

NOTE

From:	Carter Jonas and Mr Charles Banner QC on behalf of L&Q, Cirrus, and G120
To:	Roger Clews, Inspector
Project:	North Essex Section 1 Local Plan Examination
Date:	31 January 2019

RESPONSE TO OPINION BY CHARLES BANNER QC ON MEANING OF ‘DELIVERABLE’

1. We strongly endorse the opinion of Mr Banner, with the proper interpretation of “*deliverable*” within the NPPF 2012 as being *capable of delivery*, not *certain to be delivered*, *likely to be delivered*, or *expected to be delivered*.
2. Paragraph 182 of the NPPF 2012 provides that to be “*effective*” a plan must be “*deliverable*”. Accordingly, “*deliverable*” is part of the definition of what effective means. It puts the cart before the horse, therefore, to define “*deliverable*” not by reference to its ordinary meaning but by giving it a gloss purportedly based upon the term “*effective*”. “*Deliverable*” tells us what “*effective*” means, not vice versa.
3. In response to Mr Banner, paragraph 13 of Mr Kimblin's opinion puts a very substantial, unwarranted gloss on the words used by NPPF para 182. It is a very considerable departure from the ordinary English language meaning of the word “*deliverable*”, which is “*able to be delivered*”.
4. One does not need to refer to the St Modwen case to conclude that deliverable means “*able to be delivered*” – it is a matter of ordinary language¹. St Modwen merely reconfirms what is already clear as a matter of language. Mr Kimblin’s attempt to rely on purported distinctions from the circumstances of St Modwen so as to support his gloss on the word “*deliverable*” is therefore misconceived.

1. _____

¹ “*Something that can be provided or achieved as a result of a process; able to be delivered*”
[<https://dictionary.cambridge.org/dictionary/english/deliverable>] (our emphasis).