
APP/3/J

**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 – Rebuttal 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 – Rebuttal Proof of Evidence of
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- R.1 This rebuttal 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'). I provide my response to the Proof of Evidence of Jon Goodall from DLP Planning Ltd, on behalf of the Council.
- R.2 Following the submission of evidence, and the preparation of a Statement of Common Ground agreed between the Appellant and the Council, an arithmetic error has been identified in the mathematical calculations for the respective parties' positions on housing supply. This does not affect the requirement, nor the sites in dispute, but relates to errors in the identification of supply in the summary tables.
- R.3 An Updated Statement of Common Ground on Housing Land Supply has been prepared and submitted to address this matter and the summary of the arithmetic position is agreed between the two parties. I set out below the updated position which replaces the table in Paragraph 6.39 of my main Proof of Evidence. Following my analysis of sites relied upon by the Council, I calculate the deliverable housing land supply to be 3,632 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	4,305	3,632	3,632
G	Supply in years	3.54	4.87	2.99
H	Over / under supply	-1,775	-96	-2,448

- R.4 My main proof of evidence Paragraph 7.2 should be amended to refer to 2.99 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 3.14 years.
- R.5 In his Paragraph's 2.18 and 2.20, Mr Goodall portrays the Appellant's approach to the requirement for housing land supply in the context of Paragraph 74 of the NPPF as a single figure for the district **"irrespective of the nature and status of relevant strategic policies and practice guidance in relation to housing need,"** and that such an approach would **"represent a departure from the adopted development plan and therefore an incorrect application of national policy in NPPF2021 paragraph 74."**
- R.6 Mr Goodall claims support for his position from two appeal decisions at Leigh Sinton, Malvern and Twynning, Gloucestershire in his paragraph 5.3 and then asserts in Paragraph 5.5 that the Appellant is **"conflating need and supply,"** and that the **"approach to accounting for supply related to Oxford's unmet needs remains as set out in adopted strategic policies of the development plan that are less than five years old and fully consistent with national policy. These provide for a specific approach to managing supply for the housing requirement related to these needs."**
- R.7 Whilst Mr Goodall accepts the Partial Review policies are out of date given the absence of a deliverable 5 year supply of housing, his position is that the tilted balance exercise in Paragraph 11d of the NPPF, should not apply to the remainder of the district as it would give a presumption in favour of sustainable development in all areas **"that would materially undermine the spatial strategy of the Council as such an approach would potentially lead to a response to increase supply across the District due to under-delivery against policies and allocations to provide for unmet need in Oxford in the most accessible and well-related locations in the District as identified for this purpose. This would ignore the objectives for the Partial Review and provision to contribute towards part of Oxford's unmet needs"**.
- R.8 I set out my evidence for the calculation of the housing requirement in section 5 of my main Proof of Evidence and I do not repeat that here. However, I make the following points in response to Mr Goodall's Proof of Evidence.

- R.9 First, I do not arrive at the position on the housing requirement by concluding that there should be a single requirement figure 'irrespective of the nature and status of relevant strategic policies and practice guidance in relation to housing need.' My evidence in this case relates to a consideration of the specific policies in the Development Plan, the background to the attribution of the way in which unmet need (specifically the proportion of unmet need for Oxford City in Cherwell) is to be addressed (Oxfordshire Growth Board – see Table 3 of the Partial Review), and the composition of the Development Plan itself, being formed of two Development Plan Documents (the Local Plan and the Partial Review) within a single Local Planning Authority. Mr Goodall highlights in his Paragraph 5.18 that Paragraph 74 of the NPPF does not specify that the housing requirement in adopted strategic policies must be identified on the sum of all relevant components: yet it does envisage that there may be more than one strategic policy as Mr Goodall accepts in Paragraph 6.15.
- R.10 Mr Goodall (Paragraph 5.23) claims that Paragraph 74 provides no qualification for considering unmet needs where the standard method provides the requirement against which supply is assessed. However, in his section on national policy, Mr Goodall refers to a number of NPPF paragraphs which address unmet need (17, 35 and 61). He then states in his Paragraph 5.27 that **"Paragraph 66 explains that the role of establishing a housing requirement for the whole of a strategic policy-making authority's area is to show the extent to which needs (including unmet needs from neighbouring areas) can be met over the plan period."**
- R.11 In Paragraph's 5.28 and 5.29 he asserts that the Appellant is **"disregarding"** strategic policies providing for the housing requirement in respect of the outcome of a plan led approach to **"ensuring opportunities to increase the provision of land towards overall housing needs and significantly boost supply"**, and that to so would be a departure from the development plan.
- R.12 In my view it is the Council which is disregarding the fact that all parts of the Development Plan are not up to date and the imperative in significantly boosting the supply of homes required by Paragraph 60 of the NPPF and to address unmet need (Para 61 of the NPPF) by failing to act upon the absence of delivery. The Partial Review policies continue to provide express Development Plan policy support to bring forward sites for new homes: and considering the supply of housing on a district wide basis does not undermine this objective, nor provide a disincentive, nor that the Partial Review sites play no role in providing the spatial distribution or management

of supply. My evidence reflects national policy to ensure each Local Authority has an up-to-date Local Plan and delivers on its housing requirements: clearly the Cherwell Local Plan 2011-2031 is out of date (confirmed by the Council’s own review), and moreover, whilst the Partial Review is less than 5 years old it is also out of date (accepted by Mr Goodall in his para 5.12) on the basis of footnote 8 of the NPPF in that there is an absence of 5 year supply of deliverable housing. Therefore, both plans are out of date for differing reasons. Despite the concern expressed by Mr Goodall in his Paragraph 5.44 that the requirement to update housing policy in Policy BSC1 could lead to abandoning the approach to addressing Oxford’s unmet needs in the Partial Review, this is evidently not proposed by Cherwell in the approach set out in the draft Local Plan (see my main Proof paragraph 5.19).

R.13 The appeal decisions relied upon for Mr Goodall’s proposition on the housing requirement do not in my view support his case, in that there are material differences to the circumstances in each of the two cases to this appeal.

R.14 The appeal at Leigh Sinton, Malvern, lies within Malvern Hills DC. In that case there were two main areas of dispute relating to housing land supply, geography and oversupply. The latter is not relevant to this appeal, and in terms of the former the issue in that case was the area where housing land supply calculations should cover, whether it be individually or jointly between Malvern Hills, Wychavon and Worcester. In that appeal the Development Plan was out of date and the standard method was applied and resulted in a change from monitoring supply across five sub areas to the three districts (Paragraph 36). Paragraph 41 refers to the PPG which provides guidance on how to monitor housing land supply where there is a joint plan:

“Areas which have a joint plan have the option to monitor their 5 year housing land supply and have the Housing Delivery Test applied over the whole of the joint planning area or on a single authority basis. The approach to using individual or combined housing requirement figures will be established through the plan-making process and will need to be set out in the strategic policies.”
(Paragraph: 028 Reference ID: 68-028-20190722)

R.15 However, Cherwell does not have a joint plan, so the circumstances presented to the Inspector in the Malvern case are materially different to this appeal. The Inspectors comment in Paragraph 42 of the decision letter are made in the context of considering whether individual districts rather than districts combining their housing requirement: it would not be appropriate to conflate this with the situation in Cherwell there are

two documents which comprise the Development Plan which taken together provide the strategic policies. Furthermore, the Malvern appeal decision refers to the Tewkesbury Borough Council v SSHCLG [2021] EWHC (Admin) judgment where the Court held (albeit in the context of an oversupply issue) that the PPG does not cover every possible situation (referred to by Mr Goodall in his Paragraph 5.39c): indeed, he highlights that there are few examples of plans that make a contribution to neighbours’ unmet needs. It is important, as the Twyning appeal Inspector concluded in his Paragraph 50, to consider the facts and evidence as they relate to the circumstances now. The Malvern Inspector ultimately indicated that he could not conclude that it had been demonstrated that the joint approach or individual approach (across districts) should be followed.

R.16 I note that Mr Goodall draws attention to the Inspector’s conclusion that the Housing Delivery Test (HDT) is a separate process (backwards looking) compared to the forward-looking housing land supply. In my evidence I refer to the fact that the HDT is undertaken on a district wide basis rather than by local plan document. I am not, as suggested in Mr Goodall’s paragraphs 6.7-6.10, seeking to elide the two processes which evidently have a different purpose nor that HDT informs the numerical calculation of housing land supply.

R.17 In the Twyning Appeal, Tewkesbury Borough is part of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy area. The JCS was out of date and the standard method was used. The dispute in that case was whether the dwellings arising from strategic allocations which lie within Tewkesbury’s geographical boundary should be included in the housing requirement for Tewkesbury (even if they were addressing the unmet need of another district). Policy SP2 of the JCS was specific on the distribution of the strategic sites in terms of the contribution to each district’s housing land supply. The Inspector acknowledged (Paragraph 43) that Paragraph 74 of the NPPF does not indicate the method by which housing supply is to be accounted for. Once again this is a case relating to the distribution of strategic sites to individual districts and differs materially to the position in Cherwell. Indeed, as reported in **CD4.7** there is no longer any strategic joint working in Oxfordshire:

“In August 2022, the Oxfordshire authorities ceased work on a joint plan for Oxfordshire. Local Plans for the City and Districts will now provide for the long-term planning of Oxfordshire and housing needs will be addressed through individual Local Plans for each of the City and Districts.”

R.18 Mr Goodall's Paragraph 5.14 states that to engage the titled balance in wider district would **"materially undermine the spatial strategy of the Council"** which contradicts the approach set out in the Cherwell Executive report (see my para 5.18) that the District and needs for Oxford City cannot be considered in isolation and the draft Local Plan which I quote in my main Proof of Evidence paragraph 5.19 that states that sites at Bicester will help meet unmet needs from Oxford. Indeed, the Executive Officer Report to (CD4.7) Paragraph 3.26 notes:

"...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."

R.19 The Council's approach also ignores the consequence of failure to address unmet need (by seeking to rely on LHN and setting aside unmet need requirements): the alleged material harm to the spatial strategy is not articulated other than the unmet need is planned to be addressed on the partial review sites. Despite only having 0.2 years housing supply when looking at the Partial Review sites in isolation, the Council has not taken a formal decision that additional land beyond that allocated in the Partial Review is required to ensure the requisite housing supply as envisaged by Policy PR12b. This is confirmed in Paragraph 3.29 of the report to Executive in February 2023 which states (despite zero completions and no planning permissions on the Partial Review sites):

"The five-year supply 'shortfall' is not a land supply issue as such. The issue is one of timing. Presently, it is considered that the potential release of additional land within the parameters of the Plan's strategy could be counterproductive to delivering the Plan and its infrastructure requirements."

R.20 Reference made in Paragraph 5.19 of Mr Goodall's evidence to the Local Plan Regulations 2012 in respect of Article 34 (annual monitoring reports) identifies the need to report housing monitoring for any part of local authority area where so identified in policy, however, this does not provide guidance in respect of how the housing land requirement is to be derived, it simply indicates the granularity of monitoring to be reported.

- R.21 In Mr Goodall’s Paragraph 5.34 he claims the appeal decision on land at Grove (**CD7.3**) is of material difference to Cherwell as the VOWH Local Plan Part 2 in providing for 2,200 homes for unmet need were not ring fenced and that the provision on unmet need on specific allocated sites means that they are not to be added to the overall housing requirement (Paragraph 5.37)¹. The Cherwell Development Plan, whilst allocating sites to address unmet need, does not ring fence unmet need spatially on the proposals map from the remainder of the district: it is not defined on the Proposals Map (Appendix 1 of Partial Review). In the absence of a geographical split for the consideration of new housing proposals, and the absence of a formal decision that additional land beyond that allocated in the Partial Review is required to ensure the requisite housing supply as envisaged by Policy PR12b, the Council does not offer a remedy to address this situation.
- R.22 Mr Goodall identifies concern in his Paragraph 5.45 that engaging the tilted balance to meet needs at locations not in accordance with the carefully designed spatial strategy: however, this is the position now faced by the Council in that it concedes the Partial Review is out-of-date as there is no 5 year supply of housing and, in actual fact, given the lack of a ring fence to the area of the district impacted by this position leaves the Council open to the fact that other sites may be advanced to address this shortfall and seek the benefit of the provisions of Paragraph 11d in any event. In other words, the risk postulated by Mr Goodall is already a reality as the Council is failing to deliver the homes required by the Partial Review.
- R.23 With regard to the components of housing supply I have no further comments to make in response to the Council’s proof of evidence beyond that already set out in my main proof of evidence, other than to highlight concern with the unfounded assertion in Paragraph 7.18 that **“the Appellant has not considered relevant matters consistently before determining that an adjustment to the Council’s assessment is warranted.”** It is unclear on what basis this is made given that this was written prior to exchange of evidence. Of greater importance is that in Paragraph 7.12 of his proof of evidence, Mr Goodall states in the context of a Housing Land Supply Statement recently published in February 2023 that:

¹ Reference by Mr Goodall to Chiltern District is simply presumed to be a typographical error and meant to refer to Cherwell District

“It is necessary to objectively revisit all parts of the Council’s conclusions where there is a requirement to demonstrate clear evidence of a realistic prospect for completions beginning on site within five years.”

- R.24 For the reasons outlined in Section 6.0 of my main proof of evidence, I conclude that Cherwell only has **2.99 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 3.14 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.
- R.25 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.
- R.26 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.

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