
APP/3/A

**Town and Country Planning Act 1990
Planning and Compulsory Purchase Act 2004**

Section 78 Appeal by Firethorn Developments Limited

Land at North West Bicester

Five Year Housing Land Supply – Proof of Evidence
Nicholas Martin Paterson-Neild BA (Hons) MPhil, MRTPI

Appeal Ref: **APP/C3105/W/23/3315849**

LPA Ref: 21/01630/OUT

May 2023

Town and Country Planning Act 1990 – Section 78

Planning and Compulsory Purchase Act 2004

**Town and Country Planning
(Inquiries Procedure) (England) Rules 2000 (As Amended)**

Land at North West Bicester

Appeal against non-determination of planning permission by Cherwell District Council of Outline planning application for up to 530 residential dwellings (within Use Class C3), open space provision, access, drainage and all associated works and operations including but not limited to demolition, earthworks, and engineering operations, with the details of appearance, landscaping, layout and scale reserved for later determination.

**Five Year Housing Land Supply – Proof of Evidence of
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APPENDICES BOUND SEPERATELY

Appendix	Title	Date
APP/3/B	East Hendred appeal (APP/V3120/W/16/3145234)	18 th April 2017
APP/3/C	Vale of White Horse Local Plan 2031: Part 1, Inspector's Report	November 2016
APP/3/D	Banbury 5: North of Hanwell Fields: 18/01206/OUT Illustrative Master Plan & 21/00056/REM Site Layout Plan	2018 & 2020
APP/3/E	Wretchwick Green Decision Notice 16/01268/OUT	29 th June 2016
APP/3/F	Oxfordshire County Council – Highway Authority consultee response & Canal and River Trust consultee response Stratfield Farm 22/01611/OUT	28 th March 2023 & 22 nd November 2022
APP/3/G	Oxfordshire County Council – Highway Authority consultee response 21/03522/OUT – Land at Yarnton	22 nd February 2023
APP/3/H	Old Dairy, Camp Road, Upper Heyford Land Registry Title ON270058	4 th May 2023

1.0 QUALIFICATIONS AND EXPERIENCE

- 1.1 My name is Nicholas Martin Paterson-Neild. I have a Bachelor of Arts Degree with Honours in Geography from the University of Southampton (1996) and a Master of Philosophy Environmental Planning and Development Post Graduate Degree with Distinction from the University of Reading (2000). I have 22 years' experience as a town planner. I am a Chartered Member of the Royal Town Planning Institute.
- 1.2 Barton Willmore now Stantec is one of the UK's leading planning and design consultancies. Founded as an architectural practice in the 1930s, it developed into a comprehensive planning, architectural, landscape and urban design practice in the 1970s to 1990s and has strong track record in the design and implementation of major housing and mixed-use development. Barton Willmore become part of Stantec UK in April 2022. I am currently a Director, having been a Partner at the Reading Office of Barton Willmore from October 2019 to March 2022. I joined the company as Planner in April 2003, was a Senior Planner from October 2003 to April 2005, an Associate until 2012 and a Director until September 2019. I was previously employed as a Planning Officer between 2000 and 2003 in the Development Control Department at Surrey Heath Borough Council, where I represented the Council in the Appeal process as well as dealing with a varied caseload of planning applications and other statutory consents. I have subsequently given advice on a wide range of planning projects, including Section 78 Appeals heard by way of written representation, informal hearing and public inquiry throughout the country for both public and private sector clients.
- 1.3 I have also given evidence to Section 78 Appeal and Local Plan Inquiries and Local Plan, Core Strategy and Site Allocation Examinations in Public.
- 1.4 I have made myself aware of the planning policy background and relevant issues to this appeal. The evidence provided is my true and professional opinion.

2.0 INTRODUCTION

2.1 My proof of evidence relates to the consideration of the housing land supply position relevant to an appeal by Firethorn Developments Limited ('the Appellant') in support of an appeal against the failure to determine an outline planning application by Cherwell District Council (CDC), for the proposed residential development of Land at North West Bicester (the 'Appeal Site').

2.2 The description of development is as follows:

"Outline planning application for up to 530 residential dwellings (within Use Class C3), open space provision, access, drainage and all associated works and operations including but not limited to demolition, earthworks, and engineering operations, with the details of appearance, landscaping, layout and scale reserved for later determination."

2.3 As set out in the Statement of Case, the Planning Application was submitted to CDC following positive and detailed pre-application discussions in 2019 and 2020. In addition to that, a 'virtual' public consultation was undertaken in Spring 2021 over a three-week period, along with meetings with key local stakeholders including Bicester Town Council and Caversfield Parish Council. The Planning Application was submitted in May 2021, but CDC did not find themselves in a position to present it to Members until January 2023.

2.4 At the CDC Planning Committee on 12th January the Officers recommended that the Planning Application be granted permission, subject to the expiry of a consultation period, and the negotiation of planning conditions and a S106 Agreement (to be delegated to Officers). Members voted to defer consideration of the Planning Application to a later meeting, with no new date proposed, on the basis that they had not had sufficient time to review the contents of the Late Sheets that has been issued earlier that day.

2.5 Following the submission of this Appeal, the Council has since prepared putative reasons for refusal to confirm how the application would have been determined at the Planning Committee held on 9th March 2023, contrary to the officer recommendation on page 128 of the report (**CD3.1**):

That against officer recommendation, had the power to determine application 21/01630/OUT continued to rest with the committee, the committee would have refused application 21/01630/OUT for the following reasons.

- 1. The development, when set against the viability of the scheme, would not go far enough in trying to achieve the True Zero Carbon requirements for NW Bicester, as set out by Policy Bicester 1 of the Cherwell Local Plan Part 1 2011-2031. This would undermine the Council’s strategy for achieving an Exemplary Eco Town development at NW Bicester which sets this site apart from others and where the Council has declared a Climate Emergency. The development would therefore conflict with Policy Bicester 1 and Policies ESD1-5 of the Cherwell Local Plan Part 1 2011-2031 and the North West Bicester SPD 2016.**

Note to Appellant: This reason for refusal is capable of being addressed

- 2. The access arrangements to the site would be unsatisfactory as there would be an inability to provide for suitable pedestrian and cycle facilities along Charlotte Avenue. Any localised proposals to the road have not been proven to be possible, and are likely to raise safety concerns relating to users of the highway within proximity to Gagle Brook School, and would result in the loss of street trees and would impact on the character of the existing Eco Town. The proposal would not meet the requirements of LTN1/20 and would conflict with Oxfordshire County Council’s ‘Local Transport and Connectivity Plan’ Policies 1, 2b, 8, 9, 11, 35, 45 and 46b, Oxfordshire County Council’s ‘Tree Policy for Oxfordshire’ Policies 11, 18, 19 and 20, Policies SLE4 and Bicester 1 of the Cherwell Local Plan Part 1 2011-2031 and the North West Bicester SPD 2016.**
- 3. The proposed development would result in congestion at the junction of Charlotte Avenue with the B4100, particularly during the peak period. This would result in a severe transport impact and the development would therefore conflict with Government guidance contained within the National Planning Policy Framework and Policies SLE4 and Bicester 1 of the Cherwell Local Plan Part 1 2011-2031.**
- 4. The proposed development, when set against the financial viability of the scheme, would fail to provide an adequate level of affordable housing provision. The proposal is therefore contrary to Policy BSC3 and Policy Bicester 1 of the Cherwell Local Plan Part 1 2011-2031, the North West Bicester SPD 2016, CDC’s Developer Contributions SPD 2018 and Government guidance contained within the National Planning Policy Framework.**

Note to Appellant: This reason for refusal is capable of being addressed.

- 5. In the absence of a satisfactory unilateral undertaking or other form of S106 legal agreement, the Local Planning Authority is not satisfied that the proposed development provides for appropriate infrastructure contributions required as a result of the development and necessary to make the impacts of the development acceptable in planning terms. This would be to the detriment of both existing and proposed residents and would be contrary to Policies INF1, BSC3, BSC7, BSC8, BSC10, BSC11, BSC12 and Policy Bicester 1 of the Cherwell Local Plan Part 1 2011-2031, the North West Bicester SPD 2016, CDC's Developer Contributions SPD 2018 and Government guidance contained within the National Planning Policy Framework.**

Note to Appellant: This reason for refusal is capable of being addressed."

- 2.6 Whilst the putative reasons for refusal do not cover housing land supply, the Committee report from 9th March summarises the housing land supply position as follows:

"9.14. Cherwell's housing land supply as reported in the Council's 2021 Annual Monitoring Report (AMR) concluded that the District had a 3.5 year supply for the next five year period 2022-2027 commencing on 1 April 2022. This is reviewed annually and currently the housing land supply position is calculated as 5.4 year supply of housing for the period 2022-2027.

9.15. This updated figure was agreed by the Council's Executive on 6 February 2023. This is largely the result of applying the standard method housing need figure of 742 homes per year from 2022 rather than the Local Plan figure of 1,142 from 2011. The paper states at paragraph 3.26, "...economic conditions are challenging and it is important that officers continue to seek Local Plan compliant housing delivery to maintain supply and deliver the district's planned development. Having a five year land supply position does not mean that development allowed for by the Local Plan should halt. Indeed, not progressing planned development considered to be acceptable could undermine the land supply position".

9.16. Notwithstanding the Council's Housing Land Supply position, the proposed development forms part of an allocated site. Continued development on allocated sites will be important to ensure the ongoing delivery of housing to maintain the housing land supply position."

- 2.7 This evidence specifically refers to Cherwell’s failure to be able to demonstrate a five-year land supply and provides a detailed overview of the extent of the shortfall. The consideration of the development proposal in terms of the overall planning balance is contained in the evidence of Ms Leary.

3.0 THE DEVELOPMENT PLAN

3.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires local planning authorities to determine planning applications in accordance with the Development Plan unless material considerations indicate otherwise. The Planning Proof of Evidence covers a wider overview of planning policy, and below I focus specifically on policies relevant to the supply of housing.

3.2 The Development Plan comprises the following:

- Cherwell Local Plan 2011-2031, Part 1 (adopted July 2015);
- The Cherwell Local Plan 2011-2031 (Part 1) Partial Review - Oxford's Unmet Housing Need (September 2020); and
- Cherwell Local Plan 1996, Saved Policies (adopted September 2007).

Cherwell Local Plan 2011-2031, Part 1 (July 2015)

3.3 The Local was adopted in July 2015 and covers the period 2011-31. Policy BSC 1 (District Wide Housing Distribution) identifies that 10,129 dwellings are to be delivered in Bicester across the Plan period, with 3,293 dwellings to be delivered at the North West Bicester Eco Town (of which the Appeal Scheme is a part) by 2031 (Table 4, Executive Summary), with further homes to be delivered at the North West Bicester site beyond 2031 'but the Plan does not preclude earlier or faster delivery' (paragraph B.99). Paragraph A.11 confirms that Bicester will continue to grow as the main location for development within the District within the context of wider drivers for growth. Paragraph B.94 affirms that **"the Council is committed to meeting housing needs and accelerating delivery"**.

3.4 Section C of the Local Plan deals more specifically with Cherwell's Places. It indicates that the Council made a conscious decision to concentrate growth at Bicester in order to secure economic benefits, and on the basis that this is a sustainable location for growth (paragraph C.4). By 2031 the Plan envisages that over 10,000 new homes, including a substantial number of affordable homes, will have been constructed in Bicester, with the North West Bicester Eco-Town development entering its final phases. The North West Bicester development is expected to play a part in contributing to the town's profile through the delivery of pioneering development, being an economic driver and bring forward environmental benefits (paragraph C.30). Paragraph C.34 states that:

“The North West Bicester Eco-Town is central to both our District-wide strategy and our strategy for Bicester. Delivering an eco-town is considered to be one of the most sustainable means of accommodating strategic growth at Bicester to 2031.”

- 3.5 The Appeal Scheme sits within the Policy Bicester 1 (North West Bicester Eco-Town) strategic development area. It was expected that the entire Eco-Town scheme would be built out within the Plan period, but this was reviewed, and the development trajectory amended, with 3,293 homes to be delivered within the Plan period – of a total of 6,000 homes.
- 3.6 The adopted housing requirement for Cherwell is set out in Policy BSC1: “District Wide Housing Distribution” sets out that the Cherwell District will provide for 22,840 dwellings between 1st April 2011 and 31st March 2031. This equates to an annual average of 1,142 dwellings per annum.
- 3.7 The policy became more than five years old in July 2020. However, the Council continued to calculate 5YHLS against the 1,142 figure (plus shortfall) because a review (for the purposes of footnote 39 of the Framework) took place in 2020 and was approved by the Executive in January 2021 found policy BSC1 to be up to date. This was based on the latest evidence available at that time including the Strategic Housing Market Assessment (SHMA, 2014). The 2020 review found that the adopted requirement was higher than the local housing need and that it was up to date.
- 3.8 In February 2023 (**CD4.7**), another review took place for the purposes of footnote 39 of the Framework. This concluded that the adopted requirement was out of date. The report outlined two material changes in circumstances, namely the termination of the Oxfordshire joint Local Plan programme and new evidence in the form of the Housing and Economic Needs Assessment (HENA) 2022 (**CD8.1.9**) which provided an assessment materially different to the 2014 SHMA, and confirms that the 2014 SHMA is out of date (Paragraph 11). The 2023 review concludes that the housing requirement needed updating and this would be done through a new Local Plan and that housing supply should be measured against the then LHN of 742 dwellings per annum. The Council’s website summarises the position as follows:

“The Regulation 10A Review of Local Plan Policies (February 2023) shows that nearly all policies are generally consistent with government policy and/or local circumstances. It does not indicate that the policies need updating at this time, with the exception of Policy BSC1 District-Wide Housing Distribution. Work on the Local Plan Review 2040 has commenced

and recognises that there will come a point in the future at which the policies require updating. Such recognition is a normal part of the forward planning process and does not mean that the policies need updating at this time. Where policies have some inconsistencies with the National Planning Policy Framework (NPPF) and/or there has been a significant change in local circumstances, this is limited to the specific policy and does not lead to wider concerns that the Development Plan as a whole is out of date. A number of these are site specific policies which relate to proposals that have either been implemented or are now very unlikely to come forward.”

- 3.9 The latest draft of the Local Plan Review 2040 was taken to the Executive in January 2023 (but not then approved for public consultation due to the need for further information). It proposes a housing requirement of 25,587 dwellings over the period 2020-40, (1,000 per annum for Cherwell and 5,667 dwellings in total for Oxford’s unmet needs).
- 3.10 It is noteworthy that the Council has decided that the previous requirement in the 2015 Local Plan is now out of date and proposes a new requirement which is materially higher than that which it now seeks to rely on for development management purposes.
- 3.11 However, the February 2023 review has concluded that policy BSC1 is out of date and therefore I agree that the local housing need for Cherwell should be used in calculating the 5YHLS.

The Cherwell Local Plan 2011-2031 (Part 1) Partial Review - Oxford's Unmet Housing Need (September 2020)

- 3.12 The Partial Review Local Plan was brought forward to specifically deal with unmet need from the City of Oxford. The Foreword confirms that:

“Oxford has a high level of housing need which it cannot meet itself. This Plan has been prepared to meet a commitment Cherwell made to our neighbouring Councils to provide our share of Oxford’s unmet housing need.”

- 3.13 The Plan identifies a series of additional sites for the delivery of 4,400 homes which should be delivered by 2031 (Policy PR1). Policy PR12a confirms that a five-year housing land supply will be maintained for meeting Oxford’s needs and that at least 1,700 homes will be delivered for Oxford for the period 2021 to 2026 for which a five-year land supply shall be maintained on a continuous basis from 1st April 2021. The remaining homes will be delivered by 2031.

North West Bicester Supplementary Planning Document (2016)

- 3.14 Supporting Policy Bicester 1 of the Local Plan is the NW Bicester SPD. The document focuses on development principles, requirements and design and character as well as delivery. However, it is of note that the Foreword indicates the importance of the delivery of new homes at NW Bicester:

“The development at North West Bicester will make a significant contribution to meeting the District’s need for more homes and jobs as set out in the Cherwell Local Plan, including the delivery of affordable housing. A series of new places will be created, adding to the quality of and integrating with the existing town.” (my emphasis)

Emerging Planning Policy

- 3.15 The Council is currently in the process of preparing a review of the Local Plan to 2040. This is in the preliminary stages of preparation, with the Council having issued an initial ‘Community Involvement Paper’ (including a Call for Sites) and a ‘Developing Options’ paper for consultation during 2020 and 2021.
- 3.16 A Housing and Economic Needs Assessment was prepared by Cambridge Econometrics for the Council and Oxford City Council in December 2022 (**CD8.1.9**). the introduction confirms that the report follows work originally intended to inform the Oxfordshire Plan, which is no longer being prepared, although the Oxfordshire Growth Needs Assessment (OGNA), was published in 2021. In its review of strategic policy, the report identifies that:

“2.1.12 Housing provision in the current round of local plans in Oxfordshire is based on evidence showing that Oxfordshire’s economic dynamism and its economic growth performance are particular drivers of housing need. Recent Local Plans in Oxfordshire, including those in Oxford City and South Oxfordshire, which have assessed housing need as being above the Standard Method have been found to be sound at independent examination.”

- 3.17 The latest draft of the Local Plan Review 2040 was taken to the Executive Committee on 19 January 2023 but has been deferred for further consideration and no timetable has been published. The Council’s website states that:

“a meeting of the council executive took the decision to defer consideration of the item until a later date. This will give the council the opportunity to take on board and respond to comments made at an overview and scrutiny meeting on 11 January before proceeding to public consultation.”

4.0 THE NEED FOR HOUSING

4.1 The overall thrust of the planning policy approach towards housing provision at a national level has been to boost significantly the supply of housing. This was articulated as far back as the 'Planning for Growth' Ministerial Statement (dated 23rd March 2011) which has a clear objective to drive forward economic growth and housing delivery. It recognises the need to **"...maintain a flexible and responsive supply of land for key sectors, including housing"** and acknowledges that the planning system is key in driving and delivering economic development and helping to unlock stalled development. It requires Councils to:

"press ahead without delay in preparing up-to-date development plans and should use that opportunity to be proactive in driving and supporting the growth that this country needs" and to "...make every effort to identify and meet the housing, business and other development needs of their areas, and respond positively to wider opportunities for growth...".

4.2 The purpose of the planning system is to contribute to the achievement of sustainable development. Paragraph 8 of the Framework acknowledges importantly that achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives). Paragraph 9 advises that these objectives should be delivered through the preparation and implementation of plans and the application of policies in the Framework and that they are not criteria against which every decision can or should be judged.

4.3 Nevertheless, Paragraph 10 of the Framework highlights that at the heart of the Framework there is a presumption in favour of sustainable development. Paragraph 11 states that this should apply in plan-making and decision-taking. For decision taking 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 area out-of-date, granting planning 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."

- 4.4 Footnote 8 clarifies that out-of-date includes the situation 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). NPPF Paragraphs 60 to 80 deal with delivering a sufficient supply of homes. The Framework gives a clear and concise statement of Government policy on the matter of housing supply, commencing at paragraph 60 which seeks to **"significantly boosting the supply of homes"** and that it is **"important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed"**. As
- 4.5 As confirmed in the Suffolk Coastal Supreme Court Judgment (**CD7.6**), where housing supply policies failed to meet the objectives set by the then Paragraph 47 of the 2012 NPPF, the Inspector in that case **"rightly recognised that they should be regarded as 'out of date' for the purposes of Paragraph 14."** I conclude in my evidence that the Council does not have a 5-year supply of deliverable housing sites.
- 4.6 Paragraph 61 states that to determine the minimum number of homes needed, strategic policies should be informed by a local housing needs assessment, conducted using the standard method in national planning guidance unless exceptional circumstances justify an alternative approach which also reflects current and future demographic trends and market signals. Paragraph 73 advises that in the context of large sites, authorities should:
- "...make a realistic assessment of likely rates of delivery, given the lead-in times for large scale sites."**
- 4.7 Paragraph 74 of the Framework requires LPAs to provide a minimum of 5 years' worth of housing (with a buffer of either 5% to ensure choice and competition; 10% where an LPA publishes an annual position statement; or 20% where there has been significant under delivery of housing over the previous three years) against their local housing need where their strategic policies are more than 5 years old: that is the case here with the Core Strategy having been adopted in 2015. In such circumstances, the starting point for calculating the 5-year land supply is the local housing need using the standard method.
- 4.8 Paragraph 76 confirms that to maintain the supply of housing, LPAs should monitor progress in building out sites which have planning permission. Where the Housing Delivery Test indicates that delivery has fallen below 95% of the requirement over the previous

three years, the authority should prepare an Action Plan to assess the causes of under-delivery and identify actions to increase delivery in future years.

- 4.9 The Housing Delivery Test Measurement Rule Book (July 2018) explains that HDT is calculated as a percentage of net homes delivered against the “number of homes required”. Paragraph 12 then explains that where the latest adopted housing requirement figure is less than five years old, or has been reviewed and does not need updating (which was the case in Cherwell when the latest HDT was published), the figure used will be the lower of:

“EITHER the latest adopted housing requirement, including any unmet need from neighbouring authorities which forms part of that adopted housing requirement. This requirement will be the stepped housing requirement (or the annual average requirement where there is no stepped requirement)...

OR the minimum annual local housing need figure (and any need from neighbouring authorities which it has been agreed should be planned for, and which has been tested at examination) for that authority calculated with a base date of 1st April each year”

- 4.10 The fourth annual Housing Delivery Test (HDT) results were published by DLUHC on the 14th January 2022. For Cherwell, this showed that 153% of the housing delivery required over the previous 3 years was delivered. The consequence of this being a need to apply a 5% buffer to the land supply. Importantly, the HDT has been calculated on the basis of the local housing need for Cherwell **plus** the unmet need from Oxford City.

- 4.11 To support the Government’s objective of significantly boosting the supply of housing, it is important that a sufficient amount and variety of land can come forward where it is needed. Paragraph 15 of the Framework underlines the importance of the plan led system:

“Succinct and up-to-date plans should provide a positive vision for the future of each area; a framework for addressing housing needs and other economic, social and environmental priorities; and a platform for local people to shape their surroundings.”

- 4.12 The Glossary of the NPPF defines the meaning of ‘Deliverable’ in the context of the supply of housing and highlights a firm and important distinction between non major development with planning permission and all sites with detailed permission on the one hand, and those sites with outline planning permission for major development and those allocated in Local Plans on the other:

“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 5 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 5 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 5 years.”** (my emphasis)

Planning Practice Guidance (PPG)

4.13 The Planning Practice Guidance (PPG) was launched in March 2014 and has been updated a number of times since. The PPG provides further guidance on the application of national policy with regard to the assessment and consideration of the 5-year supply of housing:

“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.¹”

4.14 The PPG confirms in the context of what constitutes a deliverable housing site in the context of plan making and decision taking that:

“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.²”

4.15 The PPG also clarifies that 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.

¹ Paragraph: 002 Reference ID: 68-002-20190722

² Paragraph: 007 Reference ID: 68-007-20190722

They can do this in one of two ways: through an Annual Position Statement (which the Council has not prepared), or by:

“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)³”

4.16 Cherwell last produced a SHLAA report in 2014.

4.17 With reference to the definition of Deliverable in the NPPF, the PPG amplifies this by confirming that:

“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:

- 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 projects⁴.**

4.18 In the context of Housing Land Availability Assessments, the PPG also provides guidance on the consideration of lead in times and delivery rates:

³ Paragraph: 004 Reference ID: 68-004-20190722

⁴ Paragraph: 007 Reference ID: 68-007-20190722

“Information on suitability, availability, achievability and constraints can be used to assess the timescale within which each site is capable of development. This may include indicative lead-in times and build-out rates for the development of different scales of sites. On the largest sites allowance should be made for several developers to be involved. The advice of developers and local agents will be important in assessing lead-in times and build-out rates by year.⁵”

4.19 There has been much debate on lead in times and delivery rates. In their latest Insight report (November 2021), “Feeding the Pipeline” Lichfields, commissioned by the Land Promoters and Developers Federation (LPDF) and Home Builders Federation (HBF), have undertaken research into the pipeline of sites for housing set against what might be needed to achieve the Government target of 300,000 homes per annum across England. Lichfield’s advise:

“Increasing the number of ‘outlets’ – the active sites from which homes are completed – and doing so with a wide variety of different sites, is key to increasing output, with each housebuilder outlet delivering on average 45 homes each year.”

4.20 Lichfield’s stark conclusion is that for every district in England a further 4-5 medium sites a year or 4-5 larger sites over the next 5 years (or 1-2 medium sites per annum or 1-2 large sites over the next 5 years and 12 or 13 smaller sites per annum) is needed to achieve Government policy on housing delivery over and above the usual number of permissions granted each year. With regard to the pipeline of developers and the rate of delivery they note that:

“Housebuilders in buoyant conditions may be able to increase build out rates from their existing pipelines, and this might be welcomed. However, it would still necessitate more implementable planning permissions coming through the system to both increase outlets (alongside those existing outlets delivering more quickly) as well as to top-up already short pipelines that would otherwise be exhausted more quickly. Quite simply, without adding more permissions, there is no business rationale for housebuilders to build-out from their pipelines more quickly as the risks associated with topping up their pipeline in time would not be compatible with business resilience.”

⁵ Paragraph: 022 Reference ID: 3-022-20190722

- 4.21 It is important to appreciate the changes to and evolution of the guidance contained in the PPG pertaining to what constitutes a deliverable site in the context of housing policy. The definition of deliverable in the original NPPF in 2012 made no distinction between sites with full or outline permission, footnote 11 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.”

- 4.22 The 2014 version of the PPG clarified that the grant of planning permission is not a prerequisite for a site being considered deliverable in terms of 5-year supply but again did not distinguish explicitly between sites with outline and full planning permission:

“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.

**Paragraph: 031 Reference ID: 3-031-20140306
Revision date: 06 03 2014”**

4.23 The 2018 version of the PPG drew reference to sites with outline permission and allocations, calling for clear evidence is required:

“What constitutes a ‘deliverable site’ in the context of housing policy?

Annex 2 of the National Planning Policy Framework defines a deliverable site in terms of an assessment of the timescale for delivery and the planning status of the site. For sites with outline planning permission, permission in principle, allocated in a development plan or identified on a brownfield register, where clear evidence is required to demonstrate that housing completions will begin on site within 5 years, this evidence may include:

- **any progress being made towards the submission of an application;**
- **any progress with site assessment work; and**
- **any relevant information about site viability, ownership constraints or infrastructure provision.**

For example:

- **a statement of common ground between the local planning authority and the site developer(s) which confirms the developers’ delivery intentions and anticipated start and build-out rates.**
- **a hybrid planning permission for large sites which links to a planning performance agreement that sets out the timescale for conclusion of reserved matters applications and discharge of conditions.**

**Paragraph: 036 Reference ID: 3-036-20180913
Revision date: 13 09 2018”**

4.24 It is evident that from 2012 to the present, Government policy, expressed both through the Framework and PPG, has materially changed in terms of the evidential requirements placed on Local Planning Authorities in considering what constitutes deliverable housing sites for the purposes of 5-year supply of housing. In the Bloor Homes Hanging Lane, Birmingham Secretary of State decision, (CD7.4)⁶ the Inspector concluded in the context of the revised definition of deliverable that:

“The significant change, in the second part of the definition, is that the presumption of deliverability is removed in respect of sites with outline planning permission, permission in principle, allocated in a development plan or identified on a brownfield register, in respect of which there is now a requirement for clear evidence that housing completions will begin within five years. As agreed by

⁶ APP/P4605/W/18/3192918

the parties this places the onus on the local planning authority to justify the inclusion of such sites in the 5YHLS.” (Paragraph 14.37)

- 4.25 The Hanging Lane (**CD7.4**)⁷ Inspector summarised with reference to the two categories of sites referred to in the definition of deliverable in the NPPF (with reference to the St Modwen Judgment and Lord Gill’s Judgment in the Suffolk Coastal Supreme Court case (**CD7.6**)):

“The essential consideration under both definitions is whether or not sites included in the 5YHLS will actually deliver housing within the 5 year period. In my view, that assessment is still to be made on the basis of realistic prospect and not on any greater burden of proof. As established in the St Modwen judgment (paragraph 38), that does not mean that for a site to be considered deliverable it must be certain or probable that the housing will in fact be delivered upon it. [8.27] In that paragraph, Lord Justice Lindblom refers to Lord Gill’s statement, in paragraph 78 in the Suffolk Coastal judgment (CD.K1), that the requirements set out in the NPPF reflect the futility of local authorities including sites in their 5YHLS which have no realistic prospect of being developed within five years.”

- 4.26 As LJ Lindblom confirmed in the Court of Appeal Judgment⁸ in East Bergholt (**CD7.7**) in December 2019 confirmed that:

“49. There is, in my view, no need to enlarge the court’s reasoning in St Modwen Developments Ltd.. What it demonstrates is that the whole exercise of assessing the “deliverability” of sites under the policy in paragraph 47 is replete with planning judgment and must always be sensitive to the facts (see paragraphs 27 to 30, 34, 41 to 43 and 51 of my judgment). And this may be said, in particular, of the question of “achievability” – whether there is a “realistic prospect” of housing being delivered on a site within five years. A “realistic prospect” is not a legal concept. It is a broad concept of policy, which gives ample scope for a decision-maker’s reasonable planning judgment on the likelihood of development proceeding on a site within five years – a predictive judgment on future events that are inevitably not certain. The court recognized the range of legitimate planning judgment available to the decision-maker when considering whether sites have a “realistic prospect” of development in the five-year period.”

⁷ APP/P4605/W/18/3192918

⁸ R on the Application of East Bergholt Parish Council v Babergh District Council [2019] EWCA Civ 2200

4.27 The publication of the Framework in 2018, however, signalled a shift in the burden of proof in relation to deliverability, which is now on the Local Planning Authority in respect of major sites which do not have detailed planning permission. It is for the council to provide that clear evidence of a realistic prospect of delivery for outline planning permissions and allocated sites.

4.28 In the Woolpit appeal decision (**CD7.8**)⁹, the Inspector concluded that:

“Sites with outline permission, or those sites that have been allocated, should only be considered deliverable where there is clear evidence that housing completions will begin on sites within five years. The onus is on the LPA to provide that clear evidence for outline planning permissions and allocated sites. (Paragraph 65)

4.29 In the Sonning Common appeal decision (**CD7.9**)¹⁰, the Inspector, when considering the matter of deliverable supply and what should constitute ‘clear evidence’ he indicated that:

“This advice indicates to me 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.

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 there 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’.”

4.30 The extent of the shortfall in the 5-year supply of deliverable housing has material significance for the weight to be given in the overall planning balance given the Hallam Judgment, a case which involved Barton Willmore now Stantec representing Hallam Land (Hallam Land Management Ltd v Secretary of State for Communities And Local Government & Anor [2018] EWCA Civ 1808 (31 July 2018) (**CD7.10**). In relation to the materiality of a housing supply shortfall, Lindblom LJ opined:

⁹ Land on East Side of Green Road, Woolpit, Suffolk (APP/W3520/W/18/3194926)

¹⁰ APP/Q3115/W/20/3265861

"...in a case where the local planning authority is unable to demonstrate five years' supply of housing land, the policy leaves to the decision-maker's planning judgment the weight he gives to relevant restrictive policies. Logically, however, one would expect the weight given to such policies to be less if the shortfall in the housing land supply is large, and more if it is small. Other considerations will be relevant too: the nature of the restrictive policies themselves, the interests they are intended to protect, whether they find support in policies of the NPPF, the implications of their being breached, and so forth."
(Paragraph 47)

4.31 Davis LJ added that in the context of the relevance of the shortfall:

"The reason is obvious and involves no excessive legalism at all. The extent (be it relatively large or relatively small) of any such shortfall will bear directly on the weight to be given to the benefits or disbenefits of the proposed development. That is borne out by the observations of Lindblom LJ in the Court of Appeal in paragraph 47 of Hopkins Homes. I agree also with the observations of Lang J in paragraphs 27 and 28 of her judgment in the Shropshire Council case and in particular with her statements that "...Inspectors generally will be required to make judgments about housing need and supply." (Paragraph 83)

4.32 In the Brereton Heath decision (**CD7.11**)¹¹, the Inspector was presented with differing views on the extent of the shortfall in housing supply, ranging between 3.31 and 4.86 years. The Council in that case invited the Inspector to consider a mid-point or 'middle ground' of 4.48 years (a shortfall of 500 homes) a position the Inspector concluded was **"not only significant but also gives rise for serious concern"**. In the appeal decision¹² (30th July 2021) at Old Crawley Road, Horsham (**CD7.12**), the Inspector included a detailed commentary on housing land supply matters relating to that case. In the context of a site with outline permission and evidence presented of a reserved matters anticipated to be submitted later in the year the Inspector noted that the delivery assumptions made by the landowner, noting in Paragraph 59:

"...the email correspondence relied upon falls short of the robust and practical supporting evidence referred to in the PPG. It does not reflect the challenges around gaining reserved matters approval, noting also that there is no evidence of pre-commencement conditions associated with the outline approval having been discharged. As such it is not clear this site will be able to deliver the 133 dwellings anticipated by the

¹¹ APP/R0660/A/13/2192192

¹² APP/Z3825/W/21/3266503

Council, though it appears reasonable to assume that development will have started on site.”

- 4.33 With regard to a site benefitting from outline planning permission, but with no reserved matters application having been lodged and no evidence of progress towards such an application, the Inspector noted in Paragraph 60 that **“the reliance on the previous delivery rates in earlier phases of development as in indicator of future performance is not a sound basis for evidencing the deliverability of this Category B site.”** In concluding in the Horsham decision, a 5-year supply of 4.3 years, the Inspector opined:

“The implications of not having a five-year supply of housing land are of great significance in as the most important policies for determining the application are deemed to be out of date for the purposes of paragraph 11 d).”

NPPF Proposed Changes Consultation (December 2022 - March 2023)

- 4.34 At the time of writing the Government has recently consulted upon a number of proposed changes to the NPPF. Some of these are relevant to the consideration of housing land supply. At the present time little weight can be given to such proposals which remain solely potential changes to national policy. However, I set out a short summary of the relevant changes proposed and how this evidence addresses them.
- 4.35 A change is proposed to Paragraph 7 of the NPPF to emphasise the importance of delivering new homes as part of the achievement of sustainable development:

“The purpose of the planning system is to contribute to the achievement of sustainable development, including the provision of homes and other forms of development, including supporting infrastructure in a sustainable manner.”

- 4.36 Footnote 9 is proposed to be amended to advise that ‘out of date’ as set out in Paragraph 11d includes situations where the LPA cannot demonstrate a 5-year supply of deliverable housing sites and the housing requirement set out in strategic policies is more than five years old, unless these strategic policies have been reviewed and found not to require updating. Cherwell therefore will still be required to demonstrate a 5-year supply of deliverable housing sites.
- 4.37 Paragraph 74 (now para 75) is proposed to be amended to state:

“Local planning authorities should monitor their deliverable land supply against their housing requirement as set out in adopted strategic policies. When the housing requirement set out in strategic policies becomes more than five years old, 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 (taking into account any previous under or over-supply as set out in planning practice guidance)”

4.38 As I set out in the following section, there is a shortfall against past delivery requirements. In addition, the current requirement to include a buffer of 5, 10 or 20% depending on the circumstances set out in the 2021 NPPF is proposed to be deleted. As a consequence of this I will consider the housing land supply position both with and without the requisite 5% buffer.

4.39 Proposed paragraph 226 states:

“From the date of publication of this revision of the NPPF, for the purposes of changes to paragraph 61, for decision-taking, where emerging local plans have been submitted for examination or where they have been subject to a Regulation 18 or Regulation 19 (Town and Country Planning (Local Planning) (England) Regulations 2012) consultation which included both a policies map and proposed allocations towards meeting housing need, and the housing requirement as set out in strategic policies has become more than five years old in the extant plan, local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of four years’ worth of housing against their local housing need instead of a minimum of five years as set out in paragraph 75 of this document. These arrangements will apply for a period of two years from the publication date of this version.”

4.40 This proposed 4-year transition arrangement I do not consider can apply to Cherwell as it has yet to progress its Local Plan to consultation which includes both a policies map and proposed allocations towards meeting its housing need. In any event it cannot demonstrate four years’ worth of housing against its local housing need.

5.0 THE HOUSING REQUIREMENT

- 5.1 The Cherwell Local Plan 2011-2031, Part 1 was adopted in July 2015 and covers the period 2011-31 and set out the requirement for housing provision in the District. As set out in section 3 of my evidence, the policy became more than five years old in July 2020. However, the Council continued to calculate 5YHLS against the 1,142 figure (plus shortfall) beyond this date because a review (for the purposes of footnote 39 of the Framework) took place in 2020 and was approved by the Executive in January 2021 found policy BSC1 to be up to date.
- 5.2 In February 2023, another review took place for the purposes of footnote 39 of the Framework. This concluded that the adopted requirement was out of date. The 2023 review concluded that the housing requirement needed updating and this would be done through a new Local Plan and that housing supply should be measured against the then LHN of 742 dwellings per annum (now updated as a result of the affordability ratios).
- 5.3 Paragraph 74 of the Framework requires LPAs to provide a minimum of 5 years' worth of housing (with a buffer of either 5% to ensure choice and competition; 10% where an LPA publishes an annual position statement; or 20% where there has been significant under delivery of housing over the previous three years) against their local housing need where their strategic policies are more than 5 years old.
- 5.4 This is the case here with the Local Plan having been adopted in 2015 and the key policy relating to housing Policy BSC1 being out of date following the 2023 review. In such circumstances, the starting point for calculating the 5-year land supply position is the local housing need using the standard method.
- 5.5 Cherwell District Council's latest Five Year Housing Land Supply Statement for the period 1st April 2022 to 31st March 2027 was published in February 2023 (**CD8.1.8**) and the local housing need requirement using the Standard Method was stated to be 742dpa.
- 5.6 However this calculation needs to be updated to take account of the 2022 Affordability Ratio published on 22nd March 2023 and is now **710dpa**. Over 5 years this equates to a requirement of 3,550 dwellings before the 5% buffer is added.

SM based on PPG Feb 2019 (with 2022 ratios) 2023-2033	
	Housing need (pa)
Step 1: Baseline	
Average household growth 2023-2033 (2014-based household projection)	527
Step 2: An adjustment to take account of affordability	
2022 Median affordability ratio (workplace based)	9.55
Market signals uplift (number)	183
Market signals uplift (%)	35%
Uncapped local housing need (baseline + market signals uplift)	710
Step 3: Capping the level of any increase	
Adopted Local Plan number	1,362
Adoption date of Local Plan	2020
Plan adopted in last 5 years?	Yes
Cap applied?	No
Step 4: Cities and urban centres uplift (35%)	
Uplift applied?	No
Local housing need according to standard methodology =	710

Note: Table refers to 2020 adoption date as reference to Partial Review

5.7 For context in terms of past delivery, between the 1st April 2011 and 31st March 2022, a total of 10,981 homes were completed in Cherwell against a housing requirement of 12,562 dwellings. The shortfall at the base date of 31st March 2022 is therefore 1,589 dwellings as shown in the table below as reported in the AMR 2022 (page 20).

Monitoring Year	Completions	Requirement	Difference	Cumulative Difference
2011/12	356	1,142	-786	-786
2012/13	340	1,142	-802	-1,588
2013/14	410	1,142	-732	-2,320
2014/15	946	1,142	-196	-2,516
2015/16	1,425	1,142	283	-2,233
2016/17	1,102	1,142	-40	-2,273
2017/18	1,387	1,142	245	-2,028
2018/19	1,489	1,142	347	-1,681
2019/20	1,151	1,142	9	-1,672
2020/21	1,192	1,142	50	-1,622
2021/22	1,175	1,142	33	-1,589

5.8 Whilst I agree that the February 2023 review confirms that policy BSC1 is out of date and therefore the local housing need for Cherwell should be used in calculating the 5YHLS, that is not the end of the matter. One has to also consider the requirement to meet Oxford’s unmet need.

5.9 As set out in section 3, the Local Plan Partial Review states that 4,400 dwellings will be delivered by 2031. This is to be stepped with 340dpa in the period 2021-26 (a total of 1,360 dwellings) and 540pa for 2026-37. Furthermore, there is a shortfall of 340 dwellings over the period 2021-22¹³. Over five years the requirement is therefore 2,240 dwellings before a 5% buffer is added. This is confirmed in the Council’s position statement, equating to an annual housing requirement to meet Oxford’s unmet housing need of **448 dwellings per annum** and a supply of 0.2 years according to the Council’s own assessment. Paragraph 22 of the Council’s Housing Land Supply Statement confirms that the Partial Review Plan is not yet five years old (adopted in 2020) and therefore remains up to date and that:

“Furthermore, the unmet need figure is fixed, following agreement through a duty-to co-operate process, and has recently been found sound and adopted after examination of Oxford City’s Local Plan and Cherwell’s Partial Review Plan (amongst others), and so the reliance on the 2014 SHMA is less important. As the adopted strategic policies (which contain the unmet need component of the housing requirement) in the Partial Review Plan are less than five years old, the Standard Method does not apply for the purposes of calculating unmet need for Oxford.”

5.10 Paragraph 21 of the HLS Statement however quotes Policy 12a of the Partial Review which refers to the preparation of a **“separate five-year housing land supply will be maintained for meeting Oxford’s needs”**. The Council has then presented a LHN assessment using the Standard Method and an unmet housing need assessment in its HLS Statement but not presented an overall housing land supply position for Cherwell including the requirement to meet the unmet housing needs of the City of Oxford. It is clear however from the Partial Review Local Plan that the basis for a separate housing supply for unmet need relates to the need to monitor the housing supply position in respect of delivery against the objectives of the Partial Review (see Paragraph 5.160 and 5.164). Notwithstanding this, I consider that it is necessary and appropriate to add the respective requirement figures together, and then consider the supply position accordingly. I take this view for several reasons.

¹³ Planning Practice Guidance Paragraph: 031 Reference ID: 68-031-20190722

- 5.11 First, the genesis of the Partial Review is outlined on page 12 of the Plan, to jointly work with other Oxfordshire Councils to assess the extent of housing need that could not be met elsewhere in the HMA, in particular from the City of Oxford. Paragraph 1.3 is clear that **“The Partial Review is effectively a supplement or addendum to the adopted Cherwell Local Plan 2011-2031 which becomes part of the statutory Development Plan for the district”** (my emphasis). It therefore must be read and considered as a constituent part the 2015 Local Plan: and not considered as independent from it for the purposes of addressing housing supply.
- 5.12 Second, the application of Partial Review policies explicitly affirms the interrelationship between the Partial Review and the Cherwell Local Plan. Policy PR12b explicitly recognises that a decision may be required to facilitate the delivery of additional land beyond that allocated in the Partial Review to ensure the requisite supply is achieved: highlighting its interrelationship with the remainder of the district. Moreover, Policy PR12a highlights that should permissions be granted which result in the 4,400 homes being exceeded beyond 2031, they will be taken into account in meeting Cherwell’s housing need in the next Local Plan review.
- 5.13 Third, Paragraph 61 of the NPPF confirms that to determine the number of homes needed, in addition to the LHN figure, any needs that cannot be met within neighbouring areas should also be taken into account in establishing the amount of housing to be planned for. Paragraph 74 identifies a requirement for Local Planning Authorities to demonstrate a supply of sufficient deliverable sites: an approach based on individual component parts of the Development Plan is not required or referred to in national policy. Indeed, the footnote 8 trigger mechanism is instigated where Local Planning Authorities cannot demonstrate a 5-year supply of deliverable sites: not where individual plans are unable to do so.
- 5.14 Fourth, Paragraph 76 of the NPPF requires LPAs to monitor progress in building out sites and where the HDT indicates that delivery has fallen below 95% of the LPAs housing requirement over the previous three years an action plan should be prepared: the HDT is considered on an authority basis, not on a plan basis, indeed the current Housing Land Supply Statement has only a 5% buffer rather than a 20% buffer despite significant under delivery. The latest Cherwell HDT assessment shows that in each of the last three years the combined housing requirement was used (LHN for Cherwell plus the unmet need for Oxford): for example in 2018/19 the LHN was 754 (as at 1st April 2018) and 220 for unmet need (4,400 over 20 years) taken together (974 dwellings).
- 5.15 Fifth, the Council’s approach runs contrary to the overriding policy imperative in the NPPF to support the objective of significantly boosting the supply of homes. It is one thing to monitor the supply of housing to meet the unmet need, and it is another entirely to ignore

the responsibility upon the Council to plan for and deliver the homes needed to meet the unmet needs of Oxford City by failing to consider the overall housing supply requirement arising from both LHN and the specifically agreed figure for unmet need (inclusive of the shortfall to date): this is especially important given the failure to address the unmet need to date in Cherwell. The Partial Review Inspector commented on the maintenance of housing supply in the context of Policy PR12a in his report. He indicated that:

“I can see the sense of the Council wanting to separate out their commitment to meeting Oxford’s unmet needs from their own commitments in the Local Plan 2015, as set out in the first paragraph of the policy. That would avoid the situation where meeting Oxford’s unmet needs could be disregarded because of better than expected performance on the Local Plan 2015 Cherwell commitments, or vice versa.”

- 5.16 It is evident that the Inspector understood that the policy was expressing a commitment to ensuring that the unmet needs would be addressed by monitoring this on a separate basis. However, he also expressed caution in the alternative: where better performance in addressing unmet need led to disregarding addressing needs elsewhere. It is clear that both meeting unmet need and the district’s own need are important in terms of delivery. The Inspector also confirmed in Paragraph 151 that **“as set out in national policy, it is maintaining a five-year supply overall that matters.”**
- 5.17 Sixth, the Council’s present approach to considering housing land supply is not supported by their own proposed new Local Plan approach to considering housing land need and supply inclusive of unmet need on a district wide basis. The emerging draft Local Plan which was considered by the Council’s Executive on 19th January 2023 (**CD8.1.12 and CD8.1.13**), set out the proposed policy approach towards meeting housing needs including the unmet need arising from Oxford City.
- 5.18 The Executive Report (**CD8.1.11**) cites Paragraph 61 of the NPPF in respect of planning for unmet needs (Paragraph 3.16), and refers to the 2022 HENA in Paragraph 3.21 making the point that in assessing need, **“The new evidence necessarily considers the housing and economic need for Oxfordshire as a whole because Oxfordshire functions as a single Housing Market Area (HMA) and the needs for Oxford City and Cherwell cannot be considered in isolation”** (my emphasis). Paragraphs 3.43 and 3.44 explain that the Local Plan proposes to provide for unmet need (including the 4,400 already identified in the Partial Review) and that the Partial Review sites are to be saved within the new plan.

- 5.19 Draft Core Policy 2: District Wide Housing Distribution sets out the approach to housing delivery and Paragraph 4.16 confirms that **“This housing requirement takes account of the need to provide a limited number of additional homes to help meet Oxford’s housing needs that it cannot meet itself.”** Core Policy 2 contains a table which includes Oxford’s unmet need to be met within Cherwell as part of a single district wide housing distribution, requirement and supply. Paragraph 4.22 importantly states:

“Cherwell has already made provision for 4,400 homes for Oxford, through its Local Plan Partial Review, adopted in 2020, and these allocations are saved through this Local Plan 2040. Our Local Plan Review, through the identified allocations, also makes provision for ‘at least’ 1,687 homes elsewhere in Cherwell (i.e., giving a total of 6,087 as set out above), that are accessible to Oxford, including for example at Bicester.” (my emphasis)

- 5.20 Seventh, the approach promoted by the Council stands apart from and is materially inconsistent with its neighbouring authorities in the context of addressing housing need inclusive of the unmet need from Oxford City. The Vale of Whitehorse housing requirement is derived from Core Policy 4 of its Local Plan Part 1 (adopted 2016), this is now over five years old and having been reviewed is found to require updating in accordance with Paragraph 74 of the NPPF.

- 5.21 The Part 2 Local Plan (2019) deals with unmet need from Oxford, and the Council calculates its requirement as the combination of 661dpa (LHN) plus 183dpa (unmet need) for an overall annual requirement of 844 dwellings with Paragraph 3.1 of the Housing Land Supply Statement for the Vale of White Horse (November 2022) states that: **“the housing requirement as determined by the standard method and the addition of the Oxford’s housing needs as set out by Core Policy 4a of the Local Plan 2031: Part 2.”** The rationale for considering unmet need as an integral part of the overall housing need and supply is highlighted in Paragraph 2.18 of the VOWH Local Plan 2031 Part 2 (2019):

“2.18. It is the case that whilst the sites listed above are allocated within the Part 1 plan with the primary intention of meeting the Vale’s own objectively assessed need for housing, the sites are also well located to provide for Oxford’s unmet housing need. Housing on these sites would be just as much available to those people falling into the category of Oxford’s need as to those of the Vale. The Planning Inspector’s Report of the Examination into the Part 1 plan states: ‘In reality, it would be all but impossible to determine if a potential occupier of this housing (Part 1 allocations) represents a Vale or Oxford housing need.’”

- 5.22 South Oxfordshire’s Local Plan (adopted 2020) Policy STRAT2 of the Local Plan establishes a requirement for 23,550 homes for 2011 to 2035, of which 18,600 homes are to meet the district’s own housing need in full and 4,950 homes are to meet South Oxfordshire’s agreed quantum of unmet housing need from Oxford City in full: Paragraph 3.2 of the Housing Land Supply Statement for South Oxfordshire July 2022 confirms that **“The housing requirement includes both South Oxfordshire’s own housing need and the apportioned amount of Oxford City’s unmet housing need.”**
- 5.23 Finally, West Oxfordshire’s Local Plan (adopted September 2018) sets out a housing requirement of 15,950 dwellings (13,200 to meet its housing needs and 2,750 dwellings to meet Oxford’s unmet housing need). The Housing Land Supply Position Statement (November 2022) Paragraph 4.1 confirms **“Local Plan Policy H2 – Delivery of New Homes sets out the following phased housing requirement based on a combination of West Oxfordshire’s own housing need of 13,200 homes together with an additional 2,750 homes to meet Oxford’s housing needs.”**
- 5.24 In a recent appeal decision on 13th March 2023 in the Vale of Whitehorse for 300 dwellings at Grove (**CD7.3**) ¹⁴, the Inspector concluded that the total housing requirement for the district, was the LHN taken together with the agreed figure for meeting the unmet need of Oxford: each component identified in different plans which together form the Development Plan for the Local Planning Authority:

“10. Core Policy 4 of Local Plan Part 1, adopted in 2016, states that the housing requirement for the district is 20,560 dwellings for the period 2011/12 to 2030/31. This strategic policy remains extant. Core Policy Part 4a of the adopted Vale of White Horse Local Plan 2031 Part 2, “Detailed Policies and Additional Sites”, adopted in 2019 (Local Plan Part 2), adds 2,200 dwellings to the Core Policy 4 figure as an allowance towards the unmet needs of the City of Oxford, giving 22,760 dwellings as the total housing requirement for the district over the same period as Local Plan Part 1. Apart from the element that addresses Oxford’s unmet needs, the housing requirement in Core Policy 4a is derived directly from Core Policy 4.

11. The Council has undertaken a review of Local Plan Part 1 under Regulation 10a of the Town and Country (Local Planning) (England) Regulations 2012. The review, which was not challenged, has concluded that Core Policy 4 is more than 5 years old, is out of date, and needs revision, its housing requirement being based on the 2014 strategic housing market assessment (SHMA) which used the 2011 interim

¹⁴ APP/V3120/W/22/3310788

household projections to 2021. National policy as set out in paragraph 74 of the National Planning Policy Framework, and Planning Practice Guidance “Housing Supply and Delivery”, state that, where strategic policies are more than 5 years old, the 5 year housing land supply will be measured against the area’s local housing need (LHN), calculated using the standard method. This is directly applicable to Core Policy 4 of Local Plan Part 1.

12. Core Policy 4a of Local Plan Part 2 is only 3 years old and has not been reviewed. However, the housing requirement in that policy, apart from the City of Oxford allowance, is the same as that set out in Core Policy 4 of Local Plan Part 1. The provenance of Core Policy 4a and its derivation from the same figure and the same ageing statistical inputs and projections as Core Policy 4 are a clear indication that its housing requirement (apart from the Oxford allowance) is also out of date for the purposes of assessing the 5 year housing land supply. The purpose of the 5 year housing land supply calculation is to ensure that there is at least 5 years’ supply of deliverable housing land based on an up to date calculation of housing need. The more up-to-date figure from LHN should therefore be used.

13. LHN is 636 dwellings per annum, significantly lower than the 1,028 dwellings per annum requirement in Local Plan Part 1. The Council state that a further 183 dwellings per annum should be added to the LHN figure to allow for Oxford’s unmet needs from Core Policy 4a. This addition is appropriate in this particular instance because it is an agreed figure which addresses the level of unmet housing need in Oxford, which was reassessed and confirmed in the up-to-date Oxford Local Plan 2036, adopted in June 2020. Taking the two components together, the total housing requirement for the district, for the purposes of the 5 year housing land supply calculation, is 819 dwellings per annum.”

- 5.25 I acknowledge that the Vale of Whitehorse Local Plan has a ring-fenced area (Science Vale) for the purposes of housing land supply via Core Policy 5 (albeit it no longer relies upon this as upon review it is considered out of date) and this is explained in Paragraph 4.22 of the Part 1 Local Plan. Importantly though Core Policy 5 makes it clear that **“the supply calculations for the ring-fenced area and the rest of district area will be combined to provide a district wide calculation”**. The Local Plan Inspector considered the practical application of this ring fence in his Report dated November 2016 (**Appendix APP/3/C**) where he commented that:

“66. Whilst noting the arguments that it should do so, the ring fence policy would not prevent the plan’s policies for the supply of housing (which would be likely to include policy CP5 itself) being considered not up-to-date if a five year supply could not be demonstrated across the Vale of White Horse as a whole. And I envisage that this is likely to be a decision maker’s ultimate test of five year housing supply in the district.”

5.26 The application of Policy CP5 was considered in the East Hendred appeal (APP/V3120/W/16/3145234) (**Appendix APP/3/B**). At that time VOWH was able to demonstrate a deliverable five-year supply of homes on a District wide basis but not within the CP5 policy area. The Inspector’s Report confirms that the Council’s position was that the presumption in favour of sustainable development (as a consequence of the absence of a 5-year supply of housing) **“would only apply if the Council was unable to demonstrate a district wide five-year supply of deliverable housing sites.”** (paragraph 28). The Inspector concluded that **“It seems to me that there is a clear emphasis, in both the Inspector’s report and in Core Policy 5, on a district wide assessment of the five-year housing land supply for the purposes of the requirements of the Framework.”** (Paragraph 34)

5.27 On the basis of the above, I consider that the requirement should be as follows using a LHN need figure of 710dpa added to an unmet need annual requirement of 380dpa which when the shortfall of 340 is added equates to 448dpa:

A	Annual housing requirement	710 + 380 = 1,090
B	Five year requirement (A X 5)	5,450
C	Shortfall to be added	340
D	Five year requirement (B+C) without 5% buffer	5,790
E	Five year requirement plus 5% buffer (C+5%)	6,080
E	Annual requirement	1,216

5.28 In the next section of my evidence, I will analyse and set out the Appellant’s position on the supply position, establishing the Appellant’s view of the extent of the five-year housing supply shortfall.

6.0 THE HOUSING SUPPLY

6.1 The Council published its latest Five-Year Housing Land Supply position in 2023 with a base date of 1st April 2022, and thus looks at the 5-year period to 2027.

6.2 It sets out the components of the supply which comprise:

- Sites with outline planning permission
- Sites with detailed planning permission
- Sites not subject to any planning permission
- Windfall sites

6.3 As I have already set out, the onus rests on Local Planning Authorities as expressed in the NPPF and PPG to provide clear evidence for major sites which have outline planning permission and for site allocations or other sites identified which do not have planning permission. This absence of evidence to support the Council's housing land supply position places it in stark contrast to both national policy and those appeals decisions which I have referred to earlier.

6.4 I now turn to my assessment of the components of the Council's housing land supply.

6.5 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 5 years, the onus in a s78 appeal falls to the Appellant to demonstrate such clear evidence that such sites will not be capable of delivery within 5 years. In contrast, as set out in the Woolpit decision and reflecting the PPG, sites with outline permission, or those sites that have been allocated, should only be considered deliverable where there is clear evidence that housing completions will begin on sites within five years. The onus is on the Local Planning Authority to provide that clear evidence for outline planning permissions and allocated sites.

Sites with Outline Planning Permission

Banbury 5: North of Hanwell Fields: 18/01206/OUT

6.6 This site was allocated in the 2015 Local Plan (Banbury 7) and outline planning permission was granted on 18th March 2020 in respect of up to 46 homes, of which 40 dwellings have

been completed as of March 2022 following the approval of a reserved matters application for 40 dwellings on 18 November 2021 (21/00056/REM), leaving 6 (net 5) remaining to be delivered. Indeed, a comparison of the outline planning permission illustrative layout and approved reserved matters layouts (**Appendix APP/3/D**) highlight that the reserved matters approval encompasses the whole of the outline planning permission site and therefore no further application can be expected for this site. As there is no evidence, and no prospect of a planning application coming forward on this site, I consider that the 5 units accounted for in the housing land supply trajectory should be discounted as there is no evidence of the deliverability of the remaining units on this site. It is understood from common ground discussions that the Council no longer relies upon this site for the purposes of deliverable supply.

Banbury 17 – South of Salt Way: 14/01932/OUT

- 6.7 This site was allocated in the 2015 Local Plan (Banbury 17) and an outline planning application for up to 1,000 dwellings was approved in December 2019. A subsequent reserved matters application (22/02068/REM) for 237 dwellings was submitted by Persimmon Homes on 11th July 2022 and has recently been approved on 20th April 2023. However, no further reserved matters applications have been submitted. The Council summarises in its Housing Land Supply Statement that:

“Outline permission for the Gallagher Estates' 1000 homes is secured. This covers the remaining area of the site which is the majority of the strategic allocation. L&Q Estates will perform the role of master developer for the site. L&Q to service the sites themselves and sell land parcels to housebuilders. The expected delivery rates is based on a peak of 5 developers, 50 homes per year per developer. It also allows sufficient lead-in time for Reserved Matters approvals based on historic data for Banbury. Reserved matters for parts of the development permitted in 2021 and 2022. Reserved matters for two of the development parcels is currently pending under reference 22/02068/REM. Initial notice submitted to Building Control for full 1,000 home development in December 2021.”

- 6.8 The Council, however, relies without evidence on a very ambitious 350 dwellings in the 5-year period despite appropriately not relying on any completions before April 2024. Given the need to address planning conditions and implement on site the recently approved reserved matters, the delivery rate would equate to an average of 79dpa over the remaining 3 years of the 5-year period from 2024-27. This is at the high end in the context of the work on average completions per developer outlined in Section 4 of my evidence and in

the absence of further evidence relating to the progress of further reserved matters applications I have removed 113 dwellings (the balance without detailed consent relied upon by the Council) from the supply for this site.

Bicester 1 – North West Bicester Phase 2: 14/02121/OUT

- 6.9 An outline planning application for 1,700 dwellings was submitted on 19th December 2014 and approved on 30th January 2020 (ref: 14/02121/OUT). A reserved matters application for 500 dwellings was submitted on 5th July 2021 by Countryside Homes but has been withdrawn (November 2022) (21/02339/REM). No further reserved matters applications for residential development have been made, though two recent duplicate reserved matters applications (23/00170/REM and 23/00214/REM) have been submitted in respect of for infrastructure comprising two junctions to providing vehicular and pedestrian access into the site from Middleton Stoney Road and two initial sections of internal road and both remain undetermined at the time of writing. The Council's own assessment states that:

"A Reserved Matters application (21/02339/REM) for 500 of the 1700 homes (forming phase 1) was submitted on behalf of Countryside Properties in July 2021 and was subsequently withdrawn. A variation to the condition requiring submission of the condition requiring submission of the RM has been approved and discussions with the developer are ongoing to find a resolution. To support NW Bicester, 2 bridges were installed under the railway at the start of April 2021. The delivery of roads is to follow and work is ongoing to resolve any funding gaps. The Reserved Matters application on this parcel is unlikely to be restricted by the supporting road infrastructure. However, due to the delay this site is now considered developable, rather than deliverable as per the 2021 HDM." (My emphasis)

- 6.10 Therefore, the Council's own evidence is this site is not considered deliverable and accordingly I deduct 20 dwellings from the supply.

Bicester 2 – Graven Hill: 19/00937/OUT

- 6.11 Graven Hill is a self-build village and has outline planning permission for 1,900 dwellings. A series of reserved matters applications have been approved and there have been 439 completions prior to the base date of the Council's Housing Land Supply Statement as at 31st March 2022. The part of the site of concern relates to the residual part of the site with outline planning permission.

- 6.12 For context, an outline planning application (11/01494/OUT) for 1,900 dwellings was submitted on 3rd October 2011 and approved on 8th August 2014 (varied by 15/02159/OUT, 16/01802/OUT and 19/00937/OUT). A Local Development Order for 198 dwellings was adopted on 15th December 2015 (ref: 15/01670/LDO) pursuant to the original permission. This was revised on 18th January 2017 (ref: 16/02197/LDO) and again on 20th December 2017 to extend the land to which the Order applies to cover 276 plots (17/02107/LDO). A further LDO was then adopted on 20 November 2020, to extend the time limit for implementation to December 2023 (20/02345/LDO). In addition, a reserved matters application for 93 dwellings was submitted on 1st August 2022 and is pending determination (22/02312/REM).
- 6.13 The Council's trajectory states that 439 dwellings have been completed on the wider site to date with a further 361 with detailed permission (including the area covered by the LDO), with a further 93 dwellings pending determination (i.e., a total of 454 dwellings).
- 6.14 However, the Council seeks to rely on the delivery of a further 150 dwellings as part of the residual part of the site with outline planning permission but provides no clear evidence of this in terms of delivery. Accordingly, I remove 150 dwellings from the supply.

Bicester 3 – South West Bicester Phase 2: 13/00847/OUT

- 6.15 Outline planning permission (13/00847/OUT) for 709 homes was granted on 30th May 2015. A total of 649 dwellings have since been given detailed approval and each are under construction:
- 18/00647/REM - 247 dwellings approved October 2018
 - 18/01777/REM - 176 dwellings approved March 2019
 - 19/02225/REM - 226 dwellings approved March 2020
- 6.16 The Council's evidence states that there are 60 dwellings remaining with outline planning permission. No further reserved matters applications have been made to date. On the basis of the absence of a reserved matters application, there is a lack of firm progress in terms of delivery of the units relied upon by the Council and accordingly given this lack of clear evidence I have removed 60 dwellings from the supply.

Bicester 10 - Bicester Gateway Business Park, Wendlebury Road: 20/00293/OUT

- 6.17 An outline planning application (20/00293/OUT) for a mixed-use development, including 273 dwellings and 4,400 sq m of B1 floorspace, was approved on 1st April 2021. A reserved

matters application for Class E units was approved on 11th November 2022 (22/02025/REM). No further reserved matters applications have been made to date. The Council's statement states:

"Outline planning permission is secured. Bloombridge plan to submit a full residential application on the site in Q2 2023 and therefore the expected delivery rates allow sufficient lead-in time for Reserved Matters approvals and construction. This is therefore a deliverable site."

- 6.18 On the basis of the absence of a reserved matters application for the remainder of the site, there is a lack of clear evidence of delivery of the remaining part of the site.

Bicester 12 – South East Bicester (Wretchwick Green): 16/01268/OUT

- 6.19 An outline planning application for up to 1,500 dwellings was submitted on 28th June 2016 and approved on 20th May 2022 (ref: 16/01268/OUT). No applications for reserved matters have been submitted to date. The Council's statement outlines that the:

"Site is promoted by Boyer Planning on behalf of Redrow Homes/Wates. Outline planning permission is recently secured and conditions are being discharged indicating ongoing commitment to delivery. The expected delivery rates allow sufficient lead-in time for Reserved Matters approvals and construction. This is a developable site and will be kept under review."

- 6.20 The Council considers this is a "developable" (not deliverable) site and only includes 50 dwellings in the deliverable in year 5 (2026/27) and that this should be kept under review. Limited progress has been made to date in terms of the discharge of relevant planning conditions. Furthermore, condition 2 provides 4 years to implement or 2 years from the date of approval of reserved matters, whichever is the later. Condition 7 provides a 3 year period to submit the first reserved matters up to 10 years for remaining reserved matters and Condition 9 requires approval of a phasing plan prior to commencement of development. In addition, there are a number of conditions which need to be approved prior to or along with the first application for reserved matters (phasing plan; master plan and design code; drainage strategy); plus the following prior to or along with the first reserved matters application containing housing (energy strategy; water efficiency strategy); plus a number of pre-commencement conditions (**Appendix APP/3/E**).

- 6.21 In August 2022, an application (22/02559/DISC) was made to discharge conditions 21 (Flood Storage Compensation), 25 (Construction Environmental Management Plan), 26

(Landscape and Ecology Management Plan) & Partial discharge of conditions (relating to the Nature Conservation Area only) 17 Construction Method Statement), 18 (Construction Traffic Management Plan), 19 (Watercourses), 20 (SuDS Management and Maintenance Plan) 22 (Arboricultural Method Statement), 23 (Archaeological Written Scheme of Investigation), 24 (Programme of Archaeological Mitigation) and 28 (Ecological Buffer Zone) of 16/01268/OUT. This application was withdrawn in November 2022.

- 6.22 In July 2022, an application (22/01978/DISC) was made to discharge condition 10 of the outline planning permission relating to the masterplan and the design code. This application has still not been determined and is subject to outstanding objections including from the Environment Agency in relation to ecological buffer zones.
- 6.23 An application to discharge the condition relation to a phasing plan (condition 9) has not been made and therefore the phasing of this delivery of this site is not yet agreed.
- 6.24 On the basis of the absence of a reserved matters application, the lack of progress discharging a significant number of planning conditions and the Council's own concern regarding deliverability there is a lack of firm progress in terms of delivery of the units relied upon by the Council and accordingly given this lack of clear evidence I have removed 50 dwellings from the supply.

Sites with Detailed Planning Permission

Land to the rear of 7 and 7A High Street, Banbury: 18/00487/F

- 6.25 A full planning application for 14 dwellings was granted on 20 March 2020 (ref: 18/00487/F). However, applications have been made to discharge pre-commencement conditions, and the consent expired on 20 March 2023. Moreover, the Council's Housing Land Supply Statement states that **"The developer has indicated the plans are not currently economically viable in the current climate."** Accordingly, the site is no longer deliverable, and 14 units should be removed from the supply. It is understood from common ground discussions that the Council no longer relies upon this site for the purposes of deliverable supply.

Sites without Planning Permission

- 6.26 As confirmed in the Hanging Lane Secretary of State decision for sites without planning permission there is now a requirement for clear evidence that housing completions will begin within five years. This places the onus on the local planning authority to justify the

inclusion of such sites in the 5-year housing supply: the Council presents a lack of evidence of this for the sites outlined below.

Former RAF, Upper Heyford: 15/01357/F

- 6.27 A full planning application on behalf of Pye Homes for 89 dwellings was submitted on 20th July 2015 (ref: 15/01357/F) but was not even validated until 24th September 2021. The application was determined at planning committee on 13th January 2022 where it was recommended for approval subject to the signing of a Section 106 agreement. To date the S106 has not been signed and the Council has not provided any evidence as to the reason for it being incomplete. Therefore, there is no clear evidence of firm progress towards the issue of a planning permission or that there is a realistic prospect of the delivery of new homes within the next 5 years and I have removed 89 dwellings from the supply.

Former RAF, Upper Heyford: 21/03523/OUT

- 6.28 An outline planning application on behalf of Pye Homes for 31 dwellings was submitted on 14 October 2021 and is still pending determination (ref: 21/03523/OUT). The application was heard at planning committee on 10th March 2022 where it was recommended for approval subject to the signing of a Section 106 agreement. However, no S106 has been signed to date.
- 6.29 Even if a planning permission is granted, there will be a requirement to submit reserved matters and discharge planning conditions and there is no evidence of firm progress towards this and consequently there is no realistic prospect of the delivery of new homes within the next 5 years and I have removed 31 dwellings from the supply.
- 6.30 However, both of the above Upper Heyford sites are subject to a single full planning application (22/03063/F) lodged by David Wilson Homes in respect of 126 homes and validated on 6th October 2022. This application has yet to be determined. The covering letter indicates that: "The Applicant is in the process of acquiring the entire site and is seeking to develop the land with a single comprehensively planned residential development." The application form confirms that there are two owners, Old Dairy, Camp Road (Simon and Rebecca Fletcher), and Heyford Grange, Letchmere Farm, Camp Road (Timothy Sparks and Renate Sparks), and a Land Registry check confirms that Old Dairy parcel of land can be sold without the agreement of J A Pye (Oxford) Limited under the clause of a promotion agreement dated 30th September 2020 (**Appendix APP/3/H**). On the basis that no planning permission exists on this site, and the poor record of

deliverability in bringing development forward on the site given the long history above, and that the developer does not control the land and there is a complexity regarding a promotion agreement in favour of another party who has not been able to deliver a planning permission in the last 8 years in respect of one of the sites, I do not consider that there is clear evidence of delivery within 5 years.

PR7a - Land South East of Kidlington

- 6.31 The Council's statement confirms that a Development Brief for the site was approved in June 2022. An Outline application (22/00747/OUT) for 370 homes was submitted in March 2022 and is pending consideration. The Council relies on 30 dwellings in its supply. The application is in outline, and permission has yet to be granted. Reserved matters and the discharge of planning conditions will need to follow. There are outstanding objections from Sport England (January 2023); landscape officer (February 2023); OCC highways (April 2022); environmental protection (noise) (June 2022); Place and Growth (policy) (May 2022). Whilst the applicant has provided further information it is unclear whether this has addressed matters outstanding. As there is now a requirement in respect of sites without planning permission for clear evidence that housing completions will begin within five years, I do not consider that the Council has provided such clear evidence to an application which has been lodged for over a year, has not resolved consultee objections and has yet to be presented to planning committee and a S106 has still to be negotiated, with reserved matters and the discharge of planning conditions to then be undertaken. Accordingly, I remove 30 units from the Council's supply.

PR7b - Land at Stratfield Farm, Kidlington

- 6.32 A Development Brief for the site was approved in November 2021. Outline application (22/01611/OUT) for 118 homes was submitted on behalf of a housebuilder (Manor Oak Homes) in May 2022 and is pending consideration. Full application (22/01756/F) for alterations and repairs to farmhouse and annexe; refurbishment and partial rebuilding of existing outbuildings to provide 2 no dwellings and erection of 2 no new dwellings was submitted in June 2022 and is also pending consideration.
- 6.33 The County Highway Authority has a significant unresolved objection (28th March 2023) (**Appendix APP/3/F**) to the proposal in respect of a proposed pedestrian/cycle access via a proposed bridge onto a canal towpath and through to PR8 site is still not available to the County to access its suitability and therefore access arrangements remain unacceptable:

“The application is offering a proportionate contribution towards the delivery of the canal bridge through a s106 agreement. Whilst the canal bridge is a developer led infrastructure that the county does not find it necessary to be drawn into its delivery, the county is willing to receive the contribution from the development to hold until when the bridge is ready to be delivered. However, we require to see the bridge details ahead of agreeing to its suitability in serving the development. Both developers (PR7b and PR8) need to engage and come up with an agreement on the particulars of the bridge such as design, associated costs, construction who is delivering it and when. The developers will also need to engage with Canal and River Trust for the necessary permissions.”

- 6.34 The Canal and River Trust (**Appendix APP/3/F**) has expressed concern that the bridge proposed over the canal is not included within the site boundary and is a requirement of the Development Brief (the canal is a linear conservation area along the edge of the application site). They note that the bridge cannot be erected without their agreement, and it will need a DEFRA consent.
- 6.35 The Council relies on 20 dwellings in its supply. The application is in outline, and permission has yet to be granted. Reserved matters and the discharge of planning conditions will need to follow. As there is now a requirement in respect of sites without planning permission for clear evidence that housing completions will begin within five years, I do not consider that the Council has provided such clear evidence to an application which has been lodged for nearly a year, has not resolved consultee objections and has yet to be presented to planning committee and a S106 has still to be negotiated, with reserved matters and the discharge of planning conditions to then be undertaken. Accordingly, I remove 20 units from the Council’s supply.

PR9 - Land West of Yarnton

- 6.36 A Development Brief for the site was approved in November 2021. Outline application (21/03522/OUT) for 540 homes was submitted on 14th October 2021 and is pending consideration. The expected delivery rates allow for lead-in times of planning applications (outline followed by reserved matters) and construction. There are unresolved objections from the ecology officer (11th April 2023); County Highway Authority (22nd February 2023) (**Appendix APP/3/G**) raising objection to the need for further highway modelling and alterations to off-site highway works; Berks, Bucks and Oxon Wildlife Trust BBOWT (23rd January 2023) raising concern regarding impact on two Local Wildlife Sites, impact on

birds, ensuring net gain is in perpetuity and hydrological impact to Oxford Meadows SAC and Cassington to Yarnton gravel pits LWS).

6.37 The Council relies on 30 dwellings in its supply. The application is in outline, and permission has yet to be granted. Reserved matters and the discharge of planning conditions will need to follow. As there is now a requirement in respect of sites without planning permission for clear evidence that housing completions will begin within five years, I do not consider that the Council has provided such clear evidence to an application which has been lodged for 18 months, has not resolved consultee objections and has yet to be presented to planning committee and a S106 has still to be negotiated, with reserved matters and the discharge of planning conditions to then be undertaken. Accordingly, I remove 30 units from the Council's supply.

Windfall

6.38 The Council places no reliance on large windfalls within the first 3 years of the five-year period to avoid double counting as small sites (less than 10) are included in the allowance for small sites and larger sites are monitored separately with an allowance of 100 dwellings in years 4 and 5.

Summary

6.39 In summary, following my analysis, I calculate the deliverable housing land supply to be 3,552 dwellings, a reduction of 673 compared to the Council's housing trajectory:

		Council Supply	Appellant Supply with Council's case on requirement	Appellant Supply
A	Annual housing requirement	710 + 380	710	710 + 380
B	Five year requirement (A X 5)	5,450	3,550	5,450
C	Shortfall to be added	340	0	340
D	Five year requirement plus 5% buffer (B + C + 5%)	6,080	3,728	6,080
E	Annual requirement	1,216	746	1,216
F	5YHLS supply at 1st April 2022	4,225	3,552	3,552
G	Supply in years	3.47	4.76	2.92
H	Over / under supply	-1,855	-176	-2,528

7.0 CONCLUSION

- 7.1 As confirmed in the Suffolk Coastal Supreme Court Judgment, where housing supply policies failed to meet the objectives set by the then Paragraph 47 of the 2012 NPPF, the Inspector in that case **“rightly recognised that they should be regarded as ‘out of date’ for the purposes of Paragraph 14.”** In terms of paragraph 11d (the equivalent paragraph of the 2021 Framework to Paragraph 14 of the 2012 version), the Development Plan is not up-to-date as the housing requirement Policy BSC1 of the Local Plan was adopted in 2015 and has now been found to be out of date.
- 7.2 For the reasons outlined in Section 6.0, I conclude that Cherwell only has **2.92 years supply of deliverable housing sites**. Even without the 5% buffer being applied (should the NPPF be changed as proposed by the recent consultation proposal) the Council would require 1,158 dwellings per annum (5,790 over 5 years), and this would equate to a supply of 3.06 years. As outlined by the PPG, major sites with outline planning permission or site allocations (or indeed sites without planning permission) require further evidence demonstrate that they are deliverable in the 5-year supply period.
- 7.3 In the context where the Council has to date failed to bring forward an up-to-date NPPF compliant policy for the supply and delivery of new homes by delaying the progress of its new Local Plan, it is for the council to provide that clear evidence of a realistic prospect of delivery for outline planning permissions and allocated sites without planning permission, yet it has failed to do so.
- 7.4 The delay to delivering a new Local Plan is a significant factor in this. This has been augmented by, in the words of Lord Gill, the futility of relying on sites (such as site allocations or outline permissions without clear evidence of delivery) which do not have a prospect of delivery in 5 years. The **magnitude of this shortfall is clearly both serious and significant**; and should be given substantial material weight in the consideration of this appeal.

