

Proof of Evidence of Ben Pycroft in relation to Five Year Housing Land Supply

For Aurora Properties (UK) Ltd | 22-679

Mixed use development - Land to the North of Bradmore Way, Bradmore Way, The
Brookmans Estate, Brookmans Park, Hertfordshire

Project: 22-679
Site Address: Land to the North of Bradmore Way, The Brookmans Estate,
Brookmans Park, Hertfordshire
Client: Aurora Properties (UK) Ltd
Date: 09 January 2023
Author: Ben Pycroft

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1. Introduction

- 1.1 This proof of evidence is submitted on behalf of Aurora Properties (UK) Ltd (i.e. the Appellant) in support of its appeal against the decision of Welwyn Hatfield Borough Council to refuse to grant outline planning permission for up to 125 dwellings, a C2 care facility for up to 60 bedrooms with associated facilities, a scout hut and all ancillary works on Land to North of Bradmore Way, The Brookmans Park Estate (LPA ref: 6/2022/1097/OUTLINE, PINS ref: APP/C1950/W/22/3307844).
- 1.2 This proof of evidence specifically addresses matters relating to housing land supply. It should be read alongside the proofs of evidence prepared by Mr Stacey in relation to affordable housing and Mr Gray in relation to all other planning matters.

Qualifications

- 1.3 I am Benjamin Michael Pycroft. I have a B.A. (Hons) and postgraduate diploma in Town Planning from the University of Newcastle-upon-Tyne and am a member of the Royal Town Planning Institute. I am a Director of Emery Planning, based in Macclesfield, Cheshire.
- 1.4 I have extensive experience in dealing with housing supply matters and have prepared and presented evidence relating to five year housing land supply calculations at several Local Plan examinations and over 40 public inquiries across the country. In 2021, I prepared and submitted evidence in relation to the Council's housing land supply at the appeal against the Council's decision to refuse to grant planning permission for up to 100 dwellings at land off Bullens Green Lane, Colney Heath¹.
- 1.5 I understand my duty to the inquiry and have complied, and will continue to comply, with that duty. I confirm that this evidence identifies all facts which I regard as being relevant to the opinion that I have expressed, and that the Inquiry's attention has been drawn to any matter which would affect the validity of that opinion. I believe that the facts stated within this proof are true and that the opinions expressed are correct and comprise my true professional opinions which are expressed irrespective of by whom I am instructed.
- 1.6 I provide this proof of evidence, a summary proof of evidence and a set of appendices. I also refer to several core documents. I will work with the Council on a Statement of Common Ground in relation to housing land supply.

¹ PINS ref: 3265926 – Core document 9.28



Background

- 1.7 In August 2022, the Council published its Housing Delivery Test Action Plan². Appendix 1 of this document states that at 1st April 2022 the Council has a deliverable 5 year housing land supply (5YHLS) of 2,545 dwellings. Against the local housing need calculated using the standard method set out in the PPG of 888 dwellings per annum and a 20% buffer, this equates to 2.63 years.
- 1.8 However, the Council claims that upon adoption of the emerging Local Plan the deliverable supply at 1st April 2023 will be 5,481 dwellings, which against the proposed (stepped) housing requirement, a proportion of the shortfall to date and a 20% buffer would equate to 5.2 years.
- 1.9 It is of note that the Council's proposed approach for addressing the shortfall, a stepped housing requirement and its housing trajectory (including proposed allocations) have not been endorsed by the Local Plan Inspector and are the subject of further consultation between 4th January and 15th February 2023. The Appellant will be responding to this consultation before it closes.

Summary

- 1.10 As above, it is common ground that the Council cannot currently demonstrate a deliverable 5YHLS by a significant margin. Whilst the Council considers that the deliverable supply at 1st April 2022 is 2,545 dwellings, I have assessed the supply and consider that it is 1,762 dwellings, which against the local housing need and a 20% buffer equates to 1.65 years.
- 1.11 The housing completions between 1st April 2022 and 31st March 2023 will not be known until the start of the next monitoring year. Therefore, the shortfall at 1st April 2023 is not known at the time of writing. It is also not known whether the Council's proposed approach for addressing the shortfall, a stepped housing requirement and its housing trajectory will remain unchanged after the current consultation on them closes.
- 1.12 Nevertheless, my proof of evidence demonstrates that even were the development plan to be adopted, the Council would not be able to demonstrate a 5YHLS. This is because the Council has not provided the clear evidence required for the inclusion of sites in the 5YHLS within the context of the definition of deliverable set out in the 2021 Framework. Whilst the emerging Local Plan is being examined under the 2012 Framework and its definition of "deliverable", the 5YHLS will be measured against the current (2021) Framework.

² Core document 7.01



- 1.13 I conclude that the deliverable supply at 1st April 2023 with reference to the definition in the current Framework is 2,056 dwellings. This equates to 1.88 years or 1.95 years depending on whether the emerging housing requirement is to be stepped or not.
- 1.14 Regardless of the position in terms of the 5YHLS, I also explain in my proof of evidence that the presumption in favour of sustainable development will apply because the Council has failed the 2021 Housing Delivery Test (HDT) and will fail the 2022 HDT even if the Council is successful in adopting a stepped housing requirement.
- 1.15 The implications of this are addressed by Mr Gray.



2. Planning policy context

- 2.1 This section sets out the relevant planning policy context in relation to my proof of evidence.
- 2.2 Section 38(6) of the Planning and Compulsory Purchase Act (2004) requires applications for planning permission to be determined in accordance with the development plan unless material considerations indicate otherwise. The National Planning Policy Framework (the Framework) is a material consideration which is addressed in section 3 of my proof of evidence below.

Development plan context

Existing development plan

- 2.3 The existing development plan is the Welwyn Hatfield District Plan (adopted 2005).
- 2.4 The conformity of the appeal proposals with the policies in the development plan, whether the most important policies for determining the appeal are up to date and the weight to be given to those policies are addressed by Mr Gray.

Emerging development plan

- 2.5 The Welwyn Hatfield Local Plan was submitted for examination over 6.5 years ago in May 2017. It is still being examined. The Inspector has not provided his final conclusions on the proposed (stepped) housing requirement. The latest position is that a consultation on main modifications is taking place between 4th January and 15th February 2023. As explained in the introduction to my proof of evidence, this consultation invites comments on:
- The Council's proposed approach of addressing the shortfall over the plan period;
 - The Council's proposed approach that the housing requirement is stepped; and
 - The Council's housing trajectory (including additional proposed allocations).
- 2.6 The emerging development plan is addressed by Mr Gray. However, it is relevant to my proof of evidence that in accordance with paragraph 214 of the Framework, the Local Plan is being examined within the context of the 2012 Framework and not within the context of the definition of "deliverable" set out in the 2021 Framework, which I discuss in section 3 of my proof of evidence.



Other material considerations

Welwyn Hatfield HDT Action Plan (August 2022)³

- 2.7 This is the third HDT Action Plan that the Council has prepared. It sets out the reasons for past-under delivery and ways to reduce the risk of further under-delivery in future years. Appendix 1 of this document states that at 1st April 2022 the Council has a deliverable 5 year housing land supply (5YHLS) of 2,545 dwellings. Against the local housing need calculated using the standard method set out in the PPG of 888 dwellings per annum and a 20% buffer, this equates to 2.63 years.

Housing Note: Requirement and Supply (November 2022)⁴

- 2.8 The Council produced the housing note in response to a letter received from the Local Plan Inspector dated 6th September 2022, which (amongst other things) explained:

“It will also be necessary to consult on your calculations that have led to the five- and ten-year requirements and supply. To that end, I would be grateful if you would check your data and calculations for accuracy and set out, in a comprehensive paper, what the five- and ten-year requirements and supply are, using different assumptions if you consider that to be appropriate. Additionally, would you describe how those figures have been arrived at, paying particular attention to the methods for the treatment of the shortfall that you have identified and including a full justification for your conclusions, as well as the availability and deliverability of the sites that are included in the supply.”

- 2.9 The housing note explains the following:

- The housing requirement in the emerging Local Plan is based on the Full Objectively Assessed Housing Need (FOAHN) of 760 dwellings per annum;
- 2,731 dwellings were completed between the base date of the emerging Local Plan on 1st April 2016 and 31st March 2022;
- It is anticipated that 613 dwellings will be completed in 2022/23 and therefore 3,344 dwellings in the first 7 years;
- This results in an anticipated shortfall against the OAN between 1st April 2016 and 31st March 2023 of 1,976 dwellings;
- At 1st April 2023, the Council has identified a deliverable 5YHLS of 5,481 dwellings comprising of:

³ Core document 7.01

⁴ Core document 7.03



- 462 dwellings on existing commitments;
 - 417 dwellings on windfall sites;
 - 5 dwellings on small sites; and
 - 4,597 dwellings on allocated sites.
- Four methods for addressing the shortfall have been identified:
 - The shortfall is addressed in the first 5 years (i.e. the Sedgefield method), which would result in a five year housing requirement and 20% buffer of 6,931 dwellings (1,386 dwellings per annum). The Council would not be able to demonstrate a 5YHLS against this.
 - The shortfall is addressed in the first 10 years, which would result in a five year housing requirement and 20% buffer of 5,746 dwellings (1,149 dwellings per annum). The Council would not be able to demonstrate a 5YHLS against this.
 - The shortfall is addressed in years 6-10, which would result in a five year housing requirement and 20% buffer of 4,560 dwellings (912 dwellings per annum). This approach would mean that the Council would have the strongest 5YHLS upon adoption but would mean that completions of 1,500 dwellings per annum would be required in years 6-10.
 - The shortfall is addressed over the remaining 13 years of the plan period (i.e. the Liverpool method). This is the Council's preferred approach. It would result in a five year housing requirement and 20% buffer of 5,472 dwellings (1,094 dwellings per annum). The note states:

“Under the Liverpool approach the Council would meet a five year supply upon adoption which, as mentioned, would be favourable as it would leave the Council at less risk of speculative planning applications and planning appeals which could result in less sustainable development and undermine the plan-led system.”

2.10 Table 6 of the note then explains that using an annual housing requirement of 760 dwellings per annum and the Liverpool method, the Council's claimed supply figure of 5,481 dwellings would be just 9 dwellings over the five year requirement and buffer. The Council therefore proposes a stepped housing requirement meaning 738 dwellings in the first 17 years of the plan period. Following this approach, the Council's claimed 5YHLS at 1st April 2023 would equate to 5.2 years. This is shown in the following table.



Table 2.1 – Council’s 5YHLS calculations at 1st April 2023

		Annual Average	Stepped Housing Requirement
	Requirement		
A	Annual requirement	760	738
B	Anticipated shortfall at 1 st April 2023	1,976	1,822
C	Amount of shortfall to be addressed by 31 st March 2028	760	701
D	Five year requirement (A X 5 + C)	4,560	4,391
E	Five year requirement plus 20% buffer	5,472	5,269
F	Annual requirement plus buffer (E / 5)	1,094	1,054
	Supply		
G	Claimed 5YHLS at 1 st April 2023	5,481	5,481
H	Supply in years (G / F)	5.01	5.2
I	Oversupply (G – E)	9	212

2.11 The housing trajectory set out in the housing note shows how the Council expects its claimed housing supply will deliver over the five year period 1st April 2023 to 31st March 2028 and also to the end of the plan period in 2036.

EX294 – Local Plan Housing Note⁵

2.12 This document is similar to the November 2022 note discussed above. However, paragraph 3.1 of EX294 states:

“At a meeting of Cabinet Planning and Parking Panel (CPPP) in July 2022, the Council agreed to a strategy which would provide a supply of 12,775 dwellings over the plan period. It should be noted that this agreed strategy did not include the three sites HS22 (BrP4), HS29 (Cuf7) and HS30 (Cuf12), which were in the submitted Draft Local Plan and found sound by the Inspector. Including these additional three sites (and including

⁵ Core document 6.103



the extension at BrP4a) the total housing supply over the plan period increases to 13,351 dwellings. The supply and strategies explored in this note include these three sites, however it should be highlighted their inclusion is no longer supported by members. In addition, the Gypsy and Traveller site at Barbraville (GTLAA08), which was in the Submitted Draft Local Plan for 4 pitches, has also been added to the supply presented here. (emphasis added).

2.13 This is relevant because the Council's claimed 5YHLS at 1st April 2023 includes the following two sites as being deliverable despite their inclusion not being supported by members:

- HS29 – Land north of Northaw Road East (73 dwellings); and
- HS30 – Wells Farm, Northaw Road East (75 dwellings).

2.14 The third site (HS22) is not included in the Council's 5YHLS.



3. National planning policy and guidance

3.1 This section of my proof of evidence explains how the definition of “deliverable” set out in the current Framework differs from that set out in the 2012 version of the Framework which the Local Plan is being examined under.

The National Planning Policy Framework (“the Framework”) and Planning Practice Guidance (PPG)

3.2 The Framework was originally published in March 2012. It was revised in July 2018 and again in February 2019 and July 2021. In relation to housing land supply, footnote 8 as set out on page 6, section 5 of the *“Delivering a sufficient supply of homes”* and the definition of “deliverable” set out on page 66 of the Framework are all relevant to my proof of evidence.

3.3 The PPG was first published in March 2014 and has been updated since. It contains guidance on *“Housing and economic needs assessment”* at chapter 2a, *“Housing and economic land availability assessments”* at chapter 3, and *“Housing supply and delivery”* at chapter 68. I refer to paragraphs within these sections of the PPG in my proof of evidence.

3.4 Section 38(6) of the Planning and Compulsory Purchase Act (2004) requires applications for planning permission to be determined in accordance with the development plan unless material considerations indicate otherwise. The National Planning Policy Framework (the Framework) is a material consideration. However, it is the Framework itself which defines what a five year housing land supply is, sets out the requirement to demonstrate one and explains how it should be calculated, not the development plan. It is also the Framework, which introduces and explains how the Government measures housing delivery through the Housing Delivery Test (HDT), not the development plan. This is deliberate because it is the Framework itself which sets out the circumstances in which the tilted balance to the presumption in favour of sustainable development will be triggered as a result of a local planning authority either failing to demonstrate a five year supply of housing land and / or meeting the HDT.

3.5 Paragraph 11 of the Framework explains that plans and decisions should apply a presumption in favour of sustainable development. For decision-making, this means:

“c) approving development proposals that accord with an up-to-date development plan without delay; or

d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:



- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.”

3.6 Footnote 8 of the Framework is referred to after “out-of-date” in paragraph 11d) and states:

“This includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 74); or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years. Transitional arrangements for the Housing Delivery Test are set out in Annex 1”.

3.7 Whilst they are not the only routes in which the tilted balance to the presumption in favour of sustainable development can be triggered, the Framework is clear that paragraph 11d) of the Framework applies in the following circumstances:

- the local planning authority cannot demonstrate a five year supply of housing land with the appropriate buffer as set out in paragraph 74 of the Framework; and / or
- where the latest Housing Delivery Test indicates that the delivery of housing was less than 75% of the housing requirement over the previous three years.

Five year housing land supply

3.8 As explained above, the tilted balance to the presumption in favour of sustainable development is triggered where the local planning authority cannot demonstrate a deliverable five year housing land supply in accordance with paragraph 74 of the Framework.

3.9 The second sentence of paragraph 74 of the Framework is within chapter 5: “*Delivering a sufficient supply of homes*” and is under the title: “*Maintaining supply and delivery*”. It states:

“Local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years’ worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than five years old”.

3.10 Footnote 39 of the Framework is referred to at the end of this sentence and states:

“Unless these strategic policies have been reviewed and found not to require updating. Where local housing need is used as the basis for assessing whether a five year supply of specific deliverable sites exists, it should be calculated using the standard method set out in national planning guidance”.



3.11 Therefore, the basis on which the five year housing land supply is calculated is a binary position. The five year housing land supply should be calculated against either:

- the housing requirement set out in adopted strategic policies where:
 - those policies are less than five years old; or
 - are more than five years old but have been reviewed and found not to require updating; or
- the local housing need calculated using the standard method set out in national planning guidance where the policies are more than five years old and either:
 - have not been reviewed; or
 - have been reviewed and found to require updating.

3.12 Additional guidance is provided in chapter 68 of the Planning Practice Guidance (PPG): “*Housing supply and delivery*”. This section of the PPG contains guidance on “*5 year housing land supply*”, “*Demonstrating a 5 year housing land supply*”, “*Confirming 5 year housing land supply*”, and “*Calculating a 5 year housing land supply*”.

3.13 Paragraph 68-001 of the PPG⁶ answers the question: “What policies are in place to encourage local authorities to promote a sufficient supply of land for housing and support delivery?”. It states:

“The standard method for calculating local housing need provides a minimum number of homes to be planned for. Authorities should use the standard method as the starting point when preparing the housing requirement in their plan, unless exceptional circumstances justify an alternative approach.

The Housing Delivery Test measures whether planned requirements (or, in some cases, local housing need) have been met over the last 3 years. The 5 year housing land supply is a calculation of whether there is a deliverable supply of homes to meet the planned housing requirement (or, in some circumstances, local housing need) over the next 5 years.”

3.14 Paragraph 68-002 of the PPG⁷ answers the question: “*What is a 5 year land supply?*”. It states:

“A 5 year land supply is a supply of specific deliverable sites sufficient to provide 5 years’ worth of housing (and appropriate buffer) against a housing requirement set out in adopted strategic policies, or against a local housing need figure, using the standard method, as appropriate in accordance with paragraph 73 of the National Planning Policy Framework.”

⁶ Paragraph: 001 Reference ID: 68-001-20190722

⁷ Paragraph: 002 Reference ID: 68-002-20190722



3.15 Paragraph 68-003 of the PPG⁸ answers the question: “What is the purpose of the 5 year housing land supply?”. It states:

“The purpose of the 5 year housing land supply is to provide an indication of whether there are sufficient sites available to meet the housing requirement set out in adopted strategic policies for the next 5 years. Where strategic policies are more than 5 years old, or have been reviewed and found in need of updating, local housing need calculated using the standard method should be used in place of the housing requirement.”.

3.16 Paragraph 68-005 of the PPG⁹ answers the question: “What housing requirement figure should authorities use when calculating their 5 year housing land supply?”. It states:

“Housing requirement figures identified in adopted strategic housing policies should be used for calculating the 5 year housing land supply figure where:

- the plan was adopted in the last 5 years, or
- the strategic housing policies have been reviewed within the last 5 years and found not to need updating.

In other circumstances the 5 year housing land supply will be measured against the area’s local housing need calculated using the standard method.”

3.17 Paragraph 68-008 of the PPG¹⁰ answers the question: “What happens if an authority cannot demonstrate a 5 year housing land supply?”. It states:

“In decision-taking, if an authority cannot demonstrate a 5 year housing land supply, including any appropriate buffer, the presumption in favour of sustainable development will apply, as set out in paragraph 11d of the National Planning Policy Framework.”

3.18 There is no provision in paragraph 74 of the Framework to calculate the five year housing land supply against any other figure that is not the adopted housing requirement or the local housing need using the standard method.

3.19 In accordance with footnote 8, for the purposes of triggering the presumption of sustainable development as set out in paragraph 11(d), an assessment of whether a local planning authority can demonstrate a five year housing land supply in accordance with paragraph 74 of the Framework needs to be made. As the assessment of the five year housing land supply against any other figure than the adopted housing requirement or the local housing need calculated using the standard method would not comply with

⁸ Paragraph: 003 Reference ID: 68-003-20190722

⁹ Paragraph: 005 Reference ID: 68-005-20190722

¹⁰ Paragraph: 008 Reference ID: 68-008-20190722



paragraph 74 then an assessment for the purposes of footnote 8 and paragraph 11d could not be made. This is relevant because paragraph 74 refers to a “deliverable” supply being required as I now discuss.

What constitutes a deliverable site?

Previous National Planning Policy (2012) and Guidance (2014)

3.20 Footnote 11 of the 2012 Framework stated:

“To be considered deliverable, sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years and in particular that development of the site is viable. Sites with planning permission should be considered deliverable until permission expires, unless there is clear evidence that schemes will not be implemented within five years, for example they will not be viable, there is no longer a demand for the type of units or sites have long term phasing plans.”

3.21 Paragraph 3-031 of the previous PPG (dated 6th March 2014): “What constitutes a ‘deliverable site’ in the context of housing policy?” stated:

“Deliverable sites for housing could include those that are allocated for housing in the development plan and sites with planning permission (outline or full that have not been implemented) unless there is clear evidence that schemes will not be implemented within 5 years.

However, planning permission or allocation in a development plan is not a prerequisite for a site being deliverable in terms of the 5-year supply. Local planning authorities will need to provide robust, up to date evidence to support the deliverability of sites, ensuring that their judgements on deliverability are clearly and transparently set out. If there are no significant constraints (eg infrastructure) to overcome such as infrastructure sites not allocated within a development plan or without planning permission can be considered capable of being delivered within a 5-year timeframe.

The size of sites will also be an important factor in identifying whether a housing site is deliverable within the first 5 years. Plan makers will need to consider the time it will take to commence development on site and build out rates to ensure a robust 5-year housing supply.”

3.22 Therefore, under the 2012 Framework, all sites with planning permission, regardless of their size or whether the planning permission was in outline or in full were to be considered deliverable until permission expired unless there was clear evidence that schemes would not be “implemented” within five years. The PPG went further by stating that allocated sites “could” be deliverable and even non-allocated sites without planning permission “can” be considered capable of being delivered.



3.23 This is relevant because it is within this context that the Local Plan is being examined due to transitional arrangements.

Draft revised National Planning Policy Framework (March to May 2018)

3.24 The Government consulted on the draft revised Framework between March and May 2018. The draft revised Framework provided the following definition of “deliverable” in the glossary:

“To be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years. Small sites, and sites with detailed planning permission, should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years (e.g. they are no longer viable, there is no longer a demand for the type of units or sites have long term phasing plans). Sites with outline planning permission, permission in principle, allocated in the development plan or identified on a brownfield register should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years.”

3.25 Question 43 of the Government’s consultation on the draft revised Framework asked: “do you have any comments on the glossary?”

3.26 Under the title: “What constitutes a ‘deliverable site’ in the context of housing policy?”, the draft Planning Practice Guidance (March 2018, page 16) simply included the same definition as that set out in the draft revised Framework above.

Government’s response to the draft revised Framework consultation

3.27 There were 750 responses to question 43 of the consultation. Some of the points raised included:

“Local authorities called for the proposed definition of ‘deliverable’ to be reconsidered, as it may result in them being unable to prove a five year land supply and place additional burdens on local authorities to produce evidence. Private sector organisations were supportive of the proposed definition.” (my emphasis)

3.28 The government’s response was as follows:

“The Government has considered whether the definition of ‘deliverable’ should be amended further, but having assessed the responses it has not made additional changes. This is because the wording proposed in the consultation is considered to set appropriate and realistic expectations for when sites of different types are likely to come forward.” (my emphasis)



Revised Framework (July 2018)

3.29 The revised Framework was published on 24th July 2018. The definition of deliverable was provided on page 66 of the 2018 Framework and was as follows:

“To be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years. Sites that are not major development, and sites with detailed planning permission, should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years (e.g. they are no longer viable, there is no longer a demand for the type of units or sites have long term phasing plans). Sites with outline planning permission, permission in principle, allocated in the development plan or identified on a brownfield register should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years.” (my emphasis)

3.30 Consequently, the 2018 Framework stated that sites with outline planning permission or allocated sites should “only” be considered deliverable where there is “clear evidence” that housing completions will “begin” on site within five years. The onus is on the Council to provide the clear evidence for any sites with outline planning permission and allocated sites it considers deliverable.

3.31 The “clear evidence” required is not described any further in the Framework. However, it is discussed in the updated PPG, which I discuss below.

Technical consultation on updates to national planning policy and guidance

3.32 Between 26th October and 7th December 2018, the Government consulted on:

- Changes to planning practice guidance relating to the standard method for assessing local housing need; and
- Policy clarifications relating to housing land supply, the definition of deliverable and appropriate assessment.

3.33 In terms of the definition of deliverable, the consultation document stated at paragraph 36:

“The new Framework published in July this year set out a revised definition of ‘deliverable’ (contained in the glossary at Annex 2 of the Framework). Early experience of applying this definition has suggested that it would benefit from some clarification of the wording. In particular, the existing text could be clearer that sites that are not major development, and which have only an outline planning consent, are in principle considered to be deliverable. The relationship between the first sentence of the definition (which sets out general considerations in terms of deliverability), and the



remainder that explains how particular circumstances should be approached, also needs to be clear. The specific circumstances cited in the definition are intended to indicate how the general considerations in the first sentence apply to the types of development referred to in the text that follows.

3.34 The consultation document then set out a proposed revised definition as follows:

“Deliverable: To be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years. In particular:

a) sites which do not involve major development and have planning permission, and all sites with detailed planning permission, should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years (for example because they are no longer viable, there is no longer a demand for the type of units or sites have long term phasing plans).

b) where a site has outline planning permission for major development, has been allocated in a development plan, has a grant of permission in principle, or is identified on a brownfield register, it should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years.”

3.35 Question 5 of the consultation asked: “Do you agree with the proposed clarification to the glossary definition of “deliverable”?”

Government’s response to the technical consultation

3.36 The Government’s response to the consultation was published on 19th February 2019. It explained that there were 461 responses to question 5 and the points raised included:

“• There was considerable support (68%) for the proposal from the private sector, although some concerns were raised that sites will need longer than five years to be built out.

• About half (54%) of local authorities agreed with the proposal, although some felt that it may make delivery harder to demonstrate, resulting in sites being removed from plans and therefore make it more difficult for authorities when demonstrating a five year land supply.

• Many respondents across the groups suggested that sites with outline planning permission and / or sites that are included within local plans should be included in the definition of deliverable. Many respondents also suggested that the proposal would result in developers using specialist knowledge and resources to influence planning decisions in their favour, as well as complaints concerning land banking” (my emphasis)

3.37 The Government’s response states:



“The Government welcomes the views submitted on this proposal. Taking them into account, it considers that the revised definition does provide helpful clarification of the approach established already in the National Planning Policy Framework. The concerns that have been expressed relate more to this overall approach than the merits of the clarification (and the relevance of the overall approach was considered when the Framework was being finalised, following the consultation in the spring of 2018). The changes to the definition that the present consultation proposes should not make it harder for authorities to demonstrate that they have a deliverable portfolio of sites; indeed, it makes it clearer that non-major sites with outline consent should be considered deliverable unless there is evidence to the contrary. We are, however, providing further information on applying the approach through planning practice guidance.” (my emphasis).

Current National Planning Policy and Guidance

3.38 The definition of “deliverable” is set out on page 66 of the Framework (2021) states:

“Deliverable: To be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years. In particular:

a) sites which do not involve major development and have planning permission, and all sites with detailed planning permission, should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years (for example because they are no longer viable, there is no longer a demand for the type of units or sites have long term phasing plans).

b) where a site has outline planning permission for major development, has been allocated in a development plan, has a grant of permission in principle, or is identified on a brownfield register, it should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years.”

3.39 The PPG was most recently updated on 22nd July 2019. Paragraph 68-007 of the PPG¹¹ provides some examples of the types of evidence, which could be provided to support the inclusion of sites with outline planning permission for major development and allocated sites without planning permission. It states:

“In order to demonstrate 5 years’ worth of deliverable housing sites, robust, up to date evidence needs to be available to support the preparation of strategic policies and planning decisions. Annex 2 of the National Planning Policy Framework defines a deliverable site. As well as sites which are considered to be deliverable in principle, this definition also sets out the sites which would require further evidence to be considered deliverable, namely those which:

¹¹ Paragraph 007 Reference ID: 68-007-20190722: “What constitutes a ‘deliverable’ housing site in the context of plan-making and decision-taking?”



- have outline planning permission for major development;
- are allocated in a development plan;
- have a grant of permission in principle; or
- are identified on a brownfield register.

Such evidence, to demonstrate deliverability, may include:

- current planning status – for example, on larger scale sites with outline or hybrid permission how much progress has been made towards approving reserved matters, or whether these link to a planning performance agreement that sets out the timescale for approval of reserved matters applications and discharge of conditions;
- firm progress being made towards the submission of an application – for example, a written agreement between the local planning authority and the site developer(s) which confirms the developers’ delivery intentions and anticipated start and build-out rates;
- firm progress with site assessment work; or
- clear relevant information about site viability, ownership constraints or infrastructure provision, such as successful participation in bids for large-scale infrastructure funding or other similar projects.

Plan-makers can use the Housing and Economic Land Availability Assessment in demonstrating the deliverability of sites.”

Assessment

- 3.40 Whilst the previous definition in the 2012 Framework considered that all sites with planning permission should be considered deliverable, the revised definition in the 2021 Framework is clear that only sites with detailed consent for major development should be considered deliverable and those with outline planning permission or allocated should only be considered deliverable where there is clear evidence that housing completions will begin in five years.
- 3.41 As above, the PPG has been updated to provide some examples of the type of evidence which may be provided to be able to consider that sites with outline planning permission for major development, allocated sites and sites identified on a brownfield register are deliverable.

Relevant appeal decisions

- 3.42 There have been several appeal decisions which have considered the definition of “deliverable” as set out in the 2018, 2019 and 2021 versions of the Framework and whether “clear evidence” has been provided for the inclusion of sites which only have outline planning permission for major development or are allocated without planning permission. Whilst each appeal has been determined on a case by case basis



on the evidence before the decision-maker, several themes have arisen in appeal decisions, which I discuss below.

The absence of any written evidence

3.43 Where no evidence has been provided for the inclusion of category b) sites, the Secretary of State and Inspectors have concluded that these sites should be removed. For example:

- In an appeal decision regarding land off Audlem Road, Stapeley, Nantwich and land off Peter De Stapeleigh Way, Nantwich¹², the Secretary of State removed 301 dwellings from Cheshire East Council's supply from sites including: *"sites with outline planning permission which had no reserved matters applications and no evidence of a written agreement"* (paragraph 21 of the decision letter dated 15th July 2020);
- In an appeal decision regarding land to the south of Cox Green Road, Surrey¹³ an Inspector removed 563 dwellings on 24 sites from Waverley Council's supply because the Council had not provided any evidence for their inclusion (paragraphs 22 to 24 of the appeal decision dated 16th September 2019);
- In an appeal decision regarding land at Station Road, Stalbridge, North Dorset¹⁴ an Inspector removed 2 large sites from North Dorset's supply (references A02 and A04) because the Council had not provided any up to date information from the developers for these sites and applications for reserved matters had not been made (paragraphs 53 and 57); and
- In an appeal decision regarding land within the Westhampnett / North East Strategic Development Location, North of Madgwick Lane, Chichester¹⁵, an Inspector removed the second phase of a wider site that is under construction on the basis that an application for reserved matters had not been made for phase 2 and the fact that a major housebuilder was progressing phase 1 was not in itself clear evidence (paragraph 82).

The most up to date evidence

3.44 Paragraph 68-004 of the PPG¹⁶ explains that for decision-taking purposes, an authority will need to be able to demonstrate a five year housing land supply when dealing with applications and appeals. They can do this in one of two ways:

¹² PINS refs: 2197532 and 2197529 – core document 9.34

¹³ PINS ref: 3227970 – core document 9.35

¹⁴ PINS ref: 3284485 – core document 9.36

¹⁵ PINS ref: 3270721 – core document 9.37

¹⁶ Paragraph: 004 Reference ID: 68-004-20190722: *"How can an authority demonstrate a 5 year supply of deliverable housing sites?"*



- *“using the latest available evidence such as a Strategic Housing Land Availability Assessment (SHLAA), Housing and Economic Land Availability Assessment (HELAA), or an Authority Monitoring Report (AMR);*
- *‘confirming’ the 5 year land supply using a recently adopted plan or through a subsequent annual position statement (as set out in paragraph 74 of the National Planning Policy Framework).”*

3.45 In this case, the Council’s five year housing land supply has not been confirmed through a recently adopted plan or an annual position statement and therefore the latest available evidence should be used. As above, paragraph 68-007 of the PPG also states that *“robust, up to date evidence needs to be available to support the preparation of strategic policies and planning decisions”*. It also states that the “current” planning status of a site is one example of the type of evidence that could be used to support the inclusion of category b) sites. Therefore, the latest available evidence should be used but this is only in relation to sites already in the supply.

3.46 In an appeal regarding land on the east side of Green Road, Woolpit¹⁷, the Inspector found Mid Suffolk Council’s approach in publishing its AMR and then retrospectively seeking evidence to justify its position “wholly inadequate”. Paragraph 70 of the appeal decision states:

“the Council has had to provide additional information to demonstrate that sites are deliverable as and when it has surfaced throughout the weeks and months following the publication of the AMR in an attempt at retrospective justification. It is wholly inadequate to have a land supply based upon assertion and then seek to justify the guesswork after the AMR has been published.”

3.47 However, evidence can post date the base date to support the sites in the deliverable supply and not seek to introduce new sites. In an appeal regarding land to the east of Newport Road and to the east and west of Cranfield Road, Woburn Sands (Milton Keynes)¹⁸, the Secretary of State agreed with Inspector Gilbert-Woolridge that the latest available evidence should be used when considering deliverability. Paragraph 12 of the Secretary of State’s decision letter dated 25th June 2020 states:

“For the reasons given at IR12.8-12.12 the Secretary of State agrees with the Inspector that it is acceptable that the evidence can post-date the base date provided that it is used to support sites identified as deliverable as of 1 April 2019 (IR12.11)”.

¹⁷ PINS ref: 3194926 – core document 9.38

¹⁸ PINS ref: 3169314 – core document 10.10



3.48 Similarly, in a decision regarding land off Darnhall School Lane, Winsford¹⁹, the Secretary of State agreed with Inspector Middleton that it is appropriate to take into account information received after the base date if it affects sites included in the deliverable supply²⁰.

3.49 This means that where sites have not progressed as the Council's trajectory claimed at the time the position statement was published, the supply should be reduced. In the Audlem Road appeal²¹, the Secretary of State removed from Cheshire East Council's supply;

“a site where there is no application and the written agreement indicates an application submission date of August 2019 which has not been forthcoming, with no other evidence of progress”. (paragraph 21 of the Decision Letter dated 15th July 2020)

3.50 Cheshire East Council's Housing Monitoring Update (HMU) had a base date of 31st March 2019 and was published in November 2019. Representations by both parties on the HMU were received with the final comments received on 12th February 2020 (DL paragraph 7). Therefore, whilst the written evidence for this site explained a planning application would be made on this site in August 2019 because the application was not forthcoming by the time the decision was made and no other evidence of progress had been provided, the Secretary of State removed the site from the supply.

The form and value of the evidence

3.51 In the Woburn Sands appeal decision referred to above, the Secretary of State agreed with the Inspector that a proforma can, in principle, provide clear evidence of a site's deliverability (please see paragraph 12 of the decision letter and paragraphs 12.13 to 12.15 of the Inspector's Report). However, the evidential value of the written information is dependent on its content. The Secretary of State and Inspectors have concluded that it is not simply sufficient for Councils to provide agreement from landowners and promoters that their intention is to bring sites forward. The evidence needs to provide a realistic prospect that housing will be delivered on the site within five years.

3.52 For example, in allowing an appeal for 120 dwellings at land east of Gleneagles Way, Hatfield Peverel²², the Secretary of State found Braintree Council could not demonstrate a five year housing land supply.

3.53 Braintree Council claimed that it could demonstrate a 5.29 year supply. In determining the appeal, the Secretary of State concluded that the Council could only demonstrate a 4.15 year supply. The reason for this is set out in paragraph 41 of the decision letter (page 7), which states:

¹⁹ PINS ref: 2212671 – core document 10.05

²⁰ Paragraph 344 of the Inspector's Report and paragraph 15 of the Decision Letter.

²¹ PINS refs: 2197532 and 2197529 – core document 9.34

²² PINS ref: 3180729 – core document 10.11



“Having reviewed the housing trajectory published on 11 April, the Secretary of State considers that the evidence provided to support some of the claimed supply in respect of sites with outline planning permission of 10 dwellings or more, and sites without planning permission do not meet the requirement in the Framework Glossary definition of “deliverable” that there be clear evidence that housing completions will begin on site within five years. He has therefore removed ten sites from the housing trajectory”

- 3.54 The ten removed sites are listed in a table provided at Annex D on page 24 of the Secretary of State’s decision letter. Of the ten sites removed from Braintree’s supply, 9 had outline planning permission and the remaining site was an allocated site with a hybrid planning application pending determination. For these sites, Braintree Council had submitted completed forms and emails from landowners, developers and their agents providing the timescales for the submission of reserved matters applications and anticipated build rates. However, the Secretary of State removed these sites because he did not consider they met the definition of “deliverable” as set out in the Framework.
- 3.55 As part of its case in seeking to defend an appeal against its decision to refuse to grant outline planning permission for up to 140 no. dwellings at land off Popes Lane, Sturry²³, Canterbury City Council claimed that it could demonstrate a 6.72 year supply. For there to be a shortfall in the supply, Canterbury Council claimed that some 1,654 dwellings (out of 6,455 dwellings) would have to be removed from the “deliverable” supply.
- 3.56 The Inspector however found that the Council could not demonstrate a five year housing land supply. The Inspector concluded that the deliverable supply was 4,644 dwellings, which equates to 4.8 years. The reason why the Inspector concluded that the deliverable supply was 1,811 dwellings (28%) less than the Council claimed was because he found that 10 sites should be removed from the supply because:

“there is insufficient clear evidence to show that they meet the NPPF’s definition of deliverable. Sites which are not deliverable cannot be counted as part of the supply for the purposes of meeting the 5-year requirement.” (paragraph 23)

- 3.57 In this case, Canterbury Council had provided statements of common ground between the Council and the developer or landowner to support the inclusion of several of the disputed sites. However, the Inspector found that the statements of common ground did not demonstrate that the development prospect was realistic. Paragraph 23 of the appeal decision states:

“For a number of the disputed sites, the Council’s evidence is founded on site-specific SCGs which have been agreed with the developer or landowner of the site in question. I appreciate that the PPG refers to SCGs as an admissible type of evidence, and I have had full regard to that advice. But nevertheless, the evidential value of any particular

²³ PINS ref: 3216104 – core document 9.39



SCG in this context is dependent on its content. In a number of cases, the SCGs produced by the Council primarily record the developer's or landowner's stated intentions. Without any further detail, as to the means by which infrastructure requirements or other likely obstacles are to be overcome, and the timescales involved, this type of SCG does not seem to me to demonstrate that the development prospect is realistic. In addition, most of the site-specific SCGs are undated, thus leaving some uncertainty as to whether they represent the most up-to-date position."

3.58 Similarly, as part of its case in seeking to defend an appeal made by Parkes Ltd against its decision to refuse to grant outline planning permission for up to 53 dwellings at land to the south of Cox Green Road, Rudgwick²⁴, Waverley Council claimed it could demonstrate a supply of 5,708 dwellings, which equated to just under 5.2 years against its housing requirement and buffer.

3.59 The Inspector concluded that the supply should be reduced by 928 dwellings and therefore that Waverley Council could only demonstrate a "deliverable" supply of 4.3 years. The reasons why the Inspector considered the supply should be reduced are set out in paragraphs 10 to 27 of the appeal decision. I note that whilst Waverley Council's assumptions of delivery on a site at Dunsfold Park relied on estimated numbers of delivery from a pro-forma returned by the site's lead developer, the Inspector however considered that the details contained within it were "scant". There was no explanation as to how the timings of delivery could be achieved including the intended timescales for submitting and approving reserved matters, applications of discharge of conditions, site preparation and installing infrastructure. The Inspector therefore did not include the site.

3.60 In an appeal for up to 181 dwellings at land at Caddywell Lane / Burwood Lane, Great Torrington, Devon²⁵, Inspector Harold Stephens concluded that Torridge Council could not demonstrate a five year housing land supply. Paragraphs 56 and 57 of the appeal decision state:

"56. I have also had regard to the updated PPG advice published on 22 July 2019 on 'Housing supply and delivery' including the section that provides guidance on 'What constitutes a 'deliverable' housing site in the context of plan-making and decision-taking.' The PPG is clear on what is required:

"In order to demonstrate 5 years' worth of deliverable housing sites, robust, up to date evidence needs to be available to support the preparation of strategic policies and planning decisions."

This indicates the expectation that 'clear evidence' must be something cogent, as opposed to simply mere assertions. There must be strong evidence that a given site will in reality deliver housing in the timescale and in the numbers contended by the party concerned.

²⁴ PINS ref: 3227970 – core document 9.35

²⁵ PINS ref: 3238460 – core document 9.40



57. Clear evidence requires more than just being informed by landowners, agents or developers that sites will come forward, rather, that a realistic assessment of the factors concerning the delivery has been considered. This means not only are the planning matters that need to be considered but also the technical, legal and commercial/financial aspects of delivery assessed. Securing an email or completed pro-forma from a developer or agent does not in itself constitute 'clear evidence'. Developers are financially incentivised to reduce competition (supply) and this can be achieved by optimistically forecasting delivery of housing from their own site and consequentially remove the need for other sites to come forward" (my emphasis)

3.61 Similarly, in an appeal decision dated 25th June 2021 regarding an appeal made by Senior Living (Sonning Common) Ltd and Investfront Ltd against the decision of South Oxfordshire District Council to refuse to grant planning permission for a care village of up to 133 units at Little Sparrows, Sonning Common, Oxfordshire²⁶, the Inspector found that South Oxfordshire could not demonstrate a deliverable supply because it had not provided the necessary clear evidence. Paragraphs 20 and 21 of the appeal decision reflect paragraphs 56 and 57 of the Great Torrington appeal decision above.

3.62 Finally, in an appeal decision dated 25th August 2022 regarding an appeal made by Salter Property Investments Ltd against the decision of Exeter City Council to refuse to grant outline planning permission for up to 93 dwellings at land off Spruce Close, Exeter²⁷, the Inspector found:

- The pro-formas used by Exeter were undated, unsigned and deficient (paragraph 39);
- That 2 sites with outline planning permission and no reserved matters applications pending, and no clear evidence for their inclusion should be removed (paragraphs 40 and 41); and
- That even where reserved matters application had been made, where those applications are subject to outstanding objections and there is no written agreement with the developer, the sites should not be included because no clear evidence had been provided (paragraphs 42 and 43).

3.63 In summary, the above appeal decisions found that sites with outline planning permission for major development and allocated sites without planning permission should not be included in the deliverable supply where the respective Councils had failed to provide the clear evidence required.

²⁶ PINS ref: 3265861 – core document 9.41

²⁷ PINS ref: 3292721 – core document 9.43



Entech House, London Road, Woolmer Green²⁸

- 3.64 This decision relates to an appeal by Taylor Wimpey against the decision of Welwyn Hatfield Council to refuse to grant planning permission for 72 dwellings at Entech House, Woolmer Green. The appeal was allowed on 26th October 2018. The Council's 5YHLS at that time is discussed in paragraphs 22 to 34 of the decision. The Inspector concludes that the 5YHLS should be calculated against the local housing need (paragraph 26) and then sets out the difference between the definition of deliverable in the 2012 Framework and the revised version (paragraphs 28-30). The Inspector removes the draft allocations from the Council's 5YHLS in principle because they are not included in either category set out in the definition of deliverable and because the plan was not at an advanced stage (paragraph 33). The Inspector concludes that the Council could not demonstrate a 5YHLS and the scale of the supply falls considerably well short of 5 years (paragraph 34).
- 3.65 For the avoidance of doubt, I do not remove the draft allocation sites on the same basis as in the Entech House decision. However, I remove sites from the Council's supply which do not have detailed planning permission because the Council has not provided the clear evidence required for their inclusion.

²⁸ PINS ref: 3190821 – core document 9.49



4. Has the Council's supply been 'confirmed'?

4.1 Paragraph 75 of the Framework provides local planning authorities with the opportunity to have their housing land supply position "confirmed". It states:

"A five year supply of deliverable housing sites, with the appropriate buffer, can be demonstrated where it has been established in a recently adopted plan, or in a subsequent annual position statement which:

a) has been produced through engagement with developers and others who have an impact on delivery, and been considered by the Secretary of State; and

b) incorporates the recommendation of the Secretary of State, where the position on specific sites could not be agreed during the engagement process."

4.2 Notably, this paragraph includes the word "deliverable", which is defined on page 66 of the Framework and I discussed in section 3 of my proof of evidence above.

4.3 Footnote 40 of the Framework then explains what is meant by a "recently adopted plan". It states:

"For the purposes of paragraphs 74b and 75 a plan adopted between 1 May and 31 October will be considered 'recently adopted' until 31 October of the following year; and a plan adopted between 1 November and 30 April will be considered recently adopted until 31 October in the same year"

4.4 Chapter 68 of the PPG: "*Housing supply and delivery*" provides further guidance. Firstly, paragraph 68-004 of the PPG²⁹ states:

In plan-making, strategic policies should identify a 5 year housing land supply from the intended date of adoption of the plan.

For decision-taking purposes, an authority will need to be able to demonstrate a 5 year housing land supply when dealing with applications and appeals. They can do this in one of two ways:

using the latest available evidence such as a Strategic Housing Land Availability Assessment (SHLAA), Housing and Economic Land Availability Assessment (HELAA), or an Authority Monitoring Report (AMR);

'confirming' the 5 year land supply using a recently adopted plan or through a subsequent annual position statement (as set out in paragraph 74 of the National Planning Policy Framework).

²⁹ Paragraph: 004 Reference ID: 68-004-20190722: "*How can an authority demonstrate a 5 year supply of deliverable housing sites?*"



4.5 The word “confirming” then provides a link to a subsection of the PPG entitled: “*Confirming 5 year housing land supply*”. Paragraphs 68-009 to 68-018 are included within this subsection. Paragraph 68-009 of the PPG³⁰ states:

“When local planning authorities wish to confirm their 5 year housing land supply position once in a given year they can do so either through a recently adopted plan or by using a subsequent annual position statement.”

4.6 Paragraph 68-010 of the PPG³¹ then specifically addresses how a five year housing land supply is confirmed through the local plan process. It states:

“The examination will include consideration of the deliverability of sites to meet a 5 year supply, in a way that cannot be replicated in the course of determining individual applications and appeals where only the applicant’s / appellant’s evidence is likely to be presented to contest an authority’s position.

When confirming their supply through this process, local planning authorities will need to:

- be clear that they are seeking to confirm the existence of a 5 year supply as part of the plan-making process, and engage with developers and others with an interest in housing delivery (as set out in Paragraph 74a of the Framework), at draft plan publication (Regulation 19) stage.
- apply a minimum 10% buffer to their housing requirement to account for potential fluctuations in the market over the year and ensure their 5 year land supply is sufficiently flexible and robust. Where the Housing Delivery Test indicates that delivery has fallen below 85% of the requirement, a 20% buffer should be added instead.

Following the examination, the Inspector’s report will provide recommendations in relation to the land supply and will enable the authority, where the authority accepts the recommendations, to confirm they have a 5 year land supply in a recently adopted plan.”

4.7 Welwyn Hatfield Council was not clear that it was seeking to confirm the existence of a five year supply as part of the plan-making process nor did it engage with developers and others with an interest in housing delivery as set out in paragraph 75a of the Framework. This is not surprising because under transitional arrangements, the Local Plan is being assessed within the context of the 2012 Framework and not the 2021 Framework. In fact, the Local Plan was submitted before the Framework was revised in 2018.

³⁰ Paragraph: 009 Reference ID: 68-009-20190722: “*How can authorities confirm their 5 year housing land supply?*”

³¹ Paragraph: 010 Reference ID: 68-010-20190722: “*How can a 5 year housing land supply be confirmed as part of the examination of plan policies?*”



4.8 Paragraph 68-011 of the PPG³² then specifically asks the question: “Can ‘recently adopted plans’ adopted under the 2012 Framework be used to confirm a 5 year land supply?”. It states:

“Plans that have been recently adopted (as defined by footnote 38 of the Framework) can benefit from confirming their 5 year housing land supply through an annual position statement, including those adopted under the 2012 Framework.

Authorities should be aware that sites counted as part of the supply will need to be assessed under the definition of ‘deliverable’ set out in the revised National Planning Policy Framework.”

4.9 Notably, this paragraph does not state that recently adopted plans which were examined under the 2012 Framework can be used to confirm a five year housing land supply. This is not surprising because the definition of what constitutes a “deliverable” site has significantly changed between the 2012 and revised Framework as I explained in section 3 of my proof of evidence. Therefore where a deliverable supply may be found within the context of the 2012 Framework, which essentially considered all sites with planning permission (full or outline) and allocated sites should be considered deliverable, this may not be the case under the revised Framework which states that sites with outline planning permission for major development and allocated sites without planning permission can “only” be considered deliverable if there is “clear evidence”.

4.10 However, the PPG has been changed to now explain that areas with a recently adopted plan under the 2012 Framework have the opportunity to “confirm” their five year housing land supply in the future through a subsequent annual position statement but that process will need to consider the revised definition of “deliverable” as set out in the 2021 Framework. This is not the case during the examination of the Local Plan as it is being examined within the context of the 2012 Framework.

4.11 In summary, whilst the Council may soon have a ‘recently adopted plan’, the five year housing land supply has not been confirmed through the plan-making process. Indeed, as I explain later in my proof of evidence, the application of the revised definition of “deliverable” means that several sites should be removed from the Council’s supply.

4.12 Within this context, I refer to the Darnhall appeal decision³³. In that case, at the time the decision was made on 4th November 2019, Cheshire West and Chester Council had a recently adopted plan (the part 2 Local Plan, adopted 18th July 2019). The Local Plan Inspector considered housing land supply under issue 2: “*Whether the approach towards the supply and delivery of housing land is justified, effective and consistent with national policy*”. The Local Plan Inspector found that Cheshire West and Chester could

³² Paragraph: 011 Reference ID: 68-011-20190722: “Can ‘recently adopted plans’ adopted under the 2012 Framework be used to confirm a 5 year land supply?”

³³ PINS ref: 2212671 – core document 10.05



demonstrate a five year housing land supply of 7,753 dwellings. However, the Secretary of State did not simply conclude that a five year housing land supply had been demonstrated through the Local Plan. The Secretary of State went on to assess the five year housing land supply himself and concluded that the Council had a supply of 5,838 dwellings (i.e. almost 2,000 dwellings less than the Local Plan Inspector had found). Paragraph 14 of the Secretary of State’s decision letter explains why the Secretary of State assessed the five year housing land supply. It states:

“For the reasons given at IR325-6, the Secretary of State agrees with the Inspector that there is no evidence for disagreeing with the housing land supply details set out in the Housing Statement of Common Ground. He has had regard to the report of the Inspector into LLP Part 2, and the representations of the Council of 16 July 2019 and from the appellant of 18 July and 26 July 2019 as to whether the report on the plan confirms that the Council can demonstrate a 5 year housing land supply. However, he considers that the focus of the local plan examination was not to reach a judgment on housing land supply, that the plan Inspector did not have access to the Housing Land Monitor Review and was not considering the definition of deliverable as set out in 2019 Framework. As such has based their conclusions on the recommendation of the appeal Inspector, who heard the evidence, including more recent changes, cross examined at Inquiry at greater length than the plan Inspector, and subsequent representations from the parties”

- 4.13 Similarly, in a decision regarding an appeal made by Relta Ltd and Dylon 2 Limited against the failure of Bromley Council to determine an application for 151 dwellings at land to the rear of the former Dylon International Premises, Station Approach, Lower Sydenham³⁴, the Council had a recently adopted plan; the Bromley Local Plan (adopted January 2019). Paragraph 41 of the Local Plan Inspector’s report states:

“There have been times in the recent past when development has been allowed on appeal when Inspectors expressed concerns about housing delivery in the Borough. However, allocations in the Plan provide a reasonable prospect for a 5YHLS, subject to 5 year reviews.”

- 4.14 The appeal Inspector referred to the local plan examination in paragraph 10 of the decision:

“For some sites, the lpa’s evidence relies solely on the conclusion of the BLP Examining Inspector (EI). However, the EI, as did the Maybrey Works Inspector, considered the sites in the context of the 2012 Framework where the onus was on objectors to rebut the premise of deliverability. I am not aware of the extent of the evidence the EI had to consider, which post-dated the Maybrey Works decision. However, when she uses phrases such as “...there is nothing currently to suggest...” this does not suggest to me that she had the breadth and type of evidence before me or my colleague. Thus, I must temper her conclusions with the evidence now and the requirement of the 2019

³⁴ PINS ref: 3206569 – core document 9.17



Framework, which places the responsibility squarely on the Ipa to provide clear evidence.”



5. Housing Delivery in Welwyn Hatfield

The Housing Delivery Test

5.1 The Housing Delivery Test (HDT) is defined on page 67 of the Framework as follows:

“Housing Delivery Test: Measures net additional dwellings provided in a local authority area against the homes required, using national statistics and local authority data. The Secretary of State will publish the Housing Delivery Test results for each local authority in England every November.”

5.2 The following implications apply where the HDT results confirm delivery falls below specific thresholds.

5.3 Firstly, as explained in footnote 8 of the Framework, the tilted balance to the presumption in favour of sustainable development set out in paragraph 11(d) of the Framework applies where the HDT indicates that the delivery of housing was “substantially below” i.e., less than 75% of the housing requirement over the previous three years.

5.4 Secondly, paragraph 74 and footnote 41 of the Framework explain that where the HDT result is below 85%, the 20% buffer will apply for purposes of calculating the five year housing land supply.

5.5 Thirdly, Paragraph 76 of the Framework explains that where the HDT result is below 95%, the local planning authority should prepare an action plan to assess the causes of under delivery and identify actions to increase delivery in future years.

5.6 Guidance on the Housing Delivery Test is then provided in paragraphs 68-036 to 68-054 of the PPG, which should be read alongside the Housing Delivery Test measurement rule book.

5.7 The HDT Measurement Rule Book (July 2018) explains that HDT is calculated as a percentage of net homes delivered against the “number of homes required”. Paragraph 14 of the rulebook explains that where the latest adopted housing requirement is over five years old, unless the strategic policies have been reviewed and found not to require updating, the figure used for areas with a Local Plan will be the minimum annual local housing need figure.

5.8 The HDT results for 2021 were published on 14th January 2022. The 2021 result for Welwyn Hatfield is summarised in the table below:



Table 5.1 - Published 2021 Housing Delivery Test Result

	Housing requirement				Housing delivery				HDT %
	2018-19	2019-20	2020-21	Total	2018-19	2019-20	2020-21	Total	
Welwyn Hatfield	867	795	583	2,244	463	673	352	1,488	66%

5.9 As shown in the table above, only 1,488 dwellings were delivered over the last three years against a requirement over the same period of 2,244 dwellings. This means that the Council has failed to pass the HDT, the presumption in favour of sustainable development and the 20% buffer apply and the Council must prepare a HDT Action Plan.

5.10 The Council's HDT Action Plan was published in August 2022. Amongst other things, the Action Plan considers that the 2022 HDT result will be less than the 2021 HDT result. This is because only 258 dwellings were delivered in 2021-22. Paragraph 6.5 of the HDT Action Plan states that the 2022 HDT result is expected to be 57%. This is shown in the following table:

Table 5.2 – Predicted 2022 Housing Delivery Test Result against Local Housing Need

	Housing requirement				Housing delivery				HDT %
	2019-20	2020-21	2021-22	Total	2019-20	2020-21	2021-22	Total	
Welwyn Hatfield	795	583	878	2,256	673	352	258	1,283	57%

5.11 It is therefore expected that once the 2022 HDT results are published, the presumption in favour of sustainable development and the 20% buffer will still apply and the Council must again prepare a HDT Action Plan.



5.12 The requirement figures in the two tables above is based on the local housing need calculated using the standard method set out in the PPG. The requirement was reduced by 1/12 and 1/3 in 2019/20 and 2020/21 respectively due to the impact Covid-19 may have on build rates in those two years.

5.13 Paragraphs 16-19 of the HDT Rulebook explain that the HDT result can be recalculated against the housing requirement once a new development plan has been adopted. In this case, the start of the new plan period is 2016 and the proposed, stepped housing requirement from 2016/17 to 2032/33 is 738 dwellings per annum. However, even using the proposed stepped housing requirement upon adoption of the plan, the Council would still fail the 2022 HDT. This is shown in the following table:

Table 5.3 – Predicted 2022 Housing Delivery Test Result against the emerging proposed stepped housing requirement

	Housing requirement				Housing delivery				HDT %
	2019-20	2020-21	2021-22	Total	2019-20	2020-21	2021-22	Total	
Welwyn Hatfield	677	492	738	1,907	673	352	258	1,283	67%

5.14 This means that even on adoption of the new plan as proposed, the presumption in favour of sustainable development and the 20% buffer will still apply and the Council must again prepare a HDT Action Plan.

5.15 Indeed, based on the Council’s housing trajectory, the presumption in favour of sustainable development and the 20% buffer will still apply and the Council must again prepare a HDT Action Plan following both the 2023 and 2024 HDT results. This is shown in the following tables:



Table 5.4 – Predicted 2023 Housing Delivery Test Result against the emerging proposed stepped housing requirement and using the Council’s predicted housing delivery

	Housing requirement				Housing delivery				HDT %
	2020-21	2021-22	2022-23	Total	2020-21	2021-22	2022-23	Total	
Welwyn Hatfield	492	738	738	1,968	352	258	613	1,223	62%

Table 5.5 – Predicted 2024 Housing Delivery Test Result against the emerging proposed stepped housing requirement and using the Council’s predicted housing delivery

	Housing requirement				Housing delivery				HDT %
	2021-22	2022-23	2023-24	Total	2021-22	2022-23	2023-24	Total	
Welwyn Hatfield	738	738	738	2,214	258	613	576	1,447	65%

5.16 This is relevant for two reasons. Firstly, because in terms of calculating the 5YHLS the 20% buffer is expected to apply and secondly because despite the Council claims that it will be able to demonstrate a 5YHLS upon adoption of the development plan, the presumption in favour of sustainable development would still apply due to the failure to meet the HDT.



6. Assessment of the Council's housing supply

6.1 My assessment of the Council's five year housing land supply is based on six stages:

- i. Identifying the base date and five year period;
- ii. Identifying the housing requirement;
- iii. Identifying the past shortfall;
- iv. Identifying how the past shortfall should be addressed;
- v. Applying the appropriate buffer; and
- vi. Identifying a Realistic and Deliverable Supply.

6.2 Each stage is addressed below.



7. Stage 1: Identifying the base date and five year period

- 7.1 The base date is the start date for the five year period for which both the requirement and supply should relate.
- 7.2 The current housing land supply position has a base date of 1st April 2022 and a five year period to 31st March 2027. The Council should not attempt to include any new sites, which are not already within its schedule of sites. This would effectively mean changing the base date to beyond 1st April 2022. Within this context, there have been several appeal decisions, which have found such an approach to be inappropriate.
- 7.3 An example is dated 22nd March 2021 and relates to an appeal made by Wates Developments Ltd against the decision of Tonbridge & Malling Borough Council to refuse to grant outline planning permission for up to 250 no. dwellings at land west of Winterfield Lane, East Malling³⁵. In that case, the Tonbridge & Malling Council sought to rely on the inclusion of sites that had become “deliverable” since the base date. The Inspector disagreed. Paragraph 9 of the appeal decision states:

“Whilst I see merit in using information that becomes available after the base date to inform deliverability, I note that the Inspector in Woburn Sands was referring solely to sites that were already identified in the housing supply at the base date, in line with the approach taken in Woolpit. Indeed, he noted that to do otherwise would skew the housing supply. I share this view. An assessment of housing supply which introduces new sites would only be accurate if it also took account of lapsed sites, completions and other factors which might reduce sites at that point in time. The Council have not been in a position to supply all of this information and have not reviewed the phasing of extant permissions or indeed all of the permissions granted subsequent to the base date. I therefore have no confidence that the Council’s approach would provide an accurate assessment of the actual state of supply in the district and I must therefore rely instead on the Council’s previous position as of 1st April 2019 as a starting point.”

- 7.4 Reference is made to the decision in relation to an appeal made by Wavendon Properties Ltd against the decision of Milton Keynes Council to refuse to grant outline planning permission for a mixed use development including up to 203 dwellings at land to the east of Newport Road and to the east and west of Cranfield Road, Woburn Sands³⁶. In that appeal, the Secretary of State agreed with Inspector Gilbert-

³⁵ PINS ref: 3256877 – core document 9.42

³⁶ PINS ref: 3169314 – core document 10.10



Wooldridge that whilst evidence which post-dated the base date was acceptable, this was only in relation to sites already in the schedule of sites. New sites should not be added after the base date³⁷.

7.5 Reference is also made to the Woolpit appeal decision³⁸. Paragraph 67 of that appeal decision states:

“The inclusion of sites beyond the cut-off date skews the data by overinflating the supply without a corresponding adjustment of need.”

7.6 The Woburn Sands appeal decision made reference to an appeal made by the Darnhall Estate against the decision of Cheshire West and Chester Council to refuse to grant residential development for up to 184 dwellings at land off Darnhall School Lane, Winsford³⁹. In that case, the Secretary of State agreed with Inspector Middleton and my evidence that it would be inappropriate for new sites to be included after the base date and that their insertion should await the next full review of the housing land supply position⁴⁰. Paragraph 344 of the Inspector’s Report states:

“There is a dispute about the introduction of post-base date information by the Council in its review of the April 2018 assessment for the purpose of this Inquiry [ID 17]. Whilst I agree that it is not appropriate to introduce new sites at this stage, their insertion should await the next full review, it is nevertheless appropriate to take into account information received after 1 April 2018 if it affects sites that were in the last full assessment. Subsequent information that supports a pre-base date judgement should not normally be ignored [IR 85, 130 & 131].” (emphasis added)

7.7 Paragraph 15 of the decision letter states:

“The Secretary of State has gone on to consider the issue of supply. In doing so he has had regard to his guidance on deliverability issued 22 July 2019. For the reasons given at IR341-344 the Secretary of State agrees with the Inspector’s conclusions on preliminary points.”

7.8 Whilst the base date is currently 1st April 2022, I have also assessed the position at 1st April 2023 as that is the base date for the Council’s claimed 5YHLS after the Local Plan has been adopted.

³⁷ Please see DL paragraph 12 and IR paragraph 12.12

³⁸ Core document 9.38

³⁹ PINS ref: 2212671 – core document 10.05

⁴⁰ Please see DL paragraph 15 and IR paragraph 344



8. Stage 2: Identifying the housing requirement

- 8.1 Paragraph 74 of the Framework states that the five year housing land supply should be measured against the housing requirement set out in adopted strategic policies or against the local housing need where the strategic policies are more than five years old.
- 8.2 As the current Local Plan is more than five years old, the 5YHLS should be measured against the local housing need calculated using the standard method. This is 888 dwellings per annum as set out in the Council's Housing Delivery Test Action Plan.
- 8.3 Once the emerging Local Plan is adopted, the 5YHLS will be measured against the adopted housing requirement set out within it. As set out in section 2 of my proof of evidence, this is currently the subject of consultation. Whilst the Local Plan Inspector has accepted a housing requirement of 760 dwellings per annum, the Council is now proposing that this should be stepped to provide 738 dwellings per annum in the first 17 years.
- 8.4 There are therefore three figures in terms of the 5YHLS requirement:
- 888 dwellings per annum – based on the local housing need calculated using the standard method;
 - 760 dwellings per annum – the proposed housing requirement in the emerging Local Plan is 15,200 dwellings between 2016 and 2036. The annual average is therefore 760 dwellings per annum; and
 - 738 dwellings per annum – this is the proposed stepped housing requirement. This is being consulted on and has not been endorsed by the Local Plan Inspector at the time of writing.



9. Stage 3 – Identifying the shortfall

9.1 Between 1st April 2016 and 31st March 2022, 2,731 net dwellings were completed. This is shown in the following table.

Table 9.1 – Net completions in Welwyn Hatfield 1st April 2016 to 31st March 2022

Year	Gross completions	Losses	Net completions
2016/17	693	22	671
2017/18	343	28	315
2018/19	500	38	462
2019/20	694	21	673
2020/21	421	69	352
2021/22	Not known	Not known	258
Total			2,731

9.2 Against the proposed average housing requirement of 760 dwellings per annum, the shortfall at 1st April 2022 would therefore be 1,829 dwellings⁴¹. Against the proposed stepped housing requirement of 738 dwellings, the shortfall at 1st April 2022 would be 1,697 dwellings⁴².

9.3 The Council's housing note assumes that 613 dwellings will be delivered in 2022/23. This would mean that 3,344 dwellings would have been delivered between 1st April 2016 and 31st March 2023⁴³. This would mean that against the proposed average housing requirement of 760 dwellings per annum, the shortfall at 1st April 2023 would be 1,976 dwellings and against the proposed stepped housing requirement of 738 dwellings, the shortfall at 1st April 2023 would be 1,822 dwellings.

9.4 However, the Council has a poor record in predicting housing delivery in year 1 as shown in the following table.

⁴¹ i.e. $760 \times 6 \text{ years} = 4,560 - 2,731 = 1,829$ dwellings

⁴² i.e. $738 \times 6 \text{ years} = 4,428 - 2,731 = 1,697$ dwellings

⁴³ i.e. $2,731 + 613 = 3,344$ dwellings



Table 9.2 – Assumed completions in “Year 1” as set out in the AMRs compared to actual net completions

Year	Assumed completions in AMRs	Actual net completions
2016/17	538	671
2017/18	415	315
2018/19	559	462
2019/20	470	673
2020/21	441	352
2021/22	315	258

9.5 Therefore, it is not known whether 613 net dwellings will be completed in 2022/23 because:

- Firstly, as shown in table 9.1 above there may be losses that take place in the year that have not been accounted for; and
- Secondly, as shown in table 9.2, the Council has a very poor record of predicting delivery, even in the first year.

9.6 In summary, the extent of the shortfall at 1st April 2023 will only be known once the completions data has been collected.



10. Stage 4 – Addressing the shortfall

10.1 The first part of Paragraph 68-031 of the PPG⁴⁴: *“How can past shortfalls in housing completions against planned requirements be addressed?”* states:

“Where shortfalls in housing completions have been identified against planned requirements, strategic policy-making authorities may consider what factors might have led to this and whether there are any measures that the authority can take, either alone or jointly with other authorities, which may counter the trend. Where the standard method for assessing local housing need is used as the starting point in forming the planned requirement for housing, Step 2 of the standard method factors in past under-delivery as part of the affordability ratio, so there is no requirement to specifically address under-delivery separately when establishing the minimum annual local housing need figure. Under-delivery may need to be considered where the plan being prepared is part way through its proposed plan period, and delivery falls below the housing requirement level set out in the emerging relevant strategic policies for housing.” (emphasis added)

10.2 As in this case the five year housing land supply is currently measured against the local housing need, there is no requirement to specifically address under-delivery separately as this has been factored in as part of the affordability ratio under step 2 as highlighted in this part of the PPG.

10.3 This is confirmed in the Woolpit appeal decision. Paragraph 64 of that appeal decision states:

“No under supply/previous under delivery is taken into account when using the standard method. Therefore, no ‘backlog’ of unmet need should be taken into account when calculating the Council’s housing land supply position.”

10.4 Once the emerging Local Plan is adopted, there will be a significant shortfall to address. The Council’s preferred method for addressing the shortfall is to spread it over the remainder of the plan period. However, as set out in section 2 of this proof of evidence, that proposed strategy is currently being consulted on until 15th February 2023.

⁴⁴ Paragraph: 031 Reference ID: 68-031-20190722: *“How can past shortfalls in housing completions against planned requirements be addressed?”*



11. Stage 5: Applying the appropriate buffer

11.1 Paragraph 74 of the Framework states:

“The supply of specific deliverable sites should in addition include a buffer (moved forward from later in the plan period) of:

- 5% to ensure choice and competition in the market for land; or
- 10% where the local planning authority wishes to demonstrate a five year supply of deliverable sites through an annual position statement or recently adopted plan, to account for any fluctuations in the market during that year; or
- 20% where there has been significant under delivery of housing over the previous three years, to improve the prospect of achieving the planned supply.”

11.2 Footnote 41 of the Framework explains that from November 2018 “significant under delivery” of housing will be measured against the Housing Delivery Test, where this indicates that delivery was below 85% of the housing requirement.

11.3 As set out in section 5 of my proof of evidence, the latest HDT was failed in Welwyn Hatfield and therefore a 20% buffer applies. The following tables set out the housing requirement scenarios.

Table 11.1 – Five year requirement and buffer based on local housing need – 1st April 2022

	Requirement	
A	Annual local housing need figure	888
B	Five year housing requirement (A X 5 years)	4,440
C	20% buffer (20% of B)	888
D	Five year supply to be demonstrated (B + C)	5,328
E	Annual requirement plus 20% buffer (D / 5 years)	1,066



Table 11.2 – Five year requirement and buffer based on annual average housing requirement and stepped housing requirement – 1st April 2023

		Annual Average	Stepped Housing Requirement
	Requirement		
A	Annual requirement	760	738
B	Anticipated shortfall at 1 st April 2023	1,976	1,822
C	Amount of shortfall to be addressed by 31 st March 2028	760	701
D	Five year requirement (A X 5 + C)	4,560	4,391
E	Five year requirement plus 20% buffer	5,472	5,269
F	Annual requirement plus buffer (E / 5)	1,094	1,054



12. Stage 6: Identifying a Realistic and Deliverable Supply

Position at 1st April 2022

12.1 Appendix 1 of the Council's HDT Action Plan claims that the deliverable 5YHLS at 1st April 2022 is 2,805 dwellings. This is shown in the Council's trajectory as follows:

Table 12.1 – Council's 5YHLS trajectory at 1st April 2022

Year 1 2022/23	Year 2 2023/24	Year 3 2024/25	Year 4 2025/26	Year 5 2026/27	Total
613	510	615	549	518	2,805

12.2 For the reasons set out in Appendix EP1, I dispute the inclusion of the following sites at 1st April 2022:

Table 12.2 – Deductions made to the Council's 5YHLS at 1st April 2022

LPA ref:	Address	Capacity (Net)	LPA 5YHLS	EP 5YHLS	Difference
SDS2	Broadwater Road West SPD Site	1,403	760	208	-552
SDS1	North East of WGC	872	462	0	-462
Pea104	YMCA, 90 Peartree Lane	29	29	0	-29
	Total				-1,043

12.3 I therefore conclude that the deliverable 5YHLS at 1st April 2022 is 1,762 dwellings (i.e. 2,805 – 1,043 = 1,762). Against the Local Housing Need and a 20% Buffer, this equates to 1.65 years as shown in the table below.



Table 12.3 – Welwyn Hatfield’s 5YHLS at 1st April 2022

	Requirement	
A	Annual local housing need figure	888
B	Five year housing requirement (A X 5 years)	4,440
C	20% buffer (20% of B)	888
D	Five year supply to be demonstrated (B + C)	5,328
E	Annual requirement plus 20% buffer (D / 5 years)	1,066
	Supply	
F	5YHLS at 1 st April 2022	1,762
G	Supply in years (F / E)	1.65
H	Shortfall against 5YHLS requirement and buffer	-3,566

Position at 1st April 2023

12.4 As set out in the housing trajectory in the Council’s Local Plan Housing Note, the Council claims that it will have a deliverable 5YHLS of 5,481 dwellings at 1st April 2023. This is shown in the following trajectory:

Table 12.4 – Council’s 5YHLS trajectory at 1st April 2023

Year 1 2023/24	Year 2 2024/25	Year 3 2025/26	Year 4 2026/27	Year 5 2027/28	Total
576	879	1,550	1,423	1,053	5,481

12.5 For the reasons set out in Appendix EP1, I dispute the inclusion of the following sites at 1st April 2023:



Table 12.5 – Deductions made to the Council’s 5YHLS at 1st April 2023

LPA ref:	Address	Capacity (Net)	LPA 5YHLS	EP 5YHLS	Difference
SDS1	North East of WGC	872	612	0	-612
SDS2	South east of WGC	600	400	0	-400
SDS3/4	Brodwater Road West	1,403	787	0	-787
HS2	Creswick	340	340	97	-243
Han40a	Town Centre North – Campus East	250	250	0	-250
Pea104	YMCA, 90 Peartree Lane	29	29	0	-29
SDS5	North West Hatfield	1,750	400	0	-400
HS11	Land at Southway, Hatfield	120	120	0	-120
HS15	Land east of London Road, Woolmer	150	150	0	-150
SDS7	Marshmoor, Wel Green	100	100	0	-100
HS24	Land north of Hawkshead Road, Little Heath	35	35	34	-1
HS27	Land at the Meadway, Cuffley	60	60	0	-60
HS29	Land north of Northaw Road East	73	73	0	-73
HS30	Wells Farm, Northaw Road East	75	75	14	-61
	Windfall Allowance				-139
	Total				-3,425

12.6 I therefore conclude that the deliverable 5YHLS at 1st April 2023 is 2,056 dwellings (i.e. 5,481 – 3,425 = 2,056). Against the emerging housing requirement and a proportion of the shortfall and a 20% buffer, this equates to 1.88 years or 1.95 years and as shown in the table below.



Table 12.6 – Welwyn Hatfield’s 5YHLS at 1st April 2023

		Annual Average	Stepped Housing Requirement
	Requirement		
A	Annual requirement	760	738
B	Anticipated shortfall at 1 st April 2023	1,976	1,822
C	Amount of shortfall to be addressed by 31 st March 2028	760	701
D	Five year requirement (A X 5 + C)	4,560	4,391
E	Five year requirement plus 20% buffer	5,472	5,269
F	Annual requirement plus buffer (E / 5)	1,094	1,054
	Supply		
G	5YHLS at 1 st April 2023	2,056	2,056
H	Supply in years (G / F)	1.88	1.95
I	Shortfall (G – E)	-3,416	-3,213



13. Conclusions

13.1 My proof of evidence demonstrates the following:

- The Council cannot demonstrate a deliverable 5YHLS at 1st April 2022 by a significant margin. The Council's latest position claims that it can only demonstrate of 2.63 years against the local housing need and a 20% buffer, I have concluded that the "deliverable" supply at 1st April 2022 is 1.65 years;
- The Council has not demonstrated a deliverable 5YHLS at 1st April 2023. Firstly, the extent of the shortfall and therefore the 5YHLS requirement at 1st April 2023 will not be known until the completions for 2022/23 are known. Secondly, the Council's housing trajectory (including the claimed delivery of sites yet to be allocated) and approach to calculating the 5YHLS requirement are the subject of a current consultation and it is not known what the outcome of this consultation will be. Thirdly, whilst the emerging Local Plan is being examined with regard to the 2012 Framework, once the definition of "deliverable" as set out in the current (2021) Framework is applied, the Council cannot demonstrate a deliverable 5YHLS by a significant margin. This is because it has not provided any "clear evidence" of housing completions on several "category b" sites. Applying the current definition of deliverable means that the Council has a 5YHLS at 1st April 2023 of less than 2 years; and
- Regardless of the 5YHLS position, the presumption in favour of sustainable development applies because the Council has failed the 2021 Housing Delivery Test (HDT) and will fail the 2022 HDT even if the Council is successful in adopting a stepped housing requirement.

13.2 The implications of this are addressed by Mr Gray.



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