognising that an assessment of need is materially different to the policy process that will be followed to determine the most appropriate locations to distribute growth in order to address that need, there is nothing before me to suggest that the level of housing requirement identified within the CS, or the potential respective distribution of housing within the area, have little prospect of change as part of this review process. As such, neither the SHMA nor the Issues Report leads me to alter my conclusions that the housing requirement identified within the CS is out-of-date.

Five year supply of deliverable housing land

Full objectively assessed need (FOAN)

12. I heard evidence on the final draft of the SHMA, which identifies a HMA that covers the area of N&S and two adjacent local authority administrative areas, those of Ashfield and Mansfield. There is nothing before me that leads me to consider that the identified HMA is inappropriate. Whilst considering housing need across the whole HMA, the SHMA also identifies a level of housing need for each authority within the HMA.
13. The SHMA will be tested in due course as part of the development plan process and full details in relation to the HMA as a whole are not before me. Nonetheless, having regard to the Planning Practice Guidance (PPG) relating to the calculation of the five-year housing supply¹ and in relation to this appeal, I consider that it is necessary for me to reach an evidence based conclusion about the FOAN for N&S, before assessing whether there is any shortfall in housing supply to meet that need. The Council considers that the SHMA represents the best evidence presently available in respect of housing need, which is capable of being a robust and sound assessment of that need. It is an

¹ PPG, ID 3-030-20140306

assessment that has very recently been produced and undertaken following a detailed analysis of the issues, as well as some limited consultation. As such, I regard it as an important consideration in respect of this appeal.

14. The scale of housing supply identified as necessary for N&S within the SHMA amounts to some 454 dpa, which is substantially below that previously identified as required within the CS (740 dpa). Whilst not disputing that the CS housing figures are out-of-date, the appellant's assessment of housing need identifies that a level of housing of between 500-550 dpa would be required to meet need within N&S. In broad terms, the difference between the parties on this matter relates to three areas of assessment – the appropriate extent of adjustment that should be made to household projections to take account of longer term migration trends and unattributable population change (UPC), economic growth and market signals. I shall consider each of these in turn.
15. The evidence provided indicates that the SHMA's assessment of FOAN broadly follows the approach outlined within the PPG². Its starting point for the estimation of overall housing need is the 2012-based Office of National Statistics Sub-National Population Projections (SNPP) and the 2012-based Department for Communities and Local Government household projections, which give an FOAN figure for N&S of 399 dpa. It is not a matter of dispute between the parties that it is appropriate to adjust these initial projections to reflect other evidence on population and household change in the area. Having regard to the evidence provided, I concur with the views of both the main parties that such an adjustment would be reasonable in this case.
16. An adjustment to take account of longer term migration trends results in an identified need for some 499 dpa in N&S. The Council contends that it is necessary to make an adjustment to this figure to take into account the SNPP adjusted for UPC in order to ensure that the overall figure for the HMA would be sufficiently accurate in relation to individual local authority areas, particularly in respect of Mansfield. Such an adjustment would reduce the level of housing need for N&S to 446 dpa.
17. Whilst accepting that the HMA is greater than that of the administrative area of N&S, the FOAN for Mansfield is not a matter that is before me as part of this appeal. Furthermore, from the evidence provided, the overall assessment for the HMA is generated in part from an approach that requires a combined assessment of the relevant data sources of the respective individual local authority areas. As such, I find the justification for making an adjustment to the identified need in N&S to address a specific sensitivity issue within a neighbouring local authority area not to be compelling in respect of this appeal.
18. Whether or not some adjustment is required to the population projections for Mansfield, the evidence before me is not sufficient to demonstrate that a downward adjustment to the identified longer term migration trends to take account of UPC for N&S is necessary. Furthermore, I am not satisfied that it has been adequately demonstrated that the absence of such an adjustment in N&S would necessarily have an unacceptable impact on the robust assessment of FOAN within the HMA as a whole. As a result, on the evidence available to me, I find that the figure of 499 dpa represents an appropriate demographic figure for N&S.

² PPG, 2a 'Housing and economic development needs assessments'

19. The PPG advises that it is also necessary to consider whether any further adjustment is appropriate to take account of economic circumstances and market signals, amongst other matters. This approach is followed within the SHMA, which concludes that no adjustment is required to the demographically derived housing need figure to take account of projected levels of economic growth, but that this figure should be increased by 8 dpa within N&S to reflect market signals.
20. I understand that the SHMA's assessment of economic growth derives from the forecasts used in the *Employment Land Forecasting Study 2015* undertaken for the Council and other local authorities in the area. Whilst I acknowledge that the use of a common source may be useful, it is nonetheless important to consider whether this forecast appears reasonable in relation to the particular circumstances of the area and to understand the subsequent implications for housing growth.
21. The SHMA indicates that the level of housing need identified in relation to population change forecast would be able to support the expected level of economic growth within the area. However, whilst recognising this level of growth exceeds that of some national forecasts and reflects the forecast growth rate for the HMA as a whole, the appellant's evidence indicates that it would be below past growth for N&S. The PPG advises that 'establishing the future need for housing is not an exact science'.³ Furthermore, the appellant has accepted that methodological issues result in some uncertainty in the analysis of current employment and past rates of change within sectors. Nonetheless, taking into account past trends and the level of economic growth seen within N&S since 2012, it appears to me that the level of economic growth anticipated within the HMA as a whole may under-estimate that likely to occur within N&S.
22. I accept that some of the new jobs resulting from economic growth within N&S would be met by the population increases factored into the calculations previously, through the initial assessment of population change. However, even if the level of economic growth projected within the SHMA is shown to be appropriate, it appears that the economically active proportion of the population would have to increase significantly amongst some cohorts in order to support projected future increases in jobs, unless an increase in inward migration occurred.
23. From the evidence provided, I am not persuaded that the projected increases in economic activity are sufficiently realistic amongst all cohorts, including that of women above the age of 65. Whilst I recognise that it is very likely that, in the future, the proportion of women in this age group who are economically active may well increase, I am not satisfied that it has been adequately demonstrated that a labour force supply that includes some 17% of all women in this age group is reasonably likely to occur. Similar concerns also exist with other cohorts, such as men aged 35-49 and over 65, and women aged 25-49, although to a lesser extent.
24. As a result, whilst taking into account the advice in the PPG referred to above and recognising that economic growth projections and the resulting implications for housing need are difficult to quantify, I consider that the balance of the evidence provided suggests that some further upward

³ PPG, ID 2a-014-20140306

- adjustment to the demographic housing need figures is likely to be justified in this case.
25. In respect of market signals, the advice within the PPG indicates that, where such an adjustment is required, this should be set at a level that is reasonable. The basis for such an adjustment refers to the balance between the demand for and supply of housing. Planned supply should be increased by an amount that, on reasonable assumptions and consistent with the principles of sustainable development, could be expected to improve affordability.⁴
 26. Whilst there was some debate about the longer term trends of market signal indicators, and whether or not these are worsening, the SHMA recognises a need for an upward adjustment to reflect market signals. It was argued, by the Council, that the identified level of housing need within the HMA incorporates such an adjustment and, as such, the increase in 8 dpa should not be considered in isolation, particularly with regard to the formation of households from the 25-34 age cohort of the population.
 27. Nonetheless, increasing the amount of housing to meet future levels of projected housing growth or population change would not, to my mind, address identified issues regarding affordability. Furthermore, the evidence provided within the SHMA indicates that, in respect of house prices and ownership levels, the situation within N&S is not materially better than in the remainder of the HMA. The SHMA can be interpreted to imply that, in some respects, the affordability situation is more challenging in N&S in comparison to the other two local authority areas within the HMA.
 28. The Council accepted, in cross-examination, that an upward adjustment of 8 dpa would not have any material effect on the relationship of the demand for housing to its supply. I recognise that house prices are affected by macro-economic issues and the housing market in N&S does not operate in isolation. Nonetheless, this does not justify making only a very limited adjustment to the supply within N&S. If such an approach were followed more widely, then broader issues regarding affordability would remain unresolved.
 29. Examples of such adjustments made elsewhere have been drawn to my attention. Whilst I understand that a percentage increase in upward adjustment has been proposed or accepted in some cases elsewhere, which have been in the order of 10-20%, this has not been applied universally. Furthermore, these other examples relate to considerations undertaken as part of a development plan process. As such, the areas concerned and the circumstances in which they have been considered are materially different to those of the appeal before me. In any event, no such figure is before me in this case. Nonetheless, considered overall and for the reasons given above, I regard the evidence before me as supporting the need for a greater level of upward adjustment than that identified within the SHMA, to take account of market signals within N&S.
 30. In addition, the Framework and the PPG identify a requirement for the assessment of the need for affordable housing. The SHMA identifies an affordable housing need of 177 dpa for N&S. However, it does not specifically seek to add the identified need to the FOAN figure. It is common ground between the parties that the calculation of the specific number of houses

⁴ PPG, ID 2a-019-20140306 and ID 2a-020-20140306

required to meet this need can be difficult to quantify, as this need may potentially be addressed in a number of ways, such as by the private rented sector or within broader demographic changes, such as future household formations. As a result, the provision of a percentage of affordable housing within new build developments is not necessarily the only method of addressing this need.

31. Nonetheless, the need for affordable housing identified within the SHMA is supported by the *Newark and Sherwood Housing Market and Needs Assessment 2014 Draft Final Report* and the Council's *Affordable Housing Supplementary Planning Document 2013*, which identify a significant need for affordable housing within the area, including within Farnsfield. There is nothing before me to demonstrate that the identified need for affordable housing is no longer required or could be fully met in other ways. As such, considered overall, it is reasonable to conclude that some level of further upward adjustment would be appropriate in order to contribute towards the need for affordable housing.
32. Bringing together the above factors, I consider that the minimum housing need figure resulting from demographic change for N&S should be 499 dpa. Furthermore, in order to achieve a meaningful level of upward adjustment, which I consider to be necessary for the above reasons to reflect likely future economic growth, address issues of affordability and make some contribution towards meeting the identified need for affordable housing within the area, I conclude that, on the balance of the evidence available to me, a reasonable assessment of the FOAN for N&S would be in the order of 550 dpa.

Five year housing requirement

33. It is common ground that the five year land supply period is 1 April 2015 – 31 March 2020. The FOAN for N&S identified above would result in a five year housing requirement of 2750 units. It is common ground between the parties that a 20% buffer for persistent under-delivery of housing should be added to this figure. Furthermore, it is not disputed that the shortfall in housing provision compared to FOAN in the two years since 2013 should also be added to this figure, reflecting the base date of the SHMA and the available data for housing completions for the following two years. The Council have identified this shortfall to be some 187 dwellings. Given my findings above regarding FOAN, this shortfall figure should be increased to 379 dwellings.⁵
34. Both the parties agree that it would be appropriate to add the shortfall figure to the total following the addition of the 20% buffer to the FOAN figure, to avoid double-counting. I note that this approach does not accord with that suggested in the Planning Advisory Service (PAS) guidance⁶ and I acknowledge that the alternative approach used in the PAS guidance (adding the 20% buffer to both the FOAN and the shortfall) has been followed in other decisions. However, I do not propose to divert from the agreed approach between the parties in this case. As a result, the housing requirement for the five year period, taking into account the 20% buffer, would be increased to 3300 dwellings.

⁵ This calculation adds a figure of 96 dpa (550-454 dpa) for each of the years 2013/14 and 2014/15 to the Council's figure of 187 dwellings, to arrive at a shortfall figure of 379 dwellings.

⁶ PAS Technical Advice Note on Objectively Assessed Need and Housing Targets

35. It is disputed whether the identified shortfall of 379 dwellings should be addressed within the next five years (the 'Sedgefield' method) or spread across the remaining plan period (the 'Liverpool' method). I understand that the Council has previously been consistent in its use of the Liverpool method. Having regard to the strategic urban extensions (SUE) proposed for Newark, it continues to consider that this represents the most appropriate method in respect of N&S. In addition, although I consider the advice within the PPG to suggest a preference for the Sedgefield method,⁷ my attention has also been drawn to other examples of the use of the Liverpool method subsequent to this PPG advice being published.
36. Whilst I have had regard to these examples, I am not satisfied that the circumstances in this case are directly comparable to these other situations. In particular, the SUE sites for N&S are allocated in the CS, which was adopted in 2011. The evidence before me indicates that it was anticipated that these sites would begin to deliver housing as early as 2012. For various reasons, this has not transpired. Nonetheless, it has not been suggested that the planned delivery of housing across the SUE sites will be, or was intended to be, later in the plan period. As such, in this case and having regard to the advice within the PPG and the aim of the Framework policy at paragraph 47, to boost significantly the supply of housing, I find the Council's argument, to adopt the Liverpool method, not to be a compelling one in this case.
37. As a result, I consider that it would be appropriate to require the shortfall for N&S to be addressed within the next five years. As such, I find the overall five year housing requirement for N&S to be 3679 dwellings.⁸

Supply of deliverable housing sites

38. An agreed respective position statement between the main parties was prepared in advance of the Inquiry and this was updated during the Inquiry process. A final agreed position statement was submitted on the last day of the Inquiry and I intend to consider the appeal on the basis of this document, together with the supporting evidence provided.
39. By the end of the Inquiry, a total of twelve sites remained in dispute, which included three sites with planning permission, three sites allocated within the CS and six other allocated sites. The Council considers that it can demonstrate an overall supply of 3929 sites for housing that are deliverable in the next five years, some 250 houses above the requirement figure identified above. In contrast, the appellant contends that a supply of only 2718 houses will be deliverable within the next five years, some 961 units below this figure.
40. Broadly speaking, in respect of these remaining disputed sites and with two exceptions, the appellant's view differs from that of the Council in terms of the anticipated timing of commencement on site and the likely build-out rate for the individual sites. The two exceptions concern sites which the appellant considers will not result in any housing being delivered within the next five years.
41. Footnote 11 of the Framework defines what constitutes a 'deliverable site' in the context of housing policy and the PPG⁹ provides further advice on this

⁷ PPG, ID 3-035-20140306

⁸ FOAN for five year period plus 20% buffer (3330 dwellings) plus shortfall (379 dwellings)

⁹ PPG, ID 3-031-2140306

Appendix 9: Land to the North West of Boorley Green, Appeal Decision



Department for
Communities and
Local Government

Our Ref: APP/W1715/W/15/3130073

Mr Thomas Southgate
Terence O'Rourke Limited
Everdene House
Deansleigh Road
Bournemouth
BH7 7DU

30 November 2016

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY GLEESON DEVELOPMENTS LTD, MILLER HOMES LTD AND
WELBECK LAND
LAND TO THE NORTH WEST OF BOORLEY GREEN, WINCHESTER ROAD, BOORLEY
GREEN, EASTLEIGH, HAMPSHIRE
APPLICATION REF: 0/15/75953**

1. I am directed by the Secretary of State to say that consideration has been given to the report of David Nicholson RIBA IHBC, who held a public local inquiry on 17-19 and 24-27 May 2016 into your clients' appeal against the decision of the local authority to refuse planning permission for the development of a new sustainable neighbourhood comprising of up to 680 residential units, a new local centre including provision for small scale retail and/or community/healthcare use, land for a two-form entry primary school, formal and informal open space and sports provision, access roads and all other associated and necessary on-site infrastructure including details of the new junction arrangement for the main point of access into the development, in accordance with application ref: 0/15/75953, dated 6 July 2015.
2. On 25 August 2015, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because the appeal involves a proposal for residential development of over 150 units, or on a site of over 5 hectares, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.

Inspector's recommendation and summary of the decision

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

Department for Communities and Local Government
Jean Nowak
Planning Casework
3rd Floor Fry Building
2 Marsham Street
London SW1P 4DF

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Environmental Statement

4. In reaching this position, the Secretary of State has taken into account the Environmental Statement (ES) which was submitted under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 and the addendum submitted for the amended scheme. Having taken account of the Inspector's comments at IR1.7, the Secretary of State is satisfied that the ES, including the Addendum, complies with the above Regulations and that sufficient information has been provided for him to assess the environmental impact of the proposal.

Procedural matters

5. The Secretary of State notes that amended drawings were submitted refining some elements of the scheme. He agrees with the Inspector's conclusion at IR1.6 that, as these were limited in scope and had already been subjected to public consultations, no-one would be prejudiced by him taking them into account in coming to his decision.
6. An application for a partial award of costs was made by your clients against Eastleigh Borough Council ("the Council") (IR1.1). This application is the subject of a separate decision letter.

Policy and statutory considerations

7. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
8. In this case the development plan consists of the saved policies of the Eastleigh Borough Local Plan Review (LP) 2001-2011, adopted in 2006. The Secretary of State considers that the development plan policies of most relevance to this case are those described at IR3.2-3.6.
9. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'), as well as the Community Infrastructure Levy (CIL) Regulations 2010 as amended.

The Draft Plan and the Emerging Plan

10. The Secretary of State notes that the draft plan, the Eastleigh Borough Local Plan 2011-2029, was found unsound by the Examining Inspector in February 2015 for reasons including an inadequate supply of housing land in the first 5 years and inadequate provision for affordable housing (IR3.7-3.8). That plan has not been withdrawn but it has not been adopted, and the Secretary of State affords it very little weight. The emerging local plan, the Eastleigh Borough Local Plan 2011-2036 (eLP), is only at Issues and Options stage and no policies have yet been published. Therefore, in terms of paragraph 216 of the Framework, the Secretary of State gives it very little weight.
11. There is no neighbourhood plan (NP) for the area. There is the prospect of an emerging NP for Botley Parish and a NP area has been designated (IR3.10) but, until a plan has been published, the Secretary of State gives it no weight.

Main issues

12. The Secretary of State agrees with the Inspector that the main issues are those set out at IR12.1.
13. The Secretary of State agrees with the Inspector that, for the reasons given at IR12.2 and IR12.57, the appeal scheme would be contrary to LP Policy 1.CO. The Secretary of State agrees with the Inspector that LP Policy 1.CO is a relevant policy for the supply of housing under paragraph 49 of the Framework and, in the absence of a 5 year supply of housing land, is not up-to-date.
14. Furthermore, for the reasons given at IR12.3-12.5, IR12.7, IR12.45, IR12.57 and IR12.59, the Secretary of State agrees with the Inspector's conclusion that the scheme would also be contrary to LP Policy 3.CO. He agrees that, not only does that policy affect housing land supply and, for that reason, should be regarded as out-of-date but that other factors also limit the weight to be given to the conflict. These include: the Inspector's findings with regard to the lack of harm to named settlements; the limited viewpoints from which harm to the local gap could be experienced; the proposal for a significant landscape buffer to complement the railway line separation; and the precedent of other development being allocated within local gaps (IR12.57). Thus, overall, the Secretary of State gives limited weight to the conflict with LP Policy 3.CO.
15. For the reasons given at IR12.6 and IR12.58, the Secretary of State agrees with the Inspector that, although the proposals would not accord with LP Policy 18.CO, only limited weight should be given to that conflict; and that the scheme would accord with Policy 59.BE. The Secretary of State also agrees with the Inspector at IR12.8 that the designation of a NP area for Botley Parish should carry no weight in the determination of this appeal and, as explained in paragraph 10 above, he gives very little weight to the draft and emerging Local Plans.

Material considerations

16. The Secretary of State agrees with the Inspector at IR12.9 that the Framework is a material consideration in planning decisions and that the presumption in favour of sustainable development and the objective of boosting housing supply through a five-year supply of deliverable housing sites are the policies of most relevance to this appeal.

Housing supply

17. The Secretary of State has given very careful consideration to the Inspector's analysis of the 5 year housing land supply position at IR12.10-12.20. He notes that it is common ground that the Council cannot demonstrate the 5 year housing land supply expected by paragraph 47 of the Framework (IR12.10); and agrees with the Inspector's conclusions at IR12.21 that, on the basis of the information presented at the Inquiry and assuming that this decision is issued within the statutory timetable set, the housing land supply should be regarded as standing at around 4 years. The Secretary of State also agrees with the Inspector's conclusion at IR12.22 that considerable weight should be attributed to the benefits which the scheme would bring through delivering affordable housing.

Character and appearance

18. The Secretary of State has also given very careful consideration to the Inspector's discussion of the character and appearance of the site at IR12.23-12.47. He agrees with the Inspector at IR12.23 that, as the appeal site lies outside the urban edge, this

represents a further reason why the scheme would be contrary to LP Policy 1.CO. He also agrees with the Inspector's conclusion at IR12.24 that the development would harm the landscape qualities of the site itself by permanently altering countryside into built development.

19. Furthermore, as indicated in paragraph 14 above, the Secretary of State agrees with the Inspector at IR12.45 that, in the circumstances of this case, although policy 3.CO is a relevant policy for the supply of housing, it is not up-to-date and, as the site is in the least important part of the relevant named gap - the purpose of which would be largely retained - the weight given to the gap should be greatly reduced. He also agrees with the Inspector (IR12.46-12.49) that the weight given to the gap affecting the appeal site should be further reduced because it has been down-graded from strategic to local and is more discernable on a map than on the ground; that any harm to the gap policy needs to be weighed against the benefits of a boost to the supply of housing; and that the separate identities of Hedge End and Boorley Green would be retained.

Planning conditions

20. The Secretary of State has given consideration to the Inspector's analysis at IR10.1-10.3, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 206 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 206 of the Framework and he has therefore incorporated them in his decision as set out at Annex A to this letter.

Planning obligations

21. Having had regard to the Inspector's analysis at IR11.1-11.3, the planning obligation dated 16 June 2016, paragraphs 203-205 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR11.3 that the obligation complies with Regulations 122 and 123 of the CIL Regulations and the tests at paragraph 204 of the Framework, is necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development.

Planning balance and overall conclusion

22. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with LP Policies 1.CO, 3.CO and 18.CO of the development plan, and is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.
23. Given that the development plan policies for the supply of housing are out-of-date and the Council cannot demonstrate a 5 year housing land supply, the Secretary of State considers that paragraphs 14 and 49 of the Framework are engaged. He has therefore considered whether the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the Framework policies as a whole.
24. The Secretary of State gives considerable weight to the benefits of the scheme in delivering a new neighbourhood comprising of a large number of homes and facilities

including a new local centre and land for a primary school. The proposal would make a significant contribution in terms of helping to make up the deficit against the 5 year housing land supply and the need for affordable housing.

25. The Secretary of State acknowledges that the development of this site would harm the landscape and result in the loss of countryside, but he considers that this should be tempered by the very limited impact on views from outside the site and its immediate surroundings. He therefore gives only moderate weight to the harm caused to the landscape and by the loss of countryside.
26. The Secretary of State concludes that the adverse impacts would not significantly and demonstrably outweigh the identified benefits when assessed against the policies in the Framework taken as a whole. He therefore considers that, overall, the material considerations indicate that he should determine the proposal other than in accordance with the development plan, and he concludes that planning permission should be granted.

Formal decision

27. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants planning permission for the development of a new sustainable neighbourhood comprising of up to 680 residential units, a new local centre including provision for small scale retail and/or community/healthcare use, land for a two-form entry primary school, formal and informal open space and sports provision, access roads and all other associated and necessary on-site infrastructure including details of the new junction arrangement for the main point of access into the development, in accordance with application ref: 0/15/75953, dated 6 July 2015, subject to the conditions set out in Annex A to this decision letter.
28. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.
29. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.

Right to challenge the decision

30. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
31. A copy of this letter has been sent to Eastleigh Borough Council and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Jean Nowak

Authorised by the Secretary of State to sign in that behalf

Schedule of conditions

1. No development shall start until details of the appearance, landscaping, layout and scale (hereinafter called the reserved matters”), have been submitted to and approved in writing by the Local Planning Authority (LPA). The development shall be carried out in accordance with the approved details.
2. The development hereby permitted shall comprise no more than 680 dwellings.
3. The development hereby permitted shall be carried out in general accordance with the details shown on the Land Use Plan, drawing ref. 143405/LUB/003 Rev G, 143405/MA/008 Rev A, 143405/BH/006 Rev A, 143405/DEN/005 Rev A, 143405/LA/009 Rev A, ITB11055-GA-104 Rev D.
4. Application for approval of the reserved matters for the first phase of the development (of no less than 300 units) shall be made to the LPA not later than one year from the date of this permission, or one year from the conclusion of any subsequent Section 288 process, whichever is the later. Application for all of the remaining phases of the development shall be made to the LPA not later than three years from the date of this permission.
5. The development hereby permitted shall begin before the expiration of two years from the date of approval of the first of the reserved matters to be approved.
6. The reserved matters application for landscaping shall be accompanied by a Landscape Masterplan and Strategy to demonstrate that the landscaping proposals have taken account of, and been informed by, the existing landscape characteristics of the site and by any loss of existing vegetation on the site. The landscaping scheme shall include all hard and soft landscaping, including trees, boundary treatments and means of enclosure, car park layouts; proposed and existing functional services above and below ground; and shall provide details of timings for the provision of all landscaping and future management and maintenance. All hard and soft landscape works shall be carried out in accordance with the approved details and programme.
7. For a period of no less than 5 years after planting, any trees or plants which are removed, die or become seriously damaged or defective, shall be replaced as soon as is reasonably practicable with others of the same species, size and number as originally approved in the landscaping scheme.
8. No development or site preparation prior to operations which have any effect on compacting, disturbing or altering the levels of the site shall take place on site until an Arboricultural Method Statement and Tree Protection Plan (prepared in accordance with B.S.5837:2012 Trees in Relation to Design, Demolition and Construction) is submitted to and approved in writing by the LPA for each phase of the development and a person qualified in arboriculture, and approved by the LPA, has been appointed on the behalf of the developer to supervise construction activity occurring on the site where such development will occur within, or adjacent to, a Root Protection Zone of any tree to be retained.

This statement must include methodology for:

- Removal of existing structures and hard surfacing
- Installation of protective fencing and ground protection
- Excavations and the requirement for specialised trenchless techniques where required for the installation of services. The default position is that all services should be situated outside of the RPA of all trees
- Installation of new hard surfacing (no dig) – materials, design constraints and implications for levels

- Preparatory work for new landscaping
- Auditable system of arboricultural site monitoring including a schedule of specific site events requiring input or supervision, together with a mechanism for the submission of written evidence of monthly monitoring and compliance by the appointed Arboricultural Supervisor during construction.

The appointed Arboricultural Supervisor will be responsible for the implementation of protective measures, special surfacing and all works deemed necessary to ensure compliance with the approved Arboricultural Method Statement and Tree Protection Plan. A pre-commencement site meeting between the LPA's Arboricultural Officer, the appointed Arboricultural Supervisor and Site Manager shall take place for each phase of development, prior to any equipment, materials or machinery being brought onto the site for the purposes of development, to confirm the protection of trees on and adjacent to the site in accordance with the approved Arboricultural Method Statement and Tree Protection Plan.

9. Following inspection and approval of the tree protection measures, no access by vehicles or placement of goods, chemicals, fuels, soil or other materials shall take place within fenced areas nor shall any ground levels be altered or excavations. The tree protection shall be retained in its approved form until the development is completed.
10. No development shall take place in any phase, including any works of demolition, until a Construction Method Statement and Construction Environmental Management Plan (CEMP) for that phase has been submitted to, and approved in writing by the LPA. The approved Statement and CEMP shall be adhered to throughout the construction period. The Statement shall provide for:
 - i. Means of access for construction work
 - ii. A programme and phasing of construction work, including roads, landscaping and open space
 - iii. Location of temporary storage buildings, compounds, construction material and plant storage areas used during construction
 - iv. The arrangements for the routing/turning of lorries and details for construction traffic access to the site
 - v. The parking of vehicles of site operatives and visitors
 - vi. Provision for storage, collection, and disposal of recycling/waste from the development during construction period
 - vii. Details of wheel washing and measures to prevent mud and dust on the highway during demolition and construction
 - viii. The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
 - ix. Temporary lighting
 - x. Protection of trees and ecology (to include Habitats Regulation Assessment requirements)
 - xi. Noise generating plant
 - xii. Measures to control the emission of dust and dirt during construction (having regard to the details contained in the "Best Practice Guidance – The Control of Dust and Emissions from Construction and Demolition", 2006 (London Authorities) and "Guidance on the assessment of dust from demolition and construction" 2014 (Institute of Air Quality Management)
 - xiii. A noise and vibration assessment which takes into account the impact of demolition and piling works on existing and proposed noise sensitive properties, including a scheme of mitigation measures for protecting from noise and vibration
 - xiv. Protection of pedestrian routes during construction
 - xv. Safeguards to be used within the construction process to ensure surface water contains no pollutants on leaving the site, including suspended solids
 - xvi. Safeguards to waterways adjacent to the site from pollution impacts

- xvii. Hours of construction works restricted to 0800 - 1800 hours Monday to Friday, 0800 - 1300 on Saturday, and at no other time on Sundays, Bank and Public holidays
- xviii. No burning on site during construction and fitting out of the development hereby permitted.

11. No development shall take place in any phase until a surface water drainage scheme for that phase, based on sustainable drainage principles and an assessment of the hydrological and hydro-geological context of the development, has been submitted to and approved in writing by the LPA. The drainage strategy should demonstrate the surface water run-off generated up to and including the 1:100 year event critical storm (plus 30% climate change allowance) will not exceed the run-off from the undeveloped site following the corresponding rainfall event. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed.

Those details shall include:

- Information about the design storm period and intensity, the method employed to deal and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - Control measures to limit pollutants leaving the site;
 - A timetable for its implementation; and
 - A management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage scheme throughout its life to maintain operational water quality.
12. The development permitted by this planning permission shall be carried out in accordance with the approved Flood Risk Assessment (FRA) (by FMW Consultancy, FMW1467F, dated December 2014) and the following mitigation measures detailed within the FRA:
- All buildings and development must be located within Flood Zone 1 only. The mitigation measures shall be fully implemented prior to occupation and in accordance with the timing / phasing arrangements embodied within the scheme.
13. Prior to the commencement of any phase, details of the construction proposed for the roads and footways within the development, for each phase, including all relevant horizontal cross sections and longitudinal sections showing the existing and proposed levels together with details of street lighting (designed to minimise spillage and avoid impacting on flight corridors used by bats), the method of disposing of surface water, and details of the programme of implementation for the making up of the roads and footways, including on-going management and maintenance of any roads, footpaths and accesses and any future plans for adoption, must be submitted to and approved by the LPA in writing.
14. The roads and footways must be laid out and made up in accordance with the specification, programme and details approved and in any event shall be so constructed that, by no later than the time any building erected within that phase on the land is occupied, there shall be a direct connection from it to an existing highway. The final carriageway and footway surfacing must be commenced within 3 months and completed within 6 months from the date upon which the erection is commenced of the penultimate dwelling hereby permitted.
15. No surface alterations to the Public Right of Way, Botley Footpath no. 1, or any works that affect its surface, shall take place without the prior permission of Hampshire County Council, as the Highway Authority.
16. Development shall not begin in any phase until a noise assessment scheme has been submitted that demonstrates that the adverse impacts of noise on the development within that phase have been addressed through building layout and design, including where appropriate, mitigation measures to achieve acceptable levels of noise both externally and internally. The

noise mitigation measures, as approved in writing by the LPA, shall be fully installed and verified as performing as required in accordance with the approved scheme.

17. Any plant or equipment used for the purpose of air conditioning shall be provided with suitable acoustic attenuation, or sited at agreed locations, to mitigate the effects of noise as approved in writing by the LPA. The acoustic attenuation shall be installed and retained in accordance with the approved details.
18. No work shall commence on site until the following has been submitted to, and approved in writing by the LPA:
 - a) A Report of Preliminary Investigation comprising a Desk Study, Conceptual Site Model, and Preliminary Risk Assessment documenting previous and existing land uses of the site and adjacent land in accordance with national guidance and as set out in Contaminated Land Report Nos. 11, CLR11, and BS 10175:2011+A1:2013 Investigation of potentially contaminated sites - Code of Practice, and, unless otherwise agreed with the LPA;
 - b) A Report of a site investigation documenting the ground conditions of the site and incorporating chemical and gas analysis identified as appropriate by the Preliminary Investigation and in accordance with BS 10175:2011+A1:2013, and BS 8576:2013 and unless otherwise agreed with the LPA;
 - c) A detailed site specific scheme for remedial works and measures to be undertaken to avoid the risk from contaminants and/or gases when the site is developed and proposals for future maintenance and monitoring.

Such a scheme shall include nomination of a competent person to oversee the implementation of the works.

19. The development hereby permitted shall not be occupied / brought into use until there has been submitted to the LPA verification by the competent person approved under the provisions of condition 18(c) that any remediation scheme required and approved under the provisions of condition 18(c) has been implemented fully in accordance with the approved details (unless varied with the written permission of the LPA in advance of implementation). Unless agreed in writing with the LPA such verification shall comply with the guidance contained in CLR11 and EA Guidance for the Safe Development of Housing on Land Affected by Contamination - R&D Publication 66: 2008. Typically such a report would comprise:
 - A description of the site and its background, and summary of relevant site information;
 - A description of the remediation objectives and remedial works carried out;
 - Verification data, including - data (sample locations/analytical results, as built drawings of the implemented scheme, photographs of the remediation works in progress, etc);
 - Certificates demonstrating that imported and / or material left in situ is free from contamination, gas / vapour membranes have been installed correctly.Thereafter the scheme shall be monitored and maintained in accordance with the scheme approved under condition 21(c).
20. No development shall take place until an Employment and Skills Management Plan has been submitted to and approved in writing by the Council. This Plan will include a mechanism for delivery of the approved Plan in a co-ordinated way by the developers and for a report to be submitted to indicate how the criteria set out in the approved Employment and Skills Management Plan are jointly being met.
21. Prior to the commencement of the Development, the developers shall implement the approved Employment and Skills Management Plan throughout the duration of the construction period and any subsequent variations shall be agreed in writing by the LPA.
22. No reptile translocation or development shall take place until a phased Ecological Protection and Mitigation Plan, including timetable of implementation, has been submitted to and

approved in writing by the LPA.

This plan shall include:

- a scheme of ecological enhancements and landscaping and safeguards to protect the identified badger sett from disturbance;
- incorporation of features suitable for use by breeding birds (including swifts and house sparrows), and bats;
- an assessment of the trees on site for bat roosts, undertaken by a licensed bat ecologist;
- a reptile translocation, mitigation management and monitoring plan;
- a detailed scheme for the provision of mains foul water sewerage disposal on and off site within each phase.

The Plan shall be carried out as approved.

23. No tree/shrub clearance works shall be carried out on the site between 1st March and 31st August inclusive, unless the site is surveyed beforehand for breeding birds and a scheme to protect breeding birds is submitted to and approved in writing by the LPA. If such a scheme is submitted and approved the development shall thereafter only be carried out in accordance with the approved scheme.
24. No development which would disturb Japanese knotweed on the site shall take place until a detailed method statement for removing or the long-term management/control of Japanese knotweed on the site shall be submitted to and approved in writing by the LPA. The method statement shall include measures that will be used to prevent the spread of Japanese knotweed during any operations e.g. mowing, strimming or soil movement. It shall also contain measures to ensure that any soils brought to the site are free of the seeds/root /stem of any invasive plant listed under the Wildlife and Countryside Act 1981, as amended. Development shall proceed in accordance with the approved method statement
25. No development shall take place until a scheme for the provision and management of a 15 metre wide buffer zone alongside the Moorgreen Stream/Ford Lake Brook running through the development site shall be submitted to and agreed in writing by the LPA. Thereafter the development shall be carried out in accordance with the approved scheme and any subsequent amendments shall be agreed in writing with the LPA. The buffer zone scheme shall be free from built development including lighting, domestic gardens and formal landscaping; and could form a vital part of green infrastructure provision. The schemes shall include:
 - Plans showing the extent and layout of the buffer zone;
 - Details of any proposed planting scheme (for example, native species);
 - Details demonstrating how the buffer zone will be protected during development and managed/maintained over the longer term including adequate financial provision and named body responsible for management plus production of detailed management plan;
 - Details of any proposed footpaths, fencing, lighting etc;
 - Where a green roof is proposed for use as mitigation for development in the buffer zone ensure use of appropriate substrate and planting mix.
26. No development shall take place until the applicant has secured the implementation of a programme of archaeological assessment and a programme of archaeological mitigation in accordance with the submitted Environmental Statement Appendix C, 'C3 Written Scheme of Investigation for a Scheme of Investigation for a Scheme of Archaeological Evaluation'.
27. Following the completion of the archaeological fieldwork, a report will be produced in accordance with an approved programme, including, where appropriate, post-excavation assessment, specialist analysis and reports, publication and public engagement. This report shall be submitted to the LPA and to the local Historic Records Office.
28. For reserved matters applications, residential buildings shall achieve the following:
 - In respect of energy efficiency, a standard of a 19% improvement of dwelling emission rate over the target emission rate as set in the 2013 Building Regulations being equivalent to

and not exceeding the requirement as set by Code Level 4 (as defined by ENE1) in the, now revoked, Code for Sustainable Homes (or equivalent requirements that are set out in national legislation or policy).

- In respect of water consumption, a maximum predicted internal mains water consumption of 105 litres/person/day, i.e. the equivalent requirement as set by Code Level 4 (as defined by WAT1) in the, now revoked, Code for Sustainable Homes (or equivalent requirements that are set out in national legislation or policy).

Any non-residential development must achieve a BREEAM New Construction 'excellent' standard.

29. Prior to the construction of any building above slab level in each individual phase of the development (or, in accordance with a timetable to be agreed in writing with the LPA), a BREEAM New Construction Interim Stage Certificate at "excellent" standard (for non-residential development); or (for residential development) design stage SAP data and a design stage water calculator confirming energy efficiency and the predicted internal mains water consumption shall be submitted to and approved in writing by the LPA. The development shall not be carried out otherwise than in accordance with the approved details.
30. Prior to the construction of any dwelling above slab level in each individual phase of the development (or, in accordance with a timetable to be agreed in writing by the LPA) a report shall be submitted to and approved in writing by the LPA which sets out how essential requirements set out within ESD 2-8 of Eastleigh Borough Council's Environmentally Sustainable Development SPD will be met within that phase. The development shall not be carried out otherwise than in accordance with the approved details.
31. Prior to the first occupation of each type of building within each phase a BREEAM New Construction Post Construction Stage Certificate at "excellent" standard (for non-residential development); or (for residential development) an as built stage SAP data, and an as built stage water calculator confirming energy efficiency and the predicted internal mains water consumption; which shall meet the requirements set out in condition 24 above; shall be submitted to and approved in writing by the LPA. The development shall not be carried out otherwise than in accordance with the approved details.
32. Prior to the first occupation of each type of building within each phase of development a report highlighting how the essential requirements set out within ESD2-8 of the Eastleigh Borough Council's adopted Environmentally Sustainable Development SPD, set out by condition 26 above, have been achieved in that phase of the development shall be submitted to and approved in writing by the LPA. The development shall not be carried out otherwise than in accordance with the approved details.
33. A Design Code shall be submitted with the first reserved matters application, accompanied by a Masterplan, demonstrating how the reserved matters application, and the remainder of the outline permission (if reserved matters takes place in phases) meets the objectives of the Design & Access Statement (March 2016) and takes into account the drawings listed in condition 3 submitted with the outline planning application. It shall include details of:
 - Street Hierarchy and Character;
 - Green Infrastructure and Green Corridor Framework;
 - Urban Form, and;
 - The Character Areas, including boundary treatments and materials.
34. No development shall take place within each phase until the following details have been submitted to and approved in writing by the LPA for that phase:
 - Details and samples of the materials to be used in the construction of the external surfaces of the buildings (including fenestration, rainwater goods, meter boxes, fascias and soffits).
 - Plans including cross sections to show proposed ground levels and their relationship to existing levels both within the site and on immediately adjoining land.

- Any pumping stations and associated no build zone details
- External crime prevention measures for any flatted units.
Development shall be carried out in accordance with the approved details.

35. A parking layout plan showing the unallocated parking spaces (for shared use by any residents or visitor of the site) for each phase shall be submitted and approved as part of the reserved matters. The identified unallocated parking spaces shall remain unallocated and available for shared use by residents and visitors to the site in perpetuity.

Report to the Secretary of State for Communities and Local Government

by David Nicholson RIBA IHBC

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

Date: 25 August 2016

TOWN AND COUNTRY PLANNING ACT 1990

EASTLEIGH BOROUGH COUNCIL

APPEAL MADE BY

GLEESON DEVELOPMENTS LTD, MILLER HOMES LTD AND WELBECK LAND

Inquiry held on 17-19 and 24-27 May 2016

Land to the north west of Boorley Green, Winchester Road, Boorley Green, Eastleigh, Hampshire

File Ref: APP/W1715/W/15/3130073

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GLOSSARY

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|-------|--|
| 5YHLS | 5 Year Housing Land Supply |
| AQMA | Air Quality Management Area |
| BPAG | Botley Parish Action Group |
| CD | Core document |
| CIL | Community Infrastructure Levy |
| DAS | Design and Access Statement |
| CLG | Communities and Local Government |
| DAS | Design and access statement |
| dpa | dwellings per annum |
| EBC | Eastleigh Borough Council (the Council) |
| eLP | Emerging Local Plan |
| EIA | Environmental Impact Assessment |
| ES | Environmental Statements |
| HCC | Hampshire County Council |
| HE | Highways England (formerly the Highways Agency) |
| IC | Examination in chief |
| LP | (Eastleigh Borough) Local Plan |
| LPA | Local Planning Authority |
| GLVIA | Guidelines for Landscape and Visual Impact Assessment, 3rd edition |
| NCA | National Character Area |
| NPPF | National Planning Policy Framework |
| OAN | Objectively Assessed Needs |
| ONS | Office for National Statistics |
| PPG | Planning Practice Guidance |
| RfR | Reason for Refusal |
| ReX | Re-examination |
| S106 | Section 106 of the Town and Country Planning Act 1990 |
| SHMA | Strategic Housing Market Assessment |
| SoCG | Statement of Common Ground |
| SNHP | Sub National Household Projections |
| SNPP | Sub National Population Projections |
| SPD | Supplementary planning document |
| WMS | written ministerial statement |
| XX | cross-examination |

File Ref: APP/W1715/W/15/3130073

Land to the north west of Boorley Green, Winchester Road, Boorley Green, Eastleigh, Hampshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Gleeson Developments Ltd, Miller Homes Ltd and Welbeck Land against the decision of Eastleigh Borough Council.
- The application Ref. O/15/75953, dated 30 January 2015, was refused by notice dated 6 July 2015.
- The proposal is for: The development of a new sustainable neighbourhood comprising of up to 680 residential units, a new local centre including provision for small scale retail and/or community/healthcare use, land for a two-form entry primary school, formal and informal open space and sports provision, access roads and all other associated and necessary on-site infrastructure. Details of the new junction arrangement for the main point of access into the development are not reserved.

Summary of Recommendation: that the appeal should be allowed.

1. Procedural Matters

- 1.1 At the Inquiry an application for costs was made by Gleeson Developments Ltd, Miller Homes Ltd and Welbeck Land (the appellants) against Eastleigh Borough Council. This application is the subject of a separate Report.
- 1.2 The appeal was recovered by the Secretary of State (SoS) for his own determination by way of a direction dated 25 August 2015¹. The reason given for the direction was that: the appeal involves a proposal for residential development of over 150 units, or on sites of over 5 hectares, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.
- 1.3 The application to which the appeal relates was made in outline form except for access. All other matters (appearance, landscaping, layout and scale) were reserved. The application was refused by the Council for seven reasons². These related to: development beyond the built up area, in the designated countryside and the local gap between Hedge End and Boorley Green; the existing transport network; road safety; Junction 7 of the M27; affordable housing; on and off-site infrastructure; and, impact on the Solent and Southampton Water Special Protection Area.
- 1.4 An Agreement was submitted under section 106 of the Town and Country Planning Act 1990 (s106 Agreement)³. I deal with the contents and justification for this below. Following agreement with Highways England (HE), and subject to the s106 Agreement being completed, the Council agreed that all but reason for refusal (RfR) 1 should be withdrawn.
- 1.5 Subject to mitigation included in the s106 Agreement, it was agreed that the scheme would not breach the Conservation of Habitats and Species Regulations 2010 and that no *appropriate assessment* under these was necessary.

¹ See main file

² Ibid

³ Inquiry Document (ID) 37

- 1.6 Amended drawings have been submitted. These refined some elements of the scheme including the main site access junction and consequential reconfiguration of the local centre, a 100-space car park with access to the Hedge End railway station, and a bus link with Shamblehurst Lane North. Having studied these, I agree with the Council⁴ that as the amendments⁵ were limited in scope, and subject to public consultations, no-one would be prejudiced by me taking them into account and I have done so in reaching my conclusions.
- 1.7 The proposals are for development which requires an Environmental Impact Assessment (EIA). An Environmental Statement (ES) was submitted in accordance with the Town and Country Planning (EIA) (England and Wales) Regulations 1999 (The Regulations). Correspondence with the Council confirms the scoping and publicity. The ES includes a non-technical summary. Under *The Regulations*, planning permission cannot be granted for EIA development unless the environmental information has been taken into account. This includes not only the ES but also the written and oral evidence to the Inquiry. An ES Addendum⁶ for the amended scheme, including a revised non-technical summary, was the subject of full consultation. There were no objections or concerns raised with regard to the adequacy of the ES or the ES Addendum⁷.
- 1.8 The Botley Parish Action Group (BPAG) did not seek Rule 6 status but represented a large number of objectors as set out in its representations below. The Inquiry sat for 7 days from 17-27 May 2016. I held an additional evening session on Tuesday 24 May. I visited the area in advance of the Inquiry and conducted an accompanied site visit on 27 May 2016⁸.
- 1.9 On 25 May 2016, the Office for National Statistics (ONS) published the 2014-based Sub-national population projections (SNPP) for England. The Council assessed that these result in a reduction of the starting point need from 523 to 518 dpa (2011-2036) but both parties agreed that this difference has no material effect on the evidence presented at the Inquiry⁹ and so the new projections were not addressed any further in the closing submissions.
- 1.10 Changes were made to the Planning Practice Guidance (PPG) on 20 May 2016, during the Inquiry. A summary of the effects of the changes was submitted¹⁰ and it was agreed that they were of limited relevance to the main issues.
- 1.11 The Council submitted five further documents¹¹ regarding two matters which arose after the Inquiry closed. I have also taken subsequent comments from the appellants¹², and final comments from the Council¹³, into account.

⁴ SoCG para 1.8

⁵ See the drawing list at para 1.9 of the Statement of Common Ground (SoCG)

⁶ Dated 11 March 2016

⁷ In response to my question in opening, Day 1

⁸ Roughly following the route on ID19, taking in the points from where the parties' photographs were taken

⁹ ID30a and ID30b – SNPP Notes by Ireland and Coop

¹⁰ ID33 – Changes to PPG

¹¹ Post-ID1: Further submissions and 4 appendices relating to a High Court Challenge with regard to *Land to the east of Grange Road* (see section 3 below) and housing figures

¹² Post-ID2: Further submissions from the appellants dated 11 July 2016

¹³ Post-ID3: Response to appellants' further submissions, dated 13 July 2016

2. The Site and Surroundings¹⁴

- 2.1 The site description and its context were agreed to be as described in the ES Non-Technical Summary¹⁵. It comprises 45.4ha to the north west of Boorley Green, is bounded by a small number of residential properties along Winchester Road to the east, the railway line to the west and farmland to the north and south. Hedge End railway station is across Shamblehurst Lane North just beyond the north west corner of the site and the Botley Park Hotel and golf course is beyond Winchester Road. The latter has outline planning permission for 1,400 new dwellings and a local centre¹⁶ referred to in this report as Boorley Fields.
- 2.2 Except for a farmhouse and associated buildings, the site itself comprises an undeveloped mosaic of grazed and ungrazed pasture with hedgerows and trees which slopes gently down from 33.5m Above Ordnance Datum (AOD) to the south to 19m AOD along a stream at the north end. A footpath¹⁷, an unmade track lined by treed hedgerows, runs from close to Hedge End railway station to opposite the Botley Park Hotel.
- 2.3 The appeal site lies within National Character Area (NCA) 128 whose key characteristics include: *Mixed agricultural landscape dominated by pasture with small pockets of horticulture and arable. In parts, a very urban NCA dominated by the city and port of Southampton and other large towns The more rural hinterland is characterised by small, loosely clustered or dispersed settlements, intermixed with isolated farmsteads*¹⁸. The Partnership for South Hampshire (PUSH) Landscape Sensitivity Analysis¹⁹ puts the sensitivity of the site at moderate. None of the site is within a Green Belt or National Park or has any landscape, nature conservation or historic designation²⁰. It does lie within a designated local gap in the Local Plan (see below).
- 2.4 The character of the local settlements was considered in the DAS²¹ and no issue was taken with any of the analysis there. Boorley Green is currently an almost exclusively residential triangle of housing and mature vegetation between the Winchester Road and Maddoxford Lane with a small green space in the middle and the Pear Tree Inn across the Winchester Road from the north point of the triangle. It was broken down into character areas for the 2008 Appraisals²². The Council described it as feeling like a village²³. Just beyond this is the Boorley Fields site.
- 2.5 Hedge End comprises three distinct areas. To the south, the more established part of the town has a central mix of traditional shops and services which are

¹⁴ See site location map at p8 in the updated A3 Design and Access Statement (DAS), March 2016, and the various maps in Williams Appendices Vol.2

¹⁵ Confirmed in the SoCG para 2.1

¹⁶ Ref. O/12/71514 to include a new roundabout on Winchester Road – see SoCG para 3.3

¹⁷ Botley footpath No.1 - See CD3.1 para 2.6 and the DAS p13

¹⁸ CD1.42 p6: Natural England (March 2014) NCA 128 'South Hampshire Lowlands'

¹⁹ Williams appendices Fig 5

²⁰ It was common ground that the site is not excluded from considerations under NPPF14 by examples in footnote 9

²¹ DAS section 3

²² Character Area Appraisals Hedge End, West End and Botley, Supplementary Planning Document (SPD) HEWEB areas 40-44

²³ Nowak evidence-in-chief (IC)

surrounded by houses. Alongside the M27 is a substantial out-of-town retail development. To the north of the Botley Road, running up to a footpath and buffer alongside the railway line and adjacent to the appeal site, stands relatively recent residential development based on a layout of distributor roads and culs-de-sac, as was prevalent at that time²⁴, with some green spaces.

- 2.6 Botley is an historic settlement with the main concentration of services and facilities along the A334 High Street/Mill Hill. Away from this road the town is predominantly residential. As well as shops, pubs and restaurants, Botley has two schools, a GP's surgery, a recreation area, the Botley centre and a church. Botley High Street has been designated as an Air Quality Management Area (AQMA)²⁵.
- 2.7 Bubb Lane runs from the north west of Hedge End across the railway line to Winchester Road. The Decision for an Inquiry concerning *Land off Bubb Lane*²⁶ was issued during the Inquiry. The site in question lies at the western end of this road, close to Hedge End and the northern part of the Moorgreen Meadows Site of Special Scientific Interest, and within the Southampton – Hedge End strategic gap under LP Policy 2.CO (see below)²⁷.
- 2.8 Woodhouse Lane runs from the A334 roundabout near the centre of Hedge End out to the B3354 Winchester Road by the bridge over the railway at the south end of the appeal site and of Boorley Green. Together with another potential development site, the *Land West of Woodhouse Lane* is in the ownership of Hampshire County Council²⁸.

3. Planning Policy

- 3.1 The policies of the National Planning Policy Framework (NPPF) and the advice in the government's Planning Practice Guidance (PPG) are particularly relevant. Some of the important provisions in the NPPF, and their relationship with the development plan, were common ground²⁹.
- 3.2 The development plan for the area includes the policies in the Eastleigh Borough Local Plan Review (LP) 2001-2011, adopted in 2006, subject to the Saving Direction dated 14 May 2009. The relevant policies are listed in paragraph 4.7 to the SoCG. Of these, policies 1.CO, 3.CO, 18.CO and 59.BE are of particular relevance. The appeal site lies outside, but adjacent to, the urban edge and so is covered by LP Policy 1.CO which only grants planning permission outside the urban edge in specific circumstances, none of which applies here. Policy 2.CO applies further restrictions to strategic gaps if they would be either physically or visually diminished. LP Policy 3.CO states that: *Planning permission will only be permitted for appropriate development in a local gap, if:*
 - i. *it cannot be acceptably located elsewhere; and*
 - ii. *it would not diminish the gap, physically or visually.*The LP Proposals Map³⁰ shows the locations and extent of strategic and local

²⁴ DAS section 3

²⁵ See ES technical appendix B and Air Quality Addendum, March 2016

²⁶ ID15: Appeal Ref: APP/W1715/W/15/3063753 *Land off Bubb Lane, Hedge End*, dated 24 May 2016

²⁷ Ibid paras 14, 26 and 28

²⁸ Ireland Housing supply rebuttal para 3.24-3.26

²⁹ Section 4 of the SoCG: CD3.1

³⁰ Relevant extract at CD1.2

- gaps. The appeal site is shown as being covered by the designations 1.CO and 3.CO on the Proposals Map. Approximately 50% of the designated countryside in Eastleigh Borough lies within a strategic or local gap³¹.
- 3.3 LP paragraph 1.6 lists the local gaps including Hedge End – Horton Heath, Botley – Boorley Green and Hedge End – Botley. Appendix 1 to the LP³² identifies Strategic and Local Gaps adding a brief description and justification. Of these, the description for gap A. Botley – Boorley Green states that the western boundary lies along Winchester Road. The entry for gap B. Botley - Hedge End Local Gap is as follows: *The boundary of this gap, ... has been drawn tightly to the western edge of Botley, Although this does not preclude appropriate extensions to existing buildings or redevelopment it should ensure that an intensification of built form can be resisted in what is a very narrow and potentially vulnerable part of the gap. The significance of the gap can be appreciated from several locations including Broad Oak, Brook Lane, Woodhouse Lane, Winchester Road and a number of public footpaths and bridleways which traverse the area. No changes to the boundary as identified in the adopted local plan are proposed, although its status has been changed from strategic to local gap*³³.
- 3.4 LP Policy 18.CO states that: *Development which fails to respect, or has an adverse impact on the intrinsic character of the landscape, will be refused.* Paragraph 12.5 adds that: *It is important that development proposals should reflect local landscape character by protecting, enhancing and restoring the key landscape characteristics.*
- 3.5 Paragraphs 4.26-28 promote good design. These lead to LP Policy 59.BE, which sets criteria for proposals, including that:
- i. they take full and proper account of the context of the site including the character and appearance of the locality or neighbourhood and are appropriate in mass, scale, materials, layout, density, design and siting, both in themselves and in relation to adjoining buildings, spaces and views, natural features and trees worthy of retention; ...*
 - iv. they provide a high standard of landscape design and appropriate planting where required. Development should use native plants in landscape schemes to benefit biodiversity. Development adjacent to or within the urban edge must not have an adverse impact on the setting of the settlement in the surrounding countryside; ...*
- 3.6 Following the withdrawal of Network Rail's objection³⁴, subject to the requirements of its attached documents, the Council accepted that, subject to reserved matters, there would be no conflict with Policy 60.BE³⁵.
- 3.7 The Revised Submission Eastleigh Borough Local Plan Review 2011-2019 (eLP) was found unsound by the Examining Inspector³⁶ but has not been withdrawn. The Council has started to prepare a new local plan. In the Non-Technical

³¹ Budden IC and XX

³² Ibid p182

³³ Ibid p183

³⁴ Consultation response from Adrian Toolan, dated 19 March 2015, in the consultation responses to the Questionnaire, part 3 p16.

³⁵ Budden in XX

³⁶ CD1.6.3 Report dated 11 February 2015, para 90

Summary of his report the Inspector concluded that: *the [eLP] has a number of shortcomings in relation to housing need, the identified housing requirement and housing supply which are sufficient on their own to recommend non-adoption of the Plan. ... the Council has not recognised the full extent of affordable housing need in the Borough and, as a consequence, has not considered all options to seek to better address that need. ... market signals ... indicate that some additional market housing is required The five year land supply position is inadequate, even for the housing requirement identified in the submitted plan, because a 20% buffer is required and the overall supply position is tight, with no flexibility to respond to changing circumstances*³⁷.

- 3.8 Within his detailed reasoning the LP Inspector found a need to take account of market signals and favoured exploration of a cautious uplift of 10%. He considered that increasing market housing to meet all the identified affordable housing (AH) need would not be realistic and accepted that the provision of AH would free up existing accommodation in the private rented sector. On delivery, he found that: *For the 10 year period 2001-2011 the Local Plan's annual average was met in only two years and overall delivery fell well short of the required total. This is clear evidence of persistent under delivery*³⁸. In commenting on a possible MDA³⁹, he identified the concern that: *the severance effect of the rail line, which limits connectivity with the main urban area of Hedge End to one link across the railway line, or via the new access on Bubb Lane. ... (T)he physical barrier of the rail line would be a severe constraint on integration of the two areas. As a result, I consider that this scheme would not help to build on the existing community in Hedge End.* He also commented on the site's relative isolation and the difficulty in creating a mixed development area around the rail station.
- 3.9 The former South East Plan (SEP)⁴⁰ aimed for 80,000 net additional dwellings for the South Hampshire sub-region up to 2026. Amongst other things, the Panel Report considered housing and Strategic Development Areas (SDAs)⁴¹.
- 3.10 There is no neighbourhood plan (NP) for the area but there is the prospect of an emerging NP for Botley Parish and a NP area has been designated⁴². (See also the submissions in s8 below.)
- 3.11 The Report to the Communities Secretary and to the Minister of Housing and Planning by the Local Plans Expert Group (LPEG)⁴³ looked at how local plan making could be made more efficient and effective⁴⁴ and made a series of recommendations including how to boost supply, and a standard approach to 5 year supply calculations⁴⁵.
- 3.12 There is a significant difference between the household formation rates in the 2008-based and 2012-based projections. These are particularly noticeable in

³⁷ Ibid p3

³⁸ Ibid para 78

³⁹ CD1.4 paras 5.273, 5.277 and 5.282

⁴⁰ South Hampshire section at CD1.8

⁴¹ Dated 6 August 2007. CD1.9 paras 16.64-16.67

⁴² ID27 – Botley NP Designation Letter and Map comprising the whole of Botley Parish

⁴³ CD2.5 March 2016

⁴⁴ Ibid S1

⁴⁵ Ibid paras 41 and 43

the cohorts (or age ranges) of 25-34 and 35-44. The main parties agreed that there should be some adjustment to take account of this but could not agree on how it should be calculated.

- 3.13 The Council is one of 10 authorities in South Hampshire which make up PUSH. The PUSH Study, initially published in 2008 but revised in 2012⁴⁶, was supported by all 10 authorities and sets out to articulate a vision for South Hampshire's future and a strategy to align policies, actions and decisions with that overall vision. It is not a statutory plan but aims to provide a framework to inform and support the preparation of statutory local plans. It describes itself as a spatial strategy, with a scope beyond traditional land use planning, and founded on sound evidence that was formally adopted by the PUSH Joint Committee is therefore a pioneering example of the jointly prepared strategies envisaged by the NPPF⁴⁷.
- 3.14 The PUSH Study explains that the purpose of Gaps is to shape settlement patterns and to influence the location of planned development, not to stifle it altogether. It identifies 4 cross authority Gaps (two around Southampton) and sets out criteria for designating the location of other Gaps and to define the boundaries of all Gaps as follows:
- a) *the designation is needed to retain the open nature and/or sense of separation between settlements;*
 - b) *the land to be included within the Gap performs an important role in defining the settlement character of the area and separating settlement at risk of coalescence;*
 - c) *the Gap's boundaries should not preclude provision being made for the development proposed in this Strategy;*
 - d) *the Gap should include no more land than is necessary to prevent the coalescence of settlements having regard to maintaining their physical and visual separation.*

It adds that, once designated, the multifunctional capacity of Gaps should be strengthened wherever possible⁴⁸. The PUSH study has a separate Appendix⁴⁹ which identifies the importance of Green Infrastructure and Biodiversity, such as rivers, country parks, the coast and large tracts of woodland, and smaller scale features such as parks, play areas and the network of landscape features such as hedgerows.

- 3.15 There is no relevant planning history but an area including the appeal site has previously been identified as part of both a potential Major Development Area (MDA) as well as an SDA⁵⁰. The PUSH study looked at the North-North East Hedge End SDA including the majority of the appeal site. As well as Boorley Fields, the Council has resolved to grant up to 950 dwellings on land at Chalcroft Farm and for up to 1,100 on land south of Chestnut Avenue⁵¹.

⁴⁶ October 2012 CD1.11

⁴⁷ Ibid Foreword

⁴⁸ Ibid p35

⁴⁹ CD1.36

⁵⁰ Hampshire SP 2000 and South Hampshire Sub-regional Strategy within the SEP 2009 – see SoCG para 3.2

⁵¹ Refs. O/14/75735 and O/15/76023 – SoCG paras 3.5-3.6

- 3.16 The appeal Decision for *Bubb Lane* provided the most up-to-date independent assessment of 5YHLS albeit on slightly different evidence⁵². The *Bubb Lane* Inspector found that: *The use of strategic gaps, as a planning instrument, has a long and respectable provenance in South Hampshire. There are clear indications that local planning authorities would like to continue to rely on such designations to assist in shaping future growth. What form these might take is a matter for the development plan process, but the concept of strategic separation of settlements, as an important planning policy tool, is a consideration which should not be dismissed in determining this appeal.*
- 3.17 With regard to 5YHLS, the *Bubb Lane* Inspector started with the latest DCLG household projections which indicate a need for 523 dwellings per annum (dpa). He took the appellant's view that household formation rates in Eastleigh have been affected by suppression caused by market factors⁵³. He found the appellant's uplift of 10% for market forces, plus a further 10% for AH was reasonable. On the evidence before him, he found that the Objectively Assessed Needs (OAN) figure should be around 630 dpa roughly in line with the appellant's views at that Inquiry. He applied the buffer to both the requirement and the shortfall. He was circumspect regarding the appellant's arguments over lapse rates and contributions from large sites.
- 3.18 Overall, he found that, at the time of his Inquiry, the Council had something in the order of a four year supply, a considerable way to go to demonstrate a five year supply, and no convincing evidence that measures currently taken had been effective in increasing the rate of housing delivery. He concluded that the scale of the shortfall was a significant material consideration.
- 3.19 The *Bubb Lane* Decision was cited in terms of precedent. In his reasoning, the Inspector there noted⁵⁴: *Views from these well-used footpaths are to open fields both sides of the alignment of Footpath 9 and the protected trees. ... Residential development on this part of the appeal site would appear as an intrusive feature that would take away the sense of being in the open countryside for those using Footpaths 9 and 10*⁵⁵. With regard to LP policies, he found both 1.CO and 2.CO were out-of-date but gave some weight to 2.CO.
- 3.20 At *Grange Road*⁵⁶, the Inspector found that policy 1.CO was not up-to-date but that policies 2.CO and 3.CO were not relevant policies for the supply of housing, and were not out-of-date for that reason. He found that the harm from a scheme for housing development in a strategic gap near Netley would significantly and demonstrably outweigh the benefits. This Decision was challenged but permission was originally refused but then resurrected by a renewal application⁵⁷.
- 3.21 Since publication of the NPPF there have been a large number of Court cases which, collectively and for the time being, establish much of the correct interpretation⁵⁸. A large number of these Judgments were referred to,

⁵² That of Nathaniel Lichfield & Partners for Gladman Developments Ltd

⁵³ Partly based on the Local Plan 2011-2029 Inspector's Final Report – CD1.6.3 to this Inquiry

⁵⁴ ID15 para 22

⁵⁵ Ibid para 22

⁵⁶ CD4.35

⁵⁷ See Post-ID1, appendix 2 dated 10 June 2106

⁵⁸ See the 22 Judgments listed in the Core Documents, s5

particularly with regard to the current law surrounding 5YHLS⁵⁹. The relevant passages are summarised in the parties' statements. Of these, the most relevant is *Suffolk/Richborough*, which interprets NPPF49, usefully sets out the relationships between it and NPPF14 and NPPF47, and explains that the weight to be accorded to development plan policies which are out-of-date depends on the extent of shortfall, the action taken to address it, and the purpose of the policies such as the protection of a gap⁶⁰. The Judgment in *Phides* identifies that the weight given to the benefit of increasing the supply of housing will depend on the extent of the shortfall, how long the deficit is likely to persist, what steps the authority could readily take to reduce it, and how much of it the development would meet.

3.22 *Land west of Woodhouse Lane, Hedge End* was identified in Policy HE1 of the Revised Pre-Submission Draft Eastleigh Local Plan 2011-2029⁶¹ as a strategic location for residential development on around 51ha of land between Woodhouse Lane and the railway line directly across from Boorley Green. The policy indicated that the development should accommodate around 800 new homes subject to, amongst other things, the retention of a countryside gap and landscape planting between Hedge End, Botley and Boorley Green. The Council has included a contribution from this site in its supply figures⁶² while the appellants referred to the distance between this site and Boorley Green compared with that between the appeal site proposals and Hedge End.

4. Common ground

- 4.1 The General Statement of Common Ground (SoCG)⁶³. Subject to a s106 Agreement, it confirms that the Council considered that only RfR1 still applies. It was common ground⁶⁴ that the ES and further information and consultation have covered the matters identified in the LPA's Scoping Opinion⁶⁵. The General SoCG also identified the main areas of disagreement with regard to harm as: the impact on the countryside and the local gap, its effect on the policy 3.CO objective of protecting settlements, the relevance of the gap between Hedge End and Boorley Green, the significance of their coalescence, and the impact on their identities.
- 4.2 By the end of the Inquiry four additional SoCGs were submitted, two for transport⁶⁶ agreed with Highways England and with Hampshire County Council

⁵⁹ See CDs s5 and ID32. Those of particular relevance include: *Phides Estates (Overseas) Ltd v SoSCLG* [2015] EWHC 827 (Admin), *Tewkesbury BC v SSCLG* [2013] EWHC, *Hunston Properties v SoSCLG and St Albans City and District Council* (2013) EWHC 2678, *Borough Council of Kings Lynn and West Norfolk v Secret SoSCLG and Elm Park Holdings Ltd.* [2015] EWHC 2464, *Bloor Homes East Midlands Limited v SoSCLG* [2014] EWHC 754 (Admin), *Cheshire East Borough Council v SoSCLG* [2016] EWHC 571 (Admin), *Daventry District Council v SoSCLG and Gladman Developments Limited* [2015] EWHC 3459 (Admin), and especially *Suffolk Coastal DC v Hopkins Homes Ltd and Richborough Estates Partnership LLP v Cheshire East BC* [2016] EWCA Civ 168.

⁶⁰ *Suffolk/Richborough* paras 32-47 and para 47 in particular

⁶¹ CD 1.5.1 p194

⁶² See Ireland's HLS evidence, Appendix D: Large Sites – Developments Under Negotiation; Appendix M: Strategic Land Availability Assessment Sites Submission Pro-forma; and Appendix N: Hampshire County Council Site Submission Document, February 2016

⁶³ CD3.1 General SoCG, signed and dated 13 May 2016

⁶⁴ *Ibid* para 1.6

⁶⁵ Dated 7 October 2015

⁶⁶ CD3.2 signed and dated 11/12 April 2016 and CD3.3 signed and dated 13 April 2016

(HCC) as Highways Authority on highways matters; and two on housing numbers detailing, amongst other things, agreement and disagreement over housing land supply (HLS)⁶⁷.

- 4.3 Extensive common ground was reached on the 5 year HLS⁶⁸. With regard to the full OAN, it was agreed that the housing requirement is out-of-date as that in the LP was not 'saved'⁶⁹. Most of the methodology for assessing the full OAN was also agreed⁷⁰, including the starting point of 523 dpa from the 2012-based Household Projections, and that this was not significantly altered by the 2014 Sub National Population Projections (SNPP)⁷¹.
- 4.4 It was further agreed⁷² that the number of completions between 2011/12 and 31 December 2015 was 1,501. The target figures for each of those years was not agreed but whichever figures are used the completions show a persistent record of under-delivery and there was no dispute that, under the NPPF, a 20% buffer should be applied. There was also much common ground on the supply side⁷³.
- 4.5 On landscape matters, it was agreed⁷⁴ that the proposals would cause a significant adverse landscape effect on the appeal site itself but that there would be no significant impacts beyond the site.
- 4.6 Subject to detailed design, it was common ground that the DAS provides the framework to achieve a high quality residential development.

5. The Proposals

- 5.1 The SoCG confirms that the application was as described above, and as amended by the drawings listed there, and that there would be significant benefits⁷⁵ notably the provision of market housing of which 35% would be AH. The proposals would change 45.4ha of undeveloped grazed and ungrazed pasture into a housing development with land for a mixed use area adjacent to and complementing the Boorley Fields local centre, a public square and open areas including allotments and attenuation basins with existing hedgerows and tree belts retained, enhanced and maintained. The illustrative masterplan⁷⁶ identifies 22 separate features, as well as the houses, including the buffer to the railway line. The development would be concentrated around the proposed extension to the Boorley Fields local centre with a higher density and buildings of up to 3 storeys. The scheme would have a lower density with houses of no more than 2 storeys away from this area⁷⁷.

⁶⁷ ID3 and ID4

⁶⁸ ID3, ID4, ID7, ID25 and ID26

⁶⁹ ID3 para 1.1

⁷⁰ Ibid para 1.7

⁷¹ ID30a and 30b

⁷² ID31

⁷³ ID4 s4. The disagreement over figures is usefully set out in s5 and limited to large sites with planning permission, or with a resolution to grant permission, and sites under discussion.

⁷⁴ CD3.1 para 2.5

⁷⁵ Listed at para 5.7

⁷⁶ DAS pp 35-36 fig 6.1

⁷⁷ DAS update p49

- 5.2 A Design and Access Statement (DAS)⁷⁸ provides a framework for the scheme, subject to detailed design, and explains that the conclusions were used to inform the masterplan. It also examined the identity of surrounding settlements⁷⁹. Access points, which are not subject to reserved matters, would include a new roundabout on the Winchester Road, a further bus and pedestrian access close to the railway station, the existing footpath and provision in the s106 Agreement for a pedestrian/cycle link in the south east corner across the road from Boorley Green⁸⁰. The Zone of Visual Influence⁸¹ and the site visits show that there are very few viewpoints in which both Boorley Green and Hedge End can be seen together⁸².
- 5.3 The Winchester with Eastleigh Design Review Panel⁸³ made a number of comments. It noted that although the scheme will be promoting bus and cycle routes, people are likely to use cars. It stressed the importance of the interface between the open space and the development, noting the road along the edge of the green space, but was pleased to see that there is outlook and engagement between the dwellings and green spaces. It highlighted the need for safe routes and connections through. The panel liked the fact that there is a local centre and considered that this is an important factor in creating a sense of place. Overall the panel liked the direction of the scheme and the different identity areas but stressed the importance of the spaces in between the identity areas and suggested that the different areas should take in streets, rather than use them as the boundary, in order to create cohesive spaces.
- 5.4 The amended bus and pedestrian improvements drawing⁸⁴ shows the extent of proposals opposite Hedge End railway station. These would include traffic lights over the bridge, 2.0m wide footways in part, new connections for the bus link and pedestrians, both alongside the bus route and via a stepped path, and new surfacing to the sides of the bridge. The traffic lights would be controlled⁸⁵ to detect pedestrians and, after a 30 second delay, prevent vehicles crossing the bridge while they walk over. Although not a reserved matter, the final design has yet to be finalised.

6. The Case for Eastleigh Borough Council

The gist of its case was as follows.

- 6.1 The appeal site is within open countryside and a designated local gap to which LP policies 1.CO and 3.CO apply. The Council does not have a 5YHLS. Following publication of the NPPF, there has been a welter of litigation concerning such circumstances and to decide whether such policies are 'relevant policies for the supply of housing' within NPPF49, and so out-of-date, and, if so,

⁷⁸ A3 brochure, dated March 2106

⁷⁹ Budden in response to IQs

⁸⁰ As seen on the site visit

⁸¹ Williams Appendices Vol. 2, Figs 1 and 2

⁸² Acknowledged by Nowak in XX

⁸³ Williams appendix B

⁸⁴ No. ITB11055-GA-008 RevB attached to the s106 Agreement

⁸⁵ Wall in answer to IQs: with a clear pedestrian advantage including a guard rail, pedestrian monitoring and a pedestrian 'hurry' phase and 25 second delay

whether such policies should be dis-applied. The proper approach here has recently been clarified by the Courts⁸⁶.

- 6.2 First, *relevant policies for the supply of housing* means *relevant policies affecting the supply of housing*⁸⁷. These include LP policies 1.CO and 3.CO. They are therefore out-of-date and the relevant approach in NPPF14 applies. Second, however, it is now absolutely clear that an environmental protection policy can have very considerable, indeed determinative, weight even if it is out-of-date by reason of housing shortfall⁸⁸. Policy 3.CO should still be given substantial weight because of the examples given: the shortfall is small and the supply is getting better, the Council is committed to boosting supply, and a gap policy was precisely the type of policy under consideration.
- 6.3 Not all of these considerations need to be satisfied for determinative weight as shown at *Bubb Lane*⁸⁹ where the Inspector thought the Council still had some way to go. Nevertheless, he found that residential development would harm landscape character and visual amenity, conflict with relevant policies and breach an out-of-date LP gap policy⁹⁰. He further found that a dramatic and adverse alteration to the landscape would thwart the aims of policy and should be given substantial weight, such that it would significantly and demonstrably outweigh the benefits, and not amount to sustainable development⁹¹. This accorded with the findings of the Court in *Bloor Homes*⁹² that a proposal which would harm a gap can be unsustainable for that reason alone. It follows that NPPF14 does not support unsustainable development which may arise because of harm to a gap. Moreover, NPPF footnote 10 means that the balance is still subject to the caveat *unless material considerations indicate otherwise*⁹³. One such material consideration can be the effect on the separation of settlements.
- 6.4 The upshot of recent law, and other agreement, is that the issues have narrowed so that the appellants conceded that the gap between Boorley Green and Hedge End would be filled, that the housing need is agreed but for two adjustments, and that the supply is now a matter of when to apply the buffer and the extent of delivery on 9 sites.

Policy

- 6.5 LP policy conflict includes: Policy 1.CO as it is not for any of the stated exceptions; 3.CO as it would diminish the local gap and could be located elsewhere; and 18.CO as it would harm the landscape. Policy 59.BE lists criteria of which the context, character and appearance, and setting are relevant. Policy 60.BE concerns the effect of a rail corridor on the environment although this could be complied with in principle. Although it should only carry extremely limited weight, the emerging LP has not been withdrawn and shows a consistent direction of travel. As the Council cannot demonstrate a 5YHLS, it accepts that

⁸⁶ In *Suffolk/Richborough*: CD5.4

⁸⁷ *Ibid* para 32

⁸⁸ *Ibid* para 47

⁸⁹ ID15, para 45 – Appeal Decision for *Land off Bubb Lane* Ref: APP/W1715/W/15/3063753

⁹⁰ *Ibid* paras 25, 26 and 33

⁹¹ *Ibid* para 56

⁹² CD5.14: *Bloor Homes East Midlands Limited v Secretary of State for Communities and Local Government* [2014] EWHC 754 (Admin)

⁹³ As clarified in *Cheshire East*: CD5.19 para 28

the contribution towards meeting and exceeding that shortfall would be a benefit. However, since determination, the Council's position has improved so considerably that it should shortly meet its 5 year requirement. This reduces the weight to be given to meeting the shortfall.

- 6.6 The *basic imperative of delivery* underlies the housing policies in the NPPF⁹⁴. The driver for this is to deliver homes by allocating sufficient land which is suitable for development. The same focus runs through the PPG which sets out the methodology. This includes that councils do not need to consider hypothetical scenarios, only reasonable ones, and that any upward adjustment from household projections should be set at a reasonable level to improve affordability⁹⁵.
- 6.7 The housing situation can only be improved if the houses are delivered. To raise numbers to unrealistic, unreasonable and undeliverable levels would lead to a loss of control and to permissions for unsuitable sites. In response to the question⁹⁶ as to what harm would be caused by additional permissions, these would lead to an increased choice of sites but not to any overall increase in supply above that which the market can deliver. There would be no benefit but harm from permissions on inappropriate sites, slowing development in more suitable locations.

Full Objectively Assessed Needs (OAN)

- 6.8 The law in this regard is agreed to be that the requirement should be *policy off*⁹⁷, assessed for its own area⁹⁸, and exclude unmet needs from elsewhere⁹⁹ although the likelihood of this in due course may be a material consideration. The starting point in the PPG methodology for calculating OAN is the latest DCLG official household projections. This may then be adjusted through sensitivity testing to reflect local demographic characteristics. Further adjustments may be made for other factors including market signals and the need for affordable housing. However, it is clear¹⁰⁰ that caution should be exercised over adjustments as the household projections are statistically robust and based on nationally consistent assumptions. Any local changes therefore need *to be justified on the basis of established sources of robust evidence*.
- 6.9 There are essentially two areas of disagreement, both of which are matters of judgement. However, the appellants¹⁰¹ have almost exactly followed the radical revisions proposed in the LPEG report particularly the 'partial catch-up' approach to household formation rates and an additional uplift for AH. These raise the full OAN to 675 dpa.
- 6.10 The evidence on household formation rates is mixed¹⁰² and so a rounded approach has been taken resulting in a similar figure to that adopted recently at

⁹⁴ Paragraph 17, third bullet point

⁹⁵ PPG ID: 2a-003-20140306 and ID: 2a-020-20140306

⁹⁶ From the Inspector

⁹⁷ See CD5.1: *Hunston*

⁹⁸ CD5.10: *Satnam*

⁹⁹ Most likely Southampton – see CD5.11a: *Oadby* para 35

¹⁰⁰ PPG ID: 2a-015-20140306 and 2a-017-20140306

¹⁰¹ Mr Coop

¹⁰² See Council's closing ID34 paras 33-36

Bubb Lane. The Council has also accepted an uplift for AH but has combined this with that for market signals to avoid such an impact that it would probably be undeliverable and well above any housing delivery ever achieved in the Borough¹⁰³. There is no suggestion in the extant PPG that an adjustment for AH should be 'stacked' on top of one for market signals¹⁰⁴ and the interrelationship between these is close so that any upward adjustment is likely to deliver more AH. Here again, both parties take the uplifts into account and the difference is one of judgement. With regard to *Bubb Lane*, the additional uplift for AH should not be followed as it would be too ambitious, undeliverable and it would be premature to adopt the LPEG report approach¹⁰⁵ on which the Government has not published any response.

6.11 The delivery of public sector housing and subsidised AH effectively ceased long ago. The country is now reliant on the private sector to deliver housing. This sector may be very competitive but is also flawed. The overwhelming majority of supply is delivered by just 10 housebuilders all of whom protect their margins. Increasing supply would reduce margins, be a disincentive to build, an incentive to block competitors and extract the maximum profit from s106 negotiations. These are the real blockages to delivery, not the lack of planning permissions. The other examples cited¹⁰⁶ refer to councils with no idea as to their OAN and so are completely different. Here the figure is independent, represents a 38% uplift on the historic figure of 426 completions pa, and will provide a significant boost.

6.12 There is no formal guidance as to how the buffer should be added. Three decisions¹⁰⁷ represent the Council's favoured approach and, at one point at least, that of the SoS. Following the conflicting approaches highlighted at this Inquiry, the SoS will have the opportunity to state, clearly, which he prefers¹⁰⁸.

5 year supply

6.13 As set out in the SoCGs, the Council's case is that there is a supply of 4.8 years. The appellants' disagreement is limited to a different OAN figure, the application of the buffer, and the deliverability on 9 sites for reasons of lead-in, build-out rates, a 1% lapse rate, and availability. On the points of principle, the lead-in times are based only on large sites, the build-out rate of 50 dpa ignores how the market is moving, the historic lapse is only 0.5%, and to be available only requires a realistic prospect not certainty. The appellants have been inconsistent in their use of comments from developers. Consequently the Council can demonstrate a supply of 4.8 years.

6.14 It is highly relevant to set out the action being taken by the Council to improve their HLS position. The change is as a result of its commitment to increasing delivery. The Council encourages pre-application discussions, proposals for appropriate sites, has granted permission for schemes totalling 2,553 since January 2014 (with a further 1,452 subject to a s106), established a builders' guarantee scheme, has its own development company, and is bringing forward

¹⁰³ Ireland rebuttal

¹⁰⁴ PPG ID: 2a-029-20140306 and 2a-025-20140306

¹⁰⁵ See Council's closing ID34 paras 50-53 for full arguments

¹⁰⁶ CD4.25 and CD4.27: *Fairford* and *Spencers Wood*

¹⁰⁷ CD4.32, CD4.24 and CD4.33: *Malpas*, *Gresty Lane* and *Oadby*

¹⁰⁸ See the full analysis in the Council's closing paras 62-67

its own sites for development. The *Bubb Lane* findings are no more than a material consideration; the Inspector there was wrong with regard to OAN, and the Inspector and SoS here must reach their own findings on the evidence.

Policy breach

- 6.15 The proposals would not just impact upon the gap but would fill most of it¹⁰⁹, reducing it at one point to 80m¹¹⁰. The scheme would entirely urbanise the rural fields between Hedge End and Boorley Green leading to coalescence but for a narrow landscape buffer. The semantic point that the gap is entitled *Hedge End - Horton Heath* not *Hedge End - Boorley Green* will not do as all three settlements are named as protected by the gap policy¹¹¹. Breaking this down into different gaps¹¹² does not follow the Proposals Map where it plainly separates all three settlements in order to separate their individual identities. It is inconsistent with the approach to the same gap in Policy S9 to the eLP.
- 6.16 The *Willaston* Decision is entirely distinguishable as there are no gaps mentioned in LP Policy 3.CO, there is only a brief description, and development there would not erode the gap. Furthermore, it would make no sense to protect the individual identity of Boorley Green from coalescence with Botley, but allow it to coalesce with Hedge End. Local gaps provide protection for settlement gaps which are not regional or sub-regional¹¹³. The appellants' approach is an argument they have to make because otherwise the proposals are profoundly in breach of policy.

Policy consistency

- 6.17 Whilst Policy 3.CO should be deemed out-of-date under NPPF49 it is not on any other basis. Policies cannot be deemed out-of-date simply through age¹¹⁴. Policy 3.CO is consistent with NPPF17 in that it takes account of different roles and recognises the intrinsic character of the countryside. Similarly, it is consistent with NPPF61 and NPPF109. The NPPF contains no definition of *valued landscape* but it is broader than *designated*¹¹⁵. The Guidelines for Landscape and Visual Impact Assessment (GLVIA) recognises this as well¹¹⁶. The role of Policy 3.CO in protecting identity is also consistent with NPPF156 and NPPF157.
- 6.18 The point was demonstrated in Test Valley where the Inspector for its LP DPD¹¹⁷ stated in terms that a gap policy was in line with national policy. Nor can Policy 3.CO be out-of-date because the gap accorded with a previous spatial strategy with a different housing needs climate. Finally, the *Sovereign Drive* appeal¹¹⁸ revealed substantial areas of countryside potentially suitable for housing so that it is not inevitable that the gaps must go.

¹⁰⁹ Mulliner in XX

¹¹⁰ Williams in XX

¹¹¹ CD1.2: LP Appendix 1 p185

¹¹² Williams rebuttal Appendix D

¹¹³ CD4.35.1 *Grange Road* including para 16

¹¹⁴ CD5.16: *Wynn-Williams* paras 34-36

¹¹⁵ CD5.12 *Stroud* para 13-14, notwithstanding any *verbal infelicity*

¹¹⁶ CD1.45 paras 5.26 and 5.29

¹¹⁷ CD7.7

¹¹⁸ CD4.34 para 24

Harm to local gap and landscape

- 6.19 The local gaps are planning, not landscape, designations and do not need any special landscape qualities to merit protection, only to be undeveloped. Their importance is in maintaining the individual identity and character of settlements. Consequently, mitigation is not referred to in policy as no amount of landscaping can mitigate against the loss of openness. By preserving open countryside local gaps also function as landscape policies.
- 6.20 The LP Inspector did not see any evidence to justify the gaps but noted that the PUSH Study was a good place to start. This explains that the gaps are needed to shape the pattern of settlements¹¹⁹, command wide public support, are essential to shape future settlement patterns, and can have other advantages in retaining open land for recreation and other green infrastructure purposes. The PUSH policy for gaps led to Policy 15 of the South Hampshire Strategy¹²⁰, adopted as a non-statutory document, which states that *the land to be included within the Gap performs an important role in defining the settlement character of the area and separating settlements at risk of coalescence; ... Once designated, the multifunctional capacity of Gaps should be strengthened wherever possible.*
- 6.21 Notwithstanding the LP Inspector's comments¹²¹, the appeal site is on land in an extant gap policy in an extant LP which has never been allocated for development. With regard to an up-to-date evidence base, the Council's witnesses, local residents' views, and the site visit provide the same level as at the *Bubb Lane* Inquiry where the appeal was dismissed¹²².
- 6.22 The proposals would inflict substantial, permanent and irreversible harm on the character of the area, lead to the actual coalescence of two settlements, the permanent destruction of a local gap and fusion of two places with separate identities.

Decision consistency

- 6.23 It is in the public interest for planning decisions to be consistent¹²³. The appeal at *Grange Road*¹²⁴ was dismissed due to conflict with Policy 2.CO taking an NPPF14 approach on a site with, as here, ordinary and medium landscape quality. Other impacts would have been similar except that here the impact would be far more severe as the dwellings would fill much of the gap. At *Bubb Lane* there would also have been environmental harm to the character and appearance of the area, warranting substantial weight, and the erosion of the separation between settlements so that the adverse impact would significantly and demonstrably outweigh the benefits. As above, there is no presumption in favour of unsustainable development. A scheme may be unsustainable simply because of harm to a gap. Here a gap would be destroyed in clear conflict with Policy 3.CO.

¹¹⁹ CD1.38 paras 2.1-2.4

¹²⁰ CD1.11, published in October 2012 – after the NPPF

¹²¹ Para 9 of his post-hearing note – see Mulliner paras 5.32-34 and CD1.62

¹²² ID15 para 29

¹²³ *North Wiltshire DC v. Secretary of State for the Environment* (1993) 65 P&CR 137

¹²⁴ CD4.35

Benefits

- 6.24 The Council has accepted that the proposals would provide up to 680 dwellings, of which 35% would be affordable, within walking distance of shops, schools, community facilities and bus services. They would support social wellbeing by providing a mixed and balanced community and deliver the NPPF's aspiration of a wide choice of high quality homes in inclusive and mixed communities to meet the need of different people. Construction jobs and support for the local economy from an increased population, and a New Homes Bonus, would have economic benefits. With the completion of the s106 Agreement, assuming that it is CIL compliant, there would be social benefits from contributions towards improvements in sustainable transport measures on rail and road, land for public open space, and improvements in other local facilities and infrastructure.
- 6.25 However, while the economic and social benefits are significant, they are not unique to this site and could be delivered in a more appropriate location as correctly recognised in *Mans Hill*¹²⁵ but not in *Firlands Farm*¹²⁶. With regard to the railway benefits, these are limited to expanding the car park which is not needed¹²⁷ for residents of the appeal site, never full, in a most sensitive location in landscape terms, and would serve a station that not many locals use as the services are slower and less frequent than those from Southampton Airport Parkway. It would therefore harm the gap and the landscape without providing a significant benefit. No other railway or station improvements are offered.
- 6.26 With regard to AH, no-one at EBC disputes that there is a crisis at national level or that very substantial weight should be given to its delivery at local level. However, there are errors in the appellants' evidence including criticising income levels¹²⁸. Suggesting an affordable requirement of 711 dpa was based on wrong assumptions¹²⁹, unrealistically spreading the current need over 5 years rather than the plan period. The claim that households would have to wait 25 years for a home¹³⁰ was similarly without basis. Finally, as above, most development schemes in the Borough would be expected to contribute to AH and there is no offer above the 35% target.

Harms

- 6.27 As above, significant weight can be given to out-of-date housing policies. This has been confirmed by the Courts in *Suffolk/Richborough*¹³¹ which (see s3 above) cited three particular examples. On the first, the Council has shown that its shortfall is small. Second, this is as a result of action taken by the Council. Third, the site is not just within a gap protected by Policy 3.CO but covers the whole of it. This was the foundation of the refusal and dismissal of the *Grange Road* proposal. Here, while the Inspector conceded that some areas of gap would need to be developed, and that some already had been, he afforded very

¹²⁵ CD7.2 paras 73 and 76

¹²⁶ CD4.22 para 71 – note that there is no inconsistency in considering a proposal in its own right but also recognising that benefits could accrue at other locations

¹²⁷ As Harris confirmed

¹²⁸ Stacey para 5.7 relies on his Ax10, the Annual Survey of Hours and Earnings, which is based on individuals rather than Ireland's which is based on households

¹²⁹ Addressing the current need over 5 years rather than spreading it over the plan period

¹³⁰ Stacey para 5.11 and CD4.31

¹³¹ CD5.4 para 47

substantial weight to the protection afforded by Policy 2.CO. The same approach was taken at *Bodkin Farm* and *Bubb Lane*.

6.28 Rather than a flaw, the fact that the Council is prepared to grant permissions in gaps should reinforce the weight to be attached to those sites which it is seeking to preserve. Such decisions demonstrate the Council's positive attitude to boosting housing delivery. Indeed, with regard to the 3 examples in the *Suffolk/Richborough* Judgment, the Council's approach to development in gaps satisfies the first two while the decision here, to refuse permission where the impact would be unacceptable, accords precisely with the third example. In any event, not all three need to be satisfied. Even if the HLS position were worse, Policy 3.CO should still command substantial weight.

Balance

6.29 The Council's decision was that, on balance and despite its commitment to housing delivery, the benefits would not outweigh the harm to the local gap. Consequently, permission should not be granted, just as was found at *Grange Road*. Indeed, the case is now far stronger as here the proposals would actually lead to the physical coalescence of settlements and the destruction of the gap which separates them and protects their identities contrary to policies with considerable pedigree.

6.30 To follow the appellants' absurd argument that this is not the gap in question, and that the policy is only to protect one part of the gap and not another, would be to err in law. The locality has been considered previously but never been allocated because of its value as a gap. That hasn't changed in 30 years, the constant being the railway line as a firm settlement boundary to Hedge End as shown by the Inspector's Report commenting on a possible MDA that: *the severance effect of the rail line, which limits connectivity with the main urban area of Hedge End to one link across the railway line, or via the new access on Bubb Lane. ... (T)he physical barrier of the rail line would be a severe constraint on integration of the two areas. As a result, I consider that this scheme would not help to build on the existing community in Hedge End*¹³². In his view, *the MDA would be a harmful intrusion into the narrow area of countryside between Horton Heath, Hedge End and Boorley Green that should be avoided if at all possible*.

6.31 The appellants' claim, that it is not intended to connect with Hedge End, is only because it cannot do so. Instead, it would damage the identity of Boorley Green, and destroy the gap, while the resultant enlarged, single settlement could never function as an integrated community as it would be severed by the railway line. This must be bad master planning.

6.32 In stark contrast, the Boorley Fields development is in designated countryside on the opposite side of Winchester Road. It will not lead to coalescence but would add community facilities to Boorley Green. That is completely different. Similarly, the *Woodhouse Lane* allocation will function as an integrated extension to Hedge End and would not undermine its urban character, unlike that of Boorley Green, and is located on the appropriate side of the railway line.

¹³² CD1.4 para 5.273. See also paras 5.277 and 5.282

6.33 The appeal proposals are based on an absurd interpretation of saved Policy 3.CO. It would permanently destroy the gap between Hedge End and Boorley Green and lead to coalescence of the two which would be bad master-planning. As with *Bubb Lane*¹³³, it would thwart the aims of local planning policy to retain the separate identity of settlements and be unsustainable development. The profound harms would massively outweigh the benefits and so the appeal should be dismissed.

Post Inquiry submissions

6.34 These raise two further matters. First, following recent legal submissions by *Sheet Anchor*¹³⁴, the Council withdraws its concession in the SoCG and contends that Policy 3.CO is not a relevant policy for the supply of housing and, accordingly, not out-of-date by virtue of NPPF49¹³⁵. The skeleton arguments¹³⁶ explain that, to be relevant policies for the supply of housing they must both (1) restrict the locations where new housing may be developed; and (2) prevent an authority from demonstrating a 5-year supply of deliverable housing sites. While Policy 3.CO may restrict the possible locations, it does not prevent a 5YHLS as was the conclusion at *Sovereign Drive*¹³⁷.

6.35 Second, following more detailed consideration, the Council acknowledges that 630 dpa could be an appropriate figure for OAN and has agreed as much in common ground for an imminent Inquiry concerning *Land at Botley Road*¹³⁸. Revised tables set out the consequence of this which is a supply of 4.43 years. This is clearly sufficiently close to a 5YHLS to satisfy the examples in *Suffolk Coastal*. Even if Policy 3.CO is found to be a relevant policy for the supply of housing, substantial weight should be given to the conflict with that policy.

7. The Case for Gleeson Developments, Miller Homes and Welbeck Land

The gist of its case was as follows.

7.1 The Council has no up to date development plan for the area, its key housing policies were not saved by the SoS in 2009, and there have been no housing policies or allocations for the last 7 years. It accepted that its development plan position is a *disaster*¹³⁹. It has no 5YHLS. The Inspector for *Bubb Lane*¹⁴⁰ concluded that the Council only has around 4 years. There is an immediate shortfall of around 1,000 dwellings which the Council accepted was serious and significant¹⁴¹.

¹³³ ID15, paras 56 and 57

¹³⁴ *Sheet Anchor Properties Limited v Secretary of State for Communities and Local Government and Eastleigh Borough Council* [CO/323/2016] involved a challenge under section 288 of the TCPA 1990 to the decision of the *Grange Road* Inspector [CD4.35.1]

¹³⁵ See Further submissions section 2

¹³⁶ *Ibid* appendices 1-3

¹³⁷ CD4.34 para 24

¹³⁸ Appeal Ref: APP/W1715/W/15/3139371 – not before this Inquiry

¹³⁹ Budden in XX

¹⁴⁰ ID15: ref. APP/W/1715/W/15/306 3753

¹⁴¹ Budden in XX

- 7.2 The more detailed evidence at this Inquiry reveals a supply of either 3.39 or 3.01 years¹⁴² or an immediate shortfall of around 2,000 dwellings. This is not close to the Council's claim of being *within a whisker* of a 5 years HLS. Its delivery rate is relevant to assessing supply¹⁴³. The fact that local councillors were unaware¹⁴⁴ of its dismal performance of delivery is deeply worrying and it is troubling that they take decisions on housing applications without knowing both sides of the argument. The blame is not the development industry, the lack of brick or bricklayers, but the Council itself. Furthermore, even this limited supply is based on large sites with an excessive number of pre-commencement conditions, described as *toxic*¹⁴⁵. The Council accepted¹⁴⁶ that the only way to increase the supply of housing was to grant planning permissions. The appellants request that this is what the SoS should do, and do quickly, in line with the announcement that decisions will be made no more than 3 months from the date of an Inspector's report¹⁴⁷.
- 7.3 The proposals for a location right next to a main line railway station¹⁴⁸ would enable direct access on foot from within the site and from the adjacent Boorley Fields. There would be an additional car park capacity for local residents at a station whose use is growing rapidly. The station was opened in 1990 at the request of the Council to service new houses in the area. But it is currently missing half its catchment¹⁴⁹ as the appeal site is just fields despite there having long since been proposals for its development¹⁵⁰. It would therefore be the very definition of sustainable development and accords with the Government's thinking on housing near railway stations¹⁵¹. Although not yet providing a 15 minute service, with the potential for 5,000 people within 800m walking distance on part of the network where there are not capacity issues, the railway operating company would clearly be interested and the evidence for this should be carefully examined¹⁵².

Development plan

- 7.4 There is no up-to-date plan and the finding of *unsound* was entirely predictable. Saved policies of the old adopted LP only addressed housing needs until 2011. The report¹⁵³ must be seen in the light of the presumption in favour of previously-developed land at that time, which was effectively superseded by the SE Panel report and has no currency today. While the Council has not yet withdrawn the eLP it accepts that it will have to. It should carry no weight or, at best, very limited weight as the Council accepted. While some policies form the starting point for determining the appeal, given their age and the failure of the LP to address present needs, the focus should be on the NPPF. Although, as

¹⁴² The latter based on the LPEG approach

¹⁴³ PPG 3-033-20150327

¹⁴⁴ Cllr. Kyrle, Chairman of the planning committee which took the decision, in XX

¹⁴⁵ By the Planning Minister

¹⁴⁶ Budden in XX

¹⁴⁷ The Budget Report 2016: for both call ins and recovered reports

¹⁴⁸ Portsmouth to London Waterloo

¹⁴⁹ Harris in XX

¹⁵⁰ CD1.9: SE Panel's report para 16.67 and CD1.10: PUSH study para 4.8.10

¹⁵¹ DCLG Consultation on Proposed Changes to National Planning Policy (Dec 2015)

¹⁵² Dr Harris: para 3.1, IC and XX

¹⁵³ By Mary Travers

above, the emerging LP should only carry extremely limited weight, draft policies S1 and S9 are fully aligned with the NPPF and gaps remain a priority.

NPPF

- 7.5 The drafting of the NPPF leaves a lot to be desired¹⁵⁴ and case law is ever increasing. The proper approach is currently:
- 7.5.1 identify the development plan to which applications must accord unless material considerations, including the NPPF, indicate otherwise¹⁵⁵;
 - 7.5.2 identify the relevant policies, assess the weight to be given to them in terms of consistency with NPPF215, and ascribe weight¹⁵⁶ independently of 5YHLS and NPPF49;
 - 7.5.3 assess whether there is a 5YHLS and, if not, identify which policies are relevant to the supply of housing¹⁵⁷ and so out-of-date¹⁵⁸;
 - 7.5.4 note that out-of-date policies should not be dis-applied but decide on the weight they should be given¹⁵⁹;
 - 7.5.5 identify the extent of conflict with the development plan policies;
 - 7.5.6 identify other material considerations weighing against the scheme;
 - 7.5.7 subject to footnote 9, apply the relevant part of NPPF14;
 - 7.5.8 identify other material considerations weighing in favour of the proposals, and;
 - 7.5.9 weigh the material considerations using the balance in NPPF14 to determine whether the proposal would amount to sustainable development¹⁶⁰.
- 7.6 In this case, the development plan is the LP and the relevant policies¹⁶¹ are 1.CO, 3.CO, 18.CO and 59.BE. Of these, 18.CO and 59.BE should have limited weight as they prohibit any adverse effects, at odds with NPPF51¹⁶². It was common ground that the Council does not have a 5YHLS but the parties disagree on whether it is 3 years or nearly 5 years.
- 7.7 In assessing the weight to be given to Policy 3.CO, the decision taker should consider:
- 7.7.1 the extent of the shortfall;
 - 7.7.2 the action taken by the Council to address the shortfall;
 - 7.7.3 the purpose, such as gap policies between settlements;
 - 7.7.4 the fact that the Council has already released land in a Local Gap (*south of Horton Heath*), a strategic gap (*South of Chestnut Avenue, Stoneham Park*)

¹⁵⁴ The Court of Appeal in both *Hunston* and *Solihull*

¹⁵⁵ S38(6) of the TCPA 1990; *Suffolk/Richborough* para 42; NPPF12

¹⁵⁶ *Daventry* (subject to the CoA)

¹⁵⁷ *Suffolk/Richborough* para 45: a necessary step for the decision maker not the Courts

¹⁵⁸ *Ibid* para 30

¹⁵⁹ *Ibid* paras 45/47. See AAs' closing para 28(D)(ix) for the history of case law

¹⁶⁰ *Cheshire East 2016* paras 19,21 and 23

¹⁶¹ The Council having accepted that 60.BE can be dealt with by reserved matters, KB in XX

¹⁶² As concluded at *Bubb Lane*

- 7.7.5 that it was looking to release major housing sites in the Local Gap in the eLP until it was found unsound;
- 7.7.6 that this includes 800-900 dwellings in the same gap at *Woodhouse Lane* to the south of the appeal site; and,
- 7.7.7 that the Council relies upon those same sites in local gaps for the purpose of its 5YHLS at this inquiry;
- 7.7.8 the extent of harm to the Hedge End - Horton Heath gap referred to¹⁶³ rather than that between Hedge End and Boorley Green which is not named.
- 7.8 On the Council's case, there are no other material considerations and, if any weight is given to conflict with the eLP, this should be very limited. Regardless of the weight to Policy 3.CO, as it is out-of-date and footnote 9 is not relevant¹⁶⁴, the special emphasis in NPPF14 applies. There would be substantial benefits from housing, AH, public open space, a new station car park, a new connection with the railway, economic benefits and others listed in the SoCG.
- 7.9 While sustainable development may be permitted even where there is a 5YHLS¹⁶⁵, as there is not, the special emphasis applies. This leaves the Council's position as doubly awful, with this scheme only promising to deliver one third of the shortfall within 5 years, and more sites needed.
- 7.10 In trying to establish that development in a green wedge, or gap, cannot be sustainable development, the Council has erred in law¹⁶⁶. Such policies are relevant to the supply of housing but it is for the decision maker to determine weight¹⁶⁷.

5 year housing land supply (5YHLS)

- 7.11 The *Bubb Lane* Decision accepted the appellant's OAN figure and a shortfall of 1,000 homes. While that appeal was refused on a gap site, it was a strategic gap and the Inspector did not rule out development but only on certain parts of the site. He found that there would be significant erosion of the gap *between settlements named in the policy*. This was not a site identified for growth by the PUSH study and in a gap which faces towards Southampton rather than away from it. The Council argued that there is land beyond the gap areas which could be developed but 50% of the open land in the Borough is designated as gaps and no alternative locations for new development beyond the gaps have been promoted. That is before addressing some of the unmet needs from Southampton¹⁶⁸.

Full Objectively Assessed Needs (OAN)

- 7.12 Case law sets out how the full OAN should be established¹⁶⁹. At *Bubb Lane*, the Inspector favoured the appellant's figure of 630 dpa¹⁷⁰ but this was not based

¹⁶³ CD1.2 Appendix 1, gap J

¹⁶⁴ Budden in XX

¹⁶⁵ E.g. Decisions at *Hook Norton, Launceston, Davenham, Northwich and Whetstone*

¹⁶⁶ The authority is not *Bloor* (CD5.14 para 179) or *William Davis* (para 41) but *Suffolk/Richborough* para 47

¹⁶⁷ See AAs' closing paras 33-35 for the history of case law on this

¹⁶⁸ As accepted by Cllr. House

¹⁶⁹ See closing ID35 paras 42-47

on full modelling, was carried out at short notice, and was no more than a critique of the Council's position. There is considerable agreement between the parties with regard to the full OAN¹⁷¹ including that:

- 7.12.1 there is no adopted up-to-date housing requirement and so it is appropriate to consider OAN at this Inquiry;
 - 7.12.2 the SoS must consider the full OAN, for 2011 to 2036, at the local level, and unconstrained by policy, in order to determine the extent of HLS;
 - 7.12.3 the starting point is the 2012-base Sub National Household Projections (SNHPs) which draw on the Sub National Population Projections (SNPP)¹⁷²;
 - 7.12.4 an adjustment should be made to household formation rates, in particular the most affected 25-34 age cohort, which has suffered throughout the economic downturn and is still suffering¹⁷³;
 - 7.12.5 no adjustment is needed for unattributable population change or employment forecasts.
- 7.13 Other differences are marginal including: the number of dwellings associated with the 2012-based SNHPs, long term migration, and the demographic baseline. Only two factors are of consequence, the approaches to household formation rates and the treatment of both AH and market signals, leading to a difference of between 590 and 675 dpa. Of these, 26 dpa relates to household formation rates and 59 dpa to the treatment of AH and market signals¹⁷⁴.
- 7.14 The only outstanding differences relate to AH and suppressed household formation. It should be noted that the law allows either party's figure to be favoured but that the Council's has only been accepted as an interim figure, has been subject to neither consultation nor independent examination, and is expected to rise¹⁷⁵.

Two main differences

- 7.15 Both the Inspector at *Bubb Lane*, and that for the eLP, recognised the need for an uplift for AH¹⁷⁶. 10% is reasonable not excessive¹⁷⁷. With regard to suppressed household formation, this is again a matter of judgement amounting to a difference of some 26 dpa and the appellants' partial return to the long term trend, following nearly 10 years of economic downturn, is entirely reasonable¹⁷⁸ and consistent with the PPG¹⁷⁹.

¹⁷⁰ ID15 para 42

¹⁷¹ See closing ID35 and SoCG on OAN ID3 p3

¹⁷² While these have been replaced by the 2104-based SNPP, these make no overall difference

¹⁷³ Coop in XX

¹⁷⁴ ID35: closing para 55c

¹⁷⁵ See *West Berkshire*

¹⁷⁶ ID15 para 41 and conclusions in CD1.6.3

¹⁷⁷ The appellants' arguments over the AH uplift are set out in full in their closing ID35 paras 56-80 but add little to the fact that the law allows either figure to be favoured

¹⁷⁸ The detailed arguments on this point are set out in the appellants' closing ID35 paras 81-101. See also Coop paras 7.30-38 and the changes between 1991 and 2012. Para 102 explains why the appellants consider this to be important

¹⁷⁹ Refs ID: 2a-015-20140306, 2a-016-20150227 and 2a-017-20140306

7.16 Finally on this point, it is agreed that the latest population projections do not change the number of households to any significant extent. The appellants' figure of 675 dpa is robust, convincing and, although slightly higher than that found at *Bubb Lane*, is so for sound reasons¹⁸⁰.

Supply

- 7.17 Aside from the issue of whether the full OAN should be 675 or 590 dpa, the shortfall is greater than the Council claims for two reasons. First, it did not apply a buffer to the shortfall and, second, it is reliant on sites which do not have a realistic prospect of delivery either because they have not yet been proven to be viable or suitable or because their delivery is uncertain.
- 7.18 The reason why the buffer should be added to the shortfall is provided at *Great Ayton* and at *Stokesley*¹⁸¹. Only the *Gresty Lane* Decision goes the other way while that at *Malpas* makes no sense. No other SoS case adopts this approach¹⁸². The Council accepted that if the buffer is added then a further 260 units would be needed.
- 7.19 Delivery rates have consistently been applied at 50 dpa¹⁸³ and this has rarely been exceeded. The Council has a poor track record of predicting delivery, especially on large sites¹⁸⁴, and accepted¹⁸⁵ that it had underestimated lead-in times, that it had been 'green', and that developers 'talk up' delivery rates.
- 7.20 Recent delivery of housing, and AH, has been *dismal* and the appeal scheme would make a positive contribution to this. Acknowledgements by the Council demonstrate an over-optimistic approach on several sites¹⁸⁶. The appellants' evidence¹⁸⁷ adds yet further doubts to delivery at other sites.
- 7.21 In response to a question¹⁸⁸ about the harm that would be caused by granting more permissions than would be delivered, the Council¹⁸⁹ confirmed that *delivery would slow at other sites as a result of competition*. The appellants fairly conceded¹⁹⁰ that they had not taken any account of sales rate or the recession but nor had they adjusted figures for any slowing in delivery resulting from lots of supply at the same time (flags on poles).

Conclusions on 5YHLS

7.22 The Council argues for 4.8 years while the appellants consider that it is just 3.42 years (or 3.03 based on the LPEG calculations). While absolute precision is not necessary, it is pertinent to weight to establish the extent of the shortfall¹⁹¹.

¹⁸⁰ Listed in their closing ID35 para 106

¹⁸¹ Inspectors' Decisions at CD7.12 para 32 and CD7.13 para 42

¹⁸² CD1.34

¹⁸³ Miller PoE p26 paras 4.14-4.16 and Fig 5, rebuttal para 3.3. He explained in oral evidence that one unit per week was a common target.

¹⁸⁴ E.g. Boorley Green, Abbey Fruit Farm and West of Horton Heath

¹⁸⁵ Cllr House in XX. See also *Yate* and *Ottery St Mary* Decisions at Miller Ax4 para 24 and Ax5 para 20

¹⁸⁶ By Ireland in XX, see AAs' closing para 117

¹⁸⁷ Miller IC, XX and ReX

¹⁸⁸ by the Inspector

¹⁸⁹ Ireland in XX

¹⁹⁰ Miller in XX – see AAs' closing para 119(d)

¹⁹¹ *Crane* and *Phides* - see the CoA skeleton CD7.3

Affordable housing (AH)

- 7.23 The proposals would deliver 238 affordable homes¹⁹² against the Council's *dismal* performance¹⁹³ of an average of 26 dpa over the last 3 years. The argument that this is not a unique benefit is misguided as each scheme should be considered on its own merits¹⁹⁴. Very substantial weight should be given to AH in the planning balance as nearly 2,000 households are registered with the Council, but their voices are rarely heard at Inquiries. Contrary to the Council's approach, the current backlog, from a persistent undersupply identified as 724 households¹⁹⁵, should be dealt with in the first 5 years. To spread the need over the entire period would downplay the need, has been rejected by Inspectors¹⁹⁶, and would severely reduce the needs.
- 7.24 The needs are acute in Eastleigh where the average house price to income ratio is 9.3 and private rents are well above the national average¹⁹⁷. That there is a housing crisis, causing misery to millions, has been made clear by the Planning Minister and many others¹⁹⁸. Local and regional reports¹⁹⁹ should also be considered in assessing what should be the very substantial weight to be given to the provision of 35% AH where there is an acute need and past delivery has been dismal.

Planning policy

- 7.25 The Council's case is built on a designated local gap identified in the LP²⁰⁰ and protected by Policy 3.CO. However, unlike other Decisions²⁰¹ referring to named gaps, Boorley Green is not mentioned. While the gaps join up, as the wording makes clear²⁰², they are not the same gap. The appendix forms part of, or performs the same role as, the reasoned justification which the Courts have found plainly relevant²⁰³. The correct comparison is with *Willaston*²⁰⁴ where the relevant settlement was named. Connection is irrelevant; the focus must be on the identified gaps. Any other interpretation would make the Council's intention to allow 8-900 houses on the other side of the railway line, but also in the gap between Hedge End and Boorley Green, wholly unjustified.
- 7.26 The gap to be considered in the policy is between Hedge End - Horton Heath. The extent of likely visibility is agreed²⁰⁵ and will not harm the perception of the

¹⁹² Equivalent to 35% through the s106 Agreement

¹⁹³ Accepted by Cllr House in XX

¹⁹⁴ *Burghfield Common* CD4.22 paras 58 and 71

¹⁹⁵ CD1.17: the latest Review of Housing Needs in Eastleigh Borough Study, March 2016

¹⁹⁶ *Droitwich Spa* CD4.9 para 8.124 and *Davenham* CD4.31 par 55

¹⁹⁷ Stacey Ax15: Home Truths 2015/16, by the National Housing Federation for the South East, opening sentences

¹⁹⁸ Set out in Stacey, Ax3 and Ax8 and including: Sir John Cunliffe (Deputy Governor of Financial Stability); George Osborne (Chancellor of the Exchequer); Mark Carney (Governor of the Bank of England); European Commission and International Monetary Fund

¹⁹⁹ See appellants' closing para 148

²⁰⁰ paragraph 1.6 and Appendix 1

²⁰¹ *Bubb Lane* and *Grange Road*

²⁰² in Appendix 1 to the LP.

²⁰³ 1D12: *R (oao Cherkley Campaign Limited) v Mole Valley DC and Longshot* [2013] EWHC 2582 (Admin) Court of Appeal: Richards U para 16

²⁰⁴ Williams Rebuttal, Appendix A, Para 46

²⁰⁵ SoCG and illustrated in Fig 2 to Williams Ax Volt

identities of either of these settlements. The scheme would not be visible from any location between the closest points of these two settlements and their physical separation would be over 1,000m²⁰⁶. The impact on this gap would be negligible²⁰⁷.

7.27 While the proposals would conflict with Policy 1.CO this relates to needs up to 2011, is out-of-date, is of little relevance to needs in 2016, and seeks to constrain housing development. The scheme would conflict with Policy 18.CO but as this seeks to prevent any adverse effect on the countryside, without any balance, it is at odds with the NPPF approach. Policy 59.BE is really a design policy but if there is any conflict, as a result of building within the gap, then it is one which restricts housing supply.

Visual and landscape

7.28 It is common ground that the landscape effects on the local character would not be significant²⁰⁸ and that the visibility is essentially only within and immediately adjacent to the site. There would be very restricted visibility of the scheme beyond the site boundary. The Council is a member of PUSH. The 2010 PUSH Study identifies the local landscape unit for the area, its sensitivity and that it could accommodate some large scale development on the appeal site as did the SEP²⁰⁹. The PUSH study also recognised that: *Creation of a positive landscaped edge or green wedges to the edge of development in such areas could still enable the retention of a sense of separation between future development north of Hedge End and outlying settlements such as Horton Heath and Boorley Green*²¹⁰.

7.29 In line with the PUSH findings, and unlike previous proposals for the site, the scheme has been designed not to focus on Hedge End, but on Boorley Green and Boorley Fields with an access linking the latter to the railway²¹¹. Even if the Council's interpretation of 3.CO is correct, and there is a need for a separation between Hedge End and Boorley Green, the very clear and positive landscape edge, the railway and the vegetation would provide this separation.

7.30 The Design Review Group²¹² has supported the direction of the scheme. It has been well conceived, is thorough in its analysis of context, and would be landscape led particularly with regard to the retention and promotion of existing landscape corridors and movement routes within the site as key future site features. The Council acknowledged²¹³ that the scheme amounted to good urban design.

Sustainable location

7.31 The site was previously identified within an MDA search area, an SDA search area and 3 of the PUSH scenarios although the latter stopped short of a

²⁰⁶ Williams Fig 6

²⁰⁷ Accepted by Nowak and Cllr House in XX

²⁰⁸ General SoCG para 2.5

²⁰⁹ CD1.9 paras 16.64-16.67

²¹⁰ Williams Appendix C: PUSH Landscape Sensitivity Study Conclusions 2010 para 4.5 - and as accepted by Nowak in XX

²¹¹ Mulliner in XX

²¹² Williams Appendix B - Winchester with Eastleigh Design Review Note October 2014

²¹³ Nowak in XX

preferred option. With no up-to-date plan, the Council cannot argue prematurity and there are no longer any technical objections. There is no NP and while an NP area has been designated²¹⁴ a *made* plan is several years away.

- 7.32 As the policies are out-of-date, the special emphasis (or tilted balance) in NPPF14 applies and permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits. These are many²¹⁵ including but not exclusively: housing, AH, social well being, community facilities, employment, retail expenditure, sustainable transport, public open space and other improvements. It would enhance the sustainability of developments already permitted though improved access to the railway.
- 7.33 The benefits should carry substantial weight. They are not transferrable to another site²¹⁶. The harm would be limited to loss of countryside and conflict with out-of-date policies. There is no evidence that the site is needed to retain the identity of Boorley Green which is about to change anyway.

Residents' concerns

- 7.34 Issues such as traffic, flood risk, ecology, impact on the local area and local community facilities have been covered in the application documentation, including the ES and TA, as well as in evidence submitted to, and given at, the Inquiry. There are no outstanding objections from any of the technical statutory consultees. Specific issues raised are covered below.

Air quality

- 7.35 The effects of traffic have been reassessed²¹⁷ and been subject to public consultation. There is no requirement for mitigation and the Air Quality Action Plan for Botley will continue to operate.

Sewer

- 7.36 A deliverable and viable scheme for the phased provision of foul services is available²¹⁸ and Southern Water is legally obliged to accept all foul flows, in this case at the Peel Common Waste Water Treatment Works.

Rail use

- 7.37 There are services from Hedge End station to London, Eastleigh, Fareham and Portsmouth. Evidence²¹⁹ shows that there is no advantage in travelling to Southampton Airport Parkway to travel to London. The service is well used²²⁰ but while there may be a perception that trains are busy there is spare capacity on most journeys for new users from the development while the car park would enable more journeys and reduce travel to other stations.

²¹⁴ ID27 – Botley NP Designation Letter and Map comprising the whole of Botley Parish

²¹⁵ Listed at para 5.7 to the SoCG

²¹⁶ Mulliner in XX

²¹⁷ in the ES addendum pp7-10

²¹⁸ A note on mitigation dated 24 May 2016 was delivered to the Parish Council

²¹⁹ From Dr Harris

²²⁰ Ibid Fig 2 p7: over 250,000 passengers pa. in 2014/2015

Transport matters

- 7.38 The site is well located with regard to the railway station, existing bus services and local facilities which can be reached by walking or cycling. HCC has agreed²²¹ that residents would have genuine and attractive opportunities to travel sustainably. Nevertheless, there would be an agreed package of mitigation including physical junction improvements and measures to promote non-car travel. Using the appeal site as part of the assessment, HCC has confirmed that the case for the Botley bypass is now much stronger and that it will carry out work and consultation this year²²². In any event, the impact from this development on Botley would be small with an addition of around 1% to its traffic levels²²³.
- 7.39 With regard to the roads around the station, improvements to Shamblehurst Lane North to allow two-way traffic, access to the station car park and traffic signal control over the bridge have also been agreed. There are a variety of safe walking routes to the proposed secondary school at Horton Heath²²⁴ which, at around 2km, would be shorter than using Winchester Road. The junction modelling has been based on up-to-date traffic survey data agreed with HCC and, as well as access to Winchester Road, there would be station car park access, a bus route onto Shamblehurst Lane North and emergency access from this direction.
- 7.40 While the development would inevitably generate significant levels of traffic, HCC has agreed that, with the package of mitigation, the impact would be effectively accommodated. A detailed assessment of Junction 7 on the M27 has similarly been carried out and agreed with Highways England including, if necessary, a contribution towards an improvement which would fully mitigate any impact. Moreover, not only have the improvements for the Botley Park development been tested, and shown to deliver significant capacity to accommodate the appeal scheme as well, but a contribution would also deliver a second entry lane to the Woodhouse Lane/Winchester Road junction. A further contribution would alleviate congestion at the Bubb Lane/Snakemoor Lane/Winchester Road junction and reduce any incentive to use rat-runs.
- 7.41 Accident records do not identify any existing issues and independent safety audits have raised no concerns. The s106 Agreement would deliver these mitigation measures and nowhere would the residual transport impact amount to severe. While mitigation would deal with any adverse impacts, the development would be highly sustainable for public transport, as above, and deliver many facilities on site including a school, community and leisure facilities, and a local centre.

²²¹ CD3.2: Transportation SoCG

²²² Wall Ax14: 2015 HCC Eastleigh Strategic Transport Assessment

²²³ TA Update para 5.3.18 and the Agreed Statement on Transport Matter CD3.2 ⁹⁸ Three of which are set out in the appellants' closing para 214

²²⁴ Three of which are set out in the appellants' closing para 214

Local Health Care

7.42 It is understandable that the representative group for the local GP practice²²⁵ is concerned that their present premises are inadequate, prevent further GP services and training, and may cause difficulties with recruiting. However, there is a commitment within the s106 Agreement to make positive contributions in response to the GPs' request.

Other matters

7.43 There are no designated or undesignated heritage assets within the site nor is it within the setting of any.

7.44 Wildlife impacts are fully assessed in the ES. Most of the land that would be lost to housing is improved grassland of limited ecological value and supports few species. The scheme would introduce a variety of habitats and a network of green spaces, with new planting, to create a greater diversity than at present and a net biodiversity gain²²⁶.

7.45 The loss of around 46has of grade 3 agricultural land is relatively small in relation to the 224,448has of agricultural land in Hampshire and some loss is necessary to meet the pressing need for housing in the Borough.

7.46 Community facilities and local shops within the site would provide an extension to the Boorley Fields District Centre, would be supported by the increase in population, and would be within easy walking distance of Boorley Green as well.

7.47 The DAS shows a clear rationale and potential for a high quality development which received a positive response from the local review panel.

7.48 The scheme would bring immediate construction jobs and a commitment to an employment and skills plan, as well as longer term employment at the school and district centre.

7.49 Most of the site is within flood zone 1 and there would be no development within the higher risk zones. The scheme would not increase flooding elsewhere. Concerns over the railway embankment have not been raised by Network Rail²²⁷.

7.50 Privacy for residents along Winchester Road can be secured for a scheme of this size and would be resolved at reserved matters stage.

Conclusions

7.51 This is a very sustainable proposal on a very logical site, next to a main line railway station, at a time when the Council has no plan of any kind, a huge shortfall in the 5YHLS, and a dismal delivery record for housing and AH. The appeal should therefore be allowed.

²²⁵ The St. Luke's and Botley Patient Participation Group

²²⁶ ES chapter 9 p33 para 9.191

²²⁷ Consultation response dated 19 March 2015

Post Inquiry submissions

7.52 With regard to *Sheet Anchor*, not only is it unfortunate to attempt to retract a concession after the Inquiry, but the submissions there concern Policy 2.CO not Policy 3.CO. Moreover, the Council has accepted that it must grant permissions within local gaps in order to meet its 5YHLS obligations but has still failed to do so. The status of the policy as one which constrains the supply of housing is a matter of judgement. The OAN concession does not alter the appellants' case which is that the HLS is no more than 3.39 years.

8. The Cases for interested parties

The following summarises statements and answers to questions given during the evening session. Where points have been covered by the Council (above) or in a preceding statement by another interested party, they are not repeated. The full statements are listed as IDs.

- 8.1 **Cllr. Rupert Kyrle** represents the Botley Ward on the Council and was the chairman of the Hedge End, West End and Botley Local Area Committee (HEWEB) which refused the application to which this appeal relates. The HEWEB is made up of 13 local ward councillors who consider controversial applications or those referred to it by local members. He is also the HCC representative for Botley and Hedge End, and a member of Botley Parish Council. The HEWEB unanimously rejected the application. He noted that the site has never been actively promoted by the Council, as it is seen as a vital gap between Botley and Hedge End, and explained that the reasons for not allowing the application were that it would harm the countryside, effectively filling in and urbanising this local gap and merging the communities of Boorley Green, Botley and Hedge End creating an urban sprawl, contrary to policies 1.CO and 3.CO which were taken fully into account by local members before coming to a decision.
- 8.2 In his view, the scheme would be contrary to the NPPF due to the impact on the countryside and existing communities and the effects of traffic. It would be predominantly dependent on the car where there is no integrated transport network, where Hedge End railway station does not offer a realistic alternative and near an AQMA on Botley High Street. He argued that: there is no capacity on the sewer network; there would be impact on wildlife that would not be mitigated by the landscaping; the local doctors' surgeries are under significant pressure; the views and rural nature would be lost; development should be delivered as part of a plan led process; and little regard had been had to existing communities. He advised that the HEWEB members had weighed up all the arguments before its unanimous refusal and urged that the appeal should not be allowed.
- 8.3 In cross-examination, Cllr. Kyrle claimed that the Council's failure to meet its housing targets in 8 years out of 10 was as a result of 'land-banking' by developers. He was unaware of the extent of either the Council's shortfall in delivery of housing, only acknowledging that it was getting bigger, or of its performance with regard to AH, which he accepted was dismal. However, he pointed out that the Council didn't build houses and denied that it was using its gap policy to prevent housing development. When told that the average age of

first time buyers was approaching 40, he referred to many factors including the global recession, people living longer, financial institutions not lending and that there has been an issue with housing supply for 30 years.

- 8.4 **Cllr. Dr. Colin Mercer** is chairman of Botley Parish Council. He highlighted the long history of landslips by the railway line due to the original poor construction with the most recent incident in January 2014 being described as one of the worst ever. Climate change will increase such probabilities and, if the appeal is allowed, preventative measures should be taken with regard to surface water and storage ponds. The same would apply to any new car park. He set out sewage concerns in the absence of fully detailed plans close to Boorley Green, which has a history of surcharging, and drew a comparison with the development of 1,400 houses across Winchester Road requiring a new purpose built sewer line. He queried the extent of investigation into other utilities, and requested fibre optic broadband and a waste recycling centre.
- 8.5 He drew attention to the Parish Council's emerging NP and reported that this is proposing to limit the height of development to 2 storeys. He requested that, if permission is granted, that any AH should be on site and that there should be more than one practical entrance and exit to avoid a 'ghetto' mentality and lack of social inclusiveness. He questioned whether there would be an adequate 'centre' and realistic social or community facilities. Finally, he drew attention to the combined effect of developments turning rural areas into suburban ones and allowing Boorley Green and Hedge End to coalesce.
- 8.6 **Sue Grinham** of the **Botley Parish Action Group** (BPAG) is a Botley Parish Councillor, Botley School Governor and the Chair of BPAG. The group has over 1,400 members who are resident in Botley and its surrounding villages. She advised that BPAG does not oppose development but argued that it should be more sustainable than other alternatives, be supported with efficient infrastructure, enhance and support existing communities, and most importantly not coalesce and change the separate identities and character of individual communities. For these reasons it objected to the appeal. She outlined the history of Botley and Boorley Green and BPAG's unsuccessful Judicial Review of the 1,400 home development at Boorley Fields.
- 8.7 She informed the Inquiry that the Botley NP is currently under development by the Parish Council and local residents, a group that know and understand the village environment well. She argued that granting permission for this application at this important stage of the NP would undermine and confuse the ongoing work. The appeal site has never been part of any local plan and BPAG considers that there are other far more viable and sustainable sites within the Borough which should be brought forward ahead of this site.
- 8.8 She highlighted BPAG's concerns with regard to the loss of farmland, the natural environment, Botley's rural heritage and historic farming environment, cumulative traffic movements, noise, pollution, traffic light pollution and the destruction of quiet lanes. The proposed roundabout would further exacerbate this while the proposed car park to Hedge End station would do little to increase its usage. Instead, further development around Botley would exacerbate existing air quality management areas.
- 8.9 **David Jackson**, who is 30 years old and a local resident for some 22 years on a relatively new development, outlined the distinct community feel in Hedge End

as opposed to surrounding settlements and the importance of green gaps. He highlighted existing traffic congestion at the junction of White's Way and Tollbar Way during commuter hours and its unsuitability for increased traffic.

8.10 **Cllr. Daniel Clarke** is the recently appointed Chair of HEWEB, having previously served as Vice-Chair, and Chair of West End Parish Council. He advised that councillors in the HEWEB area have been committed to supporting sites for development which are sustainable and which respect gaps and gave illustrations²²⁸. He outlined concerns with regard to community identity, quality of life and the wishes of local residents.

8.11 **Cllr. Bruce Tennant** serves on HCC, EBC (HEWEB), West End Parish Council, Hedge End Town Council and is Vice Chair of the Horton Heath Development Management Committee. By serving on four councils, he considers himself a true community politician and able to speak on behalf of residents on planning policy, quantity of development and road safety. He advised that the appeal site had not been considered by the public during the eLP consultation period and expressed concern that building in the gap would reduce the quality of the landscape enjoyed by local residents and the identities of Botley and Hedge End. He referred to the potential cumulative impact with other developments and the likely dependence on car ownership.

8.12 **Mrs. Rosemary Nimmo** referred to heritage concerns in the ancient parish of Botley and outlined its interesting history. She refuted the claim that most of the objectors were older people who owned homes that had already been built on previously green fields. **Eugene McCann** expressed concern over the very narrow bridge crossing the railway line at Shamblehurst Lane North and the length of delays that would arise as a result of traffic lights. She argued that the Council's performance in planning for housing was an entirely separate matter to whether the site would be suitable for development. **Mark Proudfoot** queried whether the 'Merton Rule'²²⁹ would be followed and if the development would be sustainable in terms of cycling. **Eric Bodger** was concerned with regard to air quality, arguing that development should not be permitted before completion of the Botley by-pass. **Jamie Mills**, who is 29, advised that he had many friends struggling to get onto the housing ladder but that none of them supported this development.

8.13 **Teresa Griffin** is Chair of the St. Luke's & Botley Surgery PPG and attended on its behalf. She advised that the current demand there already exceeds the capacity to provide a timely service. Despite repeated attempts, the surgery has been unable to recruit GPs on a long term basis so that the full time GPs currently have a patient list of 3,300 each, compared with a national average of 1,650, so that access to routine appointments is almost impossible. A development as large as this, in addition to that on the old golf course, would only make matters worse.

8.14 **Peter Tippetts** attended, even though it was his birthday, to show the extent of his concern. These centred on traffic congestion and the impact on Botley and Boorley Green. **Ian Bennett** lives close to the end of the appeal site and described how wet the fields are and the massive landslip affecting the railway

²²⁸ The sites at Moorgreen Hospital, Dog Kennel Farm and Hatch Farm

²²⁹ Requiring a % of energy needs to be supplied by on site renewable energy

line in February 2014. **Nicola Byrne** raised concerns over the effect that power lines have on limiting the ability to grow large trees or hedges to screen potential overlooking.

- 8.15 Finally, **Tessa Richardson** spoke on behalf of **Mimms Davies MP** to urge rejection on account of its omission from any local plan, traffic congestion, air quality, the loss of farmland and the importance of gaps between settlements.

9. Written Representations

Representations from statutory consultees²³⁰ have been taken up by the Council and addressed through suggested conditions.

- 9.1 **Cllr. Derek Pretty** is one of the ward councillors for Hedge End Grange Park. He sought to represent the views of residents. While most acknowledge the need for more homes, this application was viewed as opportunistic and unwanted, in an important green countryside gap with access from an already overcrowded road. He refuted the claim that an increase in pupil numbers could be accommodated at local primary schools and pointed to the distances to shops, the limited bus timetable and the dangerous bridge to the railway station. He cited concerns over the local GP practices, loss of agricultural land and the effect on wildlife.
- 9.2 **Cllr. Stephen Radmore** was unable to attend the Inquiry but wrote to support the arguments of Colin Mercer and to emphasise concerns over the local health service, traffic pollution and education capacity. A representative of **Mrs Loth** and the residents of **Appletree Cottage** and **Oak Cottage** did not oppose the development but expressed concerns over employment, detail of sustainable dwellings and boundary treatments.
- 9.3 **Graham and Anne Hunter** wrote to highlight the risks of flooding, with recent photographs showing Maddoxford and Wangfield Lanes in Boorley Green underwater, and to add their concerns that the waste water infrastructure is already overloaded.
- 9.4 **Janet Morgan**, the Parish Clerk to **Botley Parish Council** wrote a holding letter on 24 March 2016 advising that it would need to look at the amendments in more detail but making preliminary observations including concerns over: loss of community identity; emerging NP; entrances too close together; housing layout would not improve traffic flow; multi storey buildings would be unsuitable; no sustainable urban drainage (SuDS); subsidence to the railway embankment; no off road walk or cycle route to Horton Heath School; lack of pavements along most of Winchester Road; modelling for M27 junctions; no health care provisions; sewage disposal which is already at maximum capacity.
- 9.5 The **Eastleigh Group of the Ramblers** expressed concern over the lack of recreation opportunities and that public open space would also be part of the sustainable drainage proposals.
- 9.6 **Lesley Bowler** added an objection on the ground of air quality from extra traffic onto Winchester Road, congestion, and urban sprawl.

²³⁰ Including the Environment Agency, Natural England, and the County Archaeologist

- 9.7 **Nadia Kian** has just moved to her second home in a nice quiet house in Crows Nest Lane and was sad that this and other developments would change the area when that was the reason she moved there.
- 9.8 **David Gussman** and **Joan White** reiterated others' concerns.
- 9.9 The **Hedge End Town Council** submitted the minutes of its Highways and Planning Committee on 6 April 2016 which raised a series of highway concerns.

10. Conditions

- 10.1 A list of conditions²³¹ was discussed on two occasions at the Inquiry together with reasons for their inclusion. Unless stated below, I am persuaded that the suggested conditions, and reasons, would satisfy the tests in the CIL Regulations and the NPPF. Except as explained below, or as modified by me for clarity, I recommend that if the appeal is allowed, and planning permission is granted for the proposals, for the reasons accompanying the attached conditions, the Conditions listed at Appendix C should be attached.
- 10.2 Conditions 1, 2 and 3 set out the reserved matters, the maximum number of dwellings and the relevant drawings²³². Conditions 4 and 5 set shorter than usual timescales for commencement in line with the appellants' claim that housing would be delivered quickly. Conditions 6 to 9 control the landscaping proposals, condition 10 the construction period, and conditions 11 and 12 require further details for, and compliance with, the submitted drainage and flood risk proposals. As the application was submitted before the upper limit of peak rainfall was increased to 40% by the Environment Agency, the previous 30% allowance would be appropriate²³³. Highway and footpath details not covered by the s106 Agreement would be controlled by conditions 13 to 15; noise and contamination by 16 to 19. Compliance with the LP requirements for employment and skills management would be governed by conditions 20 and 21, biodiversity by 22 to 25, and archaeology by conditions 26 and 27.
- 10.3 A written ministerial statement (WMS)²³⁴ sets out which housing standards can now be applied. The Code for Sustainable Homes has now been withdrawn but Councils are still able to require water and energy performance standards above those in the Building Regulations. These should still be applied as should be the BREEAM standards, where relevant, all of which are covered by conditions 28 to 32. To justify the design claims, including adequate parking provision, conditions 33 to 35 are necessary.

11. Obligations

- 11.1 I have assessed the s106 Agreement²³⁵ in the light of the Community Infrastructure Levy Regulations 2010 (CIL Regulations), and NPPF204, which set 3 tests²³⁶ for such obligations. From April 2015, CIL Regulation 123(3) also restricts the use of pooled contributions that may be funded via a s106

²³¹ ID23 – Agreed planning conditions

²³² See A3 brochure, other drawings being illustrative

²³³ Confirmed in ID29

²³⁴ From the SoS on 25 March 2015

²³⁵ ID38, signed and dated 16 June 2016

²³⁶ *necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.*

obligation if five or more obligations for that project or type of infrastructure have already been entered into since April 2010 which could have been funded by the levy.

- 11.2 The s106 Agreement would bind the appellant to provide: 35% of the total number of dwellings as AH to an agreed phasing and mix; on-site open space land and play area land; off-site highway works and a bus access restrictor; a funded travel plan secured by a bond; a primary school site; a completed community building or land transfer and community infrastructure contribution; contributions towards: mitigation against recreational pressure impact from the development on the Solent and Southampton Water Special Protection Area, an artificial pitch, education contributions, public art, sustainable integrated transport, Junction 8 improvements, public open space (on-site and at a district park), on-site trees, play areas, a young persons' facility, a trim trail, and healthcare facilities; and other obligations covering future provision of retail and healthcare uses, phasing, a station user car park and cycle use of Botley Footpath No.1. The Shamblehurst Lane North Works are defined as those shown in principle on drawing no. ITB11055-GA-008 Rev B which itself notes that it requires further consideration by the detailed design team.
- 11.3 Clause 28 to the s106 Agreement allows that if a Court or the SoS determines that any obligation or part would not meet the 3 tests then that obligation shall cease. For the reasons set out in detail in the Final CIL Compliance Schedule and justification, discussed and agreed at the Inquiry but submitted by agreement in its final form after the Inquiry closed²³⁷, I am persuaded that all these obligations would satisfy the NPPF tests and recommend that the SoS reach the same conclusion. The Schedule shows that to date there have been at most 4 pooled contributions towards an item and that those put forward would therefore comply. However, if much time passes between the close of the Inquiry and issuing the Decision, the SoS may have to satisfy himself that this remains the case.

²³⁷ ID37: Final CIL Compliance Schedule dated 27 May 2016

12. Inspector's Conclusions

From the evidence before me, the written representations, and my inspection of the appeal site and its surroundings, I have reached the following conclusions. The references in square brackets [] are to earlier paragraphs in this report.

Main considerations

12.1 Following the submission of a signed and dated s106 Agreement, the main considerations remaining in this appeal are as follows:

- a) whether the proposed development would accord with the development plan and, if not, whether material considerations indicate determining the appeal otherwise;
- b) the effect of the proposed development on the character and appearance of the area with particular regard to:
 - i) the limits of the built up area;
 - ii) the designated countryside, including both its landscape and visual characteristics;
 - ii) the local gap between Hedge End and Boorley Green;
- c) the balance to be struck between harm and benefit with particular regard to the extent of housing land supply (HLS) and consequently whether or not paragraph 14 of the National Planning Policy Framework (NPPF14) should apply in assessing whether the scheme would amount to sustainable development.

Development plan

12.2 The starting point for determining the appeal is the development plan of which LP policies 1.CO, 3.CO, 18.CO and 59.BE are particularly relevant. The weight to be given to policies is a matter of planning judgement for the decision taker. By limiting development outside the urban edge, as it was identified when adopted in 2006, Policy 1.CO has no other purpose than to restrict proposals, including those for housing. It is therefore a relevant policy for the supply of housing under NPPF49 and not up-to-date. As it is common ground that the Council lacks a 5YHLS, if there is ever to be an adequate HLS in the Borough, this policy will be breached. While Policy 1.CO should not be ignored, it should be given very little or no weight. This was the approach taken at *Grange Road* and at *Bubb Lane*. [3.1][3.2][6.5][7.6][7.27]

12.3 The same, however, does not necessarily apply to policies 2.CO and 3.CO as they serve another purpose. The findings in *Suffolk/Richborough* are helpful here. Unless and until a further Judgment is reached, for example following the *Grange Road* challenge, they explain that it is the effect of policies that may bring them within the scope of NPPF49. What is required is a judgement as to whether the policies do affect the supply of housing in this particular Borough given its present level of HLS, the action of the Council to address this, and the purposes of the policies. The Council originally accepted that Policy 3.CO is out-of-date under NPPF49 but argued that it should still be accorded substantial weight. In its post-Inquiry representations, following the renewal application to the *Grange Road* Decision, the Council reviewed this and reached a different conclusion. [3.2][3.3][6.2][7.6][7.25][7.29]

- 12.4 Unlike 2.CO, which prohibits any development which would physically or visually diminish a strategic gap, 3.CO does allow a further exception for development in local gaps which could not be acceptably located elsewhere. Although not specifically stated, these differences in policy wording support the common sense interpretation of a *strategic* gap as being more significant than a *local* gap. This is also consistent with the Botley to Hedge End gap being downgraded from strategic to local. The Council's evidence that strategic gaps are simply larger than local gaps, and that there is no other distinction, does not sit squarely with the differences in policy wording. There is a hierarchy and it follows that in principle conflict with 3.CO should usually carry less weight than conflict with 2.CO. The fact that this stance on gaps has not changed in 30 years might well say more about the Council's approach to housing delivery than to the importance of the gap. [3.2]
- 12.5 The appellants argued that the appeal site was not within the gap as set out in the LP. This claim turned on which gaps between which settlements the policy intended to protect. This argument may be relevant to the weight to be given to any impact that the scheme might have on the purposes for which the gap was designated and the function it performs (see below). Nevertheless, however attractively the arguments were presented, as a matter of fact the appeal site is identified on the Proposals Map as part of a designated local gap. This interpretation is consistent with the *Willaston* Decision (which led in part to the *Suffolk/Richborough* Judgment) where the Inspector found that the site was within a gap, and contrary to policy, but found that there would be no significant harm to the functions of the gap in maintaining the definition and separation of the settlements identified in the policy. [3.3][6.15][6.16][6.30][7.25][7.26]
- 12.6 As policy 18.CO prohibits any adverse impact on the intrinsic character of the landscape it is only partly consistent with the NPPF which recognises the virtues of the countryside but requires a balance to be struck. Policy 59.BE relates to design and accordance or with this otherwise is again a matter of judgement. [3.3][6.5][7.6][7.27]
- 12.7 At the time of the Inquiry, the parties were essentially agreed on the approach now required by the NPPF as interpreted by the Courts. That is that if policies are out-of-date the special emphasis in NPPF14 applies but that the final weight to be given to policies is for the decision-taker. This means that conflict with a gap policy may render a proposal unsustainable. Equally, it may not. The 3 tests in *Suffolk/Richborough* simply throw the planning judgement squarely back to the decision-maker. Whether or not Policy 3.CO prevents any possibility of achieving a 5YHLS, when 50% of the Borough is not covered by gaps, is not the test. The policy severely limits the possible locations, and so restricts housing, and therefore significantly affects its supply. The final weight to be given to it depends on the 3 tests. [3.1][6.3][6.17][6.34][7.6-7.8]
- 12.8 The Council considers that as the eLP has not been withdrawn its policies should still carry weight, albeit extremely limited. The difference between this and no weight at all, as the appellants prefer, is probably a matter of semantics rather than of any practical effect. While the eLP may help the Council to communicate its current thinking to developers, it is of no assistance in deciding this appeal. Other than the steer provided by the Inspector's Report, there is no need for the eLP to be considered further.

While a NP area has been designated for Botley Parish, until a plan has been published this should not be given any weight in this Decision. [3.7][6.15][7.4]

Material considerations

12.9 The NPPF is a material consideration in planning decisions. It says so. Of its policies, the presumption in favour of sustainable development and the objective of boosting significantly the supply of housing through a five-year supply of deliverable housing sites are the most relevant to this appeal.

Five year housing land supply (5YHLS)

12.10 It is common ground that the Council cannot demonstrate the 5YHLS expected by NPPF47. Nevertheless, as a result of the *Phides* Judgment, it is not only important to establish whether or not there is a 5YHLS but also to take account of the level of any shortfall. [3.18][3.21][6.2][7.7]

12.11 The 5YHLS has two components: the requirement and the supply. In the absence of an up-to-date plan, there is no adopted requirement and the full, objectively assessed needs (OAN) should be used. However, although the eLP will not progress in its present form, the Inspector's Report provides an objective approach to assessing the OAN. Much of the initial evidence was eventually common ground. Unless and until the LPEG recommendations are accepted, it was agreed at the time of the Inquiry that the OAN lay between 590 dpa (the Council's position) and that of 675 dpa (for the appellants). Only two substantive matters were not agreed: the approach to the adjustment of household formation rates; and the treatment of affordable housing (AH) need and market signals. Following further consideration of the *Bubb Lane* Decision for another Inquiry, the Council has accepted that an OAN of 630 dpa would be appropriate. [1.11][3.17][4.3][6.13][7.22]

12.12 On the first matter, the LP Inspector accepted that there is evidence that household formation rates have been suppressed by the economic downturn and that an adjustment (based on a partial catch-up for the younger age cohorts) is not unreasonable. The Council allowed an addition of 11 dpa but this would do very little to correct the situation. By looking at a partial catch up only, the appellants' figure of 37 is more likely to reflect the real needs and is consistent with advice in the PPG. On the second matter, in practice it is highly unlikely that the full AH requirement could ever be met under current policy and the appellants' addition of 10% seems reasonable. However, the Council is not wrong to argue that any uplift above the OAN is likely to increase the provision of AH and so there would be a significant element of overlap if this is added on top of the uplift for market signals. For this reason, and notwithstanding the conclusions at *Bubb Lane*, the appellants' figure of 675 is too high and a smaller adjustment should be made on top of that for household formation rates. [3.7][3.8][6.10][7.12][7.13]

12.13 In conceding the figure of 630 dpa after the Inquiry, the Council did not identify precisely whether it conceded with regard to household formation rates, an uplift for AH, or a combination of the two. However, for the above reasons, it is in line with a reasonable judgement from the evidence at this Inquiry. Moreover, to accept the figure of 630 dpa, as the Council now does, would follow the *Bubb Lane* conclusions and the common ground in the forthcoming Inquiry. While this would not accord entirely with the LPEG

approach, that is still at the consultation stage and may not form policy. Given that establishing future need is not an exact science, and in the interests of consistency, adopting the figure of 630 dpa would be both reasonable and desirable. [1.11][3.17][6.10][6.35][7.13][7.14]

- 12.14 While acknowledging the different approaches that have been adopted in the past, the *Bubb Lane* Inspector also accepted that, to better accord with the aims of the NPPF to boost significantly the supply of housing, the buffer should be applied to both the OAN and the shortfall. The Council did not agree but invited the SoS to state clearly, and for future reference, which he prefers. Again, for consistency with the most recent conclusions, the approach reiterated at *Bubb Lane* is appropriate. Applying the 20% buffer to the shortfall as well as to the OAN results in a total 5 year requirement of a little over 5,500 new dwellings. [3.17][6.9][6.10][6.12][7.15][7.17]

Supply

- 12.15 NPPF footnotes 11 and 12 set out policy on supply with further commentary in the PPG. The Council expects the supply over this period to amount to 4,675 dwellings. The appellants were largely in agreement other than with regard to the lapse rate, delivery on large sites, and sites under discussion but without planning permission. The historic lapse rate for 2006-2015 was 0.57%. While Council rounded this down to 0% and the appellants rounded it up to 1% there is no good reason not to use the actual figure. Looking in detail, some of the sites only under discussion may come forward and delivery on some of the large sites is likely to slip. Nevertheless, on balance and as a reasonable proxy for a site by site analysis, following the direction in NPPF footnote 11 on counting all those with planning permission (and this should include Council resolutions to grant), but discounting all those at discussion stage without permission, produces a similar outcome to a site by site approach. That outcome is that the identified sites are likely to supply a little fewer than 4,500 dwellings over the 5 year period. [1.10][3.1][6.13][7.17-7.20]
- 12.16 On this basis, following the agreed tables and the reasoning above, a reasonable indication of HLS, is very close to 4 years. This is also consistent with the findings at *Bubb Lane* of *something in the order of a four year supply* and the conclusion which should be reached here, as there, is that the scale of the shortfall is a significant material consideration. [3.17][6.14][7.22]

Tests for weight from *Suffolk/Richborough*

- 12.17 The Council claimed that it encourages both pre-application discussions and proposals for appropriate sites, has granted permission for schemes for thousands of houses, has established a builders' guarantee scheme and its own development company which is bringing forward its own sites. Councillors in the area gave evidence to the effect that they have supported sites for development which represent sustainable development and which respect the gaps between existing settlements. The *Bubb Lane* Inspector accepted that the Council had made considerable efforts to improve housing provision. Nevertheless, his more important conclusion, which also applies here, is that there is no convincing evidence that any of the measures which have been taken have been effective in increasing the rate of housing delivery. [3.18][6.10][6.14][7.19][7.20][8.3]

Deliverability

- 12.18 In rejecting the appellants' assessment of what the 5YHLS should be, the Council also questioned whether granting more permissions would actually deliver more houses given that: the Council is effectively unable to build any itself, that the delivery of public sector housing and subsidised AH effectively ceased long ago, and that the country is now effectively reliant on just 10 housebuilders in the private sector, all of whom protect their margins. As increasing supply would be likely to reduce margins, for some, granting more permissions would be a disincentive to build. These, the Council argued, are the real blockages to delivery, not the lack of planning permissions. [6.11][6.14][7.19-7.21]
- 12.19 The Council also argued that to raise numbers to unrealistic, unreasonable and undeliverable levels would lead to: a loss of control; permissions for unsuitable sites; an increased choice of sites but no overall increase in supply above that which the market can deliver; and no benefit but harm arising from permissions on inappropriate sites. This would only slow development in more suitable locations. All this may or may not be true but the fact is that the Council has not identified more suitable locations and so this hypothesis has not been tested as there has not been enough land for housing development for many years. As the Council had to acknowledge, unless there is a change in Government policy, the only way to increase the supply of housing is to grant more planning permissions. [6.11][7.20][7.21]
- 12.20 The Council may be right about the flaws in the private rented sector's ability to deliver housing. However, even if it is correct that this is not the real block to housing delivery and that there may be a limit to the rate at which the private sector would be prepared to deliver houses in order to protect its profit margins, it has still failed to produce evidence to show that more permissions would do anything but boost supply or that the current supply is anywhere close to that limit. Even if it would not boost supply as much as required, or as fast as claimed, so long as it delivered more houses it would be a benefit and would show efforts to comply with Government policy. [6.11][7.2][7.20]

Conclusions on 5YHLS

- 12.21 For the purposes of this report, the HLS is around 4 years. As highlighted by the appellants, the recommendation below should be based on the assumption that the Government meets its commitment to issue the decision on this within 3 months. In the event that it takes longer, and an update is provided on the extent of shortfall, the evidence of both parties on 5YHLS may require further scrutiny. Should the LPEG recommendations become policy before the appeal is decided, the OAN should be higher still and the number of years of supply would be even fewer. [6.13][7.22]

Affordable housing (AH)

- 12.22 The evidence on the Council's success rate in delivering AH is damning. The importance of AH was not questioned and so it is not necessary to go into further detail beyond attributing considerable weight to the benefits which the scheme would bring through delivering AH. [6.13][7.22]

Character and appearance

12.23 The site and its surroundings are as described (in s2 above) which are in turn taken from the SoCG, the ES, the DAS and the site visits. The DAS also sets out its interpretation of the character and identity of the surrounding settlements as does the independent PUSH study. The appeal site is the beyond the limits of the built up area and therefore within the designated countryside. As the appeal site lies outside the urban edge, the proposals would be contrary to LP Policy 1.CO which only grants planning permission outside the urban edge in specific circumstances. [2.1][2.4][3.2][6.5][7.6]

Landscape

12.24 In short, the land is generally flat with some hedgerows and tree belts. There can be no doubt that the development would harm the landscape qualities of the site itself by permanently altering countryside into built development. However, aside from the local gap designation (see below), if there is a requirement for new housing on agricultural land the moderate sensitivity of the site means that the quality of the landscape, which would be altered, is no more special than others in the Borough. The trees and hedgerows, which are a key characteristic, would be protected and enhanced. To this extent, the scheme would accord with landscape policy 18.CO. Beyond this, the policy does not include criteria for judging the landscape and so is not fully consistent with NPPF113 and should be given reduced weight. There was little evidence that the cumulative effects of these proposals and others would cause greater harm to the landscape, as opposed to the gap, than the sum of any harm caused by each scheme. [2.2][2.3][6.22][7.28]

12.25 The Council argued that the importance of local gaps is in maintaining the individual identity and character of settlements, that mitigation is not referred to in policy, as no amount of landscaping can mitigate against the loss of openness, and that by preserving open countryside local gaps also function as landscape policies. [2.4-2.6][6.3][6.19]

Visual effects

12.26 It was common ground that the overall public visibility of the scheme, and the geographical area where the landscape changes would be experienced, would be essentially limited to the appeal site itself, including the footpath, and that there would be no significant adverse landscape effect beyond the site. As was apparent on the site visits, the very limited views onto the land from beyond its perimeter mean that the harm, as a result of the loss of countryside and as experienced from different viewpoints, would be limited. [4.5][5.1][5.2][6.19][7.28]

12.27 The development of Boorley Fields will lead to some short term impact from construction as would the appeal scheme. On the other hand, both proposals have extensive landscaping elements and, subject to close scrutiny by the Council (and probably by concerned neighbours) at reserved matters stage, there is no reason why both schemes would not eventually produce attractive environments, both along the transformed footpath and from the limited number of viewpoints beyond the site. In time these could be as pleasant as those enjoyed along the residential streets of Boorley Green. [2.4][5.1][6.31][6.32][7.28][7.29]

12.28 At *Bubb Lane* the Inspector identified the visual dimension to the perception of a gap and where the topography local to that site was an important factor in creating a sense of separation in a strategic gap. Here however, there are very few views which provide a sense of separation and so much less harm would be done to a less important local gap. The weight to the conflict with Policy 18.CO should therefore be reduced further. [3.4][4.5][6.3][6.21][7.28][7.29]

Existing identity

12.29 Of the three nearest settlements, Botley is a small market town. Hedge End comprises three distinct areas: the older town, a commercial area alongside the M27, and the more recent residential area by the railway line. Boorley Green is currently a small residential settlement with a verdant appearance but few facilities. There is no specific reason to consider the character of Botley other than as it is at the moment. Hedge End has far more recent developments and is shortly expected to extend up to the railway line on the *Woodhouse Lane* site. However, this planned extension would complement adjoining residential areas and do little to alter the overall character of this settlement. [2.4-2.8][6.15][7.7]

12.30 Boorley Green is on the cusp of a major transformation as a result of the Boorley Fields development. On the other hand, it is currently lacking any meaningful facilities and so at the moment it can probably only operate as a dormitory to adjacent settlements. Short of some highly unlikely eventuality, the upshot of the Boorley Fields scheme will be that Boorley Green will essentially become a small residential quarter of the much larger Boorley Fields, rather than the other way around, and the effect of the latest proposals before me on the identity of Boorley Green should be considered in this context. This is not to justify the proposals as being similar to the Boorley Fields site – which is not in a gap and was in use as a golf course not for agriculture. While the Council acknowledged that the scheme would be good urban design, it did not credit the logic of extending Boorley Green and Boorley Fields into a more rounded community as opposed to extending Hedge End. [2.1][2.4][6.4][6.22][6.31][6.32][7.29][7.30][7.33]

12.31 On this point, the scheme would enhance the social qualities of Boorley Green and improve its rather one-dimensional character. Its identity would be changed, but not for the worse, while the important characteristics of Botley and Hedge End, identified above, would be essentially unaltered.

Effect on the local gap

12.32 The LP gives some guidance as to the purpose of the local gap. The PUSH Study, while intended to support the eLP rather than being a statutory plan (and so warranting reduced weight), is more helpful although its status is not more than that of part of the evidence base. It sets four criteria for designating gaps other than those named between different authorities. The local gaps close to the appeal site are shown as continuous. Although the appeal site is within a local gap, with regard to criterion one and *the open nature and/or sense of separation* the list of gaps between settlements, where a risk of coalescence is identified in the LP, does not include Hedge End to Boorley Green. [3.3][3.14][6.20][6.29][7.7]

12.33 Turning to criterion 2, regarding *settlement character* and the *risk of coalescence*, it is evident that the appeal site is not within the Botley – Boorley Green gap, which is identified as east of Winchester Road, and is not within the Botley – Hedge End gap as both these settlements are on the other side of the railway line. The Hedge End – Horton Heath gap is more problematic. Although Horton Heath is due north of Hedge End, whereas the appeal site is to the east, the references to the railway line to the south-west and to glimpses of Hedge End, suggest that the LP considered that at least a part of the area which is the appeal site is relevant to this gap.

[3.3][3.14][6.1][6.21][6.30][7.7][7.25]

12.34 While the effect of the appeal scheme would be to make the separation from Hedge End would look slim on a map or from the air, on account of the railway line and associated green infrastructure on both sides, there would be an effective separation on the ground. The accompanied site visit demonstrated that, at the two crossing points over the railway line adjacent to the site, the bridges and adjoining trees provide a clear demarcation and serve to separate Hedge End from the land on the other side regardless of the appeal site. The lack of likely integration with Hedge End, as a result of the railway line, would not be a flaw in the proposals but a benefit as it would help both to retain the separate identities of the settlements. By achieving close ties with the enlarged Boorley Green it would also benefit from the new facilities proposed there. [2.1][5.1][6.22][6.30][6.31][7.28][7.29]

12.35 Criteria 3 and 4 to the PUSH Study, not to preclude provision for development and to include no more land than is necessary, both support appropriate development. Finally, the open space provisions would strengthen the recommended multifunctional capacity of the proposed buffer whereas, other than a footpath which would be retained, the site currently makes no contribution to recreation. [3.14][5.1][7.28][7.30]

12.36 With regard to the need to retain the open nature and sense of separation, as above, the site is visible in few places beyond its boundary and, with the possible exception of Shamblehurst Lane North (see below), there would continue to be limited visibility onto the site while a landscaped buffer would reinforce the separation provided by the railway line. On this point, by reference to the PUSH Study, the weight to be given to the conflict with Policy 3.CO should be reduced further. [3.2][3.14][5.2][6.22][6.25][7.28]

Settlement character

12.37 The LP Inspector identified the rail line as a severe constraint on integration of the suggested MDA and Hedge End and the difficulty in creating a mixed development area around the station. However, the design of the appeal scheme thoughtfully avoids this problem. Rather than fail to link with Hedge End, it would extend a transformed Boorley Green with substantial integration and overlap with significant provision of local services. Whether or not the design arose from the inability to connect with Hedge End or otherwise is irrelevant to the quality of the urban design. [3.8][5.2][6.31][7.29]

12.38 Unlike previous schemes for the appeal site at MDA or SDA stage, the proposals before me are specifically designed to complement the extant permission at Boorley Fields by extending and expanding its local centre and facilities on adjoining land on the other side of Winchester Road. The scheme

would change 45ha of pasture into a housing development, a local centre, and several open areas with existing hedgerows and tree belts retained and enhanced, and recreational space. Subject to reserved matters and obligations, there was no compelling evidence to suggest that the development as a whole could not proceed satisfactorily (see below for specific concerns). If so, Boorley Green would become a residential portion of a new settlement with a far better balance of community facilities and services than at present. [3.11][5.3][6.20][6.32][7.29][7.31]

- 12.39 The identity of settlements is a matter of perception. The visual effects are not the only ones of relevance, they play a large part. Two matters as to the identity of Boorley Green are relevant. First, its character is about to change dramatically from around 200 houses to part of a 1,600 settlement with a district centre. While the scheme would certainly change the identity of Boorley Green as a whole, the existing residential areas would be unaltered while the new facilities, on the appeal site and at Boorley Fields, would transform the existing settlement into a far more rounded community. In any event, its character will shortly change irrevocably. On this point, the scheme would complement a planned improvement to the existing settlement character and this would be a benefit to its new identity. [2.1][6.32][7.29]
- 12.40 Second, there are very few public, or even private, views from outside the appeal site from which both the settlements of Boorley Green and Hedge End can be seen simultaneously or indeed either settlement and the appeal site. Although the taller buildings would no doubt be more apparent than the site is at present, the limited views would otherwise remain largely unchanged. While development of the fields of the appeal site would be crystal clear on a map or in the air, to most observers on the ground it would not. The points of transition would be, as they are now, marked by the railway line and the bridges over it. The Council points to openness, but the policy is not for a Green Belt and there is no national presumption against development in gaps. Openness is not the only way to preserve identity. [4.5][6.22][7.28]
- 12.41 The Council has identified the *Woodhouse Lane* allocation as an integrated extension to Hedge End on the appropriate side of the railway line. This emphasises that the correct analysis is not whether a development would reduce part of the gap, which this would do just as much as the appeal proposals, but how either scheme would relate to adjoining settlements. In particular, whether they would, in the language of the NPPF, support: *strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community's needs and support its health, social and cultural well-being*. In short, the test is whether the scheme would help to create a sustainable community. For Boorley Green, this test would be satisfied. [2.8][3.19][6.19][7.7][7.30]
- 12.42 Finally, by making a draft allocation of the *Woodhouse Lane* site, and arguing that its development would contribute to the 5YHLS, the Council has acknowledged that it is possible to extend local settlements into the local gaps without harming their identities or causing coalescence. Indeed, given the numbers of houses proposed there, it is likely that development of the *Woodhouse Lane* site would involve no greater landscaped buffer to Boorley Green than that proposed on the appeal site. [3.19][6.28][7.7]

Conclusion on gap policy

- 12.43 Although the wording of policy 3.CO, and its justification, could be clearer, the Proposals Map shows that the gaps join up around the appeal site so that they are continuous. The site is therefore within a designated local gap protected by policy 3.CO and on the cusp of the specified Hedge End – Horton Heath gap as described in Appendix 1 to the LP. However, both the weight to be given to this policy, and any conflict with it, should be adjusted for a number of reasons. [3.2][3.3][6.2][6.15][6.17][7.7][7.25][7.26]
- 12.44 The status of a policy as one which is relevant to the supply of housing is a matter of judgement. A policy does not have to make it impossible for housing to be developed for it to affect the supply of housing. Rather, as was identified in *Suffolk/Richborough*, the concept extends to policies which influence supply by restricting the locations where new housing may be developed. Subject to the evidence, which at this Inquiry may have been different to that at *Sovereign Drive*, given the extent of gaps in the Borough and the significant shortfall in HLS, policy 3.CO may be both relevant to the supply of housing and may constrain it. [3.2][3.21][6.2][6.3][6.17][7.5-7.7][7.25]
- 12.45 First, it is necessary to assess whether policy 3.CO is consistent with the NPPF if it has the effect of restricting the supply of housing land. Taken together, the gaps make up 50% of the Borough and at *Grange Road* the Inspector accepted that some areas of gaps would need to be developed. Referring to the 3 *Suffolk/Richborough* tests: the Council's HLS, at 4 years, falls well short of that required and has done for many years; notwithstanding its efforts, the action it has taken has not remedied this; and, as described in policy and set out in the PUSH Study, the site is in the least important part of the relevant named gap and the purpose of the gap would largely remain. For all these reasons, and in the circumstances of this appeal, policy 3.CO is a relevant policy which affects the supply of housing, is not up-to-date, and the weight to be given it in this appeal should be greatly reduced. [3.3][3.14][6.14][6.17][7.25]
- 12.46 Moreover, even set against this, the actual conflict with policy 3.CO should be given even less weight on account of it being drafted prior to the planning permission for Boorley Fields, which will fundamentally alter the identity of Boorley Green; the gap itself has been downgraded from strategic to local, i.e. related to a lower order of importance than the strategic gap in *Bubb Lane*; and, more discernable on a map than on the ground where views are few, again in stark contrast with the finding in *Bubb Lane*. [2.1][3.20][6.17][7.29]
- 12.47 The Council is correct to say that a scheme may be unsustainable simply because of harm to a gap. That is one possible outcome. However, such a finding can only be the proper outcome if it is the result of a balancing exercise. In this case neither the policy, the gap behind it, nor the actual conflict with it, should carry full weight. On the other side of the scales, the benefits of housing and AH, particularly where the supply is significantly below 5 years and the history of delivery is poor, warrant considerable weight. [3.18][5.1][6.3][7.7]

Consistency of policy and decision making

- 12.48 With regard to consistency with *Bubb Lane* concerning gaps, 4 points should be noted. First, the *Bubb Lane* site lies within a strategic gap. From the ordinary

meaning of the words, strategic should be more important than local. This is reinforced by the wording of the policies which does not allow any development which would physically or visually diminish a strategic gap while that for local gaps also allows development if it would be appropriate or cannot be acceptably located elsewhere. Less weight should usually be given to harm arising as a result of conflict with policy 3.CO than 2.CO. [3.2][3.16][6.3][7.11]

- 12.49 Second, while the proposals map makes clear that the site is within a local gap, as these join up it is not entirely clear which gap it lies within. The degree of conflict with Policy 3.CO should take account of its purposes which focus on three gaps: Hedge End – Horton Heath to the north, Botley – Boorley Green to the east, and Hedge End – Botley to the south. Less weight should be given to harm to that between Hedge End and Boorley Green. Third, as above, the separate identities of Hedge End and Boorley Green would be retained and so there would be little harm to the purposes of the policy. [3.3][3.15][6.4][6.15][6.22][7.7][7.25][7.29]

Residents' concerns

Railway

- 12.50 Hedge End station may not have a 15 minute frequency of train services but it is still well used. It is a public transport hub with regular buses serving the station at times which link well with train services. There is also cycle parking and there are walking routes, including one leading directly from the platform to the appeal site. This path is already hard surfaced for much of the route and the appeal scheme would provide the finance for this to be significantly improved. The short distance and close links between the appeal scheme and the station would be substantial benefits. [2.1][5.4][7.37][7.39][8.4][8.8][8.12]
- 12.51 The need for a new car park on the site was questioned when it would not be essential for many residents of the appeal site, for whom the station would be within easy walking distance. The single lane bridge works, with a lengthy time delay to the traffic lights rather than a separate pedestrian and cycle lane, were also criticised. The access works to it from Shamblehurst Lane North would result in the loss of significant trees across from Hedge End railway station which both screen the site and assist in the visual sense of separation between the settlements. This would be to allow road widening, a footway and a maintenance bay to preferred highway standards but with seemingly little consideration of how these benefits should be balanced against the loss of trees. However, while the s106 Agreement requires a highway works agreement, the definition only refers to the drawing in principle and this stipulates that it requires further consideration. There is also a degree of conflict between this drawing and suggested conditions protecting all the existing trees. Consequently, as reserved matters have still to be submitted and the purpose of the drawing is only to secure the works in principle, there is still time to review the extent of loss of trees, the impractical, if theoretically safe, crossing arrangements and any potential harm at this point should not alter the overall balance of the recommendation. [4.2][4.6][5.4][7.37][7.39][8.4][8.8][8.12][11.2]
- 12.52 Aside from Network Rail's concern to ensure that the proposed balancing pond must be designed and constructed so that no water could leak toward the railway line, a matter which would be controlled by conditions, it raised no

objection with regard to proposed development in the vicinity of the embankment and so limited weight should be given to this risk. [7.49][8.4][9.4]

Other matters

- 12.53 While there were widespread concerns with regard to traffic, none of these identified flaws in the safety of the highways proposals and no evidence was produced to show that the impact at any point would reach the threshold of *severe* in NPPF32. Similarly, there was no quantitative evidence to challenge the appellants' detailed information, in the ES, addressed through the s106 Agreement and conditions, or otherwise, on air quality, sewage disposal, drainage, flooding, noise, pollution, education, ecology, privacy or heritage. Given Network Rail's lack of concern over landslips, the healthcare contribution in the s106 Agreement and the inevitability of the loss of farmland to meet a 5YHLS, these concerns should not prevent development either. [7.34-7.50][s8][s9]

Sustainable location

- 12.54 While the NPPF makes one reference to sustainable locations in relative terms, it gives no definition and so the concept is of limited use in considering planning policy. What the NPPF does do is make many references to sustainable development explaining that a proposal may be, or may be capable of being made into, sustainable development. It explains at NPPF8 that the planning system should play an active role in guiding development to sustainable solutions. That is to say that design is critical to sustainable development, something reiterated in NPPF56. [3.1]

Benefits

- 12.55 The proposals would make a very substantial contribution to housing and AH for which there are substantial shortfalls. It would provide green infrastructure of the sort recommended in the PUSH Study. Access to the station, the footpath and the pedestrian/cycle link at the south end would provide connections through the scheme and a new local centre to complement that at Boorley Fields would achieve a sense of place. The Council and Review Panel accepted that the proposals have the potential for creating an attractive settlement. The s106 Agreement would substantially offset potential harms but should more correctly be considered as mitigation rather than benefit. Indeed, if the measures were simply benefits it is doubtful that they would pass the 3 tests in the NPPF. [4.6][5.1-5.3][6.24][6.26][7.8][7.9][7.23][7.33][7.47]

Sustainability balance

- 12.56 The proposals would harm the landscape, and result in the loss of countryside, but the weight to this harm should be tempered by the very limited impact on views from outside the site and its immediate surroundings. As above, there would be substantial benefits. Although theoretically the economic and social benefits could be delivered in a more appropriate location without the landscape harm, as there are not enough sites to achieve a 5YHLS, or even get close, this argument is unsound. The proposals would amount to sustainable development, as defined by the NPPF, and this is a material consideration of considerable weight. [31.][6.25][6.33][7.5][7.32][7.33]

Policy balance

12.57 In line with the findings in *Suffolk/Richborough*, the weight to be attached to relevant policies is for the decision-maker. The scheme would be contrary to LP Policy 1.CO. The weight to this conflict should be reduced considerably as it is a relevant policy for the supply of housing and so out-of-date in the absence of a 5YHLS. The scheme would also be contrary to Policy 3.CO. As above, given the circumstances in the Borough, for the purposes of this appeal it also affects housing supply and should also be regarded as out-of-date. The weight should be greatly reduced compared with that given to conflict in the *Bubb Lane* Decision on account of the gap being local rather than strategic, there being a lack of harm to named settlements, the limited viewpoints from which this harm could be experienced, the proposal for a significant landscape buffer to complement the railway line separation, and the precedent of other development being allocated within local gaps, notably on *Land west of Woodhouse Lane*.

12.58 The proposals would not accord with Policy 18.CO, due to the loss of agricultural landscape, but only little weight should be given to this conflict as it is not entirely consistent with the NPPF and the harm as experienced on the ground would be limited. Policy 59.BE is essentially a design policy and, as the scheme would amount to good urban design, it would accord with this policy. As above, the benefits would be substantial. The proposals would represent sustainable development which is a material consideration of considerable weight.

12.59 As the Council cannot demonstrate a 5YHLS, NPPF49 applies. As set out above, Policies 1.CO and 3.CO should be assessed as out-of-date. Nevertheless, this does not exclude them from being given at least some weight as a part of the development plan against which the NPPF must be balanced as a material consideration. While neither policy should necessarily be disallowed, the weight to Policy 1.CO should be very limited and Policy 3.CO should be given no more than little weight. No specific policies indicate that development should be restricted under NPPF footnote 9. Given policy in NPPF14, even if the harm were to outweigh the benefits on a straightforward balance, which it would not, in this case the tilted balance means that the adverse impacts would need to significantly and demonstrably outweigh the benefits, to which they do not come close. This is a material consideration which should outweigh the limited conflict with the development plan and the appeal should be allowed.

13. Inspector's Recommendation

13.1 The appeal should be allowed, and outline planning permission granted subject to the conditions in the attached Schedule.

David Nicholson

INSPECTOR

Appendix A

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

| | |
|---|---|
| Paul Stinchcombe QC and Ned Helme of Counsel | instructed by Eastleigh Borough Council (EBC) |
| They called | |
| Cllr Keith House | Leader, EBC |
| Nick Ireland | GL Hearn |
| Michal Nowak | Influence Environmental Limited |
| Kitty Budden | Senior Planning Officer, EBC |

FOR THE APPELLANT:

| | |
|------------------------------|--------------------------------|
| Christopher Young of Counsel | instructed by Mrs Mulliner |
| He called | |
| Simon Coop | Nathaniel Lichfield & Partners |
| Martin Miller | Terence O'Rourke (TO'R) |
| James Stacey | Tetlow King |
| Nigel Harris | The Railway Consultancy |
| Tim Wall | iTransport |
| Andrew Williams | Define |
| Jacqueline Mulliner | Terence O'Rourke |

INTERESTED PERSONS:

| | |
|--------------------|---|
| Cllr Rupert Kyrle | Botley ward councillor for EBC |
| Cllr Mercer | Chairman, Botley Parish Council |
| Sue Grinham | Botley Parish Action Group |
| David Jackson | Local resident |
| Daniel Clarke | Local resident |
| Cllr Bruce Tennent | Local resident |
| Rosemary Nimmo | Local resident |
| Eugene McCann | Local resident |
| Eric Bodger | Local resident |
| Jamie Mills | Local resident |
| Teresa Griffin | Local resident |
| Peter Tippets | Local resident |
| Ian Bennett | Local resident |
| Nicola Byrne | Local resident |
| Tessa Richardson | on behalf of Mimms Davies MP (Conservative) |

Appendix B

INQUIRY DOCUMENTS

ID1 – Appellant Opening Statement
ID2 – Council Opening Statement
ID3 – OAN SoCG
ID4 – HLS SoCG and Table of Disputed Sites
ID5a – Mr Pretty third party
ID5b – Botley PC third party
ID6a – Mr James email HCC Housing Land Supply
ID6b – Chris Reiss email Horton Heath Housing Land Supply
ID7 – NLP briefing note – comparison of components of FOAN
ID8 – Queen’s Speech extract
ID9 – Cllr Radmore third party
ID10 – Apple Tree Cottage Third Party
ID11 – Botley Parish Action Group third party
ID12a – Cherkley Ltd v Mole Valley DC
ID12b – Fox Land & Properties v SoS & CLG
ID13 – Final CIL Compliance Schedule
ID13b – EBC Supplementary Statement on Developer Contributions
ID13c – CIL Compliance Plan
ID14 – Extract St Johns Rd S106
ID15 – Appeal Decision for *Land off Bubb Lane* Ref: APP/W1715/W/15/3063753
ID16a – Cllr Rupert Kyrle third party
ID16b – Botley Parish Action Group third party
ID16c – David Jackson third party
ID16d – Daniel Clarke third party
ID16e – Cllr Bruce Tennent third party
ID16f – Rosemary Nimo third party
ID16g – Eugene McCann third party
ID16h – Eric Bodger third party
ID16i – Jamie Mills third party
ID16j – Teresa Griffin third party
ID16k – Peter Tippets third party
ID16l – Ian Bennett third party
ID16m – Nicola Byrne third party
ID16n – Tessa Richardson on behalf of Mimms Davies MP (Conservative) third party
ID17a – Fig 3.11 Land use at and in vicinity of proposed MDA
ID17b – Fig 4.2 Concept Masterplan Phases 1 and 2 (1500 houses)
ID18 – Bodkin Farm Whitstable Hern Bay Plan
ID19 – Site visit itinerary plan
ID20 – Wychavon decision
ID21 – Budget 2016 Extract
ID22 – Select Committee NPPF change
ID23 – Agreed planning conditions
ID24 – Inspectors Note Affordable Housing 23.05.16
ID25 – FAON comparison Bubb Lane and Boorley Green
ID26 – Final Bubb Lane 5YLS Note
ID27 – Botley NP Designation Letter and Map comprising the whole of Botley Parish dated 1 December 2015
ID28 – Mr Mercer third party
ID29 – EA conditions email
ID30a – Mr Coop ONS 2014 SNPP Note
ID30b – Mr Ireland ONS 2014 SNPP Note
ID31 – Past performance position statement tables
ID32 – *Daventry DC v SoS & Gladman*

- ID33 – Changes to PPG
- ID34 – Council Closing Statement
- ID35 – Appellants' Closing Statement
- ID36a – Appellants' Costs application
- ID36b – Council's Costs reply
- ID37 – Final CIL Compliance Schedule dated 27 May 2016
- ID38 – Completed s106 Agreement

POST-INQUIRY DOCUMENTS

- Post-ID1 - Further submissions and 4 appendices relating to a High Court Challenge with regard to Land to the east of Grange Road (see section 3 below) and housing figures
- Post-ID2 – Further submissions from the appellants dated 11 July 2016
- Post-ID3 – Response to appellants' further submissions, dated 13 July 2016

CORE DOCUMENTS²³⁸

1. Policy & Evidence Base Documents

- 1.1.1 NPPF
- 1.1.2 NPPG Extract (Housing and Economic Development Needs Assessments)
- 1.1.3 NPPG Extract (Housing and Economic Development Land Availability Assessments)
- 1.2 Eastleigh Borough Local Plan: Review (2001 – 2011), adopted 2006, and Policies Map (extract)
- 1.3 Eastleigh Borough Local Plan Review Saving Direction, 14 May 2009
- 1.4 Eastleigh Borough Local Plan Review Inspector's Report (extracts)
- 1.5 Eastleigh Borough Local Plan 2011 – 2029, Submission Document, July 2014:
 - 1.5.1 Revised Pre-submission Eastleigh Borough Local Plan (2011-2029) (February 2014) and Policies Map (extracts);
 - 1.5.2 Schedule of Proposed Changes July 2014
- 1.6 Eastleigh Borough Local Plan 2011 – 2029, Inspector's Reports:
 - 1.5.1 Preliminary Conclusions Housing Needs (Post Hearing Note 2) 28 November 2014;
 - 1.5.2 Other Matters (Post Hearing Note 3) 3 December 2014
 - 1.5.3 Inspector's Report on the Examination into Eastleigh Borough Council's Eastleigh Borough Local Plan 2011-2029, 11 February 2015
- 1.7 Planning Policy Guidance 3: Housing (PPG3), 29 November 2006 (extract)
- 1.8 South East Plan (extract - South Hampshire Strategy), adopted 2009
- 1.9 South East Plan Panel Report, August 2007 (Extracts)
- 1.10 SDA Feasibility Study and Appendices, July 2010
- 1.11 South Hampshire Strategy, October 2012
- 1.12 Hampshire Structure Plan: Review 1996 – 2011, November 2000 (Extracts)
- 1.13 Eastleigh Borough Council: Local Development Scheme (Draft), April 2015
- 1.14 Eastleigh Borough Local Plan 2011 – 2036, Issues and Options, December 2015
- 1.15 Eastleigh Housing Needs Study, JG Consulting, June 2015
- 1.16 Eastleigh Borough Council Local Plan 2011-2036 Housing Background Paper (December 2015)
- 1.17 Review of Housing Needs in Eastleigh Borough, GL Hearn (March 2016)
- 1.18 Eastleigh Borough Council: SHLAA, June 2014 (Extracts for appeal site)
- 1.19 Five Year Housing Land Supply Position: Housing Implementation Strategy for the Borough of Eastleigh, 30 September 2015
- 1.20 Eastleigh Borough Council 5 year housing land supply position at 31 March 2013
- 1.21 Housing implementation strategy for the Borough of Eastleigh December 2013

²³⁸ These exclude all application documentation (submitted with appeal) consultation responses (submitted with questionnaire) committee report and minutes (submitted with questionnaire) Decision notice (submitted with appeal) post-determination appeal plans (submitted to PINS) appellants' statement of case (submitted with appeal) and the Council's statement of case (submitted to PINS).

- 1.22 Housing implementation strategy for the Borough of Eastleigh June 2014
- 1.23 Housing implementation strategy for the Borough of Eastleigh September 2014
- 1.24 Housing implementation strategy for the Borough of Eastleigh December 2014
- 1.25 Housing implementation strategy for the Borough of Eastleigh March 2015
- 1.26 Housing implementation strategy for the Borough of Eastleigh June 2015
- 1.27 Eastleigh Borough Council SLAA Interim Update (December 2015)
- 1.28 Five year housing land supply proof of evidence of Chris Hemmings, GL Hearn, April 2016, in conjunction with planning inquiry APP/W1715/W/15/3063753
- 1.29 Corrigendum to the five year housing land supply proof of evidence of Chris Hemmings, GL Hearn, April 2016, in conjunction with planning inquiry APP/W1715/W/15/3063753
- 1.30 Eastleigh Borough Interim Housing Requirement: Cabinet Report of the Head of Regeneration and Planning Policy, 16 March 2016
- 1.31 Analysis of Objectively Assessed Housing Need in light of 2012-based Subnational Projections, JG Consulting, June 2014
- 1.32 PUSH South Hampshire Strategic Housing Market Assessment, Final Report, GL Hearn, January 2014
- 1.33 Housing Strategy for Eastleigh 2012-2017
- 1.34 Amber Valley Local Plan Part 1 Core Strategy Examination - Letter from Inspector R. Foster (10 August 2015)
- 1.35 Eastleigh Borough Council Eastleigh Corporate Plan 2015-2025
- 1.36 Partnership for Urban South Hampshire (October 2012) PUSH Green Infrastructure Implementation Framework
- 1.37 Partnership for Urban South Hampshire (October 2012) South Hampshire Strategy – A Framework to Guide Sustainable Development and Change to 2026
- 1.38 Partnership for Urban South Hampshire (December 2008) - Policy Framework for Gaps
- 1.39 Eastleigh Borough Council (December 2011) Landscape Character Assessment of Eastleigh Borough [Extract] Area 9
- 1.40 Winchester City Council (March 2004) Winchester District Landscape Character Assessment [Extract] Durley-Claylands LCA
- 1.41 Hampshire County Council (May 2012) The Hampshire Integrated Character Assessment [Extracts] Character Area 2E - Forest of Bere West
- 1.42 Natural England (March 2014) National Character Area Profile 128 'South Hampshire Lowlands'
- 1.43 Eastleigh Borough Council (October 2014) Green Infrastructure Background Paper
- 1.44 Hampshire County Council (2000) The Hampshire Landscape: A Strategy for the Future
- 1.45 Landscape Institute and the Institute of Environmental Management and Assessment (2013) Guidelines for Landscape and Visual Impact Assessment (3rd Edition)
- 1.46 Solent Local Enterprise Partnership (LEP) (March 2014) Transforming Solent Strategic Economic Plan
- 1.47 Hampshire County Council (Adopted September 2012) Eastleigh Borough Transport Statement
- 1.48 Transport for South Hampshire (February 2013) Transport Delivery Plan 2012-2026
- 1.49 SPD 'Character Area Appraisals: Hedge End, West End and Botley' (January 2008)
- 1.50 SPD 'Environmentally Sustainable Development' (March 2009)
- 1.51 SPD 'Quality Places' (November 2011)
- 1.52 SPD 'Residential Parking Standards' (January 2009)
- 1.53 SPD 'Affordable Housing' (July 2009)
- 1.54 SPD 'Planning Obligations' (July 2008, updated November 2010)
- 1.55 Infrastructure Delivery Plan, Background Paper G8 (July 2014)
- 1.56 Public Art Strategy 2015-2019 (February 2016)
- 1.57 Hampshire County Council's 'Developer's Contributions towards Children's Services Facilities' (October 2015)
- 1.58 Solent Recreation Mitigation Partnership's 'Interim Solent Recreation Mitigation Strategy' (December 2014)

- 1.59 Land Use Consultants, June 2010, PUSH Landscape Sensitivity Study for Hedge End (Extracts)

2. Ministerial / Government Publications

- 2.1 Government's Productivity Plan July 2015
- 2.2 Government's Consultation on proposed changes to national planning policy, December 2015
- 2.3 Ministerial Statement, March 2015 (re SHMA)
- 2.4 Letter: Housing and Planning Minister to PINS, 19 December 2014 (re SHMA)
- 2.5 Local Plans Expert Group Recommendations
- 2.6 Government Press Release 10 April 2016

3. Appeal Documents

- 3.1 General Statement of Common Ground – EBC & TO'R
- 3.2 Transport Statement of Common Ground – Highways England & i-Transport
- 3.3 Transport Statement of Common Ground – Hampshire County Council as Highways Authority & i-Transport

4. Appeal Decisions

- 4.1 Land between Leasowes Road and Laurels Road, Offenham, Worcestershire February 2014 (APP/H1840/A/13/2203924)
- 4.2 Land at Fountain Lane, Davenham, Cheshire, September 2015 (APP/A0665/A/14/2226994)
- 4.3 Land north of Durham Road, Spennymoor, County Durham, August 2015 (APP/X1355/W/15/3005376)
- 4.4 Land at Hill Top Farm, By-Pass Road, Northwich, Cheshire, September 2015 (APP/A0665/W/14/3000528)
- 4.5 Land at Worcestershire Hunt Kennels, Kennels Lane, Fernhill Heath, Worcestershire December 2015 (APP/H1840/W/15/3003157)
- 4.6 Land rear of 62 Iveshead Road, Shepshed, Leicestershire, February 2016 (APP/X/2410/W/15/3007980)
- 4.7 East Leake, Nottinghamshire, March 2008
- 4.8 Long Marston, Peabworth, July 2014
- 4.9 Land at Pulley Lane, Droitwich Spa (APP/H1840/A/13/2199085 and APP/H1840/A/13/2199426)
- 4.10 Land at Sketchley House, Burbage, November 2014
- 4.11 Land off Rilshaw Lane, Winsford, Cheshire, October 2015
- 4.12 Hook Norton, Banbury, Oxfordshire, December 2015
- 4.13 Money Hill, Ashby-De-La-Zouch, February 2016
- 4.14 Lowbrook Farm, Tilbury Green, Solihull, March 2016
- 4.15 Land at Hamble Lane, Bursledon (APP/W1715/A/13/2207851)
- 4.16 Land at Hamble Station, Netley Abbey (APP/W1715/A/14/2228566)
- 4.17 Land at Upper Chapel, Launceston, April 2014 (APP/D0840/A/13/2209757)
- 4.18 Greetham Garden Centre, Oakham Road, Greetham, Oakham, May 2015
- 4.19 Salisbury Landscapes Ltd, Boughton Road, Moulton, Northampton, June 2015
- 4.20 Land off Field End, Witchford, Cambridgeshire, June 2015
- 4.21 Land adjacent to Cornerways, High Street, Twyning, Tewkesbury, July 2015
- 4.22 Land at Firlands Farm, Burghfield Common, Reading, Berkshire, July 2015
- 4.23 Walcot Meadow, Walcot Lane, Pershore, Worcestershire, August 2015
- 4.24 Land Bounded by Gresty Lane, Rope Lane, Crewe Road and A500, Crewe (APP/R0660/A/13/2209335)
- 4.25 Land South of Cirencester Road, Fairford, 22 September 2014 (APP/F1610/A/14/2213318)

- 4.26 Land off Sadberge Road, Middleton St George, Darlington, County Durham, 12 January 2015 (APP/N1350/A/14/2217552)
- 4.27 Land west of Beech Hill Road, Spencers Wood, Berkshire, 9 June 2015 (APP/X0360/A/13/2209286)
- 4.28 -
- 4.29 Land at Southwell Road, Farnsfield, Nottinghamshire, 7 January 2016 (APP/B3030/W/15/3006252)
- 4.30 Longbank Farm, Ormesby, Middlesbrough, 9 March 2016 (APP/V0728/W/15W3018546)
- 4.31 Land adjacent to 28 Church Street, Davenham Cheshire, January 2016
- 4.32 Land at Well Meadow, Well Street, Malpas (APP/A0665/A/14/2214400)
- 4.33 Land at Cottage Farm Glen Road, Oadby, Leicestershire (APP/L2440/A/14/2216085)
- 4.34 Land to the east of Sovereign Drive and Precosa Road, Botley (October 2015) (APP/W1715/W/14/3001499)
- 4.35 Land to the east of Grange Road, Netley Abbey, Southampton (December 2015) (APP/W1715/W/15/3005761)
 - 4.35.1 Sheet Anchor Properties s288 challenge to Grange Road, Netley decision (CD11.1)
 - 4.35.2 Facts and Grounds
 - 4.35.3 First Defendant's Grounds
 - 4.35.4 Summary Grounds on behalf of interested party
- 4.36 Land to the north and west of Lucas Lane, Whittle-le-Woods, Chorley (September 2012) (APP/D2320/A/12/2172693)
- 4.37 Land off Elmwood Avenue, Essington (April 2013) (APP/C3430/A/12/2189442)
- 4.38 Land east of Springwell Lane, Whetstone, Leicestershire (August 2013) (APP/T2405/A/13/2193758 and APP/T2405/A/13/2193761)
- 4.39 Land at burgess farm, Hilton Lane, Worsley, Manchester, 16 July 2012 (APP/U4230/A/11/2157433)
- 4.40 Land adj. Gretton Road, Winchcombe, Gloucestershire, 14 May 2013 (APP/G1630/A/12/2183317)
- 4.41 Land at Goch Way, Andover (APP/C1760/A/14/2222867)

5 Court Judgements

- 5.1 Solihull Metropolitan Borough Council and 1) Gallagher Estates Ltd 2) Lioncourt Homes [2014] EXCA Civ 1610
- 5.2 Gallagher Homes Ltd and Lioncourt Homes Ltd V Solihull Metropolitan Borough Council (2014) EWHC 1283
- 5.3 Wenman [2015] EWHC 925 (Admin)
- 5.4 Suffolk Coastal DC v Hopkins Homes Ltd and Richborough Estates Partnership LLP v Cheshire East BC [2016] EWCA Civ 168
- 5.5 West Berkshire District Council v Secretary of State for Communities and Local Government and HDD Burfield Common Limited [2016] EWHC 267 (Admin)
- 5.6 Stratford on Avon District Council v Secretary of State for Communities and Local Government and J S Bloor (Tewkesbury) Limited, Hallam Land Management Limited and RASE (Residents Against Shottery Expansion) (2013). EWHC 2074
- 5.7 Hunston Properties v Secretary of State for CLG and St Albans City and District Council (2013) EWHC 2678
- 5.8 R v City and District of St Albans [2013] EWCA Civ 1610
- 5.9 South Northamptonshire Council v Secretary of State for CLG and Barwood Land and Estates Ltd [2014] EWHC 573
- 5.10 SatNam Millennium v Warrington Borough Council [2015] EWHC370
- 5.11 Oadby and Wigston Borough Council v Secretary of State for Communities and Local Government and Bloor Homes Ltd [2015] EWHC 1879
- 5.11b Borough Council of Kings Lynn and West Norfolk v Secretary of State for Communities and Local Government and Elm Park Holdings Ltd. [2015] EWHC 2464

- 5.12 Stroud District Council v SoS DCLG and Gladman Developments Ltd [2015] EWHC 488 (Admin)
- 5.13 Wainhomes (South West Holdings Ltd) v The Secretary of State for the Communities and Local Government (March 2013)
- 5.14 Bloor Homes East Midlands Limited v Secretary of State for Communities and Local Government [2014] EWHC 754 (Admin)
- 5.15 Phides Estates (Overseas) Ltd v SSCLG [2015] EWHC 827
- 5.16 Wynn-Williams v SSCLG [2014] EWHC 3374 (Admin)
- 5.17 Cheshire East Borough Council v SSCLG [2015] EWHC 410 (Admin)
- 5.18 William Davis v SSCLG [2013] EWHC 3058 (Admin)
- 5.19 Cheshire East Borough Council v SSCLG [2016] EWHC 571 (Admin)
- 5.20 Colman v SoS, North Devon District Council, RWE Npower [2013] EWHC 1138 (Admin)
- 5.21 Zurich Assurance Limited v Winchester District Council and South Downs National Park Authority [2014] EWHC 758
- 5.22 Dartford BC v SSCLG [2014] EWHC 2636 (Admin)

6 Additional Documents

- 6.1 Boorley Green development Illustrative Masterplan (00523_BG_MP_01 Rev P2)
- 6.2 Boorley Gardens Design and Access Statement, March 2016, Figure 2.5 – Site and its context
- 6.3 Planning Advisory Service's Technical Advice Note (July 2015) Objectively Assessed Need and Housing Targets, 2nd Ed.
- 6.4 Simpson, L. and McDonald, N. (April 2015) Making sense of the new English household projections, TCPA
- 6.5 DCLG (February 2015) Household Projections 2012-based: Methodological Report
- 6.6 Holmans, A. (2013) New estimates of housing demand and need in England, TCPA
- 6.7 Local and Strategic Gap, Land East of Grange Road, Netley
- 6.8 Local Gap, Sovereign Drive Site

7. Core Documents Additions

- 7.1 Eastleigh Borough Local Plan 2011-2029 – Background Paper C1 Demography (July 2014)
- 7.2 Appeal decision: Land to the north and south of Mans Hill, Burghfield Common, Reading, Berkshire 2015 (APP/W0340/A/14/2226342)
- 7.3 Cheshire East Willaston Court of Appeal Skeleton January 2016 (Claim No. CO/4217/2014)
- 7.4 Proposals Map, Borough of Crewe & Nantwich Replacement Local Plan 2011
- 7.5 Willaston LVIA Figure 1
- 7.6 Willaston LVIA Figure 2
- 7.7 Test Valley Borough Council Revised Local Plan DPD 2011-2029 Extracts and Inspector's Report
- 7.8 Appeal Decision: Land at Bodkin Farm, Thanet Way, Chestfield, Whitstable 2015 (APP/J2210/A/14/222624)
- 7.9 High Court refusal of application for permission to proceed in the matter of a claim for planning statutory review Sheet Anchor Properties v SSCLG and EBC
- 7.10 Sheet Anchor application for reconsideration of decision to refuse permission to proceed
- 7.11 Plan showing borough-wide countryside and gap designations
- 7.12 Appeal Decision: Land off Station Road, Great Ayton 2015 (APP/G2713/A/14/2218137)
- 7.13 Appeal Decision: Land off Tanton Road, Stokesley 2015 (APP/G2713/A/14/2223624)
- 7.14 Nick Ireland Proof of Evidence: Land to the west of Langton Road North Yorkshire (APP/Y2736/W/15/3136237 and 3136233)
- 7.15 Ryde District Council Strategic Housing Market Assessment (April 2016)

Appendix C

Schedule of conditions

- 1 No development shall start until details of the appearance, landscaping, layout, and scale (hereinafter called "the reserved matters"), have been submitted to and approved in writing by the Local Planning Authority (LPA). The development shall be carried out in accordance with the approved details.

Reason: To comply with Section 92 of the Town and Country Planning Act 1990.

- 2 The development hereby permitted shall comprise no more than 680 dwellings.

Reason: For the avoidance of doubt.

- 3 The development hereby permitted shall be carried out in general accordance with the details shown on the Land Use Plan, drawing ref. 143405/LUB/003 Rev G, 143405/MA/008 Rev A, 143405/BH/006 Rev A, 143405/DEN/005 Rev A, 143405/LA/009 Rev A, ITB11055-GA-104 Rev D.

Reason: For the avoidance of doubt and in the interests of proper planning.

- 4 Application for approval of the reserved matters for the first phase of the development (of no less than 300 units) shall be made to the LPA not later than one year from the date of this permission, or one year from the conclusion of any subsequent Section 288 process, whichever is the later. Application for all of the remaining phases of the development shall be made to the LPA not later than three years from the date of this permission.

Reason: To support the immediate need to improve the Council's housing land supply.

- 5 The development hereby permitted shall begin before the expiration of two years from the date of approval of the first of the reserved matters to be approved.

Reason: To support the immediate need to improve the Council's housing land supply.

- 6 The reserved matters application for landscaping shall be accompanied by a Landscape Masterplan and Strategy to demonstrate that the landscaping proposals have taken account of, and been informed by, the existing landscape characteristics of the site and by any loss of existing vegetation on the site. The landscaping scheme shall include all hard and soft landscaping, including trees, boundary treatments and means of enclosure, car park layouts; proposed and existing functional services above and below ground; and shall provide details of timings for the provision of all landscaping and future management and maintenance. All hard and soft landscape works shall be carried out in accordance with the approved details and programme.

Reason: In the interests of the visual amenities of the locality and to safeguard the amenities of neighbouring residents.

7. For a period of no less than 5 years after planting, any trees or plants which are removed, die or become seriously damaged or defective, shall be replaced as soon as is reasonably practicable with others of the same species, size and number as originally approved in the landscaping scheme.

Reason: In the interests of the visual amenities of the locality.

8. No development or site preparation prior to operations which have any effect on compacting, disturbing or altering the levels of the site shall take place on site until an Arboricultural Method Statement and Tree Protection Plan (prepared in accordance with B.S.5837:2012 Trees in Relation to Design, Demolition and Construction) is submitted to and approved in writing by the LPA for each phase of the development and a person qualified in arboriculture, and approved by the LPA, has been appointed on the behalf of the developer to supervise construction activity occurring on the site where such development will occur within, or adjacent to, a Root Protection Zone of any tree to be retained.

This statement must include methodology for:

- Removal of existing structures and hard surfacing
- Installation of protective fencing and ground protection
- Excavations and the requirement for specialised trenchless techniques where required for the installation of services. The default position is that all services should be situated outside of the RPA of all trees
- Installation of new hard surfacing (no dig) – materials, design constraints and implications for levels
- Preparatory work for new landscaping
- Auditable system of arboricultural site monitoring including a schedule of specific site events requiring input or supervision, together with a mechanism for the submission of written evidence of monthly monitoring and compliance by the appointed Arboricultural Supervisor during construction.

The appointed Arboricultural Supervisor will be responsible for the implementation of protective measures, special surfacing and all works deemed necessary to ensure compliance with the approved Arboricultural Method Statement and Tree Protection Plan. A pre-commencement site meeting between the LPA's Arboricultural Officer, the appointed Arboricultural Supervisor and Site Manager shall take place for each phase of development, prior to any equipment, materials or machinery being brought onto the site for the purposes of development, to confirm the protection of trees on and adjacent to the site in accordance with the approved Arboricultural Method Statement and Tree Protection Plan.

Reason: To retain and protect the existing trees which form an important part of the amenity of the locality.

9. Following inspection and approval of the tree protection measures, no access by vehicles or placement of goods, chemicals, fuels, soil or other materials shall take place within fenced areas nor shall any ground levels be altered or excavations. The tree protection shall be retained in its approved form until the development is completed.

Reason: To retain and protect the existing trees which form an important part of the amenity of the locality.

10. No development shall take place in any phase, including any works of demolition, until a Construction Method Statement and Construction Environmental Management Plan (CEMP) for that phase has been submitted to, and approved in writing by the LPA. The approved Statement and CEMP shall be adhered to throughout the construction period. The Statement shall provide for:
- i. Means of access for construction work
 - ii. A programme and phasing of construction work, including roads, landscaping and open space
 - iii. Location of temporary storage buildings, compounds, construction material and plant storage areas used during construction
 - iv. The arrangements for the routing/turning of lorries and details for construction traffic access to the site
 - v. The parking of vehicles of site operatives and visitors
 - vi. Provision for storage, collection, and disposal of recycling/waste from the development during construction period
 - vii. Details of wheel washing and measures to prevent mud and dust on the highway during demolition and construction
 - viii. The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
 - ix. Temporary lighting
 - x. Protection of trees and ecology (to include Habitats Regulation Assessment requirements)
 - xi. Noise generating plant
 - xii. Measures to control the emission of dust and dirt during construction (having regard to the details contained in the "Best Practice Guidance – The Control of Dust and Emissions from Construction and Demolition", 2006 (London Authorities) and "Guidance on the assessment of dust from demolition and construction" 2014 (Institute of Air Quality Management)
 - xiii. A noise and vibration assessment which takes into account the impact of demolition and piling works on existing and proposed noise sensitive properties, including a scheme of mitigation measures for protecting from noise and vibration
 - xiv. Protection of pedestrian routes during construction
 - xv. Safeguards to be used within the construction process to ensure surface water contains no pollutants on leaving the site, including suspended solids
 - xvi. Safeguards to waterways adjacent to the site from pollution impacts
 - xvii. Hours of construction works restricted to 0800 - 1800 hours Monday to Friday, 0800 - 1300 on Saturday, and at no other time on Sundays, Bank and Public holidays
 - xviii. No burning on site during construction and fitting out of the development hereby permitted.

Reason: To limit the impact the development has on the amenity of the locality during the construction period.

11. No development shall take place in any phase until a surface water drainage scheme for that phase, based on sustainable drainage principles and an

assessment of the hydrological and hydro-geological context of the development, has been submitted to and approved in writing by the LPA. The drainage strategy should demonstrate the surface water run-off generated up to and including the 1:100 year event critical storm (plus 30% climate change allowance) will not exceed the run-off from the undeveloped site following the corresponding rainfall event. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed.

Those details shall include:

- Information about the design storm period and intensity, the method employed to deal and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
- Control measures to limit pollutants leaving the site;
- A timetable for its implementation; and
- A management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage scheme throughout its life to maintain operational water quality.

Reason: To prevent the increased risk of flooding, to protect water quality, and to protect habitat and amenity.

12. The development permitted by this planning permission shall be carried out in accordance with the approved Flood Risk Assessment (FRA) (by FMW Consultancy, FMW1467F, dated December 2014) and the following mitigation measures detailed within the FRA:

- All buildings and development must be located within Flood Zone 1 only. The mitigation measures shall be fully implemented prior to occupation and in accordance with the timing / phasing arrangements embodied within the scheme.

Reason: To ensure that the flood risk is minimised.

13. Prior to the commencement of any phase, details of the construction proposed for the roads and footways within the development, for each phase, including all relevant horizontal cross sections and longitudinal sections showing the existing and proposed levels together with details of street lighting (designed to minimise spillage and avoid impacting on flight corridors used by bats), the method of disposing of surface water, and details of the programme of implementation for the making up of the roads and footways, including on-going management and maintenance of any roads, footpaths and accesses and any future plans for adoption, must be submitted to and approved by the LPA in writing.

Reason: To limit the impact the development has on the locality.

14. The roads and footways must be laid out and made up in accordance with the specification, programme and details approved and in any event shall be so constructed that, by no later than the time any building erected within that

phase on the land is occupied, there shall be a direct connection from it to an existing highway. The final carriageway and footway surfacing must be commenced within 3 months and completed within 6 months from the date upon which the erection is commenced of the penultimate dwelling hereby permitted.

Reason: To ensure the timely delivery of associated local highway infrastructure.

15. No surface alterations to the Public Right of Way, Botley Footpath no. 1, or any works that affect its surface, shall take place without the prior permission of Hampshire County Council, as the Highway Authority.

Reason: To protect the Public Right of Way.

16. Development shall not begin in any phase until a noise assessment scheme has been submitted that demonstrates that the adverse impacts of noise on the development within that phase have been addressed through building layout and design, including where appropriate, mitigation measures to achieve acceptable levels of noise both externally and internally. The noise mitigation measures, as approved in writing by the LPA, shall be fully installed and verified as performing as required in accordance with the approved scheme.

Reason: To protect the amenities of the occupiers of nearby properties.

17. Any plant or equipment used for the purpose of air conditioning shall be provided with suitable acoustic attenuation, or sited at agreed locations, to mitigate the effects of noise as approved in writing by the LPA. The acoustic attenuation shall be installed and retained in accordance with the approved details.

Reason: To protect the amenities of the occupiers of nearby properties.

18. No work shall commence on site until the following has been submitted to, and approved in writing by the LPA:
 - a) A Report of Preliminary Investigation comprising a Desk Study, Conceptual Site Model, and Preliminary Risk Assessment documenting previous and existing land uses of the site and adjacent land in accordance with national guidance and as set out in Contaminated Land Report Nos. 11, CLR11, and BS 10175:2011+A1:2013 Investigation of potentially contaminated sites - Code of Practice, and, unless otherwise agreed with the LPA;
 - b) A Report of a site investigation documenting the ground conditions of the site and incorporating chemical and gas analysis identified as appropriate by the Preliminary Investigation and in accordance with BS 10175:2011+A1:2013, and BS 8576:2013 and unless otherwise agreed with the LPA;
 - c) A detailed site specific scheme for remedial works and measures to be undertaken to avoid the risk from contaminants and/or gases when the site is developed and proposals for future maintenance and monitoring.

Such a scheme shall include nomination of a competent person to oversee the implementation of the works.

Reason: To minimise the risk from land contamination for the safety of the property's occupiers.

19. The development hereby permitted shall not be occupied / brought into use until there has been submitted to the LPA verification by the competent person approved under the provisions of condition 18(c) that any remediation scheme required and approved under the provisions of condition 18(c) has been implemented fully in accordance with the approved details (unless varied with the written permission of the LPA in advance of implementation). Unless agreed in writing with the LPA such verification shall comply with the guidance contained in CLR11 and EA Guidance for the Safe Development of Housing on Land Affected by Contamination - R&D Publication 66: 2008. Typically such a report would comprise:

- A description of the site and its background, and summary of relevant site information;
- A description of the remediation objectives and remedial works carried out;
- Verification data, including - data (sample locations/analytical results, as built drawings of the implemented scheme, photographs of the remediation works in progress, etc);
- Certificates demonstrating that imported and / or material left in situ is free from contamination, gas / vapour membranes have been installed correctly.

Thereafter the scheme shall be monitored and maintained in accordance with the scheme approved under condition 21(c).

Reason: To minimise the risk from land contamination for the safety of the property's occupiers.

20. No development shall take place until an Employment and Skills Management Plan has been submitted to and approved in writing by the Council. This Plan will include a mechanism for delivery of the approved Plan in a co-ordinated way by the developers and for a report to be submitted to indicate how the criteria set out in the approved Employment and Skills Management Plan are jointly being met.

Reason: In the interests of economic sustainability and securing local employment opportunities, in accordance with Saved Policy 191.IN of the Eastleigh Borough Local Plan (2001-2011) and the EBC Planning Obligations SPD.

21. Prior to the commencement of the Development, the developers shall implement the approved Employment and Skills Management Plan throughout the duration of the construction period and any subsequent variations shall be agreed in writing by the LPA.

Reason: In the interests of economic sustainability and securing local employment opportunities, in accordance Saved Policy 191.IN of the Eastleigh Borough Local Plan (2001-2011) and with the EBC Planning Obligations SPD.

22. No reptile translocation or development shall take place until a phased Ecological Protection and Mitigation Plan, including timetable of implementation,

has been submitted to and approved in writing by the LPA.

This plan shall include:

- a scheme of ecological enhancements and landscaping and safeguards to protect the identified badger sett from disturbance;
- incorporation of features suitable for use by breeding birds (including swifts and house sparrows), and bats;
- an assessment of the trees on site for bat roosts, undertaken by a licensed bat ecologist;
- a reptile translocation, mitigation management and monitoring plan;
- a detailed scheme for the provision of mains foul water sewerage disposal on and off site within each phase.

The Plan shall be carried out as approved.

Reason: To ensure the protection of wildlife and supporting habitat; and to ensure no deterioration of watercourses and protected areas and sensitive waters, as a result of the development.

23. No tree/shrub clearance works shall be carried out on the site between 1st March and 31st August inclusive, unless the site is surveyed beforehand for breeding birds and a scheme to protect breeding birds is submitted to and approved in writing by the LPA. If such a scheme is submitted and approved the development shall thereafter only be carried out in accordance with the approved scheme.

Reason: To prevent harm to breeding birds.

24. No development which would disturb Japanese knotweed on the site shall take place until a detailed method statement for removing or the long-term management/control of Japanese knotweed on the site shall be submitted to and approved in writing by the LPA. The method statement shall include measures that will be used to prevent the spread of Japanese knotweed during any operations e.g. mowing, strimming or soil movement. It shall also contain measures to ensure that any soils brought to the site are free of the seeds/root /stem of any invasive plant listed under the Wildlife and Countryside Act 1981, as amended. Development shall proceed in accordance with the approved method statement

Reason: To prevent the spread of Japanese Knotweed, which is an invasive plant listed under Schedule 9 of the Wildlife and Countryside Act.

25. No development shall take place until a scheme for the provision and management of a 15 metre wide buffer zone alongside the Moorgreen Stream/Ford Lake Brook running through the development site shall be submitted to and agreed in writing by the LPA. Thereafter the development shall be carried out in accordance with the approved scheme and any subsequent amendments shall be agreed in writing with the LPA. The buffer zone scheme shall be free from built development including lighting, domestic gardens and formal landscaping; and could form a vital part of green infrastructure provision. The schemes shall include:
- Plans showing the extent and layout of the buffer zone;
 - Details of any proposed planting scheme (for example, native species);

- Details demonstrating how the buffer zone will be protected during development and managed/maintained over the longer term including adequate financial provision and named body responsible for management plus production of detailed management plan;
- Details of any proposed footpaths, fencing, lighting etc;
- Where a green roof is proposed for use as mitigation for development in the buffer zone ensure use of appropriate substrate and planting mix.

Reason: To protect land alongside watercourses that is particularly valuable for wildlife and warrants protection.

26. No development shall take place until the applicant has secured the implementation of a programme of archaeological assessment and a programme of archaeological mitigation in accordance with the submitted Environmental Statement Appendix C, 'C3 Written Scheme of Investigation for a Scheme of Investigation for a Scheme of Archaeological Evaluation'.

Reason: To assess the extent, nature and date of any archaeological deposits that might be present and the impact of the development upon these heritage assets; and to mitigate the effect of the works associated with the development upon any heritage assets and to ensure that information regarding these heritage issues is preserved by record for future generations.

27. Following the completion of the archaeological fieldwork, a report will be produced in accordance with an approved programme, including, where appropriate, post-excavation assessment, specialist analysis and reports, publication and public engagement. This report shall be submitted to the LPA and to the local Historic Records Office.

Reason: To ensure evidence from the historic environment, captured through the archaeological fieldwork, is properly compiled and made publically available.

28. For reserved matters applications, residential buildings shall achieve the following:
- In respect of energy efficiency, a standard of a 19% improvement of dwelling emission rate over the target emission rate as set in the 2013 Building Regulations being equivalent to and not exceeding the requirement as set by Code Level 4 (as defined by ENE1) in the, now revoked, Code for Sustainable Homes (or equivalent requirements that are set out in national legislation or policy).
 - In respect of water consumption, a maximum predicted internal mains water consumption of 105 litres/person/day, i.e. the equivalent requirement as set by Code Level 4 (as defined by WAT1) in the, now revoked, Code for Sustainable Homes (or equivalent requirements that are set out in national legislation or policy).

Any non-residential development must achieve a BREEAM New Construction 'excellent' standard.

Reason: To ensure the development meets the requirements of the national technical standards for energy and water consumption and the Council's residential requirements of the adopted SPD 'Environmentally Sustainable Development'.

29. Prior to the construction of any building above slab level in each individual phase of the development (or, in accordance with a timetable to be agreed in writing with the LPA), a BREEAM New Construction Interim Stage Certificate at "excellent" standard (for non-residential development); or (for residential development) design stage SAP data and a design stage water calculator confirming energy efficiency and the predicted internal mains water consumption shall be submitted to and approved in writing by the LPA. The development shall not be carried out otherwise than in accordance with the approved details.

Reason: To ensure the development meets the requirements of the national technical standards for energy and water consumption and the Council's residential and non-residential requirements of the adopted SPD 'Environmentally Sustainable Development'.

30. Prior to the construction of any dwelling above slab level in each individual phase of the development (or, in accordance with a timetable to be agreed in writing by the LPA) a report shall be submitted to and approved in writing by the LPA which sets out how essential requirements set out within ESD 2-8 of Eastleigh Borough Council's Environmentally Sustainable Development SPD will be met within that phase. The development shall not be carried out otherwise than in accordance with the approved details.

Reason: To ensure the development meets the requirements of the national technical standards for energy and water consumption and the Council's residential and non-residential requirements of the adopted SPD 'Environmentally Sustainable Development'.

31. Prior to the first occupation of each type of building within each phase a BREEAM New Construction Post Construction Stage Certificate at "excellent" standard (for non-residential development); or (for residential development) an as built stage SAP data, and an as built stage water calculator confirming energy efficiency and the predicted internal mains water consumption; which shall meet the requirements set out in condition 24 above; shall be submitted to and approved in writing by the LPA. The development shall not be carried out otherwise than in accordance with the approved details.

Reason: To ensure the development meets the requirements of the national technical standards for energy and water consumption and the Council's residential and non-residential requirements of the adopted SPD 'Environmentally Sustainable Development'.

32. Prior to the first occupation of each type of building within each phase of development a report highlighting how the essential requirements set out within ESD2-8 of the Eastleigh Borough Council's adopted Environmentally Sustainable Development SPD, set out by condition 26 above, have been achieved in that phase of the development shall be submitted to and approved in writing by the LPA. The development shall not be carried out otherwise than in accordance with the approved details.

Reason: To ensure the development meets the requirements of the national technical standards for energy and water consumption and the Council's residential and non-

residential requirements of the adopted SPD 'Environmentally Sustainable Development'.

33. A Design Code shall be submitted with the first reserved matters application, accompanied by a Masterplan, demonstrating how the reserved matters application, and the remainder of the outline permission (if reserved matters takes place in phases) meets the objectives of the Design & Access Statement (March 2016) and takes into account the drawings listed in condition 3 submitted with the outline planning application. It shall include details of:
- Street Hierarchy and Character;
 - Green Infrastructure and Green Corridor Framework;
 - Urban Form, and;
 - The Character Areas, including boundary treatments and materials.

Reason: To ensure a coherent, well-designed, development.

34. No development shall take place within each phase until the following details have been submitted to and approved in writing by the LPA for that phase:
- Details and samples of the materials to be used in the construction of the external surfaces of the buildings (including fenestration, rainwater goods, meter boxes, fascias and soffits).
 - Plans including cross sections to show proposed ground levels and their relationship to existing levels both within the site and on immediately adjoining land.
 - Any pumping stations and associated no build zone details
 - External crime prevention measures for any flatted units.
- Development shall be carried out in accordance with the approved details.

Reason: To limit the impact the development has on the locality.

35. A parking layout plan showing the unallocated parking spaces (for shared use by any residents or visitor of the site) for each phase shall be submitted and approved as part of the reserved matters. The identified unallocated parking spaces shall remain unallocated and available for shared use by residents and visitors to the site in perpetuity.

Reason: To ensure the adequate provision of on-site parking for the purpose of highway safety.



RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.

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